

AN IMPORTANT FLORIDA DECISION

Florida has suffered greatly during the past year for the lack of cars to move her products. Conditions grew so serious that Florida shippers moved for relief. As a result W. H. Ellis, attorney general, instituted in the supreme court of the state, mandamus proceedings against the Atlantic coast line railroad company. Ex-Governor Jennings of Florida, who directs attention to these proceedings, writes: "The attorney general alleged that as a matter of law, in substance, the duty of a common carrier under a state franchise is to receive and transport without delay, and in a safe and convenient manner, all passengers and all freight properly offered to it for carriage under ordinary conditions. This matter was presented to the court during the early part of January, and the alternative writ of mandamus issued, to which the railroad company filed a motion to quash, which was heard by the court during January. The decision was handed down recently by Justice Whitfield, and the enclosed is a copy of extracts from such opinion. This opinion sustains the position of the attorney general in his petition for mandamus, and perhaps goes further in establishing the duties of a common carrier than any decision that has been rendered in the United States. It is deemed of very great importance to the country, and as well founded in law. The question of amendment suggested by the court has been conformed to by the attorney general. The seventh paragraph re-states the fundamental principles of law when it holds that a common carrier is required to receive and transport all passengers and freight offered to it for carriage. The eighth requires that the company must provide and maintain safe and efficient roadbed, track, motive power, equipment, facilities and operation sufficient to meet the reasonable demands of the service it undertakes to render, so as to best serve the requirements of the public; and it is stated in the ninth that when a corporation is clothed with the rights, powers and franchises of a common carrier, it becomes, in law, subject to governmental regulation and supervision, and assumes the burden of providing all proper means, etc., to handle all freight and passengers in a safe and efficient manner; while in the eleventh, it holds that the powers enumerated are inherent and reserved in the state for the necessary protection and benefit of the lives and property within its territory. This opinion will, I believe, be of especial interest to the country, of great service, and while fundamental in principle, it is one of two or three decisions that seem to have been found so far in the United States that have brushed aside the accumulated decisions on collateral questions, usually called 'constitutional questions,' and 'depriving corporations of their property without due process of law,' if any regulation is attempted by the judiciary department of a state. This decision holds that the public is entitled to efficient roadbed, rails, equipment, motive power and operation to handle all the freight and all the passenger traffic offered, whether stockholders or bondholders receive any dividends or returns whatsoever."

The opinion rendered by Justice Whitfield is so interesting that it is here given in full. It is as follows:

1—The service rendered by a common carrier directly and vitally affects the public. To have such service properly rendered is a beneficial right which the public are entitled to enjoy. If the service is not properly rendered it causes loss and inconvenience to the public and perhaps endangers the lives and property of all those to whom it is extended; therefore, it is a fundamental duty of the state to rigidly require a proper rendering of this useful public service.

2—The allegations of the alternative writ state a most flagrant disregard and violation of the duty which the respondent owes to the public, by allowing its roadbed and track to most unreasonably become and remain in a condition palpably unsafe and unsuitable for the service the respondent has undertaken to render to the public, and by failing to furnish adequate motive power, cars and other facilities, and to transport and deliver with reasonable safety and dispatch freights accepted by it for transportation. Such gross neglect of duty is an abuse of the rights and privileges received from the state and exercised by the railroad in its undertaking by permission of the state to render the service of a common carrier, and the state has a clear right to correct such abuse and to enforce the performance of an adequate and proper service.

3—The writ of mandamus may be granted to enforce the performance of a duty to the public imposed by law upon a common carrier railroad

corporation, whether such duty be prescribed by statute or charter in express terms or is raised by implication of law from the nature of the service authorized by law to be performed and which is being performed by such corporation.

4—There are certain duties to the public which a railway corporation assumes in consideration of the franchises it receives from the state and because of the service it engages to render to the public as a common carrier.

5—In order to legally and properly render the service incumbent upon a public common carrier, it is essential that it shall have and exercise certain rights, powers, franchises and privileges not possessed by individuals but which can be conferred by law. These rights, powers, franchises and privileges when granted and accepted or exercised, by implication of law impose upon the common carrier obligations and duties commensurate with the character and extent of the grants of power to it and the purpose for which they were made.

6—When a state confers upon a railroad corporation the rights of a common carrier, the law imposes upon such corporation the duty of providing all facilities and of operating them so as to adequately meet all reasonable requirements of the service it engages to render. This duty is implied by law in conferring the franchises and privileges of a common carrier or in permitting their use, whether the provisions of the grants be mandatory or merely permissive; and the acceptance or exercise of the rights carries with it the duty of properly rendering the public service undertaken by virtue of the rights conferred or permitted to be exercised.

7—The law imposes upon a common carrier railroad corporation the duty to receive and transport in a reasonably prompt, safe and convenient manner, and without unjust discrimination, all passengers and freight properly offered to it for carriage.

8—In order to render to the public an adequate service a railroad company must provide and maintain safe and efficient roadbed, track, motive power, equipment, facilities and operation sufficient to meet the reasonable demands of the service it undertakes to render so as to best serve the reasonable requirements of the public.

9—When a corporation is clothed with the rights, powers and franchises of a common carrier it becomes in law subject to governmental regulation and supervision; and it assumes the burden of providing all proper means, appliances and facilities for rendering the public service that it has been assigned to do and that it has undertaken to do, and of maintaining and operating all the property devoted to such use, in a safe, convenient and efficient condition, adequate to meet all reasonable requirements of the public service.

10—Where a railroad corporation undertakes to render to the public the service of a common carrier, it is in law primarily and essentially charged with the duty and burden of providing reasonably adequate and proper roadbed, track, motive power, equipment and facilities for the service required, and of maintaining and operating its property so as to render to the public without unjust discrimination a reasonably safe and adequate service.

11—The power and duty of a state to require the property of a common carrier corporation devoted to the public service within its borders to be maintained in a reasonably safe and adequate condition, and to be properly operated for rendering the public service to which the property is devoted by its corporate owner, are inherent and reserved in the state for the necessary protection and benefit of the lives and property within its territory.

12—Whether or not the property devoted by a common carrier railroad corporation to the public service which it is authorized to perform, is adequate, and is being operated in a reasonably safe and convenient manner for the proper rendering of such public service, may be determined by the courts when the question is duly presented by the state through its proper official representative; and in determining the question, any legal method of ascertaining the material and essential facts may be adopted which is best suited to the case.

13—In determining whether the roadbed, track, rolling stock and other equipment of a common carrier railroad corporation is reasonably sufficient, and is being maintained and operated in a reasonably safe and adequate condition, and is being managed for the proper rendering of the public service that the corporation has undertaken

to perform, the conditions under which the service is being rendered, the character and extent of the service, its reasonable requirements, and the means, facilities and methods best suited to such service in common use, will be considered by the court, together with any other material and pertinent matters available.

14—While the management of a common carrier railroad corporation is entitled to exercise a reasonable and bona fide discretion in providing and operating the property used in the discharge of its duty to the public, yet such discretion must be confined to legal purposes and to the public good; and when the discretion is so exercised that it results in an abuse of the public service the corporation is permitted to render, by the needless jeopardy of life or property, because of the lack of adequate facilities and because of the failure to keep its roadbed, track, rolling stock and other equipment in reasonably safe and adequate repair and condition, and by constant and long continued failure to promptly, safely and adequately perform the duties of a common carrier, the courts may interfere by mandamus at the instance of the attorney general to enforce the rendering of the public service in a reasonably safe, prompt and adequate manner, when the allegations of the writ are sufficiently specific and there is no other adequate remedy afforded by law.

15—The duty of providing a reasonably safe and sufficient roadbed, track, equipment and facilities, and of operating the property in a proper condition for rendering safe, prompt and adequate service, and of actually rendering to the public such service without unjust discrimination, being required for the public good and contemplated by law, and imposed upon a common carrier railroad corporation in permitting it to exercise the franchises and privileges of a common carrier, may be enforced by mandamus in a proper case upon the relation of the attorney general when no other adequate remedy is provided by law.

16—The failure of a railroad corporation to maintain its roadbed and track in a reasonably safe and efficient condition and to furnish sufficient motive power and cars and to promptly transport traffic properly credited for an abuse of the rights and privileges children, and the state and exercised by its effort to secure undertaking by permission of the state, has a clear right to correct such abuse and to enforce the performance of an adequate and proper service.

17—While a discretion is allowed a common carrier corporation in the means and manner of the discharge of the duties it owes to the public, such discretion must be exercised in good faith and with reasonable regard for the requirements of the public service. When all the necessary facilities are furnished and operated so as to reasonably meet the just requirements of the public service the law in that regard is satisfied.

18—The mandatory part of a writ of mandamus should conform to the allegations of the writ and it should not in general require more to be done than is justified by the allegations of the writ. Where the mandatory part of the writ, taken with its allegations, is not so definite and specific that its performance can be readily enforced by the court, a peremptory writ will not be issued.

19—When it is sought by mandamus to compel a railroad company to do any act in relation to the equipment and operation of its road, the courts, as a general rule, will not interfere except where the act sought to be enforced is specific.

20—If a railroad company which has undertaken the duty of a common carrier wholly fails in the performance of its duty to use public, or permits its roadbed and track to become and remain unfit for use, or fails to furnish sufficient motive power and cars to meet the requirements of the public service, or fails to transport and deliver with reasonable safety and dispatch traffic offered to it, the writ of mandamus may be issued to compel the proper performance of such duty in cases sufficiently specific for the application of the writ, when there is no other adequate remedy given by law.

21—The roadbed and track of a railroad have the elements of stability, and it can be readily ascertained when they are put in the condition required by specific allegations and commands in mandamus proceedings. But in the nature of things there can be no fixed standard for the number of engines and cars that will be sufficient