

Ellis Vs. Interstate Commerce Commission

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Appellant : Ellis

Respondent : interstate Commerce Commission

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Ellis v. Interstate Commerce Commission - 237 U.S. 434 (1915)

U.S. Supreme Court Ellis v. Interstate Commerce Commission, 237 U.S. 434 (1915)

Ellis v. Interstate Commerce Commission

No. 712

Argued April 12, 15, 1915

Decided May 10, 1915

237 U.S. 434

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES

FOR THE NORTHERN DISTRICT OF ILLINOIS

SYLLABUS

The definition of transportation in 1 of the Act to Regulate Commerce includes the instrumentalities enumerated, but, as a preliminary, a requirement that the carriers shall furnish them upon reasonable request; the definition does not mean, however, that the owners and builders of such instrumentalities shall, contrary to truth, be regarded as carriers.

The control of the Interstate Commerce Commission over private cars and such instrumentalities of commerce is effected by its control over the carriers subject to the Act, and not over the builders and owners of such instrumentalities who are not subject to the Act.

An appeal lies to this Court from a final order of the district court made upon petition of the Interstate Commerce Commission directing a witness to answer certain questions and produce certain documents. *Interstate Commerce Commission v. Baird*, [194 U. S. 25](#) ; *Alexander v. United States*, [201 U. S. 117](#) , distinguished.

The Interstate Commission may not, in a mere fishing expedition, interrogate a witness in regard to the affairs of a stranger on the chance that something discreditable may be disclosed.

An intervening corporation may be a means by which an owner of property transported incidentally renders services, and, if so, its charges therefor are subject to the supervision of the Commission, and, as unreasonable charges may be used as a device to obtain a forbidden end, the Commission should be allowed a reasonable latitude in interrogating a witness in a proper proceeding to ascertain if any such device is used. *Int. Com. Comm'n v. Brinson*, [154 U. S. 447](#) .

Every advantage which may enure to a shipper as the result of the position of his plant, his ownership, or his wealth is not necessarily a preference within the prohibitions of the Act to Regulate Commerce.

In this case, *held* that, until the corporation, not a carrier, furnishing instrumentalities to shippers was shown to be a mere tool of the latter for obtaining preferences, a witness need not answer questions concerning private business of the corporation, but also *held* that he

Page 237 U. S. 435

should answer questions in regard to the furnishing of instrumentalities so far as they affected matters which, under 15 of the Act to Regulate Commerce, are subject to the Commission.

The facts, which involve the construction and application of 12 of the Act to Regulate Commerce and the power of the court to compel witnesses to answer questions propounded, and to produce documents demanded, by the Interstate Commerce Commission, are stated in the opinion.

Page 237 U. S. 442

MR. JUSTICE HOLMES delivered the opinion of the Court.

This is an appeal from an order of the district court, made upon a petition of the appellee, the Interstate Commerce Commission, filed under the Act to Regulate Commerce, 12. The order directs the appellant to answer certain questions propounded, and to produce certain documents called for, by the appellee. There is no doubt that this appeal lies. The order is not like one made to a witness before an examiner or on the stand in the course of a proceeding, *inter alios*, in court. *Alexander v. United States*, [201 U. S. 117](#) . It is the end of a proceeding begun against the witness. *Interstate Commerce Commission v. Baird*, [194 U. S. 25](#) . Therefore, we pass at once to the statement of the case.

The Interstate Commerce Commission, reciting that it appeared from complaint on file that the allowances paid for the use of private cars, the practices governing the handling and icing of such cars, and the minimum carload weights applicable to the commodities shipped

therein, on the part of carriers subject to the Act to Regulate Commerce, violated that act in various ways, ordered that a proceeding of investigation be instituted by the Commission of its own motion to determine whether such allowances, practices, or minimum carload weights were in violation of the act as alleged, with a view to issuing such orders as might be necessary to correct discriminations and make applicable reasonable weights. It ordered that carriers by railroad subject to the act be made parties respondent, and, later, that all persons and corporations owning or operating cars and other vehicles and instrumentalities and facilities of shipment or carriage of property in interstate commerce be made parties also. In the proceedings thus ordered, the questions propounded were put to the appellant, the vice-president and general manager of the Armour Car Lines.

The Armour Car Lines is a New Jersey corporation that owns, manufactures, and maintains refrigerator, tank, and box cars, and that lets these cars to the railroad or to shippers. It also owns and operates icing stations on various lines of railway, and from these ices and re-ices the cars, when set by the railroads at the icing plant, by filling the bunkers from the top, after which the railroads remove the cars. The railroads pay a certain rate per ton, and charge the shipper according to tariffs on file with the Commission. Finally, it furnishes cars for the shipment of perishable fruits, etc., and keeps them iced, the railroads paying for the same. It has no control over motive power or over the movement of the cars that it furnishes as above, and, in short, notwithstanding some argument to the contrary, is not a common carrier subject to the act. It is true that the definition of transportation in 1 of the act includes such instrumentalities as the Armour Car Lines lets to the railroads. But the definition is a preliminary to a requirement that the carriers shall furnish them, upon reasonable request,

not that the owners and builders shall be regarded as carriers, contrary to the truth. The control of the Commission over private cars, etc., is to be effected by its control over the railroads that are subject to the act. The railroads may be made

answerable for what they hire from the Armour Car Lines, if they would not be otherwise, but that does not affect the nature of the Armour Car Lines itself. The petition of the Interstate Commerce Commission to compel an answer to its questions hardly goes on any such ground.

The ground of the petition is that it became the duty of the Commission to ascertain whether Armour & Company, an Illinois corporation shipping packing-house products in commerce among the states, was controlling Armour Car Lines and using it as a device to obtain concessions from the published rates of transportation, and whether Armour Car Lines was receiving for its refrigerating services unreasonable compensation that inured to the benefit of Armour & Company, all in violation of 1, 2, 3, and 15 of the act.

If the price paid to the Armour Car Lines was made the cover for a rebate to Armour & Company, or if better cars were given to Armour & Company than to others, or if, in short, the act was violated, the railroads are responsible on proof of the fact. But the only relation that is subject to the Commission is that between the railroads and the shippers. It does not matter to the responsibility of the roads whether they own or simply control the facilities, or whether they pay a greater or less price to their lessor. It was argued that the Commission might look into the profits and losses of the Armour Car Lines (one of the matters inquired about) in order to avoid fixing allowances to it at a confiscatory rate. But the Commission fixes nothing as to the Armour Car Lines except under 15, in the event of which we shall speak.

The appellant's refusal to answer the series of questions

Page 237 U. S. 445

put was not based upon any objection to giving much of the information sought, but on the ground that the counsel who put them avowed that they were the beginning of an attempt to go into the whole business of the Armour Car Lines -- a fishing expedition into the affairs of a stranger for the chance that something discreditable might turn up. This was beyond the powers of the Commission. *In re*

Pacific Railway Commission, 32 F. 241; *Interstate Commerce Commission v. Brimson*, [154 U. S. 447](#) , [154 U. S. 478](#) -479; *Harriman v. Interstate Commerce Commission*, [211 U. S. 407](#) . The Armour Car Lines not being subject to regulation by the Commission, its position was simply that of a witness interested in, but a stranger to, the inquiry, and the Commission could not enlarge its powers by making the company a party to the proceedings and serving it with notice. Therefore, the matter to be considered here, subject to the qualification that we are about to state, is how far an ordinary witness could be required to answer the questions that are before the court.

We have stated the nature and object of the investigation, and it is to be observed that not every advantage that may inure to a shipper as the result of the position of his plant, his ownership, or his wealth, is a preference. *Interstate Commerce Commission v. Duffenbaugh*, [222 U. S. 42](#) , [222 U. S. 46](#) . But the intervening corporation may be a means by which an owner of property transported indirectly renders the services in question, and, in that event, its charges are subject to the Commission by 15. The supposed unreasonable charge may be used as a device to attain the forbidden end, and therefore reasonable latitude should be allowed to see if any such device is used. *Interstate Commerce Commission v. Brimson*, [154 U. S. 447](#) , [154 U. S. 464](#) . But still, until the Armour Car Lines is shown to be merely the tool of Armour & Company, it has the general immunities that we have stated. With the

Page 237 U. S. 446

foregoing general principles in view, we proceed to dispose of the questions asked.

It is not necessary to repeat the many pages of questions at length. They are grouped by the government into classes, and numbered so that the result may be stated in comparatively few words. The first group concerning interlocking officers and relations between Armour Car Lines, Armour & Company, and Fowler Packing Company, questions 1, 2, 3, and 7, should be answered. The only objection was on account of the general intent avowed, as we have stated. So, also, questions 4,

5, 6, concerning the acquirement of cars previously owned by Armour & Company, and Armour Packing Company, making the second group. Also, questions 8, 9, 12, and 13, as to contracts of Armour Car Lines with Armour & Company and Colorado Packing Company for furnishing cars and icing service. The next group, so far as the questions concern the ownership, manufacture, and repair of cars, Nos. 10, 11, 14, 16, 17, and 19, need not be answered, except 11, "where are the cars of Armour Car Lines repaired when not repaired in shops of railroads?" The last two groups concern matters into which the Commission was not authorized to inquire. The fifth, questions 15, 20, 21, 25, 26, 27, and 28, called for statements showing profit and loss, credits and debits to income etc., so far as the same related to transportation as defined in the act, and the sixth, Nos. 22, 23, and 24, for statements showing the amount invested in each icing plant and the detailed results of the operation of each, amount invested in each, cost per ton of ice at the source of supply, etc., etc., all matters belonging to the private business of the Armour Car Lines, and not open if our interpretation of the law is correct. Our decision, however, must be without prejudice to the possibility that the case may be brought within 15 by evidence to the effect stated above.

Decree reversed without prejudice.

Page 237 U. S. 447

MR. JUSTICE DAY, while not differing from the general views taken by the Court, is of opinion that the nature of the inquiry under 15 made it proper that all the questions should be answered.

MR. JUSTICE Mc REYNOLDS took no part in the consideration and decision of this cause.