

## **Attorney General v. Chicago & Northwestern Railroad Company**

35 Wis. 425 (1874)

*This case, which became popularly referred to as Attorney General v. Railroads, demonstrates the great struggle in this state between corporate power and privilege on the one hand and the people represented by the Legislature on the other. Since the late 1860s, Wisconsin's railroads had been heavily criticized as a number of communities in the state went bankrupt after taking on too much debt to try to support the local rail. Chief Justice Edward G. Ryan wrote the majority opinion.*

At the time this case arose, two railway corporations were operating in this state, the Chicago, Milwaukee & St. Paul, and the Chicago & Northwestern companies. These two covered practically the whole state, but their headquarters were in adjoining states. Both railroad charters issued by the state gave them full powers to regulate freight rates and passenger fares as they chose; thus, the railroads could make or break a community or locality by setting rates.

Many in the state began to share the view that railroad freight rates were exorbitant, arbitrary and discriminatory. By the 1873 state elections, a coalition of Democrats and reform Republicans holding this view and advocating rate regulation was elected to the Legislature when Governor William R. Taylor took office. Accordingly, in 1874, the Legislature enacted a law fixing maximum freight rates and passenger fares charged by the railroads of the state; this act, known as the "Potter Law" (named after the state senator from Waushara County who had sponsored the bill), was supported and signed by the governor.

The Potter Law divided the railroads operating in the state into three classes, according to volume of business. The law fixed maximum passenger rates per mile for each class, divided freight into special classes and fixed the maximum rates to be charged for the transportation of each class. This law also created a three-member Railroad Commission with the power to investigate the actual costs of the railroads, their gross and net receipts and indebtedness, and to set schedules of maximum railroad freight rates between points within the state.

Both railroads quickly challenged the Potter Law, saying it changed the terms of their charters and thus was an illegal impairment of contract. Attorney John C. Spooner, who later became a three-term U.S. senator from Wisconsin, represented the railroads and persuaded a circuit court to hold the law unconstitutional; however, the Potter Act was upheld in two cases brought in the federal courts.

Wisconsin Attorney General Andrew Scott Sloan then brought the case that came to be called Attorney General v. Railroads. He filed motions in the state Supreme Court asking for writs of injunction against both railroad corporations to restrain them from charging greater passenger and freight rates than were permitted under the Potter Law.

But before the question of the Legislature's power to regulate rates could be resolved, the Supreme Court had to address two preliminary questions:

- the extent of the original jurisdiction of the Supreme Court and whether such original jurisdiction covered a case like this (that is, did the Court have the authority to take the case, without letting it work its way through the lower courts?);
- whether the framers, when they listed the writ of injunction in Article VII, Section 3 of the Wisconsin Constitution, intended to give the writ of injunction the functions of a prerogative writ (a writ that affects the sovereignty of the state), or whether they intended to leave the injunctive writ simply as a judicial writ or court order.

The Supreme Court held that it did have the authority to hear this case because the question was one affecting the sovereignty of the state. This opinion was one of the first to clarify the previously ill-defined field of the original jurisdiction of the Supreme Court.\*

In addition to clarifying the scope of the Supreme Court's original jurisdiction, the opinion in the Railroad case as written by Chief Justice Ryan was also viewed as a landmark case granting the Legislature power over corporations. Ryan's opinion pointed out that Article XI, Section 1 of the Wisconsin Constitution reserved to the Legislature the right to amend corporate charters at any time. The court held that this provision gave the Legislature broad powers over railroads and that the Potter Law constituted an amendment of every railroad charter in the state.

Chief Justice Ryan, in language that still resonates today, expressed concern that the law in general was not keeping pace with the growth of the railroads and other technological changes in society. He noted that "the difficulty arises probably from applying old names to new things; applying the ancient definitions of private corporations to corporations of a character unknown when the definition arose." He asserted that it was essential for the state to preserve its right to control "great corporations [which were] independent powers within the states ... baffling state order, state economy, state policy."\*\*

As an historical footnote, the Legislature's victory in the Railroad case was short lived. In the 1875 election, Governor Taylor and many of the legislators in the reform coalition were defeated. The next year, the new Legislature stripped the Railroad Commission of its regulatory powers. The new law merely required railroad rates to be "reasonable" and did not create any mechanism by which the state could enforce that provision. Under the new law, the Railroad Commission became little more than an agency for collecting statistics and information.

Sources used in this report are:

- Ranney, Joseph, "Law and Railroads in Wisconsin," Wisconsin Lawyer June, 1993.
- Hunt, R.S., Law and Locomotives (1958).
- Winslow, The Story of a Great Court (1912).

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\* This case extended the reasoning in Attorney General v. Blossom 1 Wis. 317 (1853) where the Supreme Court held that the power to issue writs enumerated in the third clause of Article VII, Section 3 of the Wisconsin Constitution was not merely to enable the court to enforce the jurisdiction conferred upon it by other parts of the Constitution, but constituted a grant of jurisdiction to issue the writs mentioned in all proper cases. The Railroad case also went beyond the decision in State ex rel. Bashford v. Barstow, 4 Wis. 567 (1856) which held that the court had original jurisdiction of the writ of quo warranto.

\*\* 35 Wis. 567-68.