DECISIONS OF

The Public Service Commission

OF THE

COMMONWEALTH OF PENNSYLVANIA

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for damages due to the owners of property taken, injured or destroyed in the execution of this improvement within its corporate limits, exclusive of compensation due to the respondent railroad company for any of its property taken, injured or destroyed; the County of Westmoreland to reimburse the borough for one-half this cost.

14. That any relocation, changes in, or removal of any adjacent structure, equipment or other facilities of any public service company, which may be required as incidental to the execution of the improvement herein ordered shall be made by said public service company at its own expense.

15. That, upon completion of the improvement, The Pennsylvania Railroad Company shall thereafter maintain the substructure and superstructure of the overhead bridge and viaduct approaches thereto exclusive of roadway and sidewalk paving, and shall also maintain the pedestrian subway including the steps and ramps leading thereto; the Borough of Seward shall maintain the drainage and lighting facilities of the pedestrian subway; and the Department of Highways shall maintain the remainder of the improvement.

16. That, upon completion of the improvement herein ordered, the portion of Indiana Street within the property lines of The Pennsylvania Railroad Company, will become unnecessary for public use and accordingly shall be vacated between said points.

17. That, upon completion of the improvement herein ordered, the said highway hereinabove vacated shall be effectively barricaded by The Pennsylvania Railroad Company, said barricades to be thereafter maintained by said company.

An order will issue in accordance with these findings.

DELAWARE, LACKAWANNA AND WESTERN RAILROAD COMPANY et al.

vs.

FRANK MARTZ BUS COMPANY

COMPLAINT DOCKET NOS. 7825-7826-7828-7830-7832-7834-7859.

Motor vehicles—Interstate commerce—Intrastate commerce—Commerce between two points in same state via anther state—Subterfuge.

The service between Philadelphia and Scranton and Wilkes-Barre by a passenger motor bus operator also operating to New York City was found to be service in intrastate commerce and ordered stopped, the Commission having found that respondent motor bus company's routing of its busses through the state of New Jersey, issuance of tickets so marked, and other methods of operation were merely subterfuges to evade state regulation.

Daniel R. Reese and *G. W. Morgan* for Delaware, Lackawanna & Western Railroad Company.

George H. Huft for *Philadelphia Rapid* Transit Company, Philadelphia Rural Transit Company and Easton & Doylestown Motor Coach Company.

H. B. Thomas for The Central Railroad of New Jersey.

F. B. Smillie for Lehigh Valley Railroad Company.

H. Z. Maxwell for The Pennsylvania Railroad Company.

C. T. Wolfe for Reading Company.

Abram Salzburg and *Mulford Morris* for Respondent.

REPORT BY THE COMMISSION, *April 23, 1929:*

Respondent in these complaints operates a passenger motor bus service between the cities of Scranton and Wilkes-Barre, and Philadelphia. The approximate distance of the route is 145 miles, less than ten miles of which are in the State of New Jersey. Originating in the cities of Wilkes-Barre and Scranton, the bus route follows the state highway known as the Lackawanna Trail to Stroudsburg, and thence to Easton, where it leaves that highway, crosses the Delaware River bridge to Phillipsburg, New Jersey, and thence proceeds south on the eastern shore of the river to Riegelsville, New Jersey, where it again crosses a river bridge to Riegelsville, Pennsylvania, and from thence, over the same Lackawanna Trail, it proceeds through Doylestown to Philadelphia.

It is within the knowledge of the Commission that the Lackawanna Trail extends as one continuous through highway from Philadelphia to Scranton without break. It further finds from the record that the main travelled highway between Philadelphia and Wilkes-Barre and Scranton is entirely within the borders of Pennsylvania, and that the portion of the highway between Easton and Riegelsville on the Pennsylvania side of the river is of concrete and is a shorter and safer highway than the corresponding section on the New Jersey side of the river between Phillipsburg and Riegelsville. It is admitted that the transportation of persons originating from or destined to Phillipsburg or any other point on the part of the route in New Jersey is negligible and almost non-existent. In fact, on the sixteen representative days covered by the evidence only seven out of 290 passengers carried entered or left the bus at New Jersey points. Phillipsburg is practically a suburb of Easton and all its transportation requirements in a service such as here operated could be reasonably met by operation through Easton, entirely on the Pennsylvania side of the river. It is on

the Pennsylvania side of the river that other bus operators, passing through this territory, route their busses.

It is clear, and the Commission finds, that the Philadelphia-Wilkes-Barre and Scranton route of respondent is a separate and independent operation and not in an integrated part of the bona fide interstate routes operated by it, such as its New York-Scranton, and its Scranton-Buffalo routes. The record shows that respondent's busses leaving Philadelphia usually pass through New Jersey and back into Pennsylvania without stopping, and that the first stop made is Stroudsburg. Nevertheless, respondent's tickets are ink-perforated in the middle, one half reading "Philadelphia, Pa. to Phillipsburg, N. J." and the other reading, "Phillipsburg, N. J. to Wilkes-Barre or Scranton" and vice versa for the return journey. The lack of good faith in this attempted appearance of a division of the trip is indicated by the fact that the entire ticket is collected at once, usually in Stroudsburg. Respondent's advertising, moreover, both in newspapers and on its busses is of transportation between Philadelphia and Scranton or Wilkes-Barre, no mention being made of any New Jersey stops. Prospective passengers for points in New Jersey are compelled to buy a ticket for Phillipsburg. Occasionally passengers for Philadelphia from Wilkes-Barre or Scranton are requested at Stroudsburg to change to the bus from New York to proceed to Philadelphia.

Does the use of the comparatively short section of the route in New Jersey constitute the service as interstate, and thereby automatically remove it from the regulatory jurisdiction of the State of Pennsylvania? Was the selection of a few miles of route in the State of New Jersey made for the legitimate purpose of serving interstate traffic, or was it a subterfuge to evade the law of Pennsylvania? These are the determinative questions involved in these proceedings.

It is not disputed that respondent is a common carrier. He contends that under the Buck and Bush decisions of the United States Supreme Court (Buck *vs.* Kuykendall, 267 U. S. 307, and Bush and Sons *vs.* Maloy et al., 267 U. S. 317) the mere fact that his vehicles traverse any part of the soil of another state than Pennsylvania relieves him of the necessity of obtaining a certificate of public convenience from this Commission for the transaction of intrastate business. While counsel for respondent in brief and argument made admission that for some purposes the State of Pennsylvania might exercise control over the operation of respondent's vehicles, in general the respondent makes unqualified denial of the jurisdiction of the State to exercise regulatory authority under the provisions of the Public Service Company Law.

Like many other motor bus passenger carriers engaged in interstate business, some of which are in bona fide interstate operation and some are not, respondent began the operation complained of subsequent to

the Buck and Bush decisions upon which he relies. It is a matter of common knowledge that since the United States Supreme Court clarified the law in reference to interstate motor vehicle transportation in these decisions, there have sprung into being almost countless operators of alleged interstate service whose disregard of all laws has led to numerous pronouncements by courts and commissions to correct their misinterpretations of the decisions of the Supreme Court. The whole trend of the judicial decisions since 1925, as the Commission construes them, and especially those of the Federal Courts, has been to make it clear that the highest tribunal did not, in the decisions referred to, intend to open the floodgates to irresponsible motor bus operations under the guise of interstate commerce, free from all restraint of law, or divested completely of the requirements of public interest.

In Pennsylvania, as in other states prior to the Buck and Bush decisions, the Commission and the courts had held that, in the absence of federal regulation, interstate motor bus common carriers were required to operate under the regulation of the Commission, so far as points within the state were concerned. Under that practice, over one hundred certificates of public convenience were issued to interstate carriers for operation within the State's borders. Many of these certificates were from the City of Philadelphia to points on the state line for routes of service to New York, New Jersey, Delaware and Maryland. From other centers of population near the State border, such as Pittsburgh and Erie, these certificates were issued for routes of service to New York, Ohio, West Virginia and Maryland. These certificates, all issued to legitimate interstate operators, lapsed when the law was defined in the Buck and Bush decisions.

Subsequently, mushroom operators who attempted to circumvent the law of Pennsylvania by such devices as crossing the state line over the Delaware River bridge between Philadelphia and Camden, New Jersey, and returning to Philadelphia, were ordered to cease and desist by the Commission (Public Service Commission *vs.* Highway Motor Coach Company, 16 P. C. R. 28). It was not the purpose of the Commission in that case, or in any of its decisions, to hamper or obstruct the operation of lawful and proper interstate motor transportation. It has repeatedly declared its purpose, in the public interest, to give every encouragement possible to the legitimate development of motor bus passenger and motor truck freight transportation and its action in having granted scores of certificates to interstate operators prior to 1925.

Our problem is not one of search for some general formula or standard to be applied, nor the relation of precedents having to do with railroads, telegraph lines, navigable rivers, and the like. It is solely whether the particular operation complained against, considered

in the light of the nature and character of the route traversed, the carriage undertaken, the extent and character of operation in New Jersey, and all the other incidents of the particular undertaking, constitute it an engagement that can be pursued without its necessity or propriety in the public interest first being established to the legal satisfaction of this Commission. We have been referred by respondent to Hanley *vs.* Kansas City Southern Railway Company, 187 U. S. 617; Missouri Pacific R. R. *vs.* Stroud, 267 U. S. 404, and Western Union Telegraph Company *vs.* Speight, 254 U. S. 17, which cited cases do not rule the present controversy. Those decisions involve commerce conducted by entities possessed of corporate privileges, franchises and rights to do and perform an interstate as well as intrastate business; commerce that was routed across state boundaries and carried on lines of rail and wires located on private rights of way; on lines that were owned, controlled and used solely by the corporations themselves, and operated as parts of an extensive and integrated system for the carriage of persons and property, or for the transmission of intelligence, to points in states other than those of their origin, and forming part of one great system of transportation, nation-wide in its general extent. They do not, as here, deal with a method of transportation which permits of transportation over one route today, another tomorrow, and the next day a third, or the first again.

The Federal Supreme Court has many times said that the distinction between interstate and intrastate commerce lies in the fundamental nature of the thing done and not in the form given it. "The question whether commerce is interstate or intrastate must be determined by the essential character of the commerce and not by mere billing or form of contract." Atlantic Coast Line R. R. Co. *vs.* Standard Oil Company, 275 U. S. 257, 268 (1927). The court applied this principle in a still more recent bus case: Sprout *vs.* City of South Bend, 277 U. S. 163 (1928). In that case the court set aside a municipal ordinance on the ground that it imposed a license fee on the right to operate in interstate commerce, but it went out of its way to definitely set its heel on the appellant's claim that his local suburban business within the State of Indiana was interstate commerce because his tickets read to points beyond the state line, and the passengers were required to pay fare to such points. "The legal character of this suburban bus traffic was not affected by the device of requiring the payment of a fare fixed for some Michigan point or by Sprout's professing that he sought only passengers destined to that state. The actual facts govern. For this purpose, the destination intended by the passenger when he begins his journey, and known to the carrier, determines the character of the commerce."

In the case now before the Commission, respondent's advertising in the newspapers and the designations on his bus indicate only a trans-

portation to another point in the same state. The prospective passenger is wholly unaware of the fact that he will be carried outside that state, and does not desire so to be taken. As in the Sprout case, respondent's device of issuing tickets indicating the payment of fare to Phillipsburg, N. J. can have no legal effect on his operation.

In addition to our opinion that there is no substantial reason for regarding this transportation as one in interstate commerce, we are further of the opinion that respondent's method of operation is adopted solely as a subterfuge and colorable form to create a legal effect, and not for any reason of business or efficiency of operation.

The language of the court in Inter City Coach Company *vs.* Atwood, 21 Fed. (2d) 83 (1927) is particularly applicable to respondent's operation:

> "Interstate commerce is more than running busses across a state line. It is running vehicles which transport passengers or goods interstate, or are honestly intended to do so. **** The question before us, taking the evidence most favorably to the plaintiff, is whether a bus, using the highway for carrying for hire intrastate passengers, escapes state highway regulation because it may also carry an occasional interstate passenger. In our opinion it does not. Still less does it do so if (as on the present record is at least probable) the interstate character of the transportation is a 'discreditable subterfuge, to which this court ought not to lend its countenance.' * * * * In our opinion, interstate commerce, in order to be entitled to the protection of the federal Constitution, must be real and bona fide. The question whether it is so is open to inquiry. It has never been held, and we believe never intended, that a mere fiction of interstate commerce may be so availed of as to deprive a state of its power to enforce sound regulation of the use of its highways in intrastate commerce."

Respondent's choice of a longer and less desirable route for a short distance outside the state, its manner of printing its tickets, the practical non-existence of any business to the points outside the State, and its attempts to create the appearance of interstate and intrastate business necessarily commingled by its occasional changing of busses at Stroudsburg, all points to the conclusion, and we so find, that respondent's operation beyond the boundaries of Pennsylvania is merely a "discreditable subterfuge" to which no countenance ought to be given by the regulatory authorities of this State.

The facts as developed of record and as found herein, considered entirely apart from respondent's motives in routing his line over the state boundary, compel the conclusion that the commerce engaged in is intrastate and subject to this Commission's jurisdiction. The purpose of the Commerce Clause of the federal Constitution is "to protect commercial intercourse from invidious restraints, to prevent interference through conflicting or hostile state laws, and to insure uniformity in regulation." Pennsylvania *vs.* West Virginia, 262 U. S. 553, 596. The

complete regulation of respondent's service by this Commission can work no invidious restraint as against New Jersey, and that state, by reason of the nature of respondent's service can relate to him no impositions save license fees for the use of its highways, speed regulations and such other local police measures as would be within its power, even though respondents' business were in point of fact and law interstate in the full sense of the term. Neither is respondent subjected to interference through conflicting or hostile state laws, nor subject to lack of uniformity in the regulation of his business.

In the Commission's opinion respondent's bus operation between Wilkes-Barre and Scranton on the one end, and Philadelphia on the other, is an operation in intrastate commerce and as such is a violation of the Public Service Company Law unless and until a certificate of public convenience from the State of Pennsylvania is obtained therefor. The operation of respondent's busses over the short section of route in New Jersey is and has been a subterfuge to evade the law of Pennsylvania. The complaints will be sustained and an order directing respondent to cease and desist from such operation will issue accordingly.

RESIDENTS OF CITY OF COATESVILLE

vs.

PENNSYLVANIA RAILROAD COMPANY, COUNTY OF CHESTER, CITY OF COATESVILLE, TOWNSHIP OF VALLEY AND DEPARTMENT OF HIGHWAYS

COMPLAINT DOCKET NO. 7435

Crossings—Bridge—Commission report and order—Modification.

The Commission modified a former report involving the reconstruction of an overhead crossing so as to provide for a wider span to permit the laying of two additional tracks under the new bridge. The additional cost was imposed upon the railroad company.

W. E. Greenwood for City of Coatesville.

Nauman & Smith for The Pennsylvania Railroad Company.

John L. Shelley, Jr., for Department of Highways.

H. F. Troutman for County of Chester.