

act, it must be presumed that it is not necessary. With the federal law in force, state action is illegal and unwarranted.

The decree of the Supreme Court of Washington is  
*Reversed.*

MR. JUSTICE McREYNOLDS and MR. JUSTICE SUTHERLAND, dissenting.

We cannot think Congress intended that the Act of March 4, 1917, without more should deprive the States of power to protect themselves against threatened disaster like the one disclosed by this record.

If the Secretary of Agriculture had taken some affirmative action the problem would be a very different one. Congress could have exerted all the power which this statute delegated to him by positive and direct enactment. If it had said nothing whatever, certainly the State could have resorted to the quarantine; and this same right, we think, should be recognized when its agent has done nothing.

It is a serious thing to paralyze the efforts of a State to protect her people against impending calamity and leave them to the slow charity of a far-off and perhaps supine federal bureau. No such purpose should be attributed to Congress unless indicated beyond reasonable doubt.

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SOUTHERN PACIFIC COMPANY *v.* UNITED STATES.

APPEAL FROM THE COURT OF CLAIMS.

No. 805. Motion to dismiss appeal submitted February 1, 1926.—Decided March 1, 1926.

1. This Court has no jurisdiction to consider an appeal from a judgment of the Court of Claims acquiring finality subsequently to

Opinion of the Court.

270 U. S.

the going into effect of the Act of February 13, 1925, c. 229, 43 Stat. 936, which limited the method of review by this Court of final judgments in the Court of Claims to writs of certiorari. P. 106.

2. A judgment of the Court of Claims, entered before May 13, 1925, the effective date of the above Act, but suspended by a motion for new trial which was denied after that date, was not appealable. *Id.*

Appeal from 60 Ct. Cls. 662, dismissed; certiorari granted.

MOTION to dismiss an appeal from the Court of Claims in an action brought by the Railroad Company to recover compensation for transportation of impedimenta carried with troop trains of the United States. A writ of certiorari had been applied for in due time and is granted.

*Solicitor General Mitchell*, for the United States, in support of the motion.

*Messrs. William R. Harr and Charles H. Bates* for the appellant, in opposition thereto.

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

The Southern Pacific Company filed a petition in the Court of Claims seeking to recover compensation for the transportation of impedimenta carried with troop trains of the United States. It asked for a judgment of \$42,734.97. After a hearing on the evidence, the Court of Claims gave judgment for the Company in the sum of \$498.38. This judgment was entered May 11, 1925. On July 10, 1925, the plaintiff filed a motion for a new trial, which, on October 26, 1925, the court denied. On October 28, 1925, the Company filed a petition for an appeal, which was allowed by the Court of Claims on November 2, 1925.

A motion is now made by the United States to dismiss the appeal on the ground that this Court was deprived of jurisdiction to entertain appeals from the Court of

Claims by the Act entitled "An Act to amend the Judicial Code and to further define the jurisdiction of the Circuit Courts of Appeals and of the Supreme Court and for other purposes," approved February 13, 1925, c. 229, 43 Stat. 936. Section 14 of that Act provides: "This Act shall take effect three months after its approval, but it shall not affect cases then pending in the Supreme Court, nor shall it affect the right to a review or the mode or time for exercising the same as respects any judgment or decree entered prior to the date when it takes effect." The Act took effect May 13, 1925. The judgment from which an appeal is sought was entered May 11, 1925, but the effect of that judgment as a final judgment was suspended by the motion for a new trial duly filed, within the rules of the Court, on July 10, 1925. This motion was not finally denied until October 26, 1925, and not until then did the judgment become subject to review in this Court. The general principle is well established by many decisions of this Court, some of which are cited in *Morse v. United States*, *post*, p. 151. That the operation of the Act of February 13, 1925, does not change the application of the principle appears clearly from the case of *Andrews v. Virginian Railway*, 248 U. S. 272. In that case, a suit for damages for wrongful death was heard in a state Circuit Court of Virginia, and a judgment rendered in favor of the defendant, June 16, 1916. A petition for writ of error to review the judgment was presented to the Court of Appeals and finally denied on November 13, 1916. On November 27, 1916, a petition was presented to the Presiding Judge of the state Circuit Court for the allowance of a writ of error from this Court to review the judgment of that court of June 16, 1916, which was allowed, and the case was brought here. Between the time of the rendition of the judgment in the state Circuit Court and the denial of the petition for writ of error by the Court of Appeals of Virginia, November 13, 1916, the Act of Congress of

September 6, 1916, ch. 448, 39 Stat. 726, had been approved and became operative October 6, 1916. In form the judgment to which the writ of error was addressed was rendered on June 16, 1916, before the operation of the Act of Congress, and it was argued that the judgment was outside its provisions. The question considered by the court was thus whether the judgment was a final judgment at the date named, or became so only by the state Court of Appeals declining in the exercise of its discretion to take jurisdiction on November 13, 1916, after the passage of the new Act of Congress. It was held that, though the action of the Court of Appeals was the mere exercise of gracious or discretionary power, neither imperative nor obligatory, the judgment of the Circuit Court could not be regarded as final for the purpose of review in this Court until after the exercise by the Court of Appeals of this discretion. It was therefore held that the judgment of the state Circuit Court, though rendered before the approval of the Act of September 6, 1916, which took effect October 6, 1916, must be regarded as not final with reference to the review by this Court until the refusal of the Court of Appeals of Virginia to consider the case on November 13, 1916. And so in this case. While the judgment to which the appeal was allowed was actually entered two days before the Act of Congress of February 13, 1925, went into effect, the subsequent motion for a new trial of July 10, 1925, seasonably filed, suspended the judgment of the Court of Claims as a final judgment for purposes of review until the denial of the motion for new trial in October, 1925. This Court, therefore, has no jurisdiction to consider an appeal from a judgment acquiring finality only in October after the going into effect of the Act of February 13, 1925, which limited the method of review by this Court of final judgments in the Court of Claims to writs of certiorari after May 13, 1925. The motion to dismiss the appeal must be granted. In the

meantime, and in due time, a petition for certiorari was filed, which the Court has considered, and does now grant, and the cause is set for hearing on the summary docket for the 4th day of October next.

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CINCINNATI, INDIANAPOLIS & WESTERN RAIL-  
ROAD COMPANY *v.* INDIANAPOLIS UNION  
RAILWAY COMPANY, THE CLEVELAND, CIN-  
CINNATI, CHICAGO & ST. LOUIS RAILWAY  
COMPANY, AND THE PITTSBURGH, CINCIN-  
NATI, CHICAGO & ST. LOUIS RAILWAY COM-  
PANY.

APPEALS FROM THE DISTRICT COURT OF THE UNITED STATES  
FOR THE SOUTHERN DISTRICT OF OHIO.

Nos. 328, 329. Argued November 25, 1925.—Decided March 1, 1926.

1. Upon an appeal to this Court from a decree of the District Court dismissing a petition for want of ancillary jurisdiction, the equity of the petition, and questions whether it should be denied because of acquiescence or laches, are not open. P. 115.
2. As ancillary to a decree of railway foreclosure, by which the purchaser of the property was allowed a fixed time in which to elect not to assume outstanding leases and contracts, and which reserved for future adjudication all questions not disposed of, and permitted all parties, including the purchaser, to apply to the court for further relief at the foot of the decree, the District Court had jurisdiction, irrespective of citizenship, over a petition of the purchaser seeking to be relieved of agreements made by its predecessors with a terminal company, upon the ground that the purchaser's failure to relieve itself of them by a valid election was due to a mistake. P. 115.
3. A delay of two years in filing such petition is not a reason for dismissing it for want of jurisdiction. P. 114.

Reversed.

JURISDICTIONAL appeals from decrees of the District Court dismissing ancillary petitions. See 279 Fed. 356.