RIGHT OF A RAILWAY COMPANY TO GRANT EXCLUSIVE PRIVILEGES TO HACKMEN AND EXPRESSMEN.

PRIVILEGES TO HACKMEN AND EXPRESSMEN.

In the recent case of Skaggs v. Kansas City Terminal Railway Co. et al.,[1] the court held that "a railroad and depot company may lawfully exclude some hackmen or carriers of baggage from entering its grounds or station for the purpose of soliciting patronage and plying their vocation, while it gives to others the exclusive privilege of doing so." The defendant Terminal Company granted to a certain transfer company the exclusive privilege of soliciting patronage for its cabs, carriages and baggage service upon the grounds and premises of the Terminal Company at the new Union Station in Kansas City. The plaintiffs obtained in the circuit court of Jackson County a temporary order restraining the defendants from depriving them of the use of the station grounds. On an amended petition charging the defendants with an agreement in restraint of trade and for the creation of a monopoly affecting commerce the case was removed to the federal court. The court held that the federal rule as stated in Donovan v. Pennsylvania Co., controlled.[2] This case and a concurring line of state decisions[3] proceed upon the theory that the carrier owes a duty only to passengers and shippers to furnish them with reasonable facilities for transporting themselves and their baggage[4] and not to the competing hack-drivers to give them all an equal opportunity to solicit patronage. As between the carrier and the general public the station and premises of the carrier are private property and the carrier is not bound to allow others to carry on a business for profits on its grounds. Another line of decisions deny the right of a railroad to grant exclusive privileges to hackmen or baggage expressmen.[5] These decisions are based on the ground that such contracts prevent competition and tend to create a monopoly and are against public policy.

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[1] 236 Fed. Rep. 827.

[2] 199 U. S. 279.

[3] See Oregon Short Line R. Co. v. Davidson, 33 Utah 370; note 16 L. R. A. (n. s.) 77 and cases cited.

[4] In Donovan v. Pennsylvania Co., the court cites with approval the Express Cases, 117 U. S. 1, saying, "So long as the public is served to its satisfaction it is a matter of no importance who serves it." See also Chicago & R. R. Co. v. Pullman Car Co., 139 U. S. 79.

[5] State v. Reed, 76 Mass. 211.

It is universally conceded that a railroad may exclude all persons who come upon its premises to solicit patronage.[6] It is also conceded by those cases which countenance such exclusive contracts that a railroad cannot prohibit the entrance upon its grounds of hackmen or expressmen who have already contracted to deliver at, or carry from a depot the person or baggage of a passenger with reasonable means for the transportation of his person and baggage, i. e., they must be allowed to enter the grounds under such circumstances by virtue of a duty owed to the passenger.[7]

In Skaggs v. Terminal Railroad Co., after deciding that the federal rule controlled, the court declared that even though it were conceded that the local law governed, nevertheless the decisions in Missouri do not sustain the plaintiff's contention that such a contract is void. This contention does not seem well founded. In Cravens v. Rogers[8] the plaintiff built an approach to the depot platform of a railroad under an agreement that he was to have the exclusive use of it. The plaintiff sought to enjoin the defendant from using this platform. The court held that "the agreement to give the exclusive privilege is against public policy and the spirit of the state constitution, Art. 12, Sec. 23."[9] It is to be noted that the Supreme Court did not attempt to construe this section of the constitution nor did it declare the contract to be contrary to its terms; it only held the contract to be against the spirit of the constitution. The court in the present case contends that this section of the constitution and sections 3174 and 3184 R. S. Mo., 1909, "apply only to those doing business with carriers in connection with railroad transportation; that is to say, patrons or would-be patrons who sustain a contractual relation with them." This view does not seem to have been adopted by the courts, as in Tielo v. Stone[10] the court quotes Cravens v. Rogers and adds, "the section in the constitution referred to in the above opinion (Cravens v. Rogers) covers transactions between carriers," and in Telephone Co. v. Telephone Co.[11] the decision in Cravens v. Rogers was put upon the ground that it was a discrimination by one common carrier against another, considering the competing bus lines as common carriers.

[6] Oregon Short Line R. R. Co. v. Davidson, *supra;* Hedding v. Gallagher, 72 N. H. 377.

[7] Old Colony R. R. v. Tupp, 147 Mass. 35.

[8] 101 Mo. 247.

[9] No discrimination in charges or facilities in transportation shall be made between transportation companies and individuals or in favor of either by abatement, draw back, or otherwise.

[10] 135 Mo. App. 438, 459.

[11] 147 Mo. App. 216, 237.

If we yield to the contention that Cravens v. Rogers does not come within the terms of the constitution provision, then it must be placed on that part of the decision which declares the contract contrary to public policy, and unless Cravens v. Rogers has been subsequently overruled, impliedly or in terms, it must be taken as the law upon the subject.

The court in Skaggs v. Terminal Railroad Co. mentions two cases which, in its opinion, involve the question in doubt. In Wiggins Ferry Co. v. Railroad[12] the defendant required a ferry to complete the transportation of its passengers and freight at a terminal point and it agreed with the plaintiff to give it all its ferrying business at that point in consideration of the granting to the railroad of a site for a depot. The railroad pleaded that the contract was against public policy to escape liability for its breach, but it was declared valid and not in restraint of trade or against public policy. This case is distinguishable, however, from Cravens v. Rogers. Here no one was complaining of a discrimination; the public in this situation is not interested in the means whereby they shall cross the Mississippi, whether by one ferry or another, so long as it is expeditious; whereas they are directly and personally interested in transportation service for their person and baggage at the point of destination. In the second argument of this case, which was subsequent to Cravens v. Rogers, it is significant that the latter was not cited by counsel or in the opinion. In Home Telephone Co. v. Sarcoxie Telephone Co., the plaintiff sued to enjoin the defendant from violating a contract providing that the parties should connect their lines so as to make a continuous system and that all messages received by either company on the lines of the other should be transmitted over the line of the other company exclusively. The court, taking judicial notice of the history of telephone organization in Missouri, declared the contract valid since the parties were not competing lines and the defendant sought to escape its contract only to join in an alliance with the Bell System, a rival of the plaintiff. All the other cases in Missouri upon this question are between carriers and shippers or localities.

As Cravens v. Rogers seems not to have been overruled, Missouri must be classed with those states which hold that a railroad cannot grant exclusive privileges to hackmen or expressmen.

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[12] 73 Mo. 389; 128 Mo. 224.
[13] 236 Mo. 114 overruling 147 Mo. App. 216.