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Carriers: Valuation of: Rate Making

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(*Zivilantsgericht* in Prague, 1927, 2 *Zeitschrift fuer das gesammte Luftrecht,* 56)

Finally the Reichsgericht in another opinion has said that it would be beyond reason if after the full development of air navigation the general public were dependent on the use of such navigation to allow the air companies to misuse their monopoly and the situation of the public to force passengers to waive the protection which the statute gives them. (46 *Eisenbahn und Verkehrsrecht Entscheidungen, und Abhandlungen,* 93, affirmed 1 *Zeitschrift fuer das gesammte Luftrecht,* 296.)

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Carriers: Valuation of: Rate Making

The importance of the question decided in *St. Louis and O'Fallon Ry. Co., et al* v. *United States, et al,*[1] and *United States, et al* v. *St. Louis and O'Fallon Ry. Co., et al,*[2] made it one of general interest when the decision was announced last May. The question involved in brief was this:

How should the value of railroads be determined so that a fair return might be had on the capital invested? The answer to this question is one which affects the inhabitants of the United States individually, either as users of the railroads or as investors.

The "Transportation Act of 1920"[3] provided that the Interstate Commerce Commission should have authority to fix a reasonable uniform rate for railroads in various districts so that a return of 6 per cent might be had on the capital invested in property "held for and used in the service of transportation" as a fair return upon such investment. It was further provided that "if, under the provisions of this section, any carcier receives for any year a net railway operating income in excess of 6 per cent of the value of the railway property held for and used by it in the service of transportation, one-half of such excess shall be placed in a reserve fund established and maintained by such carrier and the remaining one-half shall be . . . . paid to the Commission for the purpose of establishing and maintaining a general railroad contingent fund."

In other words, the Commission is authorized to set 6 per cent as a maximum return on the amount of money invested in railroads. Realizing that in some sections of the country the stronger roads would, under the uniform rates established by the commission, earn more than 6 per cent on their invested capital; the Transportation Act further provided that a fund should be established out of the surplus earnings of these roads to aid the weaker roads of the same district.

[1] 49 U.S.C.A. No. 15a.
[2] 49 Sup. Ct. Rep. 384.
[3] 73 L.ed. 457.

The plaintiff railroad in this case was ordered by the Interstate Commerce Commission to place in a reserve fund, one-half of its excess income for the years 1920, 1921, 1922, and 1923. The St. Louis and O'Fallon Railway Company and The Manufacturers' Railway were asserted to be parts of the same system by the plaintiff, and further that the Manufacturers' Railway had earned no excess operating income. The Commission found that the two railroads had the same principal officers and stockholders, but that they were separated at their closest point by twelve miles, and hence were not parts of the same system. The Supreme Court agreed with this finding of the Railroad Commission.

The principal dispute in this case, however, occurred over the manner of valuing the O'Fallon road in determining the amount of excess income which it had earned. The Transportation Act, as passed by Congress, declared that the Commission should "give due consideration to all the elements of value recognized by the law of the land for rate-making purposes." "The elements of value recognized by the law of the land for rate-making purposes have been pointed out many times by this court," says Justice McReynolds, who wrote the opinion of the court. "Among them is the present cost of construction or reproduction." On this point a list of cases were cited, chief among these being *Smyth* v. *Ames,* 169 U.S. 466. The report of the minority of the Commission shows that the Commission failed to consider the present reproduction costs in determining the value of the O'Fallon road. The Commission did consider the present value of the real estate, but for units installed prior to 1914, which constituted the major part of the carrier's property, allowed only the 1914 valuation, and gave no consideration to the cost of this property in 1923, nor to the increase in value since 1914.

The Supreme Court, by a six to three decision, held that in this respect the Commission erred. The court declared that "Congress has directed that values shall be fixed upon a consideration of present costs along with all other pertinent facts; and this mandate must be obeyed." Justice Brandeis wrote a lengthy dissenting opinion in which Justice Holmes and Stone concurred. The decision has been criticized by laymen and economists as one based upon arbitrary legal principles, and a disregard of sound economic facts. Valuing railroads at their present cost of reproduction increases their values so enormously that transportation rates could be correspondingly increased and still remain within the authorized 6 per cent return on the invested capital.

But, as Justice McReynolds points out, the function of the Interstate Commerce Commission was correctly stated in the minority report of that commission in the present case, in these words: "The function of this commission is not to act as an arbiter in economics, but as an agency

of Congress, to apply the law of the land to facts developed of record in matters committed by Congress to our jurisdiction."

T. W. HAYDEN

Courts: Attorney and Client

State v. Cannon.[1]

This was an action to disbar from the practice of law, the defendant, Raymond J. Cannon. The original action against Cannon was begun in the Wisconsin Supreme Court by the State Bar Commissioners, May 10, 1928, pursuant to the provisions of section 25628 of the Statutes of 1927.

The Honorable E. C. Fiedler was referred to the case, and it was he who took the testimony and reported the fact. He recommended that Cannon be suspended from practice for two years, and that he be required to pay the expenses and costs of the action. The defendant was disclosed by the record as a man whose purpose it was to let nothing stand in the way of making his profession yield him the largest possible financial return, without regard to the established canons of professional conduct. To accomplish that end, the referee found that he began the Huelse suit without authority from the injured man; that he improperly displaced attorneys previously retained; that he purposely and knowingly misled and deceived courts; that he collected excessive, exorbitant, and unconscionable fees from his clients; and that he commercialized his profession by the organized solicitation of business.

Because of the severe penalty imposed upon Cannon for his "ambulance chasing" proclivities, the case should command the attention of the entire Wisconsin bar, because its interests are at stake. In fact, Justice Crownhart in his dissenting opinion said: "If attorneys may be subjected to such inquisitions and ruthless charges in the future, we may expect a weak and spineless bar—one that will be afraid to fight the battles of the poor and humble as they ought to be fought to secure justice."

The question of the powers of the courts to disbar attorneys was an important one. This case is not the first one in which the unethical conduct of attorneys has been criticized. The power to protect courts and the public from the official ministration of persons unfit for practice in them was fully established in the former decision of the court in this case, *State* v. *Cannon,*[2] where it was held that, when the people by means of the Constitution established courts, they became endowed with all judicial powers essential to carry out the judicial functions delegated to them.

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[1] 226 N.W. 385; Wis.

[2] 196 Wis. 534, 221 N.W. 603.