Railroad Comm'n of WisconsIn Vs. Chicago, B. and Q. R. Co.

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Appeal No. : 257 U.S. 563

Appellant : Railroad Comm'n of Wisconsin

Respondent : Chicago, B. and Q. R. Co.

Judgement :

Railroad Comm'n of Wisconsin v. Chicago, B. & Q. R. Co. - 257 U.S. 563 (1922) U.S. Supreme Court Railroad Comm'n of Wisconsin v. Chicago, B. & Q. R. Co., 257 U.S. 563 (1922)

Railroad Commission of Wisconsin v.

Chicago, Burlington & Quincy Railroad Company

No. 20

Argued March 11, 14, 15, 1921

Restored to docket for reargument October 24, 1921

Reargued December 5, 6, 7, 1921

Decided February 27, 1922

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APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES

FOR THE EASTERN DISTRICT OF WISCONSIN

SYLLABUS

1. An order of the Interstate Commerce Commission requiring a horizontal increase of intrastate passenger fares and excess baggage charges, to correspond with fares and charges fixed for like interstate service in the same state, cannot be sustained under 13 of the Interstate Commerce Act, as amended by the Transportation Act of 1920, as an order to remove undue and unreasonable prejudice to persons traveling in interstate commerce, when it broadly embraces not only the intrastate rates to and from border points, which may work discrimination against interstate passengers and localities, but also those between points more remotely internal from which no such prejudice can arise upon the facts found by the Commission. P. 257 U. S. 579 . *The Shreveport Case,* 234 U. S. 342 , and *Illinois Central R. Co. v. Public Utilities Commission,* 245 U. S. 493 , distinguished.

2. Such an order is not validated by a clause saving the right of the state, or other party in interest, to apply to the Commission for a modification as to particular intrastate fares or charges. P. 257 U. S. 580 .

3. The Transportation Act of 1920, 422 (15a), provides in part that the Commission, in the exercise of its power to prescribe just and reasonable rates, shall initiate, modify, establish, or adjust such rates so that carriers as a whole, or in groups or territories designated by the Commission, will earn an aggregate net income equal to a fair return on the aggregate value of their railway property held and used for transportation; that the Commission shall determine what percentage of such aggregate property value constitutes a fair return, and such percentage shall be uniform for the groups or territories, and that, in making such determination, it shall give due consideration to the transportation needs of the

country and the necessity of enlarging transportation facilities in order to provide the people of the United States with adequate transportation.

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HELD

(a) The effective operation of the Transportation Act reasonably requires that intrastate traffic over the lines of interstate carriers pay a fair proportionate share of the cost of maintaining an adequate railway system. P. 257 U. S. 585 .

(b) While 15a, *supra,* confers no power on the Commission to deal with intrastate rates, 416 (13, par. 4) of the same act, in authorizing it to remove and in forbidding and declaring unlawful "any undue, unreasonable, or unjust discrimination against interstate or foreign commerce," clearly contemplates that such discrimination, resulting from intrastate rates unduly low as compared with interstate rates as fixed under 15a, and tending to thwart the purpose of that section, may be removed by the Commission. P. 257 U. S. 586 .

(c) The act being clear on this point, reports and debates of Congress cannot be resorted to to introduce ambiguity. P. 257 U. S. 588 .

(d) The valuation required by 15a is not confined to that part of the property of the interstate carrier used in interstate, segregated from that used in intrastate, commerce. P. 257 U. S. 587 .

(e) Raising the level of the intrastate rates in such case is an incident to the effective control of the interstate system, and does not violate the proviso against the Commission's regulating traffic wholly within a state. P. 257 U. S. 588 .

(f) The act as so applied is within the power of Congress over interstate commerce. P. 257 U. S. 589 .

(g) The action of the Commission under it respecting intrastate rates should be directed to substantial disparity which operates as a real discrimination against

and obstruction to interstate commerce, leaving state authorities to deal with intrastate rates *inter sese* on the general level found fair by the Commission. P. 257 U. S. 590 .

Affirmed.

The proceeding out of which this case has grown, known as the Wisconsin Passenger Fares, began in an investigation by the Interstate Commerce Commission under paragraphs 3 and 4 of 13 of the Interstate Commerce Act as amended by 416 of the Transportation Act of 1920 (41 Stat. 484) into alleged undue and unreasonable discrimination against interstate commerce arising out of intrastate railroad rates in Wisconsin. The interstate carriers by steam railroad of the state were

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made respondents, and the governor and state Railroad Commission were duly notified. The Interstate Commerce Commission made its report and order November 27, 1920. Wisconsin Passenger Fares, 59 I.C.C. 391.

The Commission had investigated the interstate rates of carriers in the United States in a proceeding known as Ex parte 74, Increased Rates, 58 I.C.C. 220, for the purpose of complying with 15a of the Interstate Commerce Act as amended by 422 of the Transportation Act of 1920 (41 Stat. 488). That section requires that the Commission so adjust rates that the revenues of the carriers shall enable them as a whole or by groups to earn a fixed net income on their railway property. The Commission ordered an increase for the carriers in the group of which the Wisconsin carriers were a part, of thirty-five percent in interstate freight states, and twenty percent in interstate passenger fares and excess baggage charges, and a surcharge upon passengers in sleeping cars amounting to fifty percent of the charge for space in such cars to accrue to the rail carriers. Thereupon the carriers applied to the Wisconsin Railroad Commission for corresponding increases in intrastate rates. The state commission granted increases in intrastate freight rates of thirty-five percent, but denied any in intrastate passenger fares and charges on

the sole ground that a state statute prescribed a maximum for passengers of two cents a mile.

In the Wisconsin Passenger Fares, the Interstate Commerce Commission found that all of the respondent carriers of Wisconsin transported both intrastate and interstate passengers on the same train, with the same service and accommodations; that the state passenger paying the lower rate rode on the same train, in the same car, and perhaps in the same seat with the interstate passenger who paid the higher rate; that the circumstances and conditions were substantially similar for interstate as for intrastate passenger service in Wisconsin; that travelers destined

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to, or coming from, points outside the state found it cheaper to pay the intrastate fare within Wisconsin and the interstate fare beyond the border than to pay the through interstate fare; that undue preference and prejudice were shown by the falling off of sales of tickets from border line points in Minnesota and Michigan to stations in Wisconsin, and by a marked increase in sales of local tickets from corresponding border line points in Wisconsin to stations in Wisconsin; that the evidence as to the practice with respect to passenger fares applied in like manner to the surcharge upon passengers in sleeping and parlor cars and to excess baggage charges.

The Commission further found that the fare necessary to fulfill the requirement as to net income of this interstate railroad group under 15a was 3.6 cents per mile, and that this was reasonable, that the direct revenue loss to the Wisconsin carriers due to their failure to secure the twenty percent increase in intrastate fares would approximate $2,400,000 per year if the three-cent fare fixed by the President under federal war control were continued, and $6,000,000 per year if the two-cent fare named in the state statute should become effective.

The Commission found that there was undue, unreasonable and unjust discrimination against persons traveling in interstate commerce and against

interstate commerce as a whole, and ordered that the undue discrimination should be removed by increases in all intrastate passenger fares and excess baggage charges and by surcharges corresponding with the increases and surcharges ordered in interstate business.

The order was made without prejudice to the right of the authorities of the state or of any other party in interest to apply in the proper manner for a modification of the order as to any specified intrastate fares or charges if the latter were not related to the interstate fares or charges in such a way as to contravene the provisions of the Interstate Commerce Act.

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The carriers filed bills in equity, of which the present is one, in the district court to enjoin the State Railroad Commission and other state officials from interfering with the maintenance of the fares thus ordered and published.

Application for interlocutory injunction was made to the district court under 266 of the Judicial Code. After a hearing before three judges, they granted an interlocutory injunction from which this appeal was taken.

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MR. CHIEF JUSTICE TAFT, after stating the case, delivered the opinion of the Court.

The Commission's order, interference with which was enjoined by the district court, effects the removal of the unjust discrimination found to exist against persons in interstate commerce, and against interstate commerce by fixing a minimum for intrastate passenger fares in Wisconsin at 3.6 cents per mile per passenger. This is done under paragraph 4 of 13 of the Interstate Commerce Act, as amended by the Transportation Act of 1920, which authorizes the Interstate Commerce Commission, after a prescribed investigation, to remove

"Any undue or unreasonable advantage, preference, or prejudice as between persons or localities in intrastate commerce, on the one hand, and interstate or foreign commerce, on the other hand, or any undue, unreasonable,

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or unjust discrimination against interstate commerce."

We have two questions to decide.

First. Do the intrastate passenger fares work undue prejudice against persons in interstate commerce, such as to justify a horizontal increase of them all?

Second. Are these intrastate fares an undue discrimination against interstate commerce as a whole which it is the duty of the Commission to remove?

We shall consider these in their order.

First. The report and findings of the Commission undoubtedly show that the intrastate fares work an undue discrimination against travelers in interstate commerce and against localities (*Houston & Texas Ry. v. United States,* 234 U. S. 342) in typical instances numerous enough to justify a general finding against a large class of fares. In a general order thus supported, possible injustice can be avoided by a saving clause allowing anyone to except himself from the order by proper showing. This practice is fully sustained by precedent in what was done as a sequence of the *Shreveport Case* (*Houston & Texas Ry. Co. v. United States, supra*). *See* Meredith v. St. Louis Southwestern R. Co., 34 I.C.C. 472; Railroad Comm'n. of Louisiana v. Arkansas Harbor Terminal Railway Co., 41 I.C.C. 83; *Eastern Texas R. Co. v. Railroad Commission,* 242 F. 300; *Looney v. Eastern Texas R. Co.,* 247 U. S. 214 . In *Illinois Central R. Co. v. Public Utilities Commission,* 245 U. S. 493 , 245 U. S. 508 , this Court indicated its approval of such practice which was adopted by the Commission. Business Men's League of St. Louis v. Atchison & S.F. R. Co., 49 I.C.C. 713. Any rule which would require specific proof of discrimination as to each fare or rate and its effect would completely block the remedial purpose of the statute.

The order in this case, however, is much wider than the orders made in the proceedings following the *Shreveport* and *Illinois Central* cases. There, as here, the report of the Commission showed discrimination against persons

and localities at border points, and the orders were extended to include all rates or fares from all points in the state to border points. But this order is not so restricted. It includes fares between all interior points, although neither may be near the border and the fares between them may not work a discrimination against interstate travelers at all. Nothing in the precedents cited justifies an order affecting all rates of a general description when it is clear that this would include many rates not within the proper class or the reason of the order. In such a case, the saving clause by which exceptions are permitted cannot give the order validity. As said by this Court in the *Illinois Central R. Co.* case,

"it is obvious that an order of a subordinate agency, such as the Commission, should not be given precedence over a state rate statute otherwise valid unless, and except so far as, it conforms to a high standard of certainty."

See also American Express Co. v. Caldwell, 244 U. S. 617 , 244 U. S. 627 .

If, in view of the changes, made by federal authority, in a large class of discriminating state rates, it is necessary from a state point of view to change nondiscriminating state rates to harmonize with them, only the state authorities can produce such harmony. We cannot sustain the sweep of the order in this case on the showing of discriminations against persons or places alone.

Second. The report of the Commission shows that, if the intrastate passenger fares in Wisconsin are to be limited by the statute of that state to two cents per mile, and charges for extra baggage and sleeping car accommodations are to be reduced in a corresponding degree, the net income of the interstate carriers of the state will be cut six millions of dollars below what it would be under intrastate rates on the same level with interstate rates. Under paragraphs 3 and 4 of 13 and 15a as enacted in 416 and 422, respectively, of the Transportation Act

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of 1920 (which are given in part in the margin, *) are such reduction and disparity an "undue, unreasonable or unjust discrimination against interstate or foreign commerce" which the Interstate Commerce Commission may remove by raising the intrastate fares? A short reference to the circumstances inducing the legislation and a summary of its relevant provisions will aid the answer to this question.

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The Interstate Commerce Act of 1887, 24 Stat. 379, was enacted by Congress to prevent interstate railroad carriers from charging unreasonable rates and from unjustly discriminating between persons and localities. The railroads availed themselves of the weakness and cumbrous machinery of the original law to defeat its purpose, and this led to various amendments culminating in the amending Act of 1910, 36 Stat. 539, in which the authority of the Commission in dealing with the carriers was made summary and effectively complete. Whatever the causes, the fact was that the carrying capacity of the railroads did not thereafter develop proportionately with the growth of the country, and it became difficult for them

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to secure additional investment of capital on feasible terms. When the extraordinary demand for transportation arose in 1917, the Congress and the President concluded to take over all the railroads into the management of the federal government, and by joint use of facilities, which the Anti-Trust Law was thought to forbid under private management, and by use of government credit, to increase their effectiveness. This was done by appropriate legislation and executive action under the war power. From January 1, 1918, until March 1, 1920, when the Transportation Act went into effect, the common carriers by steam railroad of the country were operated by the federal government. Due to the rapid rise in the

prices of material and labor in 1918 and 1919, the expense of their operation had enormously increased by the time it was proposed to return the railroads to their owners. The owners insisted that their properties could not be turned back to them by the government for useful operation without provision to aid them to meet a situation in which they were likely to face a demoralizing lack of credit and income. Congress acquiesced in this view. The Transportation Act of 1920 was the result. It was adopted after elaborate investigations by the Interstate Commerce Committees of the two Houses.

Under Title II, it made provision for the termination of federal control March 1, 1920, for the refunding of the carriers' indebtedness to the United States, and for a guaranty for six months to the carriers of an income equal to the war-time rental for their properties, and directed that, for two years following the termination of federal control, the Secretary of the Treasury, upon certificate of the Commission, might make loans to the carriers not exceeding the maximum amount recommended in the certificate, out of a revolving fund of $300,000,000.

Under Title IV, amendments were made to the Interstate Commerce Act which included 13, paragraphs 3 and 4, and 15a, already quoted in the margin. The former for the first time authorizes the Commission to deal directly with intrastate rates where they are unduly discriminating against interstate commerce -- a power already indirectly exercised as to persons and localities, with approval of this Court in the *Shreveport* and other cases. The latter, the most novel and most important feature of the act, requires the Commission so to prescribe rates as to enable the carriers as a whole or in groups selected by the Commission to earn an aggregate annual net railway operating income equal to a fair return on the aggregate value of the railway property used in transportation. For two years, the return is to be

5 1/2 percent, with 1/2 percent for improvements, and thereafter is to be fixed by the Commission.

The act sought to avoid excessive incomes accruing, under the operation of 15a, to the carriers better circumstanced by using the excess for loans to the others and for other purposes. The act further put under the control of the Interstate Commerce Commission, first, the issuing of future railroad securities by the interstate carriers; second, the regulation of their car supply and distribution and the joint use of terminals; and, third, their construction of new lines, and their abandonment of old lines. The validity of some of these provisions has been questioned. Upon that we express no opinion. We only refer to them to show the scope of the congressional purpose in the act.

It is manifest from this very condensed recital that the act made a new departure. Theretofore, the control which Congress through the Interstate Commerce Commission exercised was primarily for the purpose of preventing injustice by unreasonable or discriminatory rates against persons and localities, and the only provisions of the law that inured to the benefit of the carriers were the requirement that the rates should be reasonable in the sense of furnishing an adequate compensation for the particular service rendered and the abolition of rebates. The new measure imposed an affirmative duty on the Interstate Commerce Commission to fix rates and to take other important steps to maintain an adequate railway service for the people of the United States. This is expressly declared in 15a to be one of the purposes of the bill.

Intrastate rates and the income from them must play a most important part in maintaining an adequate national railway system. Twenty percent of the gross freight receipts of the railroads of the country are from intrastate traffic, and 50 percent of the passenger receipts. The ratio of the gross intrastate revenue to the

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interstate revenue is a little less than one to three. If the rates, on which such receipts are based, are to be fixed at a substantially lower level than in interstate traffic, the share which the intrastate traffic will contribute will be proportionately less. If the railways are to earn a fixed net percentage of income, the lower the intrastate rates, the higher the interstate rates may have to be. The effective

operation of the act will reasonably and justly require that intrastate traffic should pay a fair proportionate share of the cost of maintaining an adequate railway system. Section 15a confers no power on the Commission to deal with intrastate rates. What is done under that section is to be done by the Commission "in the exercise of its powers to prescribe just and reasonable rates" -- *i.e.,* powers derived from previous amendments to the Interstate Commerce Act, which have never been construed or used to embrace the prescribing of intrastate rates. When we turn to paragraph 4, 13, however, and find the Commission for the first time vested with a direct power to remove "any undue, unreasonable, or unjust discrimination against interstate or foreign commerce," it is impossible to escape the dovetail relation between that provision and the purpose of 15a. If that purpose is interfered with by a disparity of intrastate rates, the Commission is authorized to end the disparity by directly removing it, because it is plainly an "undue, unreasonable, and unjust discrimination against interstate or foreign commerce" within the ordinary meaning of those words.

Counsel for appellants, not able to satisfy their meaning by the suggestion of any other discrimination to which they apply, are forced to the position that the words are tautological, and a mere repetition of

"any undue or unreasonable advantage, preference or prejudice as between persons and localities in intrastate commerce, on the one hand, and interstate or foreign commerce, on the other hand,"

which precede them. In view of their apt application

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to the most important purpose of the legislation, we are not at liberty to take such a view. If "undue, unreasonable and unjust discrimination against interstate or foreign commerce" are tautological, why are they followed by the phrase "which is hereby prohibited and declared to be unlawful"? To accompany a meaningless phrase with words of such special emphasis would be unusual.

It is urged that, in previous decisions, notably the *Minnesota Rate Cases,* 230 U. S. 352 , the *Shreveport* case, *supra,* and the *Illinois Central* case, *supra,* the expression "unjust discrimination against interstate commerce" was often used when, as the law then was, it could only mean discrimination as between persons and localities, and therefore that it is to be given the same limited meaning here. But here, the general words are used after discrimination against persons and localities have been specifically mentioned. The natural inference is that, even if they include what has gone before, they mean something more. When we find that they aptly include a kind of discrimination against interstate commerce which the operation of the new act for the first time makes important and which would seriously obstruct its chief purpose, we cannot ignore their necessary effect.

Counsel for appellants are driven by the logic of their position to maintain that the valuation required for the purposes of 15a to be ascertained pursuant to 19a of the Interstate Commerce Act (37 Stat. 701; amended 41 Stat. L. 493) is to be only of that part of the property and equipment of the interstate carriers which is used in commerce among the states, and must be segregated from that used in intrastate commerce. This is contrary to the construction which, since the enactment of 19a, March 1, 1913, the Commission has put upon that section in carrying out its injunction. It is inadmissible. The language of 15a refutes such interpretation. The percentage

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is to be calculated on "the aggregate value of the railway property of such carriers held for and used in the service of transportation." To impose on the Commission the duty of separating property used in the two services when so much of it is used in both, and to do this in a reasonably short time for practical use, as contemplated by the statute, would be to assign it a well nigh impossible task. This, of itself, prevents our giving the words such a construction unless they clearly require it. They certainly do not.

It is objected here, as it was in the *Shreveport* case, that orders of the Commission which raise the intrastate rates to a level of the interstate structure

violate the specific proviso of the original Interstate Commerce Act, repeated in the amending acts, that the Commission is not to regulate traffic wholly within a state. To this the same answer must be made as was made in the *Shreveport* case, 234 U. S. 342 , 234 U. S. 358 , that such orders as to intrastate traffic are merely incidental to the regulation of interstate commerce, and necessary to its efficiency. Effective control of the one must embrace some control over the other in view of the blending of both in actual operation. The same rails and the same cars carry both. The same men conduct them. Commerce is a unit, and does not regard state lines, and while, under the Constitution, interstate and intrastate commerce are ordinarily subject to regulation by different sovereignties, yet when they are so mingled together that the supreme authority, the Nation, cannot exercise complete effective control over interstate commerce without incidental regulation of intrastate commerce, such incidental regulation is not an invasion of state authority of a violation of the proviso.

Great stress is put on the legislative history of the Transportation Act to show that the bill was not intended to confer on the Commission power to remove any discrimination against interstate commerce involved in a

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general disparity between interstate and intrastate rates. Committee reports and explanatory statements of members in charge made in presenting a bill for passage have been held to be a legitimate aid to the interpretation of a statute where its language is doubtful or obscure. *Duplex Co. v. Deering,* 254 U. S. 443 , 254 U. S. 475 . But, when taking the act as a whole, the effect of the language used is clear to the court, extraneous aid like this cannot control the interpretation. *Pennsylvania R. Co. v. International Coal Co.,* 230 U. S. 184 , 230 U. S. 198 ; *Caminetti v. United States,* 242 U. S. 470 , 242 U. S. 490 . Such aids are only admissible to solve doubt and not to create it. For the reasons given, we have no doubt in this case.

Counsel for the appellants have not contested the constitutional validity of the statute construed as we have construed it, although the counsel for the state

commissions whom we permitted to file briefs as *amici curiae* have done so. The principles laid down by this Court in the *Minnesota Rate Cases,* 230 U. S. 352 , 230 U. S. 432 -433, the *Shreveport* case, 234 U. S. 342 , 234 U. S. 351 , and the *Illinois Central* case, 245 U. S. 493 , 245 U. S. 506 , which are rates cases, and in the analogous cases of *Baltimore & Ohio R. Co. v. Interstate Commerce Commission,* 221 U. S. 612 , 221 U. S. 618 ; *Southern Ry. Co. v. United States,* 222 U. S. 20 , 222 U. S. 26 -27; *Second Employers' Liability Cases,* 223 U. S. 1 , 223 U. S. 48 , 223 U. S. 51 , we think, leave no room for discussion on this point. Congress, in its control of its interstate commerce system, is seeking in the Transportation Act to make the system adequate to the needs of the country by securing for it a reasonable compensatory return for all the work it does. The states are seeking to use that same system for intrastate traffic. That entails large duties and expenditures on the interstate commerce system which may burden it unless compensation is received for the intrastate business reasonably proportionate to that for the

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interstate business. Congress, as the dominant controller of interstate commerce, may therefore restrain undue limitation of the earning power of the interstate commerce system in doing state work. The affirmative power of Congress in developing interstate commerce agencies is clear. *Wilson v. Shaw,* 204 U. S. 24 ; *Luxton v. North River Bridge Co.,* 153 U. S. 525 ; *California v. Pacific Railroad Co.,* 127 U. S. 1 , 127 U. S. 39 . In such development, it can impose any reasonable condition on a state's use of interstate carriers for intrastate commerce it deems necessary or desirable. This is because of the supremacy of the national power in this field.

In *Minnesota Rate Cases,* 230 U. S. 399 , where relevant cases were carefully reviewed, it was said:

"The authority of Congress extends to every part of interstate commerce, and to every instrumentality or agency by which it is carried on, and the full control by Congress of the subjects committed to its regulation, is not to be denied or

thwarted by the commingling of interstate and intrastate operations. This is not to say that the Nation may deal with the internal concerns of the state as such, but that the execution by Congress of its constitutional power to regulate interstate commerce is not limited by the fact that intrastate transactions may have become so interwoven therewith that the effective government of the former incidentally controls the latter. This conclusion necessarily results from the supremacy of the national power within its appointed sphere."

It is said that our conclusion gives the Commission unified control of interstate and intrastate commerce. It is only unified to the extent of maintaining efficient regulation of interstate commerce under the paramount power of Congress. It does not involve general regulation of intrastate commerce. Action of the Interstate Commerce Commission in this regard should be directed to substantial disparity which operates as a real discrimination

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against, and obstruction to, interstate commerce, and must leave appropriate discretion to the state authorities to deal with intrastate rates as between themselves on the general level which the Interstate Commerce Commission has found to be fair to interstate commerce.

It may well turn out that the effect of a general order increasing all rates, like the one at bar, will, in particular localities, reduce income instead of increasing it, by discouraging patronage. Such cases would be within the saving clause of the order herein, and make proper an application to the Interstate Commerce Commission for appropriate exception. So, too, in practice when the state commissions shall recognize their obligation to maintain a proportionate and equitable share of the income of the carriers from intrastate rates, conference between the Interstate Commerce Commission and the state commissions may dispense with the necessity for any rigid federal order as to the intrastate rates, and leave to the state commissions power to deal with them and increase them or reduce them in their discretion.

The order of the district court granting the interlocutory injunction is

Affirmed.

* Paragraphs 3 and 4 of 13 of 416 and 15a of 422 of the same act are as follows:

"(3) Whenever in any investigation under the provisions of this Act, or in any investigation instituted upon petition of the carrier concerned, which petition is hereby authorized to be filed, there shall be brought in issue any rate, fare, charge, classification, regulation, or practice made or imposed by authority of any state, or initiated by the President during the period of Federal control, the Commission, before proceeding to hear and dispose of such issue, shall cause the state or states interested to be notified of the proceeding. The Commission may confer with the authorities of any state having regulatory jurisdiction over the class of persons and corporations subject to this Act with respect to the relationship between rate structures and practices of carriers subject to the jurisdiction of such state bodies and of the Commission, and to that end is authorized and empowered, under rules to be prescribed by it, and which may be modified from time to time, to hold joint hearings with any such state regulating bodies on any matters wherein the Commission is empowered to act and where the ratemaking authority of a state is or may be affected by the action taken by the Commission. The Commission is also authorized to avail itself of the cooperation, services, records, and facilities of such state authorities in the enforcement of any provision of this Act."

"(4) Whenever in any such investigation the Commission, after full hearing, finds that any such rate, fare, charge, classification, regulation, or practice causes *any undue or unreasonable advantage, preference, or prejudice as between persons or localities in intrastate commerce, on the one hand, and interstate or foreign commerce, on the other hand, or any undue, unreasonable, or unjust discrimination against interstate or foreign commerce, which is hereby forbidden and declared to be unlawful,* it shall prescribe the rate, fare, or charge, or the maximum or minimum, or maximum and minimum, thereafter to be charged, and the classification, regulation, or practice thereafter to be observed in such manner

as, in its judgment, will remove such advantage, preference, prejudice, or discrimination. Such rates, fares, charges, classifications, regulations, and practices shall be observed while in effect by the carriers parties to such proceeding affected thereby, the law of any state or the decision or order of any state authority to the contrary notwithstanding."

Section 422 of the Transportation Act, 1920, 41 Stat. 488.

"The Interstate Commerce Act is further amended by inserting, after section 15, a new section to be known as 15a and to read as follows:"

"Section 15a(1)."

" * * * *"

"(2) In the exercise of its power to prescribe just and reasonable rates, the Commission shall initiate, modify, establish or adjust such rates so that carriers as a whole (or as a whole in each of such rate groups or territories as the Commission may from time to time designate) will, under honest, efficient, and economical management and reasonable expenditures for maintenance of way, structures, and equipment, earn an aggregate annual net railway operating income equal, as nearly as may be, to fair return upon the aggregate value of the railway property of such carriers held for and used in the service of transportation. . . ."

"(3) The Commission shall from time to time determine and make public what percentage of such aggregate property value constitutes a fair return thereon, and such percentage shall be uniform for all rate groups or territories which may be designated by the Commission. In making such determination, it shall give due consideration, among other things, to the transportation needs of the country and the necessity (under honest, efficient, and economical management of existing transportation facilities) of enlarging such facilities in order to provide the people of the United States with adequate transportation; *Provided* that, during two years beginning March 1, 1920, the Commission shall take as such fair return a sum equal to 5 1/2 percentum of such aggregate value, but may, in its discretion, add thereto a sum not exceeding one-half of one percentum of such aggregate value

to make provision in whole or in part for improvements, betterments, or equipment which, according to the accounting system prescribed by the Commission, are chargeable to capital account."

"(4) For the purposes of this section, such aggregate value of the property of the carriers shall be determined by the Commission from time to time and as often as may be necessary. The Commission may utilize the results of its investigation under 19a of this Act, insofar as deemed by it available, and shall give due consideration to all the elements of value recognized by the law of the land for ratemaking purposes, and shall give to the property investment account of the carriers only that consideration which, under such law, it is entitled to in establishing values for ratemaking purposes. Whenever, pursuant to 19a of this Act, the value of the railway property of any carrier held for and used in the service of transportation has been finally ascertained, the value so ascertained shall be deemed by the Commission to be the value thereof for the purpose of determining such aggregate value."