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INTERSTATE COMMERCE - JURISDICTION OF INTERSTATE COMMERCE COMMISSION - "TACKING" OF INTRASTATE HAULS

INTERSTATE COMMERCE — JURISDICTION OF INTERSTATE COMMERCE COMMISSION — "TACKING" OF INTRASTATE HAULS — The coal company shipped coal from its mines in Pennsylvania by means of its own private railway, river barges, and tugs to a point in Ohio where the coal was unloaded, washed, freed from impurities, and sorted into appropriate sizes. Thereafter it was delivered by the company to a common carrier in Ohio for transportation to points within the state to fill orders often not received until after the coal left the mines. *Held*, the haul by the common carrier in Ohio is not subject to the jurisdiction of the Interstate Commerce Commission and is intrastate commerce which may be regulated as to rates by the Ohio Public Utilities Commission. *Pennsylvania R. R. v. Public Utilities Comm.*, 298 U. S. 170, 56 S. Ct. 687 (1936).

The Court assumed almost without discussion that the interstate character of the movement of the goods was broken or terminated when the coal was halted for cleaning, sorting, and separation — operations not aimed to facilitate the transportation of the coal — and that thereafter the transportation by the common carrier in Ohio was, standing alone, intrastate commerce. Previous decisions of the Court amply support this position.[1] It was argued, however, that this was intrastate transportation which was subject to the jurisdiction of the Interstate Commerce Commission under the Interstate Commerce Act,[2] apparently as a necessary regulation of the interstate movement with which it was connected, and that hence the attempted state regulation was an invalid entrenchment upon the Commission's jurisdiction. This result was sought by reference to previous decisions of the Court [3] to allow the "tacking" of the interstate haul

[1] American Steel & Wire Co. v. Speed, 192 U. S. 500, 24 S. Ct. 365 (1904); General Oil Co. v. Crain, 209 U. S. 211, 28 S. Ct. 475 (1908); Chicago, M. & St. P. Ry. v. Iowa, 233 U. S. 334, 34 S. Ct. 592 (1914); Champlain Realty Co. v. Town of Brattleboro, 260 U. S. 366, 43 S. Ct. 146 (1922); Atlantic Coast Line R. R. v. Standard Oil of Ky., 275 U. S. 257, 48 S. Ct. 107 (1927); State of Minnesota v. Blasius, 290 U. S. 1, 54 S. Ct. 34 (1933). See annotations in 2 L. R. A. (N. S.) 662 (1906) and 52 L. Ed. 755 (1908) on when an interstate shipment has been so interrupted or terminated as to allow local taxation.

[2] See annotations, 49 U. S. C. A., § 1 (2), p. 33 ff. (1929).

[3] Cincinnati, N. O. & T. P. R. R. v. Interstate Commerce Comm., 162 U. S. 184, 16 S. Ct. 700 (1896); Louisville & N. R. R. v. Behlmer, 175 U. S. 648, 20 S.

by the coal company's private carrier to the carriage in Ohio by the common carrier. This argument had been previously unsuccessfully put forward in the ninth circuit.[4] The Court pointed out, however, that the Interstate Commerce Act aims to regulate only common carriers, by very definition therein,[5] and that there was no basis for combining two parts of transportation, each alone exempt from the statute's operation (one because a haul by a private carrier, the other because intrastate transportation [6]), to obtain a combined movement subject to the act. It is submitted that the interpretation is a reasonable one and, furthermore, is in line with the modern trend of the Court to allow the states exclusive control of local matters touching interstate activity when federal regulation is not absolutely essential.[7]

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Ct. 209 (1900); Texas & N. O. R. R. v. Sabine Tram Co., 227 U. S. 111, 33 S. Ct. 229 (1913).

[4] Chicago, M., St. P. & P. R. R. v. Campbell River Mills Co., (C. C. A. 9th, 1931) 53 F. (2d) 69, affg. (D. C. Wash. 1930) 42 F. (2d) 775; certiorari denied 285 U. S. 536, 52 S. Ct. 310 (1931); discussed in 25 ILL. L. REV. 953 (1931) and 6 WASH. L. REV. 37 (1931).

[5] 49 U. S. C., § 1 (1) provides, "The provisions of this chapter shall apply to common carriers engaged in" etc. Sec. 1 (2) provides, "The provisions of this chapter shall also apply to *such* transportation of passengers and property," etc. (author's italics), the Court in the principal case saying that "such" referred back to the transportation by common carriers. Sec. 1 (3) contains this definition: "Wherever the word 'carrier' is used in this chapter it shall be held to mean 'common carrier.'"

That transportation of own goods only, by private means of transportation, does not constitute one a common carrier, see U. S. v. Ohio Oil Co. (Pipe Line Cases), 234 U. S. 548, 34 S. Ct. 956 (1914).

[6] 49 U. S. C., § 1 (2): "The provisions of this chapter . . . shall not apply—(a) To the transportation of passengers or property, or to the receiving, delivering, storage, or handling of property, wholly within one State and not shipped to or from a foreign country from or to any place in the United States as aforesaid. . . ."

[7] Bradley v. Public Utilities Comm. of Ohio, 289 U. S. 92, 53 S. Ct. 577 (1933); Mintz v. Baldwin, 289 U. S. 346, 53 S. Ct. 611 (1933); State of Minnesota v. Blasius, 290 U. S. 1, 54 S. Ct. 34 (1933); Gilvary v. Cuyahoga Valley R. R., 292 U. S. 57, 54 S. Ct. 573 (1934); A. L. A. Schechter Poultry Corp. v. U. S., 295 U. S. 495, 55 S. Ct. 837 (1935); Ashton v. Cameron County Water Improvement Dist. No. One, (U. S. 1936) 56 S. Ct. 892; Carter v. Carter Coal Co., (U. S. 1936) 56 S. Ct. 855; United States v. Butler, 297 U. S. 1, 56 S. Ct. 312 (1936).