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**Chicago, Ind. and Louisville Ry. Co. Vs. United States**

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**Court : US Supreme Court**

**Decided On : Feb-20-1911**

**Appeal No. : 219 U.S. 486**

**Appellant : Chicago, Ind. and Louisville Ry. Co.**

**Respondent : United States**

**Judgement :**

Chicago, Ind. & Louisville Ry. Co. v. United States - 219 U.S. 486 (1911)

U.S. Supreme Court Chicago, Ind. & Louisville Ry. Co. v. United States, 219 U.S. 486 (1911)

**Chicago, Indianapolis and Louisville**

**Railway Company v. United States**

**No. 74**

**Submitted December 16, 1910**

**Decided February 20, 1911**

**219 U.S. 486**

*APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES*

## SYLLABUS

*Louisville & Nashville Railroad Co. v. Mottley, ante*, p. [219 U. S. 467](#) , followed to effect that, under the Act of June 29, 1906, c. 3591, 34 Stat. 584, amending the Act of February 4, 1887, c. 104, 2, 24 Stat. 379, a carrier cannot accept any compensation other than cash for interstate transportation, and the delivery of such transportation in exchange for advertising is a violation of the act, and it is no defense that such a transaction is permitted by a state statute.

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No state enactment can avail when the subject has been covered by an act of Congress acting within its constitutional power. In such a case, the Act of Congress is paramount and the state law must give way.

The facts, which involve the construction of provisions of the Interstate Commerce Act relating to payment of fare on railways, are stated in the opinion.

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MR. JUSTICE HARLAN delivered the opinion of the Court.

By the Act of Congress of February 19, 1903, further regulating commerce with foreign nations and among the states, as amended by the Act of June 29, 1906, it was provided that, whenever the Interstate Commerce Commission had reasonable ground to believe that a common carrier was engaged in carrying passengers or freight between

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given points at less than the published rates on file or was committing any discrimination forbidden by law, the facts could be set forth in a petition in equity to the proper circuit court of the United States, whose duty it was made summarily to

inquire into the circumstances, without formal pleadings and proceedings applicable to ordinary suits in equity. If the court became satisfied upon investigation that the facts existed as alleged, it was then by proper orders to enforce the observance of the published tariffs, or direct a discontinuance of the alleged discrimination, with such right of appeal as was then provided by law to the parties interested in the traffic or to the carrier. 32 Stat. 847, 848, Pt. 1, c. 708; 34 Stat. 584, c. 3591.

The present suit was brought by the United States under that statute against the Chicago, Indianapolis & Louisville Railway Company, a corporation of Indiana which operated the lines of railroad known as the Monon Route, and extending from Chicago through Indiana to Cincinnati, and from Michigan City, Indiana, to Louisville, Kentucky. The railway company was engaged in the business of carrying passengers over the above lines.

The petition alleged that, on the twenty-fourth day of January, 1907, the defendant made a written contract with the Frank A. Munsey Company, publisher at New York, of Munsey's Magazine, which contained, among other provisions, the following:

"Agreement between the Monon Route (Chicago, Indianapolis & Louisville Railway Company) and Frank A Munsey Company, publisher. Entered into this 24 day of January, 1907."

"Whereas, the said publisher issues Munsey's Magazine, a publication published at New York City, New York, Chicago office 423 Marquette Building, and which has a regular circulation of 643,000 each issue. "

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"And whereas, the said Monon Route desires to advertise in said publication, which advertising the said publisher agrees to do upon the following terms and conditions, which are mutually agreed upon:"

"1st. The said publisher agrees to publish in said publication an advertisement of the Monon Route as follows . . . One page 'ad' (divided as desired), said advertisement to appear favorably and occupy a space of not less than one page and to be published as desired issues of said publication."

"2d. In full consideration of the foregoing advertising, the Monon Route agrees to issue the following nontransferable transportation based on regular published rate Trip tickets or mileage to the value of Five hundred Dollars (\$500) for the personal use of the publisher, his employees or immediate members of his or their families, which said transportation shall be limited for use not later than December 31, 1907."

"3d. Under no circumstances must the transportation issued under this contract be sold or transferred to or used by any other than the person to whom issued, as such sale, transfer, or use would be a misdemeanor under the law."

"4th. It is understood and agreed that the transportation issued under this contract shall be read to points on the Monon Route, and not to points on any other road. . . . Further, should said publisher or any person named on said tickets allow any other person to use same, or offer to sell, sell or transfer the same, then said publisher agrees to pay the said Monon Route as a penalty the full rate of fare which would have been paid

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for regular tickets. . . . This contract expires December 31, 1907, unless otherwise stipulated."

The petition also alleged that, after that contract was entered into and previous to April 3, 1907, the defendant railway company, pursuant to the above contract, transported over its railway from points in one state to points in other states, the employees of the Munsey Company upon trip and mileage tickets issued for their benefit.

That such interstate transportation, paid for according to the company's published rates, amounted to \$145.10, while the only compensation received by it for transportation previous to May 10th, 1907, was the publication in the March issue of the Munsey Magazine of one-fourth of a page advertisement of the Monon Route, which the parties valued at \$125.

That, while the railroad company was thus transporting the Munsey employees, it contemporaneously transported over its lines between the same points other persons, and exacted and received in money from them, in each instance, the full amount of its published rates and fares, the conditions and circumstances of the transportation being the same in the cases of employees and others.

That, in accordance with the contract in question, the railway company was, at the date of this suit, still furnishing interstate transportation to the publisher of Munsey's Magazine and the members of his family, and to his employees and the members of their families.

That the railway company had entered into like contracts with other publishers of magazines, newspapers, and similar periodicals to the number of 251, under the terms of which latter contracts the company at the date this suit was commenced was furnishing interstate transportation over its lines to such persons as were from time to time designated by the publishers last above mentioned, but not receiving compensation in money in any instance when furnishing transportation

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under those contracts for the services rendered by it, and that the above contracts between the railway company and the publishers of magazines and newspapers are in violation of the act of Congress regulating commerce, particularly 2 and 6, and also 3 of the above act, approved February 19th, 1903, in this, that those contracts require the furnishing of interstate transportation at rates which, in each instance, "are less than and different" from the rates contemporaneously exacted from the general public under substantially similar circumstances and conditions.

The company, in its answer, averred that the money value of the space purchased from the Munsey Company under the contract was \$500, as determined and fixed by the rate to the public, and that it was to pay therefor \$500 in value of passenger transportation issued and based on regularly published rates, so that the money value of the advertising space purchased and the money value of the transportation furnished was the same, and that its arrangements for advertising space with other publications were based on the "regular published rate." The answer contains this paragraph:

"Defendant admits that it has entered into a large number of other contracts for advertising space by written contracts providing substantially the same as the contract with the Munsey Company, as aforesaid, and that, in each case, pursuant to the terms and conditions of each of said contracts, the publishers named in said contracts and in each of them sell to this defendant advertising space in the par money value at the usual market rate therefor, and that this defendant issues and pays therefor in transportation 'based on the regular published rates' in money value equal to the money value of said advertising space."

The answer further avers that all the company's corporate powers as a common carrier are derived from an

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Indiana statute which prohibits the railway company from giving free tickets, free passes, or free transportation, but which, in express words, authorizes the company to issue transportation in payment for printing and advertising. It denied that the purchase of advertising space by a common carrier constituted any part of interstate commerce, or that Congress has any constitutional power to prohibit it from doing so.

It was admitted at the hearing

"that said defendant had, subsequent to the filing of said petition, executed contracts similar in terms to the ones set forth in said petition, expiring December 31, 1908, for the exchange of interstate transportation for advertising, under the

same conditions as those set forth in the contracts described in said petition, and that said case should be heard and determined precisely as if it were alleged in the pleading that said defendant had made said contracts expiring December 31, 1908."

The circuit court heard the case upon the pleadings and proofs, and adjudged that the acts of the railway company, as alleged in the petition, were sustained by the evidence (as they undoubtedly were), and were in violation of the Commerce Act of February 4th, 1887, 24 Stat. 379, c. 104, of the Act Further to Regulate Commerce approved February 19, 1903, and of the acts amendatory thereof.

It was further adjudged, in accordance with the petition of the government,

"that the defendant, its officers and agents, and any and all persons whomsoever, acting on its behalf, be, and they are hereby, enjoined from further executing each and every one of said contracts now pending for the exchange of transportation for advertising space, and that they be, and they are hereby, enjoined from issuing transportation in exchange for advertising space pursuant to the terms of contracts providing that said transportation shall be paid for by the furnishing of advertising space in newspapers or periodicals,

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that they be, and they are hereby, enjoined from accepting advertisements in lieu of money in payment for interstate transportation, pursuant to agreements or contracts providing that said advertising space shall be paid for by issuing transportation, and that they be, and they are hereby, enjoined from committing any of the acts with reference to the exchange of interstate transportation for advertising space, as charged in said petition."

1. The decisive question in this case is whether the contract between the railway company and the Munsey Company is repugnant to the Acts of Congress Regulating Commerce. In other words, could the company, in return for the transportation which it agreed to furnish and did furnish to the Munsey publisher over its interstate lines, and to his employees and to the immediate members of

his and their families, accept as compensation for such service anything else than money, the amount to be determined by its published schedule of rates and charges? Upon the authority of *Louisville & Nashville R. Co. v. Mottley*, p. [219 U. S. 467](#) , just decided, and according to the principles announced in the opinion in that case, the answer to the above question must be in the negative. The acceptance by the railway company of advertising, not of money, in payment of the interstate transportation furnished to the publisher of the Munsey magazine, his employees and the immediate members of his and their families, was, for the reasons given in the *Mottley* case, in violation of the Commerce Act. The facts in the present case show how easily, under any other rule, the act can be evaded and the object of Congress entirely defeated. The legislative department intended that all who obtained transportation on interstate lines should be treated alike in the matter of rates, and that all who availed themselves of the services of the railway company (with certain specified exceptions) should be on a plane of equality. Those ends cannot be met otherwise than by requiring transportation to be

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paid for in money, which has a certain value, known to all, and not in commodities or services, or otherwise than in money.

2. We need say but little about the Indiana statute upon which the defense is in part based. The transactions in respect of which the government seeks relief, being interstate in their character, the acts of Congress as to such transactions are paramount. No state enactment can be of any avail when the subject of such transactions has been covered by an act of Congress acting within the limits of its constitutional powers. It has long been settled that, when an

"act of the legislature of a state prescribes a regulation of the subject repugnant to and inconsistent with the regulation of Congress, the state law must give way, and this without regard to the source of power whence the state legislature derived its enactment."

[Sinnot v. Davenport](#), 22 How. 227, [63 U. S. 243](#) ; *M., K. & T. Railway v. Haber*, [169 U. S. 613](#) , [169 U. S. 626](#) ; *Reid v. Colorado*, [187 U. S. 137](#) . This results, Chief Justice Marshall said in [Gibbons v. Ogden](#), 9 Wheat. 1, as well from the nature of the government as from the words of the Constitution.

*Judgment affirmed.*

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