

[J-142-99]
IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT

CITY OF PHILADELPHIA AND	:	29 M.D. Miscellaneous Dkt. 1999
PENNSYLVANIA PUBLIC UTILITY	:	
COMMISSION,	:	On petition for certification of a question of
	:	law from the United States Court of
Appellees	:	Appeals for the District of Columbia Circuit
	:	in No. 97-7221
	:	
v.	:	
	:	
	:	
CONSOLIDATED RAIL CORPORATION	:	
AND NATIONAL RAILROAD	:	
PASSENGER CORPORATION,	:	
	:	
Appellants	:	SUBMITTED: July 27, 1999

CONCURRING OPINION

MR. JUSTICE SAYLOR

DECIDED: February 24, 2000

I agree with the majority's articulation of the general common law rule respecting bridge ownership, but wish to emphasize my view that the rule should apply only where there are insufficient indicia that legal title lies with a non-governmental entity. See generally Heinlein v. Allegheny County, 374 Pa. 496, 500, 98 A.2d 36, 39 (1953)(stating that "[a]s a general proposition, but by no means universal, bridges are treated as portions of the highways which cross them" (quoting Rapho & West Hempfield Townships v. Moore, 68 Pa. 404, 406 (1871))(emphasis added). Additionally, and particularly with respect to older bridges, I would not require that the evidence of ownership necessary to overcome the common law rule equate with a written deed reflecting title. Along with the problems

of proof associated with the passage of an extensive period of time, rail-highway crossings represent a limited and quite unique subset of property, and the principles by which pertinent rights and obligations are to be determined should reflect the specialized context. In particular, current conceptions of railroad bankruptcy and reorganization law (which today are likely to substantially affect the consequences following from this Court's determination) simply did not exist at the time when ownership initially vested, and thus, the technicalities of documenting ownership would appear to have been far less of an issue than the careful allocation of obligations related to upkeep necessary to maintain public safety.

Nevertheless, in the present case, confronted with motions for summary judgment filed by the railroads in the district court, the City simply was unable to adduce specific material facts sufficient to overcome the common law presumption. The common law rule therefore controls, and all legal consequences associated with ownership (and non-ownership) follow under the legislative schemes which, in their interplay, will ultimately determine the parties' liabilities in connection with the repair of the 41st Street Bridge.