KAEISER *v.* ILLINOIS CENT. R. CO.

Circuit Court, S. D. Iowa, C. D. October 24, 1883.

1. INTERSTATE COMMERCE—POWER TO REGULATE, WHERE VESTED—RAILROAD TARIFFS—HOW FAR GOVERNED BY STATE ACTS—TERMS DEFINED, ETC.

Article 1, § 8, of the constitution of the United States confers upon congress the power "to regulate commerce with foreign nations and among the several states." This power of congress is exclusive. It follows that the act of the general assembly of Iowa, approved March 23, 1874, providing for a tariff of maximum charges for the transportation of freight and passengers by railroads, in so far as it relates to through shipments over interstate lines, is unconstitutional.

2. SAME—TERMS DEFINED AND PRINCIPLES STATED.

The court, in its opinion, laid down the following propositions as settled: (1) The transportation of merchandise from place to place by railroad is commerce. (2) The transportation of merchandise from a place in one state to a place in another is "commerce among the states." (3) To fix or limit the charges for such transportation is to regulate commerce. (4) A statute fixing or limiting such charges for transportation from places in one state to places in other states is a regulation of commerce among the states. (5) The power to regulate such commerce is vested by the constitution in congress. (6) This power of congress is exclusive, at least in all cases where the subjects over which the power is exercised are in their nature national, or admit of one uniform system or plan of regulation.

By an act of the general assembly of Iowa, approved March 23, 1874, a tariff of maximum charges was provided for the transportation of freight and passengers by railroad. The act, by its terms, applies to "all railroad corporations organized or doing business in this state, their trustees, receivers, or lessees." It provides that "all

railroads in this state shall be classified according to the gross amount of their respective annual earnings within the state per mile for the preceding year," and for a separate tariff of rates for each class. It also provides that the tariff of rates so established shall "be considered a basis on which to compute the compensation for transporting freight, goods, merchandise, or property over any line of railroad within this state. This suit is brought to recover damages for overcharges upon freight shipped from points in Iowa to points in Illinois and Wisconsin over a part of defendant's road in Iowa, and over connecting lines in the other states named. The answer sets up, among other things, that the statute above named neither had, nor was intended to have, any extraterritorial operation beyond the limits of Iowa, and neither had, nor was intended to have, any application to or effect upon contracts, either expressed or implied, for the conveyance of persons or property from a point in one state to a point in another state. Plaintiff demurs to this answer, and the principal questions discussed by counsel are: (1) Did the act, by its terms, apply to interstate commerce? (2) If so, is it constitutional?

A. B. & J. C. Cummins, for plaintiff.

John F. Duncombe, for defendant.

MCCRARY, J. There may be room for doubt as to whether the act of 1874, by its terms, applies to interstate commerce. If it be construed as *in pari materia* with the subsequent act of the sixteenth general assembly, (1876,) "for the relief of certain railroad companies, agents, and employes," there is, I think, sufficient ground for holding that it was only intended to regulate such transportation as was carried on within the state. The latter act provides for releasing railroad companies from liability for having violated the act of 1874 upon certain conditions. Among these conditions was a requirement that such

railroad companies should enter into bonds, with security, conditioned that they would not seek to evade the provisions of the act of 1874 "by increasing or contriving any increase on through rates to points on its line outside of the state." If the original act itself was intended to apply to through shipments between points in this state and points in other states, it is difficult to see how it could have been evaded by increasing such rates.

It is plain, therefore, that the legislature understood and construed the original act as applicable only to local or state commerce, and sought by the supplemental act above mentioned to induce railroad companies to bind, themselves by contract not to increase their charges upon interstate commerce for the purpose of making up for their losses under the law upon state commerce.

If, however, the statute shall be held by its terms to apply to interstate commerce, I am of the opinion that it is in contravention of article 1, § 8, of the constitution of the United States, which confers upon congress the power "to regulate commerce with foreign nations 153 and among the several states." The question is one of great importance, and, in some of its aspects, not free from difficulty. It has been much discussed in the courts of the country, and especially in the supreme court of the United States.

The following propositions may now be laid down as settled, at least so far as the federal courts are concerned:

(1) The transportation of merchandise from place to place by railroad is commerce. (2) The transportation of merchandise from a place in one state to a place in another is "commerce among the states." (3) To fix or limit the charges for such transportation is to regulate commerce. (4) A statute fixing or limiting such charges for transportation from places in one state to places in other states, is a regulation of commerce among the

states. (5) The power to regulate such commerce is vested by the constitution in congress. (6) This power of congress is exclusive, at least in all cases where the subjects over which the power is exercised are in their nature national, or admit of one uniform system or plan of regulation. (7) The state cannot adopt any regulation which does or may operate injuriously upon the commerce of other states.

These general propositions are abundantly sustained by the following, among other, authorities: *Crandall* v. *Nevada,* 6 Wall. 35; *Passenger Cases,* 7 How. 283; *Gibbon* v. *Ogden,* 9 Wheat. 1; *Case of State Freight Tax,* 15 Wall. 232; *Welton* v. *Missouri,* 91 U. S. 279; *Hall* v. *Be Cuir,* 95 U. S. 497; *Railroad Co.* v. *Husen,* Id. 469; *Pensacola Tel. Co.* v. *Western, etc., Tel. Co.* 96 U. S. 9; *Carton* v. *Ill. Cent. R. Co.* (Sup. Ct. Iowa) 13 N. W. Rep. 67.

It is insisted by plaintiff's counsel, in his very able and exhaustive argument in this case, that, conceding the soundness of these propositions, the statute in question may be upheld upon the ground that in enacting it the state exercised a power which is vested concurrently in the states and the general government. That certain powers may be exercised by the states in the way of regulating interstate commerce, where no act of congress is interfered with, may, for the purposes of this case, well be admitted.

Assuming such to be law, the questions remain:

(1) Whether the act in question, if applied to through shipments, or freight upon lines extending into or through several states, must not be held to relate to a subject which is in its nature national, or which admits of one uniform system or plan of regulation. (2) Whether, if the power of the state to pass such an act be conceded, it does not necessarily include the power to discriminate against the commerce of other states.

If either of these questions is answered affirmatively, then the statute, in so far as it relates to

through shipments over interstate lines, is in violation of the federal constitution. I am of the opinion that both questions must be so answered.

It seems very obvious that the regulation of transportation of merchandise over a line extending, it may be, from the Atlantic to the Pacific ocean, is a subject which is in its nature national. It is so because it necessarily concerns the people of the whole country, and is beyond the legislative power of any single state. It is also apparent 154 that such transportation not only admits of, but requires, a uniform system or plan of regulation. I do not understand the plaintiff's counsel as denying these propositions; but he insists that this state may regulate charges upon so much of the route as lies within its own territory. In other words, the contention of counsel is that each state over whose territory a line of interstate railroad passes, may fix or limit the charges to be made for the carriage of a cargo upon that part of the route which lies within its own jurisdiction.

The consideration of this proposition involves a determination of the second question last above stated, viz., whether the statute in question, construed as authorizing the regulation of charges within this state, may not affect charges made for carriage in other states. To state the question in another form, it is this: Can each of the states through which a cargo must pass in going, for example, from Des Moines to New York city, fix the proportionate charge which shall be made by the carrier for the distance within its own territory? Such a line would pass through portions of the states of Iowa, Illinois, Indiana, Ohio, Pennsylvania, and New York. How can Iowa fix the amount to be paid for the carriage from Des Moines to the state line without indirectly affecting the rates to be charged in the other states? It must be borne in mind that the power to regulate includes not only the power to reduce, but the power to increase charges.

If one of the states upon such a line can fix the charges for carriage within its own territory, what is to prevent it from authorizing its own carriers to demand and receive an undue and unreasonable proportion of the gross amount? If the proposition contended for be admitted, what is there to prevent the three states through which the cargo must first pass on its way to New York, from exacting more than one-half of the charge for the entire route? or, to state the same question in another way, why may not the five states through which the cargo would pass before reaching the boundary of New York, exact in the aggregate the whole of a reasonable charge for the entire route, leaving nothing for the carrier within the state of New York? And since no state law can have any extraterritorial force, is it not clear that the attempt to enforce the statutes of each of the several states, in be far as the carriage within such state is concerned, would lead to conflicts and disputes which no state authority would be competent to adjust and determine.

These considerations, I think, lead inevitably to the conclusion, not only that such commerce is the subject only of national control and regulation, but that any attempt to devolve upon a single state the power to regulate it in part would necessarily give to such state the right to discriminate against other states of the Union.

It is well known that one of the chief reasons which caused the constitutional convention to insert the commercial clause in the constitution of the United States, was the belief that if the power to regulate commerce among the states was not taken exclusively into the 155 hands of the national government, rivalries and jealousies would arise among the states similar to those which had existed under the old confederation, which would lead practically to the destruction of interstate commerce, and it was regarded as specially important that no power in the

legislature of any one state to interfere with commerce or trade in any other state should be recognized as existing.

My conclusion is, therefore, that the statute in question, if held to apply to interstate commerce, is in violation of the constitution of the United States In this view I am supported by the recent decision of the supreme court of this state, *(Carton* v. *Ill. Cent. R. Co., supra,)* in which the act now under consideration was held to be unconstitutional. If I were in doubt upon the subject, I should not hesitate to follow that ruling.

I am not aware that the federal courts have ever in the course of our history undertaken to enforce a state statute which has been held void by the supreme judicial authority of the state. I should hesitate long before undertaking to enforce in this tribunal any act of the state legislature which the supreme court of the state has held, for any reason, to be null and void. To do so would be to give to suitors who can come here an unjust advantage over the citizens of the state who are compelled to submit their rights to the determination of the state courts.

The demurrer to the answer is overruled.

See *The Head-money Cases, ante,* 135, and note, 142; *Memphis & L. R. R. Co.* v. *Nolan,* 14 FED. REP. 532, and note, 534.