

554.

Counsel for Parties.

and serves all the purposes of exemplary damages." *Leep v. Railway Co.*, 58 Arkansas, 407, 440-441. But whether in a proceeding against the Director General it shall be deemed compensation or a penalty presents a question not of state, but of federal law. Whatever name be applied, the element of punishment clearly predominates and Congress has not given its consent that suits of this character be brought against the United States. The judgment against the Director General, so far as it provided for recovery of the penalty, was erroneous.

The case is properly here on writ of error. The petition for writ of certiorari, consideration of which was postponed to the hearing on the merits, is therefore denied.

Judgment reversed.

NORFOLK-SOUTHERN RAILROAD COMPANY
v. OWENS.

CERTIORARI TO THE SUPREME COURT OF THE STATE OF
NORTH CAROLINA.

No. 223. Argued March 17, 1921.—Decided June 1, 1921.

A railroad corporation, while its road was under federal control, was not liable for a penalty prescribed by a state law, for delay in delivery of an intrastate shipment. *Missouri Pacific R. R. Co. v. Ault*, ante, 554.

178 N. Car. 325, reversed.

THE case is stated in the opinion.

Mr. W. B. Rodman, Jr., for petitioner.

No appearance for respondent.

MR. JUSTICE BRANDEIS delivered the opinion of the court.

This case comes here on writ of certiorari (251 U. S. 550) to the Supreme Court of North Carolina, which affirmed (178 N. Car. 325) a judgment of \$21 against the Norfolk-Southern Railroad Company in favor of Owens, a shipper. The amount was assessed under a statute of the State as a penalty for undue delay in making delivery of an intrastate shipment made March 27, 1918. At that time the railroad was in the possession and control of the Government, and was being operated by the Director General under the Federal Control Act of March 21, 1918, c. 25, 40 Stat. 451. The only question presented for decision is whether the company was liable for the penalty. We are of opinion that it was not, for the reasons stated in *Missouri Pacific R. R. Co. v. Ault*, decided this day, *ante*, 554.

Reversed.

WESTERN UNION TELEGRAPH COMPANY *v.*
ESTEVE BROTHERS & COMPANY.

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

No. 491. Argued April 12, 13, 1921.—Decided June 1, 1921.

A company engaged in transmitting telegraphic messages in this country and by cable between here and France, established a tariff offering a lower rate for unrepeated and a higher rate for repeated messages, and limiting its liability for mistakes in transmitting unrepeated messages to the tolls accruing to it therefrom, and filed the tariff with the Interstate Commerce Commission under the Interstate Commerce Act, as amended June 18, 1910, c. 309, § 7, 36 Stat. 539; an unrepeated message sent by plaintiffs from Spain passed over other lines to Havre, where it was received by the com-