

NEBRASKA LAW INVALID

Justice Harlan of Supreme Court Renders a Decision in the Maximum Freight Case.

RAILROAD CONTENTION UPHELD

William J. Bryan Appeared for the
State at a Former Hearing in the
Supreme Court—Railroads En-
titled to a Fair Return.

WASHINGTON, March 7.—The United States Supreme Court to-day decided that the Nebraska statute, on which is based what is known as the Nebraska maximum freight case, is unconstitutional and invalid, inasmuch as it is contrary to the fourteenth amendment, which provides that property shall not be taken without due process of law.

The law in question was passed April 12, 1893 and provided that all freights should be classified in a certain form, and any different classification which would raise the rates on any class of freight was declared unlawful, and that no road shall charge for freight from any point in the State to any other point in the State a higher sum than that fixed in the act as the reasonable maximum rate for the distance hauled. Provision was made for the Supreme Court of Nebraska to decide whether the rate was reasonable or not, but no rate should be raised to a higher sum than that charged on Jan. 1, 1893.

The Railroad Commissioners of Nebraska were empowered to reduce any rate, in any class, whenever it seemed to a majority of the board just and reasonable to so do. But it was prohibited from changing classification so as to raise rates. Two weeks' notice to the railroads of reduced rates was to be given.

The penalty for the violation of the act was for the first offense a fine of not less than \$1,000 nor more than \$5,000; for the second offense not less than \$5,000 nor more than \$10,000; for the third offense not less than \$10,000 nor more than \$20,000, and for every subsequent offense \$25,000.

The law was contested by the Union Pacific, St. Joseph and Grand Island, Omaha and Republican Valley, and the Kansas City and Omaha. They claimed that the law was confiscation and unconstitutional, as it attempted to regulate rates on inter-State commerce. The railroads claimed that the reduction in local rates on freight was 20½ per cent., and that it would make a difference in the earnings of roads in Nebraska of about \$2,250,000 annually.

When the case was heard in the United States Circuit Court Justice Brewer sustained the contention of the railroad companies and held against the validity of the law. His opinion was based largely upon the charge of unreasonableness.

William J. Bryan Appeared.

This case has been twice argued in the Supreme Court, William J. Bryan appearing as one of the counsel for the State at the last hearing. Much interest has been manifested in the decision ever since the case was docketed because of the probable influence a result favorable to the law would have upon legislation in other States.

The decision to-day was handed down by Justice Harlan.

In his opinion, Justice Harlan first detailed the facts relating to the passage of the act by the Nebraska Legislature in 1893, and then sketched briefly its provisions, saying that among others of its provisions was one to fix reasonable maximum freight rates on the railroads of the State and to classify freights. He then took up in order the points at issue between the State and the railroad companies, dealing first with the question of the propriety of considering the case as one of equity rather than of law. It was contended in the argument that the railroads had an adequate remedy at law before the State and Supreme Court, and that therefore the United States Circuit Court, sitting in equity, was without jurisdiction. On this point he said: "We cannot accept this view of the equity jurisdiction of the Circuit Courts of the United States. The adequacy or inadequacy of a remedy at law for the protection of the rights of one entitled upon any ground to invoke the powers of a Federal court is not to be conclusively determined by the statutes of the particular State in which suit may be brought. One who is entitled to sue in the Federal Circuit Court may invoke its jurisdiction in equity whenever the established principles and rules of equity permit such a suit in that court; and he cannot be deprived of that right by reason of his being allowed to sue at law in a State court on the same cause of action. The transactions along the line of any of these railroads, out of which causes of action might arise under the statute, are so numerous and varied that the interference of equity could well be justified upon the ground that a general decree, according to the prayer of the bills, would avoid a multiplicity of suits, and give a remedy more certain and efficacious than could be given in any proceeding instituted against the company in a court of law; for a court of law could only deal with each separate transaction involving the rates to be charged for transportation."

Federal Courts Have Jurisdiction.

The contention that the State was the real party in interest and that, therefore, the Federal courts could not take cognizance of it under the eleventh amendment to the Constitution, was overruled, the Court saying that the Federal courts had jurisdiction, because both of the diverse citizenship or alienage of the parties and also on account of the fact that the act is attacked as contrary to provisions of the Federal Constitution.

It was also contended that the act could not be made applicable to the Union Pacific Railroad, because it has a Federal charter, and the act creating the corporation had reserved to Congress the right to fix the rates on this line in certain contingencies, but the court took the position that as Congress had not availed itself of this privilege the States through which the Union Pacific passed have the right to fix rates. Justice Harlan said on this point: "Until Congress, in the exercise either of the power specifically reserved by the eighteenth section of the act of 1862, or its power under the general reservation made of authority to add to, alter, amend, or repeal that act, prescribes rates to be charged by the railroad company, it remains with the States through which the road passes to fix rates for transportation beginning and ending with their respective limits."

Justice Harlan then quoted a number of opinions, and said that, in view of the adjudications, the following principles must be regarded as settled:

Rates Cannot Be Ruinous.

First—A railroad corporation is a person within the meaning of the Fourteenth Amendment, declaring that no State shall deprive any person of property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

Second—A State enactment, or regulation made under the authority of a State enactment, establishing such rates for the transportation of persons or property by railroad as will not admit of the carrier earning such compensation as under all the circumstances is just to it and to the public, would deprive such carrier of its property without due process of law, and deny to it the equal protection of the laws, and would therefore be repugnant to the Fourteenth Amendment of the Constitution of the United States.

Third—While rates for the transportation of persons and property within the limits of a State are primarily for its determination, the question whether they are so unreasonably low as to deprive the carrier of its property without such compensation as the Constitution secures, and therefore without due process of law, cannot be so conclusively determined by the Legislature of the State or by regulations adopted under its authority, that the matter may not become the subject of judicial inquiry.

This last proposition, Justice Harlan said, covered the case in point. He then proceeded to make an exhaustive examination into the effect of the enforcement of the rates prescribed upon the business of the different Nebraska lines, showing the reduction to amount to 20.50 per cent. for the years 1891, 1892, and 1893. The result was to show that each of the roads involved would for this period have conducted their business at a loss with only one or two exceptions, and those for only a short while.

Discussing the question as to "what are the considerations to which weight must be given when we seek to ascertain the compensation which a railroad company is entitled to receive, and a prohibition upon the receiving of which may be fairly deemed a deprivation by legislative decree of property without due process of law," Justice Harlan said:

A Commission to Fix Rates.

"Undoubtedly that question could be more easily determined by a commission composed of persons whose special skill,

observation, and experience qualifies them to so handle great problems of transportation as to do justice to the public as well as to those whose money has been used to construct and maintain highways for the convenience and benefit of the people. But despite the difficulties that confessedly attend the proper solution of such questions the Court cannot shrink from the duty to determine whether it be true, as alleged, that the Nebraska statute invades or destroys rights secured by the supreme law of the land. No one, we take it, will contend that a State enactment is in harmony with that law simply because the Legislature of the State has declared such to be the case; for that would make the State Legislature the final judge of the validity of its enactment, although the Constitution of the United States and the laws made in pursuance thereof are the supreme law of the land, anything in the Constitution or laws of any State to the contrary notwithstanding.

"The idea that any Legislature, State or Federal, can conclusively determine for the people and for the courts that what it enacts in the form of law, or what it authorizes its agents to do, is consistent with the fundamental law, is in opposition to the theory of our institutions. The duty rests upon all courts, Federal and State, when their jurisdiction is properly invoked, to see to it that no right should by the supreme law of the land be impaired or destroyed by legislation."

It had been contended on behalf of the law that the State of Nebraska could legally require local freight business to be conducted even at an actual loss, if the company earned on its inter-State business enough to give it just compensation in respect of its entire line and all its business, inter-State and domestic. The Court did not accept this view, Justice Harlan saying:

Inter-State versus State Business.

"We cannot concur in this view. In our judgment, it must be held that the reasonableness or unreasonableness of rates prescribed by a State for the transportation of persons and property wholly within its limits, must be determined without reference to the business of an inter-State character done by the carrier, or to the profits derived from that business. The State cannot justify unreasonably low rates for domestic transportation, considered upon the ground that the carriers are earning large profits on its inter-State business, over which, so far as rates are concerned, the State has no control. Nor can the carrier justify unreasonably high rates on domestic business, upon the ground that only in that way can it meet losses on its inter-State business. So far as rates of transportation are concerned, domestic business should not be made to bear the losses on inter-State business, nor the latter the losses on domestic business. It is only rates for the transportation of persons and property between points within the State which the State can prescribe, and when it undertakes to prescribe rates not to be exceeded by the carrier, it must do so with reference exclusively to what is just and reasonable, as between the carrier and the public in respect of domestic business."

Referring to the arguments on the two sides of the case as to what are reasonable charges, the opinion laid down the following: "We hold that the basis of all calculations as to reasonableness of rates to be charged by a corporation maintaining a highway under legislative sanction must be the fair value of the property being used by it for the convenience of the public. And in order to ascertain that value the original cost of construction, the amount expended in improvements, the amount and market value of its bonds and stock, the present as compared with the original cost of construction, the probable earning capacity of the property under any rates prescribed by statute, and the sum required to meet operating expenses, are all matters for consideration, and to be given such weight as may be just and right in the particular case."

The Right to a Fair Return.

"What the company is entitled to ask is a fair return upon the value of that which it employs for the public convenience. On the other hand, what the public is entitled to demand is that no more be exacted from it for the use of a public highway than the services rendered by it are reasonably worth. But, even upon this basis, we perceive no ground on the record for reversing the decree of the Circuit Court. On the contrary, we are of opinion that as to most of the companies in question there would have been under the rates established by the act of 1893 an actual loss in each of the years ending June 30, 1891, 1892, and 1893, and substantially no compensation earned for the services rendered, and that in the exceptional cases above stated the receipts or gains above operating expenses of some of the companies would have been too small to affect the general conclusion that the act, if enforced, would have deprived each of the railroad companies involved in these suits of the just compensation secured to them by the Constitution. Under the evidence there is no ground for saying that the operating expenses of any of them were greater than necessary."

In conclusion, Justice Harlan said if business improved the State could apply to the courts, his language being as follows: "But it may be added that the conditions of business, so far as railroad corporations are concerned, have probably changed for the better, and that the rates prescribed by the statute of 1893, may now afford all the compensation to which the railroad companies in Nebraska are entitled as between them and the public. In anticipation, perhaps, of such a change of circumstances, the Circuit Court wisely provided in its final decree that the defendants, members of the Board of Transportation, might 'when the circumstances have changed so that the rates fixed in said act of 1893 shall yield to the said companies reasonable compensation for the services aforesaid,' apply to the court by bill or otherwise, as they might be advised, for a further order in that behalf. Of this provision of the final decree the State Board of Transportation, if so advised, can avail itself. In that event, if the Circuit Court finds that the present condition of business is such as to admit of the application of the statute to the railroad companies in question, without depriving them of just compensation, it will be its duty to discharge the injunction heretofore granted and to make whatever order is necessary to remove any obstruction placed by the decrees in these cases in the way of the enforcement of the statute."

Chief Justice Fuller and Justice McKenna did not participate in the hearing or in the decision.