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## **Interstate Commerce Regulation--Power to Impose Conditions in Authorization of Security Issues (The United States and Commission v. Chicago, Milwaukee, St. Paul, and Pacific Railroad Company, 51 S. Ct. 159 (1931))**

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INTERSTATE COMMERCE REGULATION—POWER TO IMPOSE CONDITIONS IN AUTHORIZATION OF SECURITY ISSUES.—The Plaintiff Railway Company was formed through a reorganization of its predecessor which had become insolvent. The reorganization plan provided that the stockholders of the old company might participate in the reorganization by depositing their common and preferred stock, together with the sum of \$32.00 for each share of the former and \$28.00 for each share of the latter. Each depositor was to receive stock and, in addition, \$28.00 and \$24.00, respectively, in bonds of the new company. Out of the remainder of the money deposited with the reorganization managers, being \$4.00 per share, two funds were to be created. A fund equivalent to \$2.50 per share was to be set aside to satisfy such expenses as cost of foreclosure, court allowances, engraving of securities for the new company, the corporate trustees' charges; any balance remaining to be paid over to the new company. An amount equivalent to \$1.50 per share was to be set aside to provide for the compensation of the reorganization managers and the committees, the fees and disbursements of their counsels and depositaries; any balance remaining to be paid over to the new company as additional working capital or to be distributed *pro rata* to the holders of certificates of deposit for stock, *as the reorganization managers might see fit*. The Interstate Commerce Commission authorized the issuance of securities by the new company on condition that the special funds created through the \$4.00 payments by the depositing stockholders be impounded and not paid out until authorized by the Commission. The present suit was brought to have this proviso declared beyond the lawful authority of the Interstate Commerce Commission and to restrain its enforcement. On appeal to the Supreme Court, *Held*, the proviso is valid as to the fund created by the payment of \$2.50 per share but is invalid as to the fund created by the payment of \$1.50 per share. *The United States and Commission v. Chicago, Milwaukee, St. Paul, and Pacific Railroad Company*, 51 Sup. Ct. 159 (1931).

Under the provisions of section 20A of the Transportation Act, the Commission is empowered to make its grant of authority to issue securities upon such conditions as it may see fit.<sup>1</sup> However, the power to impose conditions must be exercised in conformity with the constitutional grant of authority to regulate interstate commerce—the condition must relate to commerce.<sup>2</sup>

In the view of the majority of the Court, the fund created by a \$2.50 payment was within the "realm of commerce." As to the fund created by the \$1.50 payment, however, the majority of

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<sup>1</sup>"The Commission shall have power by its order to grant or deny the application as made, \* \* \*, or to grant it with such modifications and upon such terms and conditions as the Commission may deem necessary or appropriate." Ch. 91, Sec. 439, 41 Stat. 494; U. S. C. A., Tit. 49, Sec. 20A, Subd. 3.

<sup>2</sup>*Union Bridge Co. v. United States*, 204 U. S. 364, 384-385; 27 Sup. Ct. 367 (1906); *Hammer v. Dagenhart*, 247 U. S. 251, 38 Sup. Ct. 529 (1917).

the Court was of the opinion that it represented private property and was outside the "realm of commerce" because "whether the carrier would receive any part of it was a matter of speculation, being wholly dependent upon the unrestricted will of its custodians"—the reorganization managers.

The minority of the Court took the view that, in determining whether the transaction pertained to commerce, the practical operation of the plan should control rather than the formal interests of the respective parties. Applying this test to the contract governing the fund created by the payment of \$1.50 per share, the Commission was acting within its powers for, in substance, the payments into this fund were part of the necessary price exacted for the new securities. The dissenting opinion points out that reorganizations of excessive cost militate against the stability of the credit of the transportation system in that the attractiveness of railroad securities as investments is impaired. Moreover, reorganization costs may play a part in determining the going concern value of a railroad company as an element of rate making<sup>3</sup> and, hence, the public at large has a direct interest in the matter.

Stability of credit is essential to the preservation of the transportation system to which end the Transportation Act, under which the Commission derives its powers to regulate security issues, was enacted.<sup>4</sup> Regulation of fees and costs charged by bankers and financiers who generally dominate reorganizations, should not be permitted to be defeated by the simple expedient of having expenses paid out by the managers for the account of the carrier rather than payment being made directly by the carrier. The majority opinion is not in harmony with the broad purpose of the legislative enactment.

E. P. W.

PLEADING AND PRACTICE—JOINDER OF PARTIES DEFENDANT—CIVIL PRACTICE ACT, SEC. 193, SUBD. 2, CONSTRUED.—Plaintiff, an employee of a car-cleaning company, was injured by shunting cars belonging to the defendant railroad company but upon land leased by it to the employer. Defendant now seeks to have the employing company brought in as party defendant under a contract by which said employer agrees to indemnify the railroad for all injuries to person or property occurring upon land leased from the railroad. The trial Court denied defendant's motion for joinder. On appeal, *Held*, reversed. *Hejza v. New York Central R. R. Co.*, 137 Misc. 824, 246 N. Y. Supp. 34 (1930).

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<sup>3</sup> See *McCardle v. Indianapolis Water Company*, 272 U. S. 400, 414, 47 Sup. Ct. 140 (1926); *United Railways v. West*, 280 U. S. 234, 50 Sup. Ct. 123 (1930).

<sup>4</sup> *New England Divisions Case*, 261 U. S. 184, 189, 43 Sup. Ct. 270 (1922); *Dayton, Goose Creek Ry. Co. v. United States*, 263 U. S. 456, 478, 44 Sup. Ct. 169 (1923).