Davis Vs. Donovan

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Court : US Supreme Court

Decided On : May-26-1924

Appeal No. : 265 U.S. 257

Appellant : Davis

Respondent : Donovan

Judgement :

Davis v. Donovan - 265 U.S. 257 (1924)
U.S. Supreme Court Davis v. Donovan, 265 U.S. 257 (1924)

Davis v. Donovan

No. 757

Argued April 10, 1924

Decided May 26, 1924

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CERTIORARI TO THE CIRCUIT COURT OF APPEALS

FOR THE SECOND CIRCUIT

SYLLABUS

1. Under 10 of the Federal Control Act and General Order 5A, issued January 11, 1919, by the Director General of Railroads, the Director General was not made suable generally, as the operator of all railroads, but only with special reference to the particular transportation system or "carrier" out of whose operations the liability in question arose. *Cf. Missouri Pacific R. Co. v. Ault,* 256 U. S. 554 . P. 265 U. S. 263 .

2. Therefore, an action against him for alleged negligence in the. operations of one carrier cannot be maintained by proof of negligence in the operations of another carrier, both under his control. *Id.*

294 F. 525 reversed.

Certiorari to a decree of the circuit court of appeals affirming a decree of the district court for the present respondent in a libel brought by him against the Director General of Railroads to recover damages for injury to a vessel resulting from a collision.

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MR. JUSTICE Mc REYNOLDS delivered the opinion of the Court.

June 13, 1919, respondent Donovan, owner of the *Mary Ethel,* filed a libel in the United States District Court, Southern District of New York, against the "Director General of Railroads of the United States (New York, New Haven & Hartford Railroad Company)," for whom James C. Davis, Agent, etc, has been substituted, and another wherein he asked to recover for damage sustained by his vessel when in collision with the New York, New Haven & Hartford Railroad Company's car float No. 46. He alleged that the collision resulted solely from negligence of the float and those in charge of her; that the President took possession of all systems of transportation December 28, 1917, through the Director General, and

"that, at all the times herein mentioned, the car float No. 46 was managed, operated, and owned by the said New York, New Haven & Hartford Railroad Company under the control or operation of the said Director General of Railroads."

The "Director General of Railroads of the United States (New York, New Haven & Hartford Railroad)" answered and denied liability.

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It appeared from the evidence that, while moored at Pier 2, Erie Basin, March 28, 1919, the *Mary Ethel* suffered damage by contact with car float No. 46 of the New York, New Haven & Hartford Railroad, negligently cast loose by a New York Central Railroad tug. Both railroads and the tug were then being operated by the Director General.

The district court found and held:

"The last intervening cause of the accident which occurred to the *Mary Ethel* was the fact that the New York Central came in and, after removing the New York Central barge, allowed the No. 46 to go adrift, but that fact will not relieve the Director General, operating the New York, New Haven & Hartford Railroad, from liability, inasmuch as he is the same entity that is operating the New York Central."

A decree for the libelant was affirmed by the circuit court of appeals. It said:

"The contention of appellant is that,"

"even though it be admitted that the New York Central tug was under the control and operation of the Director General of Railroads operating the New York Central Railroad, the Director General of Railroads operating the New Haven Railroad, being a separate and distinct person, is in no way responsible."

"Appellant seeks to avoid the decision of this court in *Globe & Rutgers Fire Ins. Co. v. Hines, Agent,* 273 F. 774, by the effect, as he contends, of *Missouri Pacific Railroad Co. v. Ault,* 256 U. S. 554 . . . . In our view, the opinion of the Supreme

Court . . . sustains the *Globe & Rutgers Fire Ins. Co. case, supra.* . . ."

"The sole point is that the outside litigant, such as this libelant, need look only to the Director General as the party to respond for damage caused by negligence on the part of any of the railroads which he was operating, pursuant to the federal control statutes. "

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We cannot accept the conclusion reached by the court below.

During the year 1919, the United States were in possession and complete control, by the Director General, of the important railroad systems throughout the country. *Northern Pacific Ry. v. North Dakota,* 250 U. S. 135 . As the representative of the United States, he was subject to be sued for the purposes, to the extent, and under the conditions prescribed by statute and orders issued thereunder, and not otherwise. *Du Pont de Nemours & Co. v. Davis,* 264 U. S. 456 .

Section 10 of the Federal Control Act, approved March 21, 1918, c. 25, 40 Stat. 451, 456, provides that carriers under federal control shall be subject to liability as common carriers under state and federal laws, and that, in actions against them, no defense shall be made upon the ground that the carrier is an instrumentality of the federal government.

General Order 50-A of the Director General, issued January 11, 1919, directs that actions at law, suits in equity, or proceedings in admiralty growing out of operation of any system of transportation which might have been brought against the carrier but for federal control shall be brought against the Director General, and not otherwise; that service of process may be made upon officials operating a railroad for the Director General as formerly permitted in actions against the road, and, further,

"the pleadings in all such actions at law, suits in equity, or proceedings in admiralty now pending against any carrier company for a cause of action arising since December 31, 1917, based upon a cause of action arising from or out of the

operation of any railroad or other carrier may on application be amended by substituting the Director General of Railroads for the carrier company as party defendant and dismissing the company therefrom. "

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The effect of 10 and General Order 50a were discussed in *Missouri Pacific R. Co. v. Ault,* 256 U. S. 554 , 256 U. S. 560 , and it was there pointed out that, while the transportation systems were controlled and administered by the United States, they were treated as separate entities, "regarded much as ships are regarded in admiralty," and "dealt with as active responsible parties answerable for their own wrongs."

As well pointed out in *Manbar Coal Co. v. Davis,* Circuit Court of Appeals, Fourth Circuit, 297 F. 24, no one was given the right to sue the Director General as operator of all railroads, but his liability was carefully limited to such as would have been incurred by some particular carrier if there had been no federal control.

Here, the Director General came into court to defend only against a liability asserted because of the negligence of agents operating the New York, New Haven & Hartford system, and not because of anything which might have been done or omitted by those of another system. In such circumstances, under the statute and orders, we think the court could adjudge no liability against him except such as might have been enforced against the New York, New Haven & Hartford Railroad Company before federal control. Under those conditions, the United States consented to be proceeded against. One reason therefor, if any is necessary, seems plain enough. Every system was operated as an entity; its agents and employees knew and carried on its ordinary affairs, but not those of other carriers. The Director General necessarily relied upon the organization of each system, and could demand notice sufficient to set the proper one in motion; otherwise, proper defenses might not be presented.

Reversed.