THE SHREVEPORT CASE.

In March, 1911, the Railroad Commission of Louisiana initiated proceedings with the Interstate Commerce Commission to prevent the Texas and Pacific Ry. Co., The Houston, East and West Ry. Co., and the Houston and Shreveport Ry. Co. from maintaining discriminatory rates against the town of Shreveport, Louisiana and in favor of Dallas, Texas.[1] The Louisiana Commission, for instance, set forth that the Texas and Pacific Ry. Co. was charging a rate on farm wagons from Shreveport, Louisiana, to Marshall, Texas, a distance of 42 miles, of 56 cents per 100 pounds, while charging from Dallas to Marshall, both in Texas, a distance of 147 miles, a rate of only 36.8 per 100 pounds.

It was conceded by the railroads that the situation constituted undue prejudice to Shreveport and undue preference to Dallas within the meaning of the third section of the Interstate Commerce Act,[2] provided that section be applicable. But they contended that the section was not applicable, because the intrastate rate from Dallas to Marshall was not voluntarily established but was forced upon the railroads by the authority of the State of Texas, and in order to come within the meaning of the third section the acts complained of must have been voluntary.

On this point Commissioner Lane, speaking for the majority of the Commissioners said: "An interstate carrier must respect the federal law, and if it is also subject to state law it must respect that in so far as it can without doing violence to its obligations under the federal authority. Before us are carriers, which undeniably discriminate directly against interstate traffic. To this charge they plead that all they have done was to obey the orders of a state commission, as against which they were helpless. They appealed to no court for relief nor to this Commission. When the state of Louisiana after years of endurance makes complaint to this body, these carriers make no showing of the reasonableness of their rates other than that heretofore dealt with—a traffic adjustment equalizing gateways—and even in this defense all the carriers do not join. * * * While the Texas Commission has evidenced a policy of

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[1]Meridith vs. St. Louis & Southwestern Ry. Co., 23 I. C. C. Repts. 31.
[2]Act of Feb. 4, 1887, C. 104, 24 Stat. 380.

home protection for its own state cities, there is every evidence that the carriers moving into and within Texas accepted this policy as their own, claiming that not to have adopted it would have led to reprisal on the part of state authorities. Such conditions may not continue under this act. The interstate carrier which adopts a policy, even under state direction, that makes against the interstate movement of commerce must do so with its eyes open and fully conscious of the responsibilities of the federal law, which guards commerce among the several states against discrimination."

The railroads petitioned the Commerce Court to set aside the order of the Interstate Commerce Commission.[3] The Court, however, accepted the ruling of the Commission and adopted the language of Commissioner Lane. Judge Mack concurred because he said that his Brethren had found some evidence, though slight, that the railroads had solicited and voluntarily adopted the Texas rates. But he said, "In the absence of judicial decree, temporarily or permanently suspending the force and effect of the Texas rates, the railroads would be compelled to obey them, just as the railroads and the public are required to observe interstate rates duly made and published by the railroads, even though they be such as would be set aside for unreasonableness, unjust discrimination, or undue prejudice, on direct attack before the Interstate Commerce Commission."

The decision lacks force on the argument that the railroad voluntarily adopted the rates of the Texas Commission. The only evidence adduced to support this fact was that the railroads had not brought suit to set aside the Texas rate. The railroads did enter formal protest, but took no further action. They would certainly be bound by the order of the state of Texas until relieved of it by a federal order. To hold the railroads to the necessity of attacking the ruling of the commission of Texas seems to place an unwarranted burden on the railroads. There was some doubt whether the commission had authority to supervise a rate of this character, and it would hardly seem that it was the duty of the railroads to test this authority. The entering of formal protest was sufficient to absolve them from the position of being a party to the rate.

Why did not the Railroad Commission of Louisiana appeal to the Interstate Commerce Commission to set aside the rates es-

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[3]Texas & Pacific Ry. Co. vs. Interstate Commerce Com., 205 Fed. 380.

tablished by the Texas Commission? By ordering the railroads to change their rates so as not to discriminate against Shreveport, it left no option with the railroads, but to reduce their interstate rates (which had been approved by the Interstate Commerce Commission) to the same basis as the Texas rate, for the Texas rate remained in force with which the railroads were bound to comply.

The railroads together with several intervening parties took the case to the Supreme Court.[4] After disposing of the other points of the case the court, speaking through Mr. Justice Hughes, dismissed our present discussion thus: "The further objection is made that the prohibition of section three is directed against unjust discrimination or undue preference only when it arises from the voluntary act of the carrier and does not relate to acts which are the result of conditions beyond its control. *East Tennessee &c. Rwy. Co. vs. Interstate Commerce Commission*, 181 U. S. 1, 18. The reference is not to any inherent lack of control arising out of traffice conditions, but to the requirements of local authorities which are assumed to be binding upon the carriers. The contention is thus merely a repetition in another form of the argument that the Commission exceeded its power; for it would not be contended that local rules could nullify the lawful exercise of Federal authority. In the view that the Commission was entitled to make the order, there is no longer compulsion upon the carriers by virtue of any inconsistent local requirement."

In the East Tennessee case, *supra*, the city of Chattanooga complained of the fact that through rates from the Atlantic seaboard to Nashville were less than to Chattanooga, a shorter distance. The railroads explained that they were compelled to charge a lower rate to Nashville in order to compete with railroads running direct from Chattanooga to New York and other eastern points. Besides, the railroads said, it would in no way aid Chattanooga to compel them to reduce their rates, for the other railroads would simply carry all of the freight. The court held that it was necessary for the railroads to charge the lower rates in order to compete for the business; and that it being a necessity, the railroads had not discriminated against Chattanooga within the meaning of the 3rd section of the Commerce Act. The same point was decided in *Louisville & Nashville Ry. Co. vs. Belmer*, 175 U. S. 648.

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[4]Houston & Texas Ry. Co. vs. U. S., 234 U. S. 343.

But the Supreme Court in the Shreveport case distinguishes between a necessity arising out of traffic conditions and a necessity arising from state law. They say in the former case that the railroads are compelled to reduce their rates, while in the latter case they may disregard the state law with impunity. It is true that there are two different forms of necessity involved, but why a distinction between the two should be made is not clear. If the railroads ceased their discrimination forced upon them by inherent traffic conditions, they would lose freight, while, if they ceased discrimination forced upon them by the state law, they would be liable to state punishment. It seems that the state law inflicted even a greater necessity on the railroads than the traffic conditions.

To say that the railroads were not bound by the local rate as established by the Texas Commission, upon the issuing of the order of the Interstate Commerce Commission is manifestly absurd. With both orders standing, the state order calling for a low rate and the federal order to prevent discrimination, the railroads were compelled to take a course which would satisfy both of these orders if possible; in other words to reduce the interstate rate to the level of the intrastate rate.

It was very doubtful until the Shreveport decision whether or not the Interstate Commerce Commission had power to govern rates of the character of those established by the Texas Commission, and, if the railroads had, upon the order of the Interstate Commerce Commission to cease discrimination against Shreveport, raised their local rate, it would have caused reprisal by the state of Texas.

The purpose of the order of the Interstate Commerce Commission was not to compel the railroads to reduce their interstate rate, but to allow them to raise their intrastate rate, which was unreasonably low. The method pursued was indirect and unjust to the railroads. The complaint against the railroads should have been dismissed, or the state of Texas should have been made a party and proper proceedings taken against that state to prevent it from maintaining its existing intrastate rate as interfering with interstate commerce, and in this way protect the railroads from any loss or injury caused by complying with the order of the Interstate Commerce Commission.

The state of Texas has since voluntarily withdrawn its local rate, which has made it possible for the railroads to establish uniform rates on the basis of the approved interstate rate. Never-

theless, it leaves the question of Federal supremacy undecided and Texas or any other state may with impunity establish and force the railroads to accept intrastate rates even though they interfere with interstate commerce rates.