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Public Utilities

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that there was not clear and convincing evidence that the decedent had relinquished all vestige of control over the property.

A somewhat similar situation was presented in *Tilton v. Mullen*.[6] There the issue was raised upon proceedings on exceptions to the inventory filed in the decedent's estate, the exceptor contending that the decedent, expressing the wish that the exceptor have the contents of her safety deposit box, had given her the keys to the box some five months before death. The box contained unindorsed stock certificates, actual delivery of none of which to the exceptor was shown. The court reasoned that the exceptor must base her claim upon a gift inter vivos and, under the depository's practice of requiring an authorized signature as well as presentment of proper keys to gain entry to the box, no sufficient parting of dominion and control by the decedent was shown.

This decision may be distinguished from that of a probate court,[7] upon the same type of proceeding, that one who indorsed a certificate of stock twelve years prior to her death but never delivered it to the indorsee, had nevertheless effectively transferred the certificate to the indorsee. The court there found that the indorsee had impliedly contracted to allow the decedent rent-free use of valuable property in return for the stock. The exceptor's claim was based not upon gift, either inter vivos or causa mortis, but upon contract, bringing the transaction, as the court held, within the provisions of section 10 of the Uniform Stock Transfer Act[8] relating to the attempted transfer of stock without delivery.

REES H. DAVIS, JR.

PUBLIC UTILITIES

Railroads: Installation of Safety Services at Crossings — Authority to Compel

In *New York Central R. R. Co. v. Public Util. Comm'n*,[1] the Ohio Supreme Court held that the statute[2] authorizing municipal corporations to construct and operate safety devices at railroad grade crossings considered dangerous did not deprive the Commission of jurisdiction to order a railroad company to install safety devices at a street crossing the Commission finds dangerous. It is difficult to see how the court could have decided the issue other than it did!

[6] 101 Ohio App. 129, 137 N.E.2d 125 (1956).

[7] *In re* Merrick's Estate, 133 N.E.2d 919 (Ohio Prob. 1955).

[8] OHIO REV. CODE § 1705.13.

Public Utilities Commission — Modification of Order Respecting Railroad

In *Akron & Barberton Belt Rd. Co. v. Public Util. Comm'n*,[3] it was held that while the Commission is authorized by statute[4] — upon application, notice to the interested parties and hearing — to rescind, alter or amend any order made by the Commission with respect to a railroad, the statute does not give the Commission authority to change an order determining track clearances without the production of evidence justifying the change. In the absence of such evidence the railroad is not obligated to offer evidence against the new order.

Railroads: Connecting Carrier Bound by Initial Contract Of Carriage

In *Baltimore & O R. R. Co. v. Producers Livestock Cooperative Ass'n*,[5] a shipper ordered one 40 foot car for through shipment of livestock from McCook, Nebraska, to Washington Courthouse, Ohio. The originating carrier, the C. B. & Q. R. R. Co., was unable to furnish the car ordered, and instead, for its own convenience, furnished two 36 foot cars. The shipper's order of one 40 foot car and the originating carrier's substitution were expressly set forth in the contract of carriage (Uniform Live Stock Contract) When the two cars arrived at East St. Louis for interchange with the Baltimore & O. R. R. Co. for delivery to destination, the Baltimore & O. R. R. Co. reloaded the cattle into two cars of its own. When the cars were delivered at destination, the shipper refused to pay the freight charges as computed on *two* cars from East St. Louis but tendered the one-car rate, which the Baltimore & O. R. R. Co. accepted and credited on the total bill. This action was for the balance allegedly due. In denying recovery of the balance, the court held that with only 38 head of cattle being shipped, and the express notation on the original billing that the shipment was being moved as one car, the connecting carrier was put on notice that, in the transfer of the shipment, it should have reloaded the cattle into one 40 foot car and assessed charges accordingly. The decision seems sound, for as the court points out, to hold otherwise would require a shipper to follow his shipment in order to insure that the connecting carrier would transfer the shipment in accordance with the original contract of carriage.

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[1] 164 Ohio St. 289, 130 N.E.2d 365 (1955)
[2] OHIO REV. CODE § 4907.49.
[3] 165 Ohio St. 316, 135 N.E.2d 400 (1956)
[4] OHIO REV. CODE § 4909.30.
[5] 131 N.E.2d 275 (Ohio C.P. 1956).