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United States Vs. Louisville and Nashville R. Co.

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Decided On : Feb-23-1915

Appeal No. : 236 U.S. 318

Appellant : United States

Respondent : Louisville and Nashville R. Co.

Judgement :

United States v. Louisville & Nashville R. Co. - 236 U.S. 318 (1915)

U.S. Supreme Court United States v. Louisville & Nashville R. Co., 236 U.S. 318 (1915)

United States v. Louisville & Nashville Railroad Company

No. 499

Argued January 5 and 6, 1915

Decided February 23, 1915

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ERROR TO AND APPEAL FROM THE UNITED STATES

DISTRICT COURT FOR THE WESTERN DISTRICT OF KENTUCKY

SYLLABUS

No authority beyond that already conferred on the Interstate Commerce Commission by the Act to Regulate Commerce can be derived by that Commission from a resolution passed by only one branch of Congress, and so *held* that the powers of the Commission in making the investigation required by Senate Resolution No. 153, in regard to inspection of accounts and other papers, are limited to those conferred by the Act to Regulate Commerce and the amendments thereto.

Section 12 of the Act to Regulate Commerce does not make provision for inspection of accounts and correspondence of carriers authorized by the Commission; that feature was added by the Hepburn Act of June 29, 1906, amending 20 of the Commerce Act.

The Hepburn Act, like other statutes, may be read in the light of the purpose it was intended to subserve, and the history of its origin and the report of the Interstate Commerce Commission submitted to Congress recommending the passage of the Act may be referred to.

As construed in the light of such report, and applying the rule of *noscitur a sociis*, 20 of the Act to Regulate Commerce does not provide for the compulsory inspection of the correspondence of carriers, but is limited to accounts, including records, documents and memoranda.

Congress is not likely to enact a sweeping provision subjecting all correspondence of carriers to examination, attended with serious consequences in cases of withholding it, without using language adequate to that purpose.

The protection of confidential communications between attorney and client is well known and recognized as a matter of public policy.

The right of inspection of whatever accounts, records, documents, and memoranda are included within 20 of the Act to Regulate Commerce, as amended by the Hepburn Act, is not limited to those kept and made after the passage of the

latter Act, but includes those kept and made prior thereto.

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Quaere whether compulsory inspection of correspondence and other matters referred to in Senate Resolution No. 153 of Nov. 6, 1913, can be permitted within the constitutional rights of the carrier. Where the Interstate Commerce Commission has applied for a writ of mandamus broader than the law permits, and no amendment was made narrowing the demand, but the petition was dismissed without prejudice, the proper practice is to affirm the order, and not to reverse so as to grant the relief within the limits which the law allows; a new proceeding may be started for that purpose.

212 F. 486 affirmed.

The facts, which involve the power of the federal court to require the production of testimony, books, and papers by a carrier under the provisions of the Anti-Trust Act in a proceeding started by the Interstate Commerce Commission pursuant to a resolution of the Senate of the United States, are stated in the opinion.

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MR. JUSTICE DAY delivered the opinion of the Court.

This is an appeal from and writ of error to the District Court of the United States for the Western District of Kentucky refusing a writ of mandamus which the United States undertook to obtain under authority of 20 of the Act to Regulate Commerce, as amended, June 29, 1906, 34 Stat. 584, 594-595, c. 3591. In view of the character of an action in mandamus, we are of opinion that the review is by writ of error. [Columbian Ins. Co. v. Wheelright](#), 7 Wheat. 534; [Kentucky v. Dennison](#), 24 How. 66, [65 U. S. 97](#) ;

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High on Extraordinary Legal Remedies 6, 557. The appeal is therefore dismissed.

The petition sets forth the authority conferred upon the Commission by 20 of the Act, and also 12, and embodies a copy of a resolution passed by the Senate of the United States, which is given in the margin. * It further

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states that, for the purpose of enabling the Commission to perform its duties, it appointed two special agents and duly authorized them to inspect and examine the accounts, records, and memoranda of the defendant railway company; that, on February 4, 1914, one of said agents demanded of the vice-president of the defendant, the officer

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in charge and control of the accounts, records, and memoranda of the company, and to and of other officers, access to and opportunity to examine the accounts, records, and memoranda kept by the defendant prior to August 28, 1906 [the Hepburn Act took effect August 29, 1906], and that the same was refused by the officers of the company; that, on February 4, 1914, a demand was made for an opportunity to examine the accounts, records, and memoranda of the defendant on and subsequent to August 28th, 1906, which was refused, and a writ of mandamus was asked against the company requiring it to give access to its accounts, records, and memoranda, and its correspondence and copies of correspondence, and indexes thereto, and to afford opportunity to examine the same to the commission and its agents and examiners, and to give such access to and opportunity to examine the said accounts, records, and memoranda made and kept by and for said

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defendant both before, on, and subsequent to August 28, 1906, including correspondence, copies of correspondence, and indexes thereto, and other indexes to said accounts, records, and memoranda.

To this petition the defendant answered, setting out that it did, prior to the beginning of the suit, give the examiners access to the correspondence other than privileged communications, and that, after this suit, it did refuse and does now refuse to give to said commission or to said agent access to or opportunity to examine correspondence received by it before, on, or subsequent to August 28, 1906, or copies of correspondence sent out by defendant before, on, or subsequent to that date, or the indexes kept with respect to said outgoing and incoming correspondence by defendant (except correspondence as to passes issued since January 1, 1911), and the defendant set up that its correspondence contains private communications between its various officers and agents regarding various matters which did not in any way pertain to the provisions of the Act to Regulate Commerce, nor to any act of Congress, the provisions of which it is made the duty of the Interstate Commerce Commission to enforce, and avers that said correspondence contains communications of a private and confidential nature between the president of the railway company and the heads of the various departments, relative to its internal affairs, to its proposed constructions and extensions in the future, to its policies with competing and rival roads, to its relations with labor organizations represented in its operating department, and to a variety of other subjects of a private and confidential nature, and that do not relate to the provisions of the Act to Regulate Commerce and acts amendatory thereto, or to any other act of Congress as to the enforcement of which any duty has been imposed upon the Interstate Commerce Commission, and that said correspondence also contains confidential, private, and privileged communications between

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defendant and its attorneys. The answer further sets up that, under the provisions of 20 of the Commerce Act, a uniform system of accounting has been prescribed by the Commission, and that defendant has fully complied with all such requirements, and that the Commission's examiners have full and complete access to the same; that, if the Act to Regulate Commerce can be construed as to give the said Commission or its examiners a right of access to, and the right to

examine or inspect at will, any or all accounts, records, and memoranda, and all correspondence received, and all copies of correspondence sent out by the defendant or its officials in the manner and as set out and claimed in the petition, then the exercise of such alleged right in this respect will amount to and operate as an unreasonable search and seizure of the private papers of the defendant, in violation of the Fourth Amendment to the Constitution of the United States.

The answer further sets out a copy of the Senate resolution, and the order of the Interstate Commerce Commission ordering the investigation and inquiry concerning the matters and things set forth in the resolution, and providing that the proceeding be set for hearing at such times and places, and that such persons be required to appear and testify, or to produce books, documents, and papers, as the Commission may direct, and that a copy be served upon certain railways, including the defendant. The answer also sets up that the subject matter of the first twelve paragraphs of the Senate resolution was not within the authority of the Interstate Commerce Commission, and avers that as to the subject matter of the thirteenth paragraph, which relates to free passes, since January 1, 1911, defendant permitted the Commission and its examiners and agents, on their request, to have access to and to examine and inspect all accounts, records, and memoranda relating to such passes, whether interstate or intrastate, and also all correspondence relating to such passes (although

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defendant claims that the Commission had no legal right to examine any of said correspondence nor to examine any intrastate passes or any accounts, records, and memoranda pertaining thereto).

Motion was made for the writ of mandamus to issue as prayed for in the petition, certain testimony was taken, showing the demand of the agent and the refusal of the company. Upon hearing, the motion was denied.

The testimony shows that the refusal withheld from the inspection of the agents making the demand all accounts, records, and memoranda kept prior to the 28th

of August, 1906; all accounts, records, and memoranda subsequent to that date, except such as to which the form had been subsequently prescribed by the Commission; all correspondence and the indexes thereto upon any subject other than the issue of passes subsequent to January 1, 1911, and all certificates of destruction, if any, relating to papers antedating August 28, 1906.

The discussion in this case has taken a wide range, and much has been said of the constitutional rights of the defendant and the authority of the Commission to carry out the purpose of the interstate Commerce Act, and to make investigations which shall be the basis of the discharge of duties imposed upon it by the law. But, as we view the case, the real questions may be determined by a consideration of certain provisions of the Act to Regulate Commerce. We may at the beginning put aside any question of authority derivable from the resolution passed by the Senate. The resolution was passed by only one branch of the legislative body, and it is not contended by the government or the Commission that any authority is derivable from it.

To authorize the government to demand the writ of mandamus in this case, two sections of the interstate Commerce Act are invoked -- 12 and 20. It is enough to say of 12 that the record discloses that the proceedings

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and the demands for inspection in this case were not conducted under its authority. See *Harriman* case, [211 U. S. 407](#) .

Section 12 deals with the production of evidence in certain cases; it does not make provision for inspection by examiners duly authorized by the Commission. That feature of the law was added by the amendment to 20, of June 29, 1906.

The substantial question in the case is: was the right of inspection of the accounts, records, and memoranda of the defendant in the manner attempted by the agents who represented the Commission in this respect authorized by 20 of the Act, as the same is amended by the Hepburn Act of June, 1906?

That section, as amended, provides in part:

"The Commission may, in its discretion, prescribe the forms of any and all accounts, records, and memoranda to be kept by carriers subject to the provisions of this Act, including the accounts, records, and memoranda of the movement of traffic as well as the receipts and expenditures of moneys. The Commission shall at all times have access to all accounts, records, and memoranda kept by carriers subject to this Act, and it shall be unlawful for such carriers to keep any other accounts, records, or memoranda than those prescribed or approved by the Commission, and it may employ special agents or examiners, who shall have authority under the order of the Commission to inspect and examine any and all accounts, records, and memoranda kept by such carriers. This provision shall apply to receivers of carriers and operating trustees."

"In case of failure or refusal on the part of any such carrier, receiver, or trustee to keep such accounts, records, and memoranda on the books and in the manner prescribed by the Commission, or to submit such accounts, records, and memoranda as are kept to the inspection of the Commission or any of its authorized agents or examiners, such

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carrier, receiver, or trustee shall forfeit to the United States the sum of five hundred dollars for each such offense and for each and every day of the continuance of such offense, such forfeitures to be recoverable in the same manner as other forfeitures provided for in this Act."

"Any person who shall willfully make any false entry in the accounts of any book of accounts, or in any record or memoranda kept by a carrier, or who shall willfully destroy, mutilate, alter, or by any other means or device falsify the record of any such account, record, or memoranda, or who shall willfully neglect or fail to make full, true, and correct entries in such accounts, records, or memoranda of all facts and transactions appertaining to the carrier's business, or shall keep any other accounts, records, or memoranda than those prescribed or approved by the

Commission, shall be deemed guilty of a misdemeanor and shall be subject, upon conviction in any court of the United States of competent jurisdiction, to a fine of not less than one thousand dollars nor more than five thousand dollars, or imprisonment for a term not less than one year nor more than three years, or both such fine and imprisonment."

"Any examiner who divulges any fact or information which may come to his knowledge during the course of such examination, except insofar as he may be directed by the Commission or by a court or judge thereof shall be subject, upon conviction in any court of the United states of competent jurisdiction, to a fine of not more than five thousand dollars or imprisonment for a term not exceeding two years, or both."

This section, it will be observed, gives authority to the Commission to employ special agents or examiners, who shall have authority under the order of the Commission to inspect and examine any and all accounts, records, and memoranda kept by such carriers. The copy of the authority issued by the Commission to the special agent or

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examiner who made the demand for inspection in this case shows that he was clothed with authority to examine any and all "accounts, records, and memoranda" kept by carriers subject to the Act to Regulate Commerce. The language here used, taken from 20, shows that the Commission acted under authority of that section, and the examiner was thereby authorized to make the demand, the refusal to comply with which was the basis for the petition for the writ of mandamus in this case.

This part of the amended section, as the report of the Interstate Commerce Commission, 1905, page 11, shows, was framed by the Commission and became a part of the law upon its recommendation. The appendix to the report (p. 182) shows the amendment in the form in which it became a law. In commending the passage of such an act, the Commission, in its report to Congress, said:

" *Examination of Books of Account*"

"An efficient means of discovering illegal practices would be found, as we believe, in authority to prescribe a form in which books of account shall be kept by railways, with the right on the part of the Commission to examine such books at any and all times through expert accountants. This recommendation has been urged upon the attention of the Congress in previous reports, and we earnestly renew it at this time. Probably no one thing would go further than this toward the detection and punishment of rebates and kindred wrongdoing."

"We have also called attention to the fact that certain carriers now refuse to make the statistical returns required by the Commission. For example, railways are required, among other things, to indicate what permanent improvements have been charged to operating expenses. Without an answer to this question, it is impossible to determine to what extent gross earnings have been used in improving the property and the actual cost of operation proper.

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Admitting the right of a railroad company to use its money as it sees fit, it is certainly proper that the government should know what use is made of it for the purpose of determining whether its rates and charges imposed are legitimate. Certain important railways decline to furnish this information at all, and others furnish it in a very imperfect and unsatisfactory manner."

"We have also recently required carriers to furnish statistics showing the rate per ton-mile actually received for the movement of certain kinds of carload traffic, but this requirement has not been generally complied with."

Responding to this recommendation, and acting upon the bill in the form proposed by the Commission, it was adopted as an amendment and became amended 20 of the Act to Regulate Commerce.

Of course, this act, like other acts, may be read in the light of the purpose it was intended to subserve and the history of its origin. We find, then, that in this section,

Congress has authorized the Commission to prescribe the forms of accounts, records, and memoranda, which shall include accounts, records, and memoranda of the movements of traffic, as well as the receipts and expenditures of money, to which accounts, records, and memoranda the Commission is given access at all times. The railroads are not allowed to keep any other than those prescribed by the Commission. The Commission is empowered to appoint agents or examiners with authority to inspect and examine such accounts, records, and memoranda, and provision is made penalizing the failure to comply with the orders of the Commission concerning such accounts, records, and memoranda or the falsification thereof, or the willful destruction or mutilation thereof, or the failure to make full, true, and correct entries in such accounts, records, and memoranda of all facts and transactions pertaining to the carrier's business, or keeping any other accounts, records, and memoranda.

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Reading these provisions of the Act, there is nothing to suggest that they were intended to include correspondence relative to the railroad's business. In recommending the passage of the Act, the Commission did not suggest that it was essential to its purpose to have an inspection of the correspondence of the railroad. And, with its expert consideration of the questions involved, and having clearly in mind the authority it was intended to secure, it can scarcely be supposed that the Commission would have confined its proposed amendment to the carefully chosen words "accounts, records, or memoranda," and would have omitted the word "correspondence," if it had intended to include the latter. If we apply the rule of construction *noscitur a sociis*, we find that all the provisions of the Act as to the inspection of accounts have relation to such as are kept in the system of bookkeeping to be prescribed by the Commission. It would be a great stretch of the meaning of the term as here used, to make "memoranda" include correspondence. The "records" of a corporation import the transcript of its charter and bylaws, the minutes of its meetings -- the books containing the accounts of its official doings and the written evidence of its contracts and business transactions. Certainly it was not intended that the Commission should prescribe the forms of

correspondence, although it was given the power to prescribe the forms of all accounts, records, and memoranda subject to the provisions of the Act.

It is urged that the amendment to 20 of February 25, 1909, adding a proviso to paragraph 7, shows the intention of Congress to provide for accounts, records, and memoranda, including more than those as to which the form may be prescribed by the Commission, and in the word "document" making this section broad enough to include correspondence. The language of this proviso is as follows:

"Any person who shall willfully make any false entry

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in the accounts of any book of accounts, or in any record or memoranda kept by a carrier, or who shall willfully destroy, mutilate, alter, or by any other means or device falsify the record of any such account, record, or memoranda, or who shall willfully neglect or fail to make full, true, and correct entries in such accounts, records, or memoranda of all facts and transactions appertaining to the carrier's business, or shall keep any other accounts, records, or memoranda than those prescribed or approved by the Commission, shall be deemed guilty of a misdemeanor, and shall be subject, upon conviction in any court of the United States of competent jurisdiction, to a fine of not less than one thousand dollars nor more than five thousand dollars, or imprisonment for a term not less than one year nor more than three years, or both such fine and imprisonment: Provided, that the Commission may, in its discretion, issue orders specifying such operating, accounting, or financial papers, records, books, blanks, tickets, stubs, or documents of carriers which may, after a reasonable time, be destroyed, and prescribing the length of time such books, papers, or documents shall be preserved."

It may be that the section is broad enough, particularly when read in the light of this proviso, to authorize an inspection of accounts, records, and memoranda for which no form has been prescribed by the Commission, but we do not find in this

proviso anything to indicate that Congress in the original act or the amendment intended to provide for the compulsory inspection of correspondence.

There is nothing from the beginning to the end of the section to indicate that Congress had in mind that it was making any provisions concerning the correspondence received or sent by the railroad companies. The primary object to be accomplished was to establish a uniform system of accounting and bookkeeping, and to have an inspection thereof. If it intended to permit the Commission

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to authorize examiners to seize and examine all correspondence of every nature, Congress would have used language adequate to that purpose. A sweeping provision of that nature, attended with such consequences, would not be likely to have been enacted without probable exceptions as to some lines of correspondence required to be kept open and subject to inspection upon demand of the agents of the government.

In the brief filed on behalf of the United States, it is frankly admitted that there is much force in the objection that Congress did not intend in this grant of authority to include the confidential correspondence of the railroad companies between itself and its counsel, and it is admitted that, in this respect, the demand of the agent of the Commission may be too broad. The desirability of protecting confidential communications between attorney and client as a matter of public policy is too well known and has been too often recognized by textbooks and courts to need extended comment now. If such communications were required to be made the subject of examination and publication, such enactment would be a practical prohibition upon professional advice and assistance. *Connecticut Mutual Life Insurance Co. v. Schaefer*, [94 U. S. 457](#) , [94 U. S. 458](#) . And see the comments of this Court in [Blackburn v. Crawford](#), 3 Wall. 175, [70 U. S. 192](#) .

How far such a demand as embodied in this petition can be permitted within the constitutional rights set up by the defendant, we do not need to consider, as we do

not think that the section of the act of Congress under which the demand was made authorizes the compulsory submission of the correspondence of the company to inspection. It is true that correspondence may contain a record, and it may be the only record of business transactions, but that fact does not authorize a judicial interpretation of this statute which shall include a right to inspection which Congress did not intend to authorize.

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The court below held that the right to demand inspection of documents before August 29, 1906, the date when the Hepburn Act went into effect, was of such a doubtful character that the writ ought not to issue. We think the right of inspection and examination given by the interstate Commerce Act by the amendment to 20 was not intended to be limited to such accounts, records, and memoranda only as were made after the passage of the Act, but is intended to permit an examination of all such accounts, records, and memoranda, for the purpose of carrying out the provisions of the Act. It is not contended that Congress might not do this within its constitutional authority, and the argument is that it had no such right in contemplation, and did not intend to authorize it; but we think it is clear from the terms of the Act, read in the light of its purpose, that Congress did not intend to draw the line of inspection at preexisting accounts, records, and memoranda.

The government argues that, if it be held that the prayer for the writ of mandamus and the accompanying motion were too broad in requiring the production of confidential communications between attorney and client which were contained in this correspondence, nevertheless the court should have issued its writ of mandamus insofar as the relator showed it was entitled thereto, and the case of *West Virginia Northern R. Co. v. United States*, 134 Fed.198, 203, is cited to the effect such practice is permissible. The case shows, however, an amendment was permitted so as to make the writ conform to the rights which could be properly granted. And that course might have been pursued in this case.

Whether the Commission would desire an inspection of the accounts, records, and memoranda as we have construed the terms of the Act without the right to examine the correspondence, we are not advised. As the petition in this case was dismissed by the court below

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without prejudice, and a new proceeding may be started, asking for such inspection as the law allows, we think the order of the court refusing to grant the writ of mandamus in the broad terms prayed for in the petition and the motion for the writ should not be reversed to permit a grant of relief within the limits which the law allows as we interpret it.

It follows that the judgment of the district court refusing the writ and dismissing the petition should be affirmed.

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

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*

" *RESOLUTION*"

"Resolved, That the Interstate Commerce Commission be, and the same is hereby, directed to investigate, taking proof and employing counsel if necessary, and report to the Senate as soon as practicable --"

"First. What amount of stock, bonds, and other securities of the Nashville, Chattanooga & St. Louis Railway is owned or controlled by the Louisville & Nashville Railroad;"

"Second. What other railroad or railroads in the territory served by the Louisville & Nashville Railroad and the Nashville Chattanooga & St. Louis Railway have been purchased, leased, controlled, or arrangements entered into with for the purpose

of controlling by either the Louisville & Nashville Railroad or the Nashville, Chattanooga & St. Louis Railway;"

"Third. Whether the Louisville & Nashville Railroad and the Nashville, Chattanooga & St. Louis Railway serve the same territory in whole or in part, and whether, under separate ownership, they would be competitive to the various points in their territories;"

"Fourth. Any other fact or facts showing or tending to show the further relations between the Louisville & Nashville Railroad and the Nashville, Chattanooga & St. Louis Railway, and any fact or facts showing or tending to show whether these relations restrict competition and maintain fixed rates;"

"Fifth. The terms of the lease of the Nashville & Decatur Railroad by the Louis & Nashville Railroad, and what amount, if any, of stock, bonds, and other securities of the Nashville & Decatur Railroad, and of the Lewisburg & Northern Railroad are owned by the Louisville & Nashville Railroad, or any of its subsidiaries or holding companies;"

"Sixth. Whether the Nashville & Decatur Railroad, the Lewisburg & Northern Railroad, and the Louisville & Nashville Railroad serve the same territory, in whole or in part, and whether, under separate ownership, these railroads would be competitive between various points in their territories;"

"Seventh. Any other fact or facts showing or tending to show the further relations between the Louisville & Nashville Railroad, the Nashville & Decatur Railroad, and the Lewisburg & Northern Railroad, and any fact or facts showing, or tending to show, whether these relations restrict competition and maintain and fix rates;"

"Eighth. Any fact or facts showing or tending to show (a) the relations between the Louisville & Nashville Railroad, the Nashville, Chattanooga & St. Louis Railway, the Tennessee Midland Railroad, the Tennessee, Paducah & Alabama Railroad, and any other railroads that have been purchased or leased by either or both of said railroad companies, and whether such relations restrict competition and maintain and fix rates, and (b) whether the lease of the Western & Atlantic

Railroad by the Nashville, Chattanooga & St. Louis Railway from the State of Georgia, and the arrangement made between the Louisville & Nashville and the Nashville, Chattanooga & St. Louis Railway by which the former uses the tracks of the said Western & Atlantic Railway restrict competition, restrain trade, and determine and fix rates:"

"Ninth. Any fact or facts showing or tending to show whether the ownership of the Louisville & Nashville Railroad and the Nashville, Chattanooga & St. Louis Railway of any railroad terminals or terminal companies, steamboats and steamboat lines upon the Cumberland and Tennessee Rivers, and any dock or dock yards at Pensacola, New Orleans, Mobile, or other seaport establishes a monopoly and restricts competition and determines and fixes rates;"

"Tenth. Any fact or facts showing or tending to show whether an agreement or arrangement has been entered into between the Louisville & Nashville and other railroad companies for the purpose of preventing competition from entering into any of the territory served by the Louisville & Nashville Railroad, in consideration of the Louisville & Nashville Railroad agreeing not to enter into certain other territory, or in consideration of any other agreement or arrangement;"

"Eleventh. What amount of stock, if any, the Atlantic Coast Line Company or Atlantic Coast Holding Company owns in the Louisville & Nashville Railroad, and in the Atlantic Coast Line, and whether the ownership by such holding company of a majority of stock in both of the aforesaid railroads tends to restrict competition and maintain and fix rates;"

"Twelfth. What amount, if any, the Louisville & Nashville Railroad, the Nashville, Chattanooga & St. Louis Railway, the Nashville & Decatur Railroad, and the Lewisburg & Northern Railroad, all or any of them, have subscribed, expended or contributed for the purpose of preventing other railroads from entering any of the territory served by any of these railroads for maintaining political or legislative agents, for contributing to political campaigns, for creating sentiment in favor of any of the plans of any of said railroads; and,"

"Thirteenth. (a) The number of free annual passes; (b) the number of free-trip passes; (c) the number of every kind of free passes issued by each of said railroads each year since January first, nineteen hundred and eleven, to members of legislative bodies and other public officials, or at the request of members of legislative bodies and other public officials; (d) the total mileage traveled upon free passes issued under each of the above classifications, and (e) the amount in money the free passes issued under each of the above-mentioned classifications would equal at the regular rates for such service of each of the above-named railroads."

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