**Chesapeake and Ohio Ry. Co. Vs. Conley**

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**Court** : US Supreme Court

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**Appeal No.** : 230 U.S. 513

**Appellant** : Chesapeake and Ohio Ry. Co.

**Respondent** : Conley

**Judgement** :

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U.S. Supreme Court Chesapeake & Ohio Ry. Co. v. Conley, 230 U.S. 513 (1913)

**Chesapeake & Ohio Railway Company v. Conley**

**No. 111**

**Argued April 8, 1912**

**Decided June 1, 1913**

**230 U.S. 513**

*ERROR TO THE SUPREME COURT OF APPEALS*

*OF THE STATE OF WEST VIRGINIA*

## SYLLABUS

Where the state court has held that the carrier is exempted from the operation of the penalty clause of a ratemaking statute during prosecution by it in good faith of a suit to determine the constitutionality of such statute, the carrier cannot attack the validity of the statute on the ground of its penal provisions.

Classification in a ratemaking statute of railroads less than fifty miles in length is not unreasonable, and does not render the statute unconstitutional as violating the equal protection provision of the Fourteenth Amendment. *Dow v. Beidelman,* 125 U. S. 680 .

As construed by the state court, the statute of West Virginia of 1907 is not unconstitutional because the classification of railroad under fifty miles in length only applies to such roads as are not under the control, management, or operation of other railroads.

A classification excepting electric lines and street railways from a railroad

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rate statute is reasonable and proper, and does not offend the equal protection clause of the Fourteenth Amendment. *Omaha & Council Bluffs Railway Co. v. Int. Com. Comm., ante,* p. 230 U. S. 324 . *Minnesota Rate Cases, ante,* p. 230 U. S. 352 , followed to effect that a state statute prescribing rates exclusively for intrastate traffic is within the power of the state to enact.

The facts, which involve the constitutionality of the two-cent rate act of West Virginia of 1907, are stated in the opinion.

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MR. JUSTICE HUGHES delivered the opinion of the Court.

The suit was brought by the Chesapeake & Ohio Railway Company in the Circuit Court for Kanawha County, West Virginia, against William G. Conley, Attorney General of the State of West Virginia, and the prosecuting attorneys of several counties in the state, to enjoin the enforcement of the act of the Legislature of West Virginia, passed February 21, 1907 (Acts 1907, c. 41), fixing the maximum fare for passengers on railroads, as described at two cents a mile.

The state court sustained the act, and this writ of error is brought.

The act provides:

"SEC. 1. That all railroad corporations organized or

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doing business in this state under the laws or authority thereof shall be limited in their charges for the transporting of any person with ordinary baggage, not exceeding one hundred pounds in weight, to the sum of two cents per mile or fractional part of a mile, but the fare shall always be made the multiple of five nearest reached by multiplying the rate by the distance, and if for any one passenger the rates herein provided shall be less than five cents, the said sum of five cents may be charged as a minimum; children under twelve years of age shall be carried for one-half fare above prescribed; *provided,* that any passenger boarding a train at a station where tickets are sold without having procured a ticket may be charged an additional fare of ten cents, for which sum a rebate slip, redeemable in money upon presentation to any ticket agent of the company, shall be issued and delivered to such passenger, and *provided further* that nothing in this act shall apply to any railroad in this state under fifty miles in length, and not a part of, or under the control, management, or operation of, any other railroad over fifty miles in length operated wholly or in part in the state."

"SEC. 2. Any railroad company which shall charge, demand, or receive any greater compensation for the transportation of any passenger than is authorized by this act shall be fined for each offense not less than $50 nor more than $500; provided, that nothing contained in this act shall apply to electric lines and street

railways owned or operated in this state."

The questions presented are thus stated by the plaintiff in error:

"First: the statute in question is unconstitutional because of the fact that the penalties pronounced by the statute against any railway which shall fail to comply with the same are so excessive as to bring the act within the inhibition of Article Eight of the Constitution of the

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United States and under the Fourteenth Amendment to the Constitution of the United States deprives the plaintiff of its property without due process of law, and denies to it the equal protection of the law."

"Second: the entire act is unconstitutional, because the classification thereby made of the railways makes the act applicable to certain railroads of a certain class, and such classification as set out is unfair and unjust, and a mere arbitrary selection imposed by the legislature without any relation to the alleged purpose of the act, and not based on any reasonable grounds."

"Third: because the act necessarily imposes a burden upon the plaintiff as an interstate carrier, and denies it the right to transact and carry on interstate commerce free from the burdens and restrictions imposed by the West Virginia two-cent rate act."

While the plaintiff in error was entitled to a fair opportunity to test the constitutional validity of the prescribed rate, and penal provisions operating to preclude such an opportunity would be invalid ( *Ex Parte Young,* 209 U. S. 123 ), it is clear that the provisions for penalties of the statute in question, aside from their separable character, are not open to this objection in the light of the construction placed upon them by the state court. In construing the act, the Supreme Court of Appeals of West Virginia held:

"By the institution of a suit to determine whether such a statute is confiscatory in its operation in a particular case, such corporation alters its status from that of a mere

corporation engaged in the public service to that of a contestant of the legislative claim of right to take its property without due process of law, and, in the absence of expression of intent to the contrary, it is presumed the legislature did not intend to affect or interfere with the assumption or maintenance of such status, nor to legislate upon the subject of such remedy, and the penal clause of

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such a statute, silent on the subject of remedy, has no application while a suit is pending in good faith, for the determination of such question. . . . By the application of these rules and principles, a railroad company is excepted from the operation of the penalty clause of chapter 41 of the Acts of 1907, during the prosecution by it, in good faith, of a suit to determine whether said statute is confiscatory in its operation and effect as applied to such company."

*Coal & Coke Railway Co. v. Conley,* 67 W.Va. 129, 133.

Under this ruling, it does not appear that the company is in a position to attack the validity of the act by reason of its penal provisions. It has had its opportunity in court, and if the act be otherwise valid, it may avoid penalties hereafter by complying with it. Further, as was said in *Western Union Telegraph Co. v. Richmond,* 224 U. S. 160 , 224 U. S. 172 : "If an oppressive application of them should be attempted, it will be time enough then for the appellant to file its bill."

Nor can it be said that the classification of the act is an unreasonable or arbitrary one. In *Dow v. Beidelman,* 125 U. S. 680 , the statute under consideration classified railroads with respect to passenger fares, as follows:

"On lines of railroad fifteen miles or less in length, eight cents per mile. On lines over fifteen miles in length, and less than seventy-five miles in length, five cents. On lines over seventy-five miles in length, three cents per mile."

The court, in sustaining the statute, said:

"The legislature, in the exercise of its power of regulating fares and freights, may classify the railroads according to the amount of the business which they have

done or appear likely to do. Whether the classification shall be according to the amount of passengers and freight carried, or of gross or net earnings, during a previous year, or according to the simpler and more constant test of the length of the line of the railroad is a matter within the discretion of the

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legislature. If the same rule is applied to all railroads of the same class, there is no violation of the constitutional provision securing to all the equal protection of the laws."

P. 125 U. S. 691 .

Again, in *Chicago, Rock Island & Pacific Railway Co. v. Arkansas,* 219 U. S. 453 , the Court sustained the statute of that state, which, in providing for the number of men to be employed in the operation of freight trains, excluded from its application railroads less than fifty miles in length. The principles governing the decision of a question of this sort have been so frequently stated that repetition is unnecessary. *Magoun v. Illinois T. & S. Bank,* 170 U. S. 283 , 170 U. S. 294 ; *Louisville & Nashville R. Co. v. Melton,* 218 U. S. 36 , 218 U. S. 52 -55; *Engel v. O'Malley,* 219 U. S. 128 ; *Lindsley v. Natural Carbonic Gas Co.,* 220 U. S. 61 , 220 U. S. 78 ; *Mutual Loan Co. v. Martel,* 222 U. S. 225 , 222 U. S. 232 ; *Chicago Dock v. Fraley,* 228 U. S. 680 .

It is urged, however, that "control, management, or operation" is made the basis of classification for rate purposes, so that, if a railroad under fifty miles in length be controlled by a railroad of greater length, it would be taken out of the exception, although operated wholly independently, and not in connection with the longer line. This contention is fully met by the construction which the state court has given to the statute. Upon this point that court said that the meaning of the words "under the control, management, or operation"

"is to be ascertained from the connection in which they are used, the act in which they are found, its context, and the mass of legislation of which they form a part. In form, the expressions are alternative, but in meaning they are appositive,

signifying the same as the words 'part of.' . . . The suggestion that ownership or control of one railroad by another, when they are not connected and operated together nor susceptible of such connection and operation makes them one within the meaning of the act is likewise

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contrary to the spirit and beyond the scope thereof. Such an interpretation is not within its reason or purpose, and therefore not within its meaning. The legislature must be regarded as having passed the act in view of existing conditions and methods of railroad operation and with the intent that it should operate in harmony with the spirit and general principles of existing railroad rate legislation, except insofar as the contrary is expressed in terms or by necessary implication. There is not a word here signifying any intent to depart from the general principle embodied in the Act of 1873, concerning the entity of a railroad for the purposes of the act. It made into one only such railroads as were operated 'in connection' with one another. Intent to change this settled policy must rest upon something more, in an amendatory act, than mere inference, surmise, or unnecessary implication."

*Coal & Coke Railway Co. v. Conley and Avis,* 67 W.Va. 129, 177-179.

The exception of "electric lines and street railways" is also made the ground of criticism, but this classification rests upon reasonable and familiar distinctions, long recognized as proper in railroad legislation. *Omaha & Council Bluffs Street Railway Co. v. Interstate Commerce Commission, ante,* p. 230 U. S. 324 .

The final objection to the statute is that it constitutes an unconstitutional interference with interstate commerce. It must be regarded, however, as prescribing rates exclusively for intrastate traffic, and, as thus construed, it was within the power of the state to enact. The questions presented are substantially the same as those which were considered in *Minnesota Rate Cases, ante,* p. 230 U. S. 352 .

*Judgment affirmed.*