

Texas Vs. Eastern Texas R. Co.

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Appeal No. : 258 U.S. 204

Appellant : Texas

Respondent : Eastern Texas R. Co.

Judgement :

Texas v. Eastern Texas R. Co. - 258 U.S. 204 (1922)

U.S. Supreme Court Texas v. Eastern Texas R. Co., 258 U.S. 204 (1922)

Texas v. Eastern Texas Railroad Company

Nos. 298 and 563

Argued November 15, 16, 1921

Decided March 13, 1922

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APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES

FOR THE EASTERN DISTRICT OF TEXAS

SYLLABUS

1. Where a statute is susceptible of two constructions, one raising grave and doubtful constitutional questions and the other not, it is the duty of the court to adopt the latter. P. [258 U. S. 217](#) .

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2. Paragraphs 120 of 1 of the Act to Regulate Commerce, added by 402 of the Transportation Act of 1920, which regulate the construction and acquisition of new lines of railroad and the extension and abandonment of old lines, are not to be construed as clothing the Interstate Commerce Commission with authority over the discontinuance of the purely intrastate business of a railroad whose situation and ownership are such that interstate and foreign commerce will not be affected by that business. P. 258 U. S. 218 .

Reversed.

The first of these cases is an appeal from a decree of the District Court for the Western District of Texas dismissing a suit removed from a court of that state in which the Texas sought to enjoin the above-named railroad company and some of its officers from ceasing to operate its road in intrastate commerce. The other is an appeal from a decree of the District Court for the Eastern District of Texas dismissing the bill in a suit brought by the state and its Attorney General, in that court, against the United States, the members of the Interstate Commerce Commission, the United States Attorney General, and the above-named and two other railroad companies to annul an order and certificate of the Interstate Commerce Commission purporting to permit the abandonment of the same railroad line upon certain conditions.

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MR. JUSTICE VAN DEVANTER delivered the opinion of the Court.

By 402 of the Transportation Act of 1920, c. 91, 41 Stat. 456, 477, several new paragraphs were added to 1 of the Act to Regulate Commerce, as theretofore amended. Paragraphs 18, 19, and 20 are copied in the margin. [[Footnote 1](#)] By

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them, Congress has undertaken to regulate the construction and acquisition of new or additional lines of railroad and the extension and abandonment of old lines, and to invest the Interstate Commerce Commission with important administrative powers in that connection. Like the act of which they are amendatory, these paragraphs are expressly restricted to carriers engaged in transporting persons or property in interstate and foreign commerce. [[Footnote 2](#)]

Our present concern is with the provisions relating to the abandonment of existing lines. They declare that:

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"no carrier by railroad subject to this act shall abandon all or any portion of a line of railroad, or the operation thereof, unless and until there shall first have been obtained from the Commission a certificate that the present or future public convenience and necessity permit of such abandonment"

(paragraph 18); that, when application for such a certificate is received, the Commission shall cause notice thereof to be given to the governor of the state wherein the line lies and published in newspapers of general circulation in each county along the line, and shall accord a hearing to the state and all parties in interest (paragraph 19); that the Commission may grant or refuse the certificate in whole or in part and impose such terms and conditions as in its judgment the public convenience and necessity require, and that, when the certificate is issued, and not before, the carrier may, "without securing approval other than such certificate," comply with the terms and conditions imposed and proceed with the abandonment covered by the certificate (paragraph 20).

The Eastern Texas Railroad Company, a Texas corporation, owns and operates in that state a line of railroad 30.3 miles in length. Approximately three-fourths of the traffic over the road is in interstate and foreign commerce, and the rest is in intrastate commerce. The company neither owns nor operates any other line. The road was constructed in 1902 to serve extensive lumber industries, but in subsequent years the adjacent timber was removed, and the mills dismantled. The company claims that, since 1917, the road has been operated at a loss.

On June 3, 1920, the company filed with the Commission an application for a certificate authorizing it to abandon and cease operating its road, full notice of the application being regularly given. The state declined to appear before the Commission, but others, who were being served by the road, appeared and opposed the application. A full hearing was had, and, on December 2, 1920, the

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Commission made and filed a report concluding as follows:

"Upon consideration of the record, we find that the present public convenience and necessity permit the abandonment of the applicant's line, and we further find that permission to abandon the line should be made subject to the right of interested persons in the community served to purchase the property at a figure not in excess of \$50,000. A certificate and order to that effect will be issued."

The certificate and order were issued, and the railroad company indicated its assent to the condition imposed, but, so far as appears, no one sought to purchase under the condition.

While the application was pending before the Commission and before the certificate was issued, the state brought a suit in one of its courts against the railroad company and some of its officers to enjoin them from ceasing to operate the road in intrastate commerce. The bill was brought on the theory that, under the laws of the state, the company was obliged to continue the operation of the road in intrastate commerce; that the provisions of the Transportation Act were unconstitutional and void in and insofar as they authorize the abandonment of such

a road as respects intrastate commerce, and that the company in asking the Commission to sanction such an abandonment was proceeding in disregard of its obligations to the state. At the instance of the defendants, the suit was removed to the District Court of the United States for the Western District of Texas. During the pendency of the suit, the Commission issued the certificate and the defendants then sought the benefit of it by a supplemental answer. The court held that the certificate constituted a complete defense, and without a hearing on other issues dismissed the suit. The state appealed directly to this Court. That appeal is No. 298.

After the Commission granted the certificate the state brought a suit in the District Court of the United States

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for the Eastern District of Texas against the United States, the railroad company and others to set aside and annul the Commission's order and certificate on the grounds, first, that the provisions of the Transportation Act, rightly interpreted, did not afford any basis for granting a certificate sanctioning the abandonment of the company's road as respects intrastate commerce, and, secondly, if those provisions purported to authorize such a certificate, they were to that extent in excess of the power of Congress and an encroachment on the reserved powers of the state. The defendants moved to dismiss the bill as ill founded in point of merits, and the court sustained the motions and entered a decree of dismissal. The state appealed directly to this Court. That appeal is No. 563.

Counsel attribute to these cases a breadth which they do not have, and for obvious reasons we shall deal with them as they are, not as they might be.

Up to the time the Commission made the order granting the certificate a part of the commerce passing over the road was interstate and foreign -- that is, was bound to or from other states and foreign countries. It is not questioned that Congress could, nor that it did, authorize the Commission to sanction a discontinuance of this interstate and foreign business. Neither is it questioned that the Commission's

certificate was adequate for that purpose. The only matters in controversy are whether, by paragraphs 18, 19, and 20, Congress has assumed to clothe the Commission with authority to sanction the entire abandonment of a road such as this, and, if so, whether the power of Congress extends so far.

The road lies entirely within a single state, is owned and operated by a corporation of that state, and is not a part of another line. Its continued operation solely in intrastate commerce cannot be of more than local concern. Interstate and foreign commerce will not be burdened or affected by any shortage in the earnings, nor will

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any carrier in such commerce have to bear or make good the shortage. It is not as if the road were a branch or extension whose unremunerative operation would, or might burden or cripple the main line, and thereby affect its utility or service as an artery of interstate and foreign commerce.

If paragraphs 18, 19, and 20 be construed as authorizing the Commission to deal with the abandonment of such a road as to intrastate as well as interstate and foreign commerce, a serious question of their constitutional validity will be unavoidable. If they be given a more restricted construction, their validity will be undoubted. Of such a situation this Court has said,

"where a statute is susceptible of two constructions, by one of which grave and doubtful constitutional questions arise and by the other of which such questions are avoided, our duty is to adopt the latter."

United States v. Delaware & Hudson Co., [213 U. S. 366](#) , [213 U. S. 407](#) -408.

Although found in the Transportation Act, these paragraphs are amendments of the Interstate Commerce Act, and are so styled. They contain some broad language, but do not plainly or certainly show that they are intended to provide for the complete abandonment of a road like the one we have described. Only by putting a liberal interpretation on general terms can they be said to go so far.

Being amendments of the Interstate Commerce Act, they are to be read in connection with it and with other amendments of it. As a whole, these acts show that what is intended is to regulate interstate and foreign commerce and to affect intrastate commerce only as that may be incidental to the effective regulation and protection of commerce of the other class. They contain many manifestations of a continuing purpose to refrain from any regulation of intrastate commerce save such as is involved in the rightful exertion of the power of Congress over interstate and foreign commerce. [Minnesota Rate Case](#), 230

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U.S. 352, [230 U. S. 418](#) ; *Railroad Commission of Wisconsin v. Chicago, Burlington & Quincy R. Co.*, [257 U. S. 563](#) . And had there been a purpose here to depart from the accustomed path and to deal with intrastate commerce as such independently of any effect on interstate and foreign commerce, it is but reasonable to believe that that purpose would have been very plainly declared. This was not done.

These considerations persuade us that the paragraphs in question should be interpreted and read as not clothing the Commission with any authority over the discontinuance of the purely intrastate business of a road whose situation and ownership, as here, are such that interstate and foreign commerce will not be burdened or affected by a continuance of that business.

Whether, apart from the Commission's certificate, the railroad company is entitled to abandon its intrastate business is not before us, so we have no occasion for considering to what extent the decisions in *Brooks-Scanlon Co. v. Railroad Commission of Louisiana*, [251 U. S. 396](#) , and *Bullock v. Railroad Commission of Florida*, [254 U. S. 513](#) , may be applicable to this road.

As the district courts both accorded to the Commission's certificate a wider operation and effect than can be given to it consistently with the provisions of paragraphs 18, 19, and 20 as we interpret them, the decrees must be reversed and the causes remanded for further proceedings in conformity to this opinion.

Decrees reversed.

[[Footnote 1](#)]

"(18) After ninety days after this paragraph takes effect, no carrier by railroad subject to this Act shall undertake the extension of its line of railroad, or the construction of a new line of railroad, or shall acquire or operate any line of railroad, or extension thereof, or shall engage in transportation under this act over or by means of such additional or extended line of railroad unless and until there shall first have been obtained from the Commission a certificate that the present or future public convenience and necessity require or will require the construction, or operation, or construction and operation, of such additional or extended line of railroad, and no carrier by railroad subject to this act shall abandon all or any portion of a line of railroad or the operation thereof unless and until there shall first have been obtained from the Commission a certificate that the present or future public convenience and necessity permit of such abandonment."

"(19) The application for and issuance of any such certificate shall be under such rules and regulations as to hearings and other matters as the Commission may from time to time prescribe, and the provisions of this act shall apply to all such proceedings. Upon receipt of any application for such certificate, the Commission shall cause notice thereof to be given to and a copy filed with the governor of each state in which such additional or extended line of railroad is proposed to be constructed or operated, or all or any portion of a line of railroad, or the operation thereof, is proposed to be abandoned, with the right to be heard as hereinafter provided with respect to the hearing of complaints or the issuance of securities, and said notice shall also be published for three consecutive weeks in some newspaper of general circulation in each county in or through which said line of railroad is constructed or operates."

"(20) The Commission shall have power to issue such certificate as prayed for, or to refuse to issue it, or to issue it for a portion or portions of a line of railroad or extension thereof described in the application, or for the partial exercise only of such right or privilege, and may attach to the issuance of the certificate such terms

and conditions as in its judgment the public convenience and necessity may require. From and after issuance of such certificate, and not before, the carrier by railroad may, without securing approval other than such certificate, comply with the terms and conditions contained in or attached to the issuance of such certificate and proceed with the construction, operation, or abandonment covered thereby. Any construction, operation, or abandonment contrary to the provisions of this paragraph or of paragraph (18) or (19) of this section may be enjoined by any court of competent jurisdiction at the suit of the United States, the Commission, any commission or regulating body of the state or states affected, or any party in interest, and any carrier which, or any director, officer, receiver, operating trustee, lessee, agent, or person, acting for or employed by such carrier who knowingly authorizes, consents to, or permits any violation of the provisions of this paragraph or of paragraph (18) of this section shall, upon conviction thereof, be punished by a fine of not more than \$5,000 or by imprisonment for not more than three years, or both."

[[Footnote 2](#)]

See amended paragraphs (1) and (2) of the Act to Regulate Commerce as set forth in 400 of the Transportation Act of 1920.