

SUPREME COURT OF NORTH CAROLINA

State v. Southern Railway Co.

119 N.C. 814 (1896) · Decided September 15, 1896

OPINION

State v. Southern Railway Co. 119 N.C. 814

AVISEY, J.

Avissey, J. : The statute (The Code, Sec. 1973) under which the indictment is drawn is not unconstitutional. Although it affects interstate commerce to some extent, there is nothing in its provisions which suggests a purpose on the part of the Legislature to interfere with such traffic, *820or indicative of any other intent than to prescribe in the honest exercise of the police power a rule of civil conduct for persons within her territorial jurisdiction. Such a law is valid and must be obeyed unless and until Congress shall have passed some statute which supersedes that act by prescribing regulations for the running of trains on the Sabbath on all railway lines engaged in interstate commerce. *Hunington v. Georgia*, 163 U. S., 299. While the State may not interfere with transportation into or through its territory, “beyond what is absolutely necessary for its self-protection,” it is authorized in the-exercise of the police power to provide for maintaining domestic order, and for protecting the health, morals and security of the people. *Railway v. Van Husen*, 95 U. S., 470, 473. Congress is unquestionably empowered, whenever it may see fit to do so, to supersede by express enactment on this subject all conflicting State legislation. But, until its powers are asserted and exercised, the statute under which the indictment is drawn may be enforced and will constitute one of the many illustrations of the principle that the States have the power, at least in the absence of any action by Congress, to pass laws necessary to preserve the health and morals of their people, though their enforcement may involve some slight, delay or disturbance of the transportation of goods or persons through their borders. *Morgan v. Louisiana*, 118 U. S., 455, 463 ; *Hunington v. Georgia*, supra, at p. 314 ; *Smith v. Alabama*, 124 U. S., 465, 474, 479, 482; *Bagg v. Railroad*, 109 N. C., 279. The statute (Code, Sec. 1973) declares the running of any such train as that in question is admitted to have been, after 9 o’clock on Sunday morning, to be a misdemeanor. It is not denied that the train arrived at Greensboro at 10:25 A. M. on Sunday. The State, therefore, *821established prima facie the guilt of the defendant. If the defense relied upon was that it was necessary to run after the hour fixed as the limit by statute in order to preserve the health or to save the lives of the crew employed on the train, or relieve them from severe suffering, it was incumbent on the defendant to show to the satisfaction of the jury that the act was done under the stress of such necessity in order to excuse it as not in violation of the spirit though in conflict with the letter of the law. *State v. Brown*, 109 N. C., 802; *State v. McBrayer*, 98 N. C., 619. The evidence is not sufficient in any aspect of it to excuse the running of

the train after 9 o'clock. Admitting that it was impossible to procure water at the tank at Jamestown (though the fact shown was not that the tank could not have been filled by pumping but that it was empty) or supplies of food for the crew, non constat but that both food and water could have been obtained in sufficient quantity at any town or station on the road west of Jamestown. In fact, the testimony tends rather to show⁷ that those who directed the movements of the train had abundant reason for anticipating further delays, and ought, therefore, to have ordered it to lie over sooner. The authorities of the road ought to have been aware that in such a busy time, when so many trains were in motion, they ought, in the exercise of ordinary care, to have ordered the train to move on to the siding in time to avoid any risk of violating the law. The proof offered •falls very far short of excusing the act, denounced as a violation of law, by showing that it could not have been obeyed by the exercise of due precaution without imminent risk of endangering the lives or health of the crew on board the train. For the reasons given the judgment of the court below is affirmed. Affirmed.