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The Tap Line Cases

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Court : US Supreme Court

Decided On : May-25-1914

Appeal No. : 234 U.S. 1

Appellant : The Tap Line Cases

Judgement :

The Tap Line Cases - 234 U.S. 1 (1914)
U.S. Supreme Court The Tap Line Cases, 234 U.S. 1 (1914)

The Tap Line Cases *

Nos. 829-836

Argued April 8, 9, 13, 1914

Decided May 25, 1914

234 U.S. 1

APPEALS FROM THE UNITED STATES COMMERCE COURT

SYLLABUS

An order of the Interstate Commerce Commission, based on its finding that the service rendered by a connecting line is not a service of transportation by a common carrier railroad, but a plant service by a plant facility, to the effect that allowances and divisions of rates

are unlawful and must be discontinued, is affirmative in its nature and subject to judicial review by the Commerce Court.

Where the validity of an order of the Interstate Commerce Commission directing discontinuance of divisions of rates with another railroad depends upon whether the latter is a common carrier or a plant facility, the determination of that question upon undisputed facts is a conclusion of law which is subject to judicial review.

Although a railroad may have originally been a mere plant facility, after it has been acquired by a common carrier duly organized under the law of the state and performing service as such and regulated and operated under competent authority, it is no longer a plant facility, but a public institution, even though the owner of the industry of which it formerly was an appendage is the principal shipper of freight thereover.

The extent to which a railroad is in fact used does not determine whether it is or is not a common carrier, but the right of the public to demand service of it.

Railroads owned by corporations properly organized under the laws of the state in which they are and treated as common carriers by the state, authorized to exercise eminent domain, dealt with as common carriers by other railroad corporations, and engaged in carrying for hire goods of those who see fit to employ them, are common carriers for all purposes, and cannot be treated as such as to the general public and not as to those who have a proprietary interest in the corporations owning them.

Congress has expressly excepted the transportation of lumber from the operation of the commodities clause, and had power so to do. *United States v. Del. &*

Hudson Co., 213 U. S. 366 .

Debates in Congress may be resorted to for the purpose of showing that which prompted the legislation.

This Court will not, in interpreting the power of the Interstate Commerce Commission in regard to a particular traffic, ignore a declaration of public policy in regard to that traffic as shown by an enactment of Congress.

Congress, by the exemption of lumber from the operation of the commodities clause, shows that it regarded railroad tap lines for lumber, owned and operated by the owners of the timber, as essential for the development of the timber interests of the country.

It is beyond the authority of the Interstate Commerce Commission to order a tap line to cease a division of rates as to lumber owned by it or by those having proprietary interest therein if it is allowed such division as to lumber shipments by others.

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If the division of joint rates between the principal carrier and the tap line really amounts to a rebate or discrimination in favor of the tap line owners, it is within the power and duty of the Interstate Commerce Commission to reduce such division to a proper point.

209 F. 244 affirmed.

These are all appeals from decrees of the United States Commerce Court (209 F. 244) annulling orders of the Interstate Commerce Commission refusing in whole or in part to compel certain common carriers which had filed schedules cancelling former schedules covering through routes and joint rates with the Louisiana & Pacific Railway Company, the Woodworth & Louisiana Central Railway Company, the Mansfield Railway & Transportation Company and the Victoria, Fisher & Western Railroad Company, appellees, hereinafter referred to as tap lines, to

establish or reestablish through routes and joint rates and to grant allowances and divisions to the tap lines.

The Commission, after an extensive investigation of the tap lines in the lumber regions, particularly in the states of Arkansas, Missouri, Louisiana and Texas, on April 23, and May 14, 1912, filed its report and supplemental report (23 I.C.C. 277, 549). The report deals at some length with the manner in which logs and lumber are moved in that territory and the practices attending such traffic. The Commission found the identification of the road with the industry, the necessity of incorporation to secure divisions and allowances, the great amount in the aggregate paid by the trunk lines to the tap lines, and the resulting discrimination, the fact that allowances were dependent upon the bargain the tap lines might exact from the trunk lines for a proportion of their traffic and not upon the amount of service rendered, and the fact that most of the lumber mills were near public carriers and that the tap lines would not be kept in operation if the mills were removed. General principles for determining the character

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of carriers were set forth, and the conclusion stated that the real relation of a tap line was a question to be decided upon the facts in each case.

The Commission entered upon a particular examination of the various lines under investigation, among others, the appellees in these appeals. It found:

The Louisiana & Pacific Railway Company, controlled by the R. A. Long interests, owning a controlling interest in the Hudson River Lumber Company, the King-Ryder Lumber Company, Longville Lumber Company, and the Calcasieu Long Leaf Lumber Company, consists of the following tracks, all of which were originally constructed as private logging roads: (1) A track from De Ridder Junction, Louisiana (all of the lines involved in these cases are within that state), to Bundicks, a distance of 8 miles. The mill of the Hudson River Lumber Company, in whose interest this track is operated, is located at De Ridder, within a few hundred feet of the trunk lines; Bundicks is apparently a logging camp with a company

store. (2) A track from Lilly Junction to Walla, about 7 1/2 miles, the latter being a point in the woods where the King-Ryder Lumber Company has a commissary, and where is located a small independent yellow-pine mill, owned by the Bundick Creek Lumber Company. The mill of the King-Ryder Company is at Bon Ami, a town of 2,000, located on the Lake Charles & Northern Railroad Company, a short distance from and connected by it with Lilly Junction. (3) A track of two miles at Longville, a town of 2,000 people, where the Longville Lumber Company has its mill and a store, and where also are several independent stores. (4) A track of nine miles from Fayette to Camp Curtis, a place of 200 population, where the Calcasieu Long Leaf Lumber Company has a store, its mill being at Lake Charles. (5) A track of one mile from Bridge Junction to Lake Charles station. The towns De Ridder, Bon Ami, Lilly Junction, Longville, Fayette, and

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Lake Charles are connected by the Lake Charles & Northern Railroad, a Southern Pacific Railway Company line, originally built by the Long interests as a part of the Louisiana & Pacific, and sold to the Lake Charles & Northern with the reservation of trackage rights advantageous to the Louisiana & Pacific. By means of this arrangement the Louisiana & Pacific connects with the Kansas City Southern and the Santa Fe at De Ridder, with the Frisco at Fulton (a station south of Fayette), and with the Southern Pacific, Iron Mountain, & Kansas City Southern at Lake Charles. Its equipment consists of 22 locomotives, 6 cabooses, 41 freight cars, and 270 logging cars, and a private car used by its officers, who are connected with the lumber companies, in traveling around the country. The lumber companies have many miles of unincorporated logging tracks connecting with the Louisiana & Pacific at various points. There are a number of other stations on the line, among them Bannister, where the Brown Lumber Company owns a small independent mill.

The operation is this: the lumber companies load the logs and switch them over the logging spurs to connection with the tap line which hauls them to the mill, an average distance of 30 miles, for which no charge is made. The tap line switches the carloads of lumber from the mill at Lake Charles, a distance of three quarters

of a mile, to the Southern Pacific; at De Ridder, only a few hundred feet to the trunk lines; from the Lake Charles mill to the Frisco, a distance of 18 miles; from the Bon Ami mill to the Southern Pacific at Lake Charles, a distance of 40 miles, and from the Longville mill to the Southern Pacific at Lake Charles, a distance of 24 miles -- the average haul for the controlling companies being nearly 20 miles. By written agreement, 50% of the lumber must be routed over the Frisco and 40% over the Southern Pacific, but this is not always done. 243,122 tons of lumber, as against 8,819 tons of merchandise, were shipped in 1910, 98% of the whole tonnage

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being supplied by the controlling interests. The passenger receipts for 1910 were $473.77. A logging train runs daily on each branch, and there is one "mixed" train, loaded chiefly with logs and lumber, between Lake Charles and De Ridder. The allowances paid by the trunk lines range from 1 1/2 to 5 1/2 per 100 pounds out of their earnings under the group lumber rate. The operating revenue for the year ending June 30, 1910, was $220,985.94, with operating expenses of $145,433.69, and there was an accumulated surplus of $73,581.07 on that date.

The Commission found that no charge was made for hauling the logs to the mills by the tap line, and that, for the short switching service, allowances were made as above stated, and concluded that it regarded the whole arrangement as indefensible and unlawful, and saw no ground upon which any allowance might lawfully be made.

The Woodworth & Louisiana Central Railway Company and the Rapides Lumber Company, situated at Woodworth, are identical in interest. The mill is near the Iron Mountain, which has a spur track to the mill, and the tap line has a standard gauge track from the mill to La Moria, about 6 miles, where it connects with the Southern Pacific Railway, Texas & Pacific Railway, and Chicago, Rock Island, & Pacific Railway, and a narrow-gauge track in the other direction for 18 miles, whence spur tracks go into the timber. The equipment consists of 1 standard-gauge locomotive, 5 narrow-gauge locomotives, and 2 standard and 9 narrow-gauge cars. The steel

in the logging spurs and 4 of the narrow-gauge locomotives used by the lumber company on the spurs are owned by the tap line and leased to the lumber company, while the right of way for the narrow-gauge track is leased from the lumber company.

The tap line hauls the logs from its terminus to the mill without charge, where they are dumped by the trainmen into the mill pond. The carloads of lumber are switched

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by the tap line from the planing mill to the place where they are taken by the Iron Mountain, about 25 feet. About 95% of the lumber goes through La Moria, being switched there by the tap line; the allowances from the Iron Mountain out of through rates being from 1 1/2 to 5 1/2 per 100 pounds, while from the trunk lines at La Moria from 2 to 5 1/2. There are no joint rates except on lumber. For the year ending June 30, 1910, there were 40,707 tons of freight handled for the lumber company and 2,100 tons of outside traffic. It has no passenger business. Its operations for that year showed a deficit, but there was a surplus from previous years of nearly $10,000. It files annual reports with the Commission.

The Mansfield Railway & Transportation Company and the Frost-Johnson Lumber Company are identical in interest. The tap line extends from Mansfield to a logging camp in the woods, known as Hunter, a distance of about 16 miles, and the line which was originally incorporated by the citizens of Mansfield in 1881, consisting of 2 miles of track from the town to a connection with the Texas & Pacific at Mansfield Junction. Later, the Mansfield Company acquired the 2 mile track and equipment, and the interests controlling it purchased a large amount of timber lands near Mansfield at a point called Oak Hill, where a mill was built and spur tracks were laid into the timber, which were later turned over to the Mansfield Company, with the free privilege reserved to the lumber company to operate logging trains between the timber and the mill, which operation is performed by a subsidiary company. The purchase price did not reflect the value of the reservation. There are about 25 miles of unincorporated logging tracks. The tap

line also has a connection with the Kansas City Southern. It owns a locomotive, a passenger coach, and a box car.

The service performed by the tap line is switching cars between the mill and the Kansas City Southern, about

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3/4 of a mile, although the mill is within 300 feet of the Kansas City Southern, and was formerly connected by a spur track which was abandoned and taken up, and to the Texas & Pacific, a distance of 2 1/2 miles. The tap line bears the expense of maintaining its tracks extending into the woods.

No other yellow-pine mills are served by the tap line, but there is a hardwood mill adjacent to the Frost-Johnson mill, obtaining a substantial portion of its logs from the latter company or subsidiaries, the price including delivery at the hardwood mill, the logs being hauled by the logging company under its trackage right. Some logs are also obtained from the Texas & Pacific, for the switching of which the hardwood mill pays the tap line $2.50 a car or less. The tap line maintains joint rates on hardwood as well as yellow pine.

Practically no traffic other than that in which the lumber company is interested moves over the track from Mansfield to Hunter, but a good deal of outside traffic moves over the original 2 miles from Mansfield to Mansfield Junction. 16,539 tons of miscellaneous freight were handled during the year ending June 30, 1910, most of which passed over the Mansfield Junction branch, and much of which was for the controlling interests or their employees, while, during the same time, 28,596 tons, of lumber were handled, 91.4% of which was supplied by the lumber company. A daily train is operated by the tap line in each direction on regular schedule, handling passengers, mail, and express; but in 1910, the passenger revenues were only $1,209.76, while its freight revenues were $25,617.19.

The Commission noticed the abandonment of the 300-foot spur track, and then the payment of an allowance of 1 to 4 per 100 pounds, and held that it was a mere manipulation of the situation in order to establish an unlawful relation, and also

held that, since the tap line crosses the

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right of way of the Texas & Pacific within a short distance, the allowance of a like amount by the Texas & Pacific for switching from the mill to Mansfield and down to the junction was unlawful.

The Victoria, Fisher, & Western Railroad Company and the Louisiana Long Leaf Lumber Company have the same stockholders and officers. The tap line extends from Victoria, where it connects with the Texas & Pacific, to Fisher, where it crosses the Kansas City Southern Railway, and then extends to Cain, in all about 31 miles. A part of the track was built some time ago, and was acquired by the lumber company in 1900. In 1902, the railroad company was incorporated and its stock exchanged as a stock dividend for the line. There are about 25 miles of logging spurs and side tracks. The equipment consists of 5 locomotives, 4 cabooses, 3 box cars, 1 flat car, and 105 logging cars. It does not operate any trains on regular schedule. There are two mills owned by the Lumber Company, one about a mile from the junction with the Texas & Pacific, and the other about half a mile from the tracks of the Kansas City Southern.

The tap line hauls the logs from the forest to the mill, charging $1.50 per 1,000 feet, which is supposed to cover only the service performed on the logging spurs, and not the haul over the main track. The greater part of the lumber from Fisher is turned over to the Kansas City Southern, involving a one-half mile switch by the tap line, and from Victoria is moved by the tap line 1 mile to the Texas & Pacific; a small amount of the lumber from each mill is taken by the tap line to the more distant trunk line, but the same divisions are paid. The allowances range from 3/4 to 4 per 100 pounds, and the joint rates are the same as the rates published from adjacent mills on the trunk lines, except traffic moving to Texas, for which 1 1/4 per 100 pounds is added to the junction-point rate. No passengers are carried, and of 316,676 tons

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of freight for the year 1910, over 99% was furnished by the proprietary company. And the accumulated surplus at the end of June, 1910, was $13,509.17.

The Commission held that the tap line could not participate as a common carrier in joint rates on the products of the proprietary company, but said that the lumber rate of the trunk lines applied from the adjacent mills, and that they might make a reasonable allowance for switching.

The Commission made an order in such matter on May 14, 1912, which it amended on October 30, 1912. The amended order, so far as these appeals are concerned, provided:

"The Commission upon the record finds in the case of the . . . Woodworth & Louisiana Central Railway Company; Mansfield Railway & Transportation Company; Louisiana & Pacific Railway Company; Victoria, Fisher, & Western Railroad Company -- that the tracks and equipment, with respect to the industry of the several proprietary companies, are plant facilities, and that the service performed therewith for the respective proprietary lumber companies in moving logs to their respective mills, and performed therewith in moving the products of the mills to the trunk lines, is not a service of transportation by a common carrier railroad, but is a plant service by a plant facility, and that any allowances or divisions out of the rate on account thereof are unlawful and result in undue and unreasonable preferences and unjust discriminations, as found in the said reports,"

and it ordered that the trunk lines should cease and desist and abstain from making any such allowances to the tap lines named.

The commission further ordered that, if the trunk lines failed by a time stated, to reestablish the through routes and joint rates in effect on April 30, 1912, on traffic other than the products of the mills of certain proprietary companies,

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among others, the appellees herein, it would, upon proper petition, enter an order requiring the establishment of such routes and rates, or enter upon an inquiry with respect thereto, and further provided that all divisions of joint rates should be submitted to the Commission for approval.

The appellees thereupon, by their several petitions filed in the United States Commerce Court, sought to have the order of the Commission, so far as applicable to them, enjoined and annulled. The Interstate Commerce Commission, the Atchison, Topeka, & Santa Fe Railway Company, the Gulf, Colorado, & Santa Fe Railway Company, and the Railroad Commission of Louisiana, intervened. The Commerce Court said that the question was whether the Commission had acted arbitrarily and on improper considerations in determining under what circumstances a common carrier tap line would be deemed to be performing a mere plant service for a proprietary company, and held that, as the service rendered to the proprietary and nonproprietary mills by the tap lines was the same, and as it was held to be a transportation service by an interstate common carrier as to the nonproprietary mills, it must be held to be a similar service as to the proprietary mills, and concluded that the Commission was without power to prohibit the making of joint rates by the trunk lines and the tap lines, and the payment of some division of such rates to the tap lines for their services in hauling logs to and lumber from the proprietary mills, and annulled the order of the Commission in this respect and so far as it applied to the appellees.

The United States and the Interstate Commerce Commission, and the Atchison, Topeka, & Santa Fe Railway Company, and the Gulf, Colorado, & Santa Fe Railway Company, entered separate appeals from the decrees of the Commerce Court in the four cases instituted by the appellees.

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MR. JUSTICE DAY, after making the foregoing statement, delivered the opinion of the Court.

A preliminary objection is made to the jurisdiction of the Commerce Court in that the order of the Commission is not reviewable because merely of a negative character. The Commerce Court examined this question, and in view of the amended order of October 30, 1912, reached the conclusion that the order was affirmative in its nature, and of a character permitting of review by proper proceedings in that court under the act giving it jurisdiction in such cases. We find no reason to differ with this conclusion, and are of opinion that the Commerce Court had jurisdiction in the case.

It is further insisted, upon the authority of *Proctor & Gamble Co. v. United States,* 225 U. S. 282 , and other cases in this Court which have followed that decision, that, in the present cases, the decision rests upon conclusions of the Commission as to matters of fact only, which are within the sole jurisdiction of that body, and not reviewable in the courts. But we shall consider the case upon the findings of fact preceding this opinion, which are identical with those made by the Commission, and test the conclusions reached as matters of law, giving proper consideration to matters of fact which are not in dispute.

The final decree of the Commerce Court vacated and set aside the portion of the Commission's order reading as follows:

"That the tracks and equipment with respect to the industry of the several proprietary companies are plant facilities, and that the service performed therewith for the

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respective proprietary lumber companies in moving logs to their respective mills, and performed therewith in moving the products of the mills to the trunk lines, is not a service of transportation by a common carrier railroad, but is a plant service by a plant facility, and that any allowances or divisions out of the rate on account thereof are unlawful and result in undue and unreasonable preferences and unjust discriminations, as found in the said reports;"

"3. It is ordered, that the principal defendants [trunk lines, naming them], be, and they are hereby, notified and required to cease and desist, and for a period of two years hereafter, or until otherwise ordered, to abstain from making any such allowances to any of the above-named parties to the record in respect of any such above-described service."

The question now before this Court is the correctness of this decree.

A perusal of the findings and orders of the Commission make it apparent that the grounds of decision upon which it proceeded were two: first, that these roads were mere plant facilities; second, that they were not common carriers as to proprietary traffic. The Commission held that, before incorporation, they were plant facilities, and that, after incorporation, they remained such. What the Commission means by plant facilities may be gathered from a consideration of some of its decisions. In General Electric Co. v. N.Y. C. & H. R. Co., 14 I.C.C. 237, a network of interior switching tracks, constructed to meet the necessities of the business, were held to be mere plant facilities. The same principle was applied to the internal trackage of large industrial plants in Solvay Process Co. v. Delaware, Lackawanna & W. R. Co., 14 I.C.C. 246. These systems of internal trackage were not common carriers, and, however extensive, were intended to and did furnish service for the plants which owned and

operated them. But a common carrier, performing service as such, regulated and operated under competent authority, as observed by Commissioner Prouty in Kaul Lumber Co. v. Central of Georgia R. Co., 20 I.C.C. 450, 456, is no longer a mere appendage of a mill, "but a public institution." It thus becomes apparent that the real question in these cases is the true character of the roads here involved. Are they plant facilities merely, or common carriers with rights and obligations as such?

It is insisted that these roads are not carriers, because the most of their traffic is in their own logs and lumber, and that only a small part of the traffic carried is the

property of others. But this conclusion loses sight of the principle that the extent to which a railroad is in fact used does not determine the fact whether it is or is not a common carrier. It is the right of the public to use the road's facilities and to demand service of it, rather than the extent of its business, which is the real criterion determinative of its character. This principle has been frequently recognized in the decision of the courts. We need not cite the many state cases in which it has been so held, in view of the fact that the same principle was laid down in the late case of *Union Lime Co. v. Chicago & N.W. R. Co.,* 233 U. S. 211 . In that case, the Supreme Court of Wisconsin sustained the extension of a spur track to reach the quarries and lime kilns of a single company as a public use authorizing the exercise of the right of eminent domain, and this Court affirmed the judgment. Dealing with the contention that the Wisconsin statute was invalid because it authorized action appropriating property upon the exigency of a private business, this Court said (p. 233 U. S. 221):

"A spur may at the outset, lead only to a single industry or establishment; it may be constructed to furnish an outlet for the products of a particular plant; its cost may be defrayed by those in special need of its service at the

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time. But nonetheless, by virtue of the conditions under which it is provided, the spur may constitute at all times a part of the transportation facilities of the carrier which are operated under the obligations of public service and are subject to the regulation of public authority. As was said by this Court in *Hairston v. Danville & Western Ry.,* 208 U. S. 608 :"

"The uses for which the track was desired are not the less public because the motive which dictated its location over this particular land was to reach a private industry, or because the proprietors of that industry contributed in any way to the cost."

"There is a clear distinction between spurs which are owned and operated by a common carrier as a part of its system and under its public obligation and merely

private sidings. *See De Camp v. Hibernia R. Co.,* 47 N.J.L. 43; *Chicago &c.; R. Co. v. Porter,* 43 Minn. 527; *Ulmer v. Lime Rock R. Co.,* 98 Me. 579; *Railway Company v. Petty,* 57 Ark. 359; *Dietrich v. Murdock,* 42 Mo. 279; *Bedford Quarries Co. v. Chicago &c.; R. Co.,* 175 Ind. 303."

The Commission has recognized this principle as applicable to tap lines, for in Central Yellow Pine Association v. Vicksburg, Shreveport & Pacific R. Co., 10 I.C.C. 193, 199, it said:

"While these logging roads are almost or quite without exception mill propositions at the outset, built exclusively for the purpose of transporting logs to the mill, they soon reach a point where they engage in other business to a greater or less extent. As the length of the road increases, as the lumber is taken off and other operations obtain a foothold along the line, various commodities besides lumber are transported, and this business gradually develops until in several cases what was at first a logging road pure and simple has become a common carrier of miscellaneous freight and passengers. Almost all these lines, even where they are run as private enterprises,

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do more or less outside transportation, and it would be difficult to draw any line of demarcation between the logging road as such and the logging road which has become a general carrier of freight."

This representation, it is contended by the Attorney General of Louisiana, who appears here in behalf of the Louisiana Railroad Commission, intervener, is aptly descriptive of the growth and development of railroads in that state.

Furthermore, these roads are common carriers when tried by the test of organization for that purpose under competent legislation of the state. They are so treated by the public authorities of the state, who insist in this case that they are such, and submit in oral discussion and printed briefs cogent arguments to justify that conclusion. They are engaged in carrying for hire the goods of those who see fit to employ them. They are authorized to exercise the right of eminent domain by

the state of their incorporation. They were treated and dealt with as common carriers by connecting systems of other carriers -- a circumstance to be noticed in determining their true character. *United States v. Union Stock Yard & Transit Co.,* 226 U. S. 286 . They are engaged in transportation as that term is defined in the Commerce Act and described in decisions of this Court. *Coe v. Errol,* 116 U. S. 517 ; *Covington Stock Yds. Co. v. Keith,* 139 U. S. 128 ; *Southern Pac. Term. Co. v. Interstate Com. Com.,* 219 U. S. 493 ; *United States v. Union Stock Yard Co. supra.*

Applying the principles which we have stated as determinative of the character of these roads, and without repeating the facts concerning them, they would seem to fill all the requirements of common carriers so employed, unless the grounds upon which they were determined not to be such by the Commission are adequate to that end. The Commission itself, as to all shippers other than those controlled by the so-called proprietary companies, treated

them as common carriers, for it has ordered the trunk lines to reestablish through routes and joint rates as to such traffic. But, says the government (and it insists that this fact alone might well control the decision), the roads are owned by the persons who also own the timber and mills which they principally serve.

This fact is not shown to be inconsistent with the laws of the state in which they are organized and operated. On the contrary, the public authorities of that state are here insisting that these companies are common carriers. Congress has not made it illegal for roads thus owned to operate in interstate commerce. While Congress, in enacting the commodities clause amending 1 of the Act to Regulate Commerce (June 29, 1906. 34 Stat. 584, c. 3591), sought to divorce transportation from production and manufacture, and to make transportation a business of and by itself, unallied with manufacture and production in which a carrier was itself interested, the debates, which may be resorted to for the purpose of ascertaining the situation which prompted this legislation, show that the situation in some of the states as to the logging industry and transportation was sharply brought to the

attention of Congress, and led to the exemption from the commodities clause of timber and the manufactured products thereof, thus indicating the intention to permit railroads to haul such lumber and products although it owned them itself. And that Congress had the constitutional power to enact such exemption was held in *United States v. Delaware & Hudson Co.,* 213 U. S. 366 , 213 U. S. 416 - 417. This declaration of public policy which is now part of the Commerce Act cannot be ignored in interpreting the power and authority of the Commission under the act. The discussion resulting in the action of Congress shows that railroads built and owned by the same persons who own the timber were regarded as essential to the development of the timber regions in the Southwest,

and the necessity of such roads was dwelt upon and set forth with ample illustration by Commissioner Prouty in his concurring opinion in this case.

As we have said, the Commission, by its order herein, required the trunk lines to reestablish through routes and joint rates as to property to be transported by others than the proprietary owners over the tap lines. This order would of itself create a discrimination against proprietary owners, for lumber products are carried from this territory upon blanket rates applicable to all within its limits. It follows that independent owners would get this blanket rate for the entire haul of their products while proprietary owners would pay the same rate plus the cost of getting to the trunk line over the tap line. The Commission, by the effect of its order, recognizes that railroads organized and operated as these tap lines are, if owned by others than those who own the timber and mills, would be entitled to be treated as common carriers and to participate in joint rates with other carriers. We think the Commission exceeded its authority when it condemned these roads as a mere attempt to evade the law and to secure rebates and preferences for themselves.

It is doubtless true, as the Commission amply shows in its full report and supplemental report in these cases, that abuses exist in the conduct and practice of these lines and in their dealings with other carriers, which have resulted in unfair advantages to the owners of some tap lines and in discriminations against the

owners of others. Because we reach the conclusion that the tap lines involved in these appeals are common carriers, as well of proprietary as nonproprietary traffic, and as such entitled to participate in joint rates with other common carriers, that the determination falls far short of deciding -- indeed, does not at all decide -- that the division of such joint rates may be made at the will of the carriers involved, and without any power of the Commission to control. That body has the

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authority, and it is its duty, to reach all unlawful discriminatory practices resulting in favoritism and unfair advantages to particular shippers or carriers. It is not only within its power, but the law makes it the duty, of the Commission to make orders which shall nullify such practices resulting in rebating or preferences, whatever form they take and in whatsoever guise they may appear. If the divisions of joint rates are such as to amount to rebates or discriminations in favor of the owners of the tap lines because of their disproportionate amount in view of the service rendered, it is within the province of the Commission to reduce the amount so that a tap line shall receive just compensation only for what it actually does.

For the reasons stated, we think the Commerce Court did not err in reaching its conclusion and decision, and its judgment is

Affirmed.

* Docket titles of the Tap Line cases are: No. 829, *United States and Interstate Commerce Commission v. Louisiana & Pacific Railway Co.;* No. 830, *Atchison, Topeka & Santa Fe Railway Co. v. Louisiana & Pacific Railway Co.;* No. 831, *United States and Interstate Commerce Commission v. Woodworth & Louisiana Central Railway Co.;* No. 832, *Atchison, Topeka & Santa Fe Railway Co. v. Woodworth & Louisiana Central Railway Co.,* No. 833; *United States and Interstate Commerce Commission v. Mansfield Railway & Transportation Co.;* No. 834, *Atchison, Topeka and Santa Fe Railway Co. v. Mansfield Railway & Transportation Co.;* No. 835, *United States and Interstate Commerce Commission v. Victoria, Fisher & Western Railroad Co.;* No. 836, *Atchison,*

Topeka & Santa Fe Railway Co. v. Victoria, Fisher & Western Railroad Co.

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