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the cost of reproducing the property may be ascertained with a proper degree of certainty. But it does not justify the acceptance of the results which depend upon the mere conjecture."

Justice Hughes said that the railroad would have no ground to complain if it were allowed a value for its land equal to the fair average market value of similar lands in the vicinity, without additions by the use of multipliers, or otherwise to cover hypothetical outlays.

In criticizing the apportionment of valuation between interstate and intrastate business upon the "gross revenue basis" Justice Hughes said that the division should be made according to the use that is made of the property. He declared that this use could not be measured by the return, when the return itself was in question. "If the return be taken as the basis," said he, "then the validity of the state's reduction of rates would have to be tested by the very rates which the state denounced as exorbitant. He added that it would not be impossible to ascertain some kind of use units by which the property could be divided both between interstate and intrastate business on the one hand and between passenger and freight business on the other. He did not point out what this "unit" would be.

Justice Hughes next considered the lower court's plan of apportioning expenses on the basis that it cost two and a half times as much to do intrastate freight business as it did to do interstate, as well as a larger amount to do intrastate passenger business than to do interstate. He said that the expenses had not been kept separately in the accounts of statistics of the company and that testimony as to these expenses varied widely and that the intricate question of whether the rates were confiscatory could not be decided on proof of such a general character.

Applying these principles to the Northern Pacific, the justice held that neither the value of the property employed nor the shares of expenses attributed to interstate business had been proven satisfactorily to show that the railroads' property was confiscated. A similar conclusion was reached by applying the principles to the Great Northern railroad.

Coming to the Minneapolis and St. Louis he found the net return in 1908 to that road was less than 3½ per cent and that errors in estimating value and of apportionment were not sufficient to change the result.

HISTORY OF THE CASES

The so-called "state rate" cases have presented to the supreme court one of the momentous problems of the decade.

In general terms, this group of cases called upon the court to decide two questions. One was whether the states in passing maximum freight and 2-cent passenger laws had unduly interfered with interstate commerce. The other was whether those laws confiscated the property of the railroads by requiring them to transact business at a loss.

The group consisted of forty-five cases. All arose out of legislation enacted by state legislatures about 1907, or just after the federal government had passed the Hepburn rate law. The forty-five cases concerned directly the laws in six states, Missouri, Minnesota, Kentucky, Oregon, Arkansas and West Virginia. Similar litigations arose in Alabama, Iowa, Kansas, Nebraska, Oklahoma and South Dakota. In all, it was said that seventy-six suits in federal courts depended upon the decision in the forty-five cases before the supreme court.

The first of the forty-five cases to reach the supreme court were the Missouri rate cases. In Missouri the eighteen railroads crossing the state attacked, in separate suits, the validity of state laws fixing the maximum rate on freight and limiting passenger fares to 2 cents a mile.

Judge McPherson, of the United States circuit court for western Missouri, held that the rates were confiscatory of the railroads' property, and therefore unconstitutional, but he declined to hold that they interfered with interstate commerce. Both the railroads and the state appealed to the supreme court, bringing, in all, thirty-six Missouri cases. Two cases growing out of "the Burlington suit" were presented to the court in October, 1910, but they were restored to the docket for argument with the other Missouri cases in April, 1912. The state protested that Judge McPherson should not have apportioned expenses, as between state and interstate business, on a revenue basis, but rather on a car-mile, or ton-mile basis.

The Minnesota rate cases arose out of cases by stockholders of the Northern Pacific, the Great Northern and the Minneapolis and St. Louis railroads against the companies to enjoin them from obeying the maximum freight and 2-cent passenger laws as unconstitutional, and against the state officials to enjoin them from enforcing the laws. Judge Sanborn, of the United States circuit court for Minnesota, held the laws unconstitutional, of a confiscatory nature, and that they burdened interstate commerce. The three suits were appealed to the supreme court. The contest over the interstate commerce feature of the controversy was similar to that in the Missouri cases.

In the Missouri cases, however, the state and the railroads had agreed upon the valuation of the railroads, upon which the percentage of income from rates was to be figured. No such agreement was reached in the Minnesota cases, and a bitter contest arose over the holding of Judge Sanborn that the fair valuation of a railroad property was its "cost of reproduction new."

The Kentucky rate case arose over state rates on grain from Ohio river points to inland distillery cities. Unlike the Missouri and Minnesota cases, it did not embrace a claim of confiscation. Points raised were that the rates laid an improper burden upon interstate commerce and that the McCord act, authorizing the state railroad commission to fix reasonable rates was unconstitutional. Judges Warrington, Denison and Sanford, of the United States circuit court for eastern Kentucky, upheld the McChord act and the rates in question.

In the Oregon cases it was claimed that there was an interference with interstate commerce. The Oregon railroad and Navigation company claimed that the state railroad commission in reducing the state freight rates from Portland to eastern Oregon cities effected a reduction of interstate rates to those cities, because the state rates were used as a basis for the interstate rates. A similar claim was made by the Southern Pacific company as to rates along its line. The United States circuit court for Oregon upheld the rates. An attack was also made upon the constitutionality of the law creating the Oregon railroad commission. That, too, was upheld by the lower court.

In the Arkansas cases, brought by the St. Louis, Iron Mountain & Southern railway, and by the St. Louis Southwestern railway, the United States circuit court for eastern Arkansas held that the maximum freight rate orders and the 2-cent passenger fare law were unconstitutional because they were confiscatory.

The West Virginia case arose out of a suit by the Chesapeake & Ohio Railway company to test the validity of the 2-cent passenger law. The supreme court of West Virginia upheld the law. —Sioux City (Iowa) Journal.

IS THE LIMIT OF FEDERAL POWER AS VAGUE AS EVER?

The Minnesota rate decision is characterized by practical common sense and intellectual timidity.

The right to regulate interstate rates belongs, under the constitution, to congress. Owing to geographical considerations, it is impossible to exercise the power of making rates within a state without thereby affecting interstate rates in certain cases. A familiar example is the St. Louis-Kansas City rate, state rate purely, which affects the East St. Louis-Kansas City rate, which is interstate. This was the point on which the Minnesota case turned. Since the state of Minnesota has no power over interstate rates, should it be permitted to make state rates which necessarily affect them?

To this question the court, speaking through Justice Hughes, returned the answer of common sense. The state's power over rates within its borders is beyond question. The indirect effect of the exercise of that power is something for which the state has no responsibility and with which congress has never concerned itself.

This decision seems to be bottomed on the familiar principle that the possession of a right carries with it perforce those things without which the right could not be freely exercised. All actions have effects beyond the parties and things immediately concerned. If state rights whose exercise affects things in the federal domain are to be restricted, no room will be left for the exercise of any state rights at all. Judge Sanborn's decision was that of a theorist; the supreme court decision is that of men familiar with the laws which govern practical affairs.

But when we turn from the very satisfactory practical side of the decision to its treatment of the tremendously important question of the relative limits of state and federal powers, we enter a region of twilight and timidity. The decision, here, is anything but full and clean-cut. It appears to claim for congress by indirection all the power which congress is minded to assume. In view of the elementary fact that the constitution is a limited instrument, it is singular to find the state power treated in this decision as if existing on sufferance and only because congress has not seen fit to assert itself in the matters in question. We quote:

"The idea that the power of the state to fix reasonable rates for its internal traffic is limited by the mere action of the carrier in laying an interstate rate to places across the state's border is foreign to our jurisprudence. If this authority of the state be restricted, it must be by virtue of the paramount power of congress over interstate commerce and its instruments."

Again:

"If this authority of the state be restricted, it must be by virtue of the actual exercise of federal control and not by reason merely of a dormant federal power; that is, one which has not been exerted."

If the portion of the decision which has already been published is fairly representative of its scope, the ultimate question raised by the Minnesota cases is as far from solution as it was before this decision was rendered. That is the question of the relative powers of the state and federal governments in that portion of the field of intrastate commerce where interstate rates are affected. Their honors have contented themselves with declaring that, in the absence of specific federal legislation, the state's rights may be freely exercised. They have at least hinted that the federal power might seriously circumscribe those rights were it so disposed. The decision has the immediate practical importance that always attaches to a judicial application of a common sense principle to a concrete case. But it leaves one of the most difficult questions in our jurisprudence—and one which the country believed to be on the point of determination—as much in the dark as it was. States will continue for the present to fix maximum rates and their action will be upheld by the courts. But the limit of the federal power remains just as vague as ever.—St. Louis Republic.

A POLITICAL ISSUE?

Following is an Associated Press dispatch: Washington, D. C., June 10.—Republican members of congress see in the decision of the supreme court in the Minnesota rate case yesterday, a political issue of large importance.

They agreed to prepare an organized attack on the democratic policy of states' rights on this issue.

In the house of representatives Representative Willis of Ohio, member of the committee on interstate and foreign commerce, has been requested by his colleagues to prepare a bill for introduction at the next session of congress which will extend the power of the interstate commerce commission over all railroads in the manner indicated by the supreme court as being within the rights of congress.

The republicans believe that regulation of