

Opinion of the Court.

enforced by the State imposed illegal burdens upon interstate commerce under the guise of a valuation for purposes of taxation of property within the State. The board had no authority to impart to the value of railroad track and rolling stock, within the State, any part of the value of the company's various interests and property without the State.

There was some contention at the bar as to whether the state board, in fact, proceeded according to the rule of valuation to which I have referred. If I am in error in saying that it appears, affirmatively, from the record, that the board applied that rule, there can be no doubt that the state court construed the statute as authorizing the adoption of such a rule. It is equally clear that evidence to prove that the board acted upon that rule was offered and excluded, and that a proper exception was taken. Such action upon the part of the court was itself sufficient to raise the question whether the statute, as interpreted by the state court, and as administered by the state authorities, was not obnoxious to the objection that it permitted illegal burdens to be imposed, under the guise of local taxation, upon interstate commerce, and the taxation of property not within the jurisdiction of Indiana.

Without referring to other grounds discussed at the bar, I dissent from the opinion and judgment in this case upon the grounds above stated.

I am authorized by MR. JUSTICE BROWN to say that he also dissents.

MR. JUSTICE JACKSON did not hear the argument in this case, or take any part in its decision.

INDIANAPOLIS AND VINCENNES RAILROAD COMPANY *v.* BACKUS,
No. 900. Error to the Supreme Court of the State of Indiana.
Argued March 27, 28, 1894. Decided May 26, 1894.

MR. JUSTICE BREWER delivered the opinion of the court.

Syllabus.

Case No. 900, brought by the Indianapolis and Vincennes Railroad Company to impeach the assessment made by the same board, in the same year, of its property, is so nearly like this in its material features that no separate statement of the special facts is necessary, and in that case, too, the judgment of the Supreme Court of the State of Indiana will be

Affirmed.

MR. JUSTICE HARLAN and MR. JUSTICE BROWN dissented from the opinion and judgment upon the ground stated in their dissenting opinion in *Pittsburgh, Cincinnati, Chicago & St. Louis Railway Company v. Backus*, No. 899, *ante*, 421, 437.

MR. JUSTICE JACKSON did not hear the argument in this case or take any part in its decision.

Mr. John M. Butler for plaintiff in error.

Mr. Albert Greene Smith, Attorney General of the State of Indiana, and *Mr. William A. Ketcham* for defendant in error.

CLEVELAND, CINCINNATI, CHICAGO AND ST. LOUIS RAILWAY COMPANY *v.* BACKUS.

ERROR TO THE SUPREME COURT OF THE STATE OF INDIANA.

No. 908. Argued March 27, 28, 1894. — Decided May 26, 1894.

If an assessing board, seeking to assess for purposes of taxation a part of a railroad within a State, the other part of which is in an adjoining State, ascertains the value of the whole line as a single property and then determines the value of that within the State, upon the mileage basis, that is not a valuation of property outside of the State; and the assessing board, in order to keep within the limits of state jurisdiction, need not treat the part of the road within the State as an independent line, disconnected from the part without, and place upon that property only the value which can be given to it if operated separately from the balance of the road.

Where an assessing board is charged with the duty of valuing a certain number of miles of railroad within a State forming part of a line of road