

the preponderance of evidence, if they found in it any preponderance. There is no such uncertainty in the charge of the court as warrants the theory that the jury may have been misled as to the rules of law by which they should be controlled in pronouncing their verdict. Judgment affirmed.

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## UNITED STATES v. MISSOURI PAC. RY. CO.

(Circuit Court, D. Kansas, S. D. September 14, 1894.)

1. INTERSTATE COMMERCE — DISCRIMINATING RATES — INJUNCTION — SUIT BY UNITED STATES.

Under the amendments by the acts March 2, 1889, and February 10, 1891, to the twelfth section of the interstate commerce law, authorizing and requiring the commission to execute and enforce the act, and providing that on the request of the commission it shall be the duty of any district attorney of the United States to institute in the proper court, and to prosecute under the direction of the attorney general of the United States, all necessary proceedings for the enforcement of the provisions of the act, and for the punishment of the violations thereof, the district attorney so requested may, under the direction of the attorney general, prosecute a suit in the name of the United States against a railroad company to enjoin it from discriminating in rates against one city in favor of another city.

2. SAME—PRELIMINARY INVESTIGATION BY COMMISSION.

Under such amendment, the formal preliminary investigation by the commission, authorized by the original act, is not necessary to vest jurisdiction in the court.

Suit by the United States against the Missouri Pacific Railway Company to enforce the provisions of the interstate commerce law.

Morris Oliggett, Asst. U. S. Atty. (W. C. Perry, U. S. Atty., of counsel).

J. H. Richards and C. E. Benton (B. P. Waggener, of counsel), for defendant.

WILLIAMS, District Judge. This case is submitted to the court upon a demurrer by the railway company to the bill of complaint. For the purposes of this submission, the facts alleged in the complaint are to be taken as true. The bill avers that:

"This action is brought by the authority of and under the direction of the attorney general of the United States, which said authority and direction is given and made in pursuance of the request of the interstate commerce commission of the United States that the United States attorney for the district of Kansas be directed and authorized to institute and prosecute all necessary proceedings, legal or equitable, for the enforcement of the provisions of the interstate commerce law against the defendant in relation to the matters hereinafter complained of."

The facts as set forth show the defendant railway company to be a common carrier, owning the lines of railway, and engaged in interstate commerce, between the cities of St. Louis, Mo., Wichita, Kan., and Omaha, Neb. The distance from St. Louis to Wichita is 458 miles; to Omaha, 501 miles. That all freight on defendant's lines to the two cities, going to and from St. Louis, passes over 232 miles of the same track, to Holden, Mo.; thence on separate lines to Wichita, 226 miles, to Omaha, 269 miles, being a haul of 43 miles less to Wichita than to Omaha. The bill further sets out in detail the schedule rates of freight to the two cities, showing that about 100 per cent. greater rates are charged to Wichita than to Omaha, on the same kind and classification of freights, and this while the shipments are made, as alleged, contemporaneously and under similar circumstances and conditions. It is further alleged that such rates are "unreasonable, excessive, and exorbitant," and are unjust discrimination against the city of Wichita; that the city of Wichita is a general distributing point for a large scope of country, embracing Central and Southern Kansas and the Indian Territory and Oklahoma; and that these exorbitant and unjust rates, and this unlawful discrimination against the city of Wichita and its distributing territory, cause great and irreparable prejudice and injury to the citizens of the United States and the public generally engaged in and affected by this interstate commerce between St. Louis and Wichita.

The provisions of the interstate commerce act upon which the charges are based are as follows:

Section 1 of "An act to regulate commerce" provides:

"That all charges made for any service rendered, or to be rendered, in the transportation of passengers or property as aforesaid, or in any connection therewith, or for receiving, delivering, storage, or handling such property shall be reasonable and just; and every unjust and unreasonable charge for such service is prohibited and declared to be unlawful."

Section 2 provides:

"That if any common carrier subject to the provisions of this act shall directly or indirectly, by any special rate, rebate, drawback or other device, charge, demand, collect or receive from any person or persons a greater or less compensation for any services rendered, or to be rendered, in the transportation of passengers or property, subject to the provisions of this act, than it charges, demands, collects or receives from any other person or persons for doing for him or them a like and contemporaneous service in the transportation of a like kind of traffic, under substantially similar conditions, such common carrier shall be deemed guilty of unjust discrimination, which is hereby prohibited and declared to be unlawful."

Section 3 provides:

"That it shall be unlawful for any common carrier subject to the provisions of this act to make or give any undue or unreasonable preference or advantage to any particular person, company, firm, corporation, or locality, or any particular description of traffic, in any respect whatsoever, or subject