

Shaffer v. Carter, 252 U. S. 37, 44, this motion should be granted; but it does not change the ultimate result, because the final decree of the District Court dismissing the bill really turned on the same erroneous ruling of its prematurity as that upon which the temporary injunction was denied and must be reversed for the same reason.

After the case was reached in this Court, somewhat extended argument was made in the later appeal to show that the bill was defective in stating a case for equitable relief even if it was not premature. The argument is based on objections which seem to us to be rather make-weights or afterthoughts, and are so unsubstantial that we do not discuss them. The merits of the issue between the parties can be developed after the case is remanded to the District Court for further proceedings.

Decree reversed and cause remanded for further proceedings in conformity with this opinion.

HOME TELEPHONE & TELEGRAPH COMPANY
OF SPOKANE *v.* KUYKENDALL, AS DIRECTOR
OF PUBLIC WORKS OF WASHINGTON, ET AL.

APPEALS FROM THE DISTRICT COURT OF THE UNITED STATES
FOR THE WESTERN DISTRICT OF WASHINGTON.

Nos. 539 and 790. Argued April 17, 1924.—Decided May 26, 1924.

1. Upon appeal from decrees refusing an interlocutory injunction and dismissing the bill on demurrer, the court will not pass upon an issue not shown by the bill but only by an opposing affidavit used at the injunction hearing. P. 208.
 2. Decided (in other respects) upon the authority of *Pacific Telephone Co. v. Kuykendall*, ante, 196.
- Reversed.

APPEALS from decrees of the District Court refusing an interlocutory injunction and finally dismissing on de-

murrer a bill to enjoin interference with increases of telephone rates.

Mr. Otto B. Rupp, with whom *Mr. Frank T. Post*, *Mr. H. D. Pillsbury*, *Mr. C. M. Bracelen* and *Mr. W. V. Tanner* were on the briefs, for appellant.

Mr. John H. Dunbar, Attorney General of the State of Washington, *Mr. Thos. J. L. Kennedy* and *Mr. Alex M. Winston*, with whom *Mr. H. C. Brodie*, *Mr. J. M. Geraghty* and *Mr. E. K. Murray* were on the briefs, for appellees.

MR. CHIEF JUSTICE TAFT delivered the opinion of the Court.

These appeals present the same question as that just considered and decided in the appeal of the Pacific Telephone & Telegraph Company against the same appellees. The bill averred that the plaintiff was a corporation of Washington, owning and operating a telephone system in the City of Spokane and territory adjacent thereto, known as the Spokane Exchange; that on September 20, 1922, it filed with the Department of Public Works a schedule of rates by which those of 1919 as approved in that year by the Public Service Commission, the predecessor of the Department of Public Works, were substantially increased; that the Department suspended the new rates and March 31, 1923, finally denied the company its application for increase, thereby limiting it to prior rates alleged to be confiscatory in character. In detail, the bill set out the cost of the Spokane system at over four millions of dollars and its present value at \$5,710,684, and averred that a fair return thereon would be 8 per cent; that the actual return therefrom had been:

	On cost	On fair value
Year 1919.....	2.95%	2.14%
Year 1920.....	1.79%	1.30%
Year 1921.....	2.35%	1.71%
Year 1922.....	3.07%	2.28%

and that the order of March 31, 1923, by which an increase of rates had been denied, operated to limit it to the prior rates which it alleged were and would continue to be confiscatory. The prayer was for a temporary and permanent injunction.

These appeals were heard at the same time with the two just disposed of in the *Pacific Telephone & Telegraph Co. Case*, ante, 196, and the same orders were made therein by the District Court. There is no difference in the cases except that on the motion for a temporary injunction an affidavit of the Assistant Corporation Counsel of Spokane was filed which set forth, among other reasons for denying an injunction, an ordinance of the City of Spokane of April, 1909, in which rates for telephone service by the Home Telephone Company in that city were fixed in a schedule much lower than the one said to be necessary for a fair return, and alleged that the ordinance was still in full force and effect, was a valid contract between the City and the Company, and that thus the bill of the plaintiff must fail. Upon argument and brief in this Court, counsel for the Company insist that, under the decision of the Supreme Court of Washington in *Spokane Falls Gas Light Co. v. Kuykendall*, 119 Wash. 107, action of the City in reducing the rates of the ordinance in 1913 and increasing them in 1919 must be held to terminate the contract of the ordinance and bring the rates within the regulation of the Public Service Commission or its successor the Department of Public Works.

It is obvious that upon this appeal we could not safely pass upon an issue raised upon an affidavit and not shown in the bill. The temporary injunction was denied and the bill was dismissed by the District Court on the same ground as that explained at length in the *Pacific Telephone & Telegraph Company Case*. For the same reasons as therein stated we must dismiss the appeal in No. 539 as

merged in No. 790 and reverse the District Court in the latter appeal and remand the case for further proceedings when, upon answer and the merits, the effect of the ordinance referred to and other questions raised in the affidavit can be fully considered.

Reversed and cause remanded for further proceedings in conformity with this opinion.

ILLINOIS CENTRAL RAILROAD COMPANY v.
UNITED STATES.

APPEAL FROM THE COURT OF CLAIMS.

No. 248. Argued April 28, 1924.—Decided May 26, 1924.

For the purpose of securing the reduced rates for transportation of its property over land-grant railroads, the Government purchased goods for prices f. o. b. at place of shipment, paid the freight, and had shipment made by the sellers with government bills of lading. *Held*, that title passed at place of shipment, although the contracts of sale reserved to the Government the right of inspection and rejection at the place of destination and imposed certain duties there upon the sellers, and that goods so transported, and accepted by the Government, were entitled to the reduced rates of transportation. P. 213.

57 Ct. Clms. 277, affirmed.

APPEAL from a judgment of the Court of Claims rejecting claims for additional compensation for transportation of freight.

Mr. Benjamin Carter for appellant.

The question is whether freights intended for government uses, but which the Government was under no obligation to accept until after they had reached destination, were, while in transit, "property of the United States" and lawful subjects of transportation rates at which, in virtue of land grants, "property of the United