

CHICAGO & ALTON RAILWAY COMPANY v. UNITED STATES.

FAITHORN v. SAME.

WANN v. SAME.

CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

Nos. 238, 239, 240. Argued October 21, 22, 1908.—Decided January 4, 1909.

This court by a divided court and without opinion affirms the judgment of the lower court holding a common carrier guilty of violating § 1 of the Elkins act of February 19, 1903, c. 708, 32 Stat. 847. The contention of the carrier was that the amount paid to the shipper was for use of tracks owned by the shipper, although there was no reference thereto in the published rate.

*Mr. Blackburn Esterline* and *Mr. Ralph M. Shaw*, with whom *Mr. Frederick S. Winston*, *Mr. Robert Mather*, *Mr. John Barton Payne* and *Mr. Silas H. Strawn* were on the brief, for petitioners.

*The Attorney General* and *The Solicitor General* for respondent.

*Per Curiam*: Judgment affirmed by a divided court, and causes remanded to the District Court of the United States for the Northern District of Illinois.

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"Clause 3 of general order in bankruptcy XXXVI applies to appealable cases and must be complied with.

"This appeal cannot be maintained because it does not come within either paragraph 1 or paragraph 2 of § 25*b* of the bankruptcy act.

"Where the decision below proceeds on principles of general law broad enough to sustain it without reference to provisions of the bankruptcy act, the question involved is not one which would justify a writ of error from the highest court of a State to this court."]