

the simple expedient of purchasing exempt ones with borrowed funds and paying \$10,000 interest thereon, would escape all taxation upon receipts from both sources. It was proper to make provision to prevent such a possibility. The classification complained of is not arbitrary, makes no improper discrimination, does not result in defeating any guaranteed exemption, and was within the power of Congress. The fact that respondent engaged in the business of buying and selling is not important. See *Willcuts v. Bunn*, ante, p. 216.

Reversed.

FULLERTON LUMBER COMPANY *v.* CHICAGO,
MILWAUKEE, ST. PAUL & PACIFIC RAILROAD
COMPANY.

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

No. 47. Argued January 9, 1931.—Decided February 24, 1931.

Where a carrier accepts a check for the amount of freight charges, and a loss is suffered as a result of its unjustifiable delay in presenting it, the bank in the meantime having failed, the question whether the shipper is relieved of liability depends upon the general law applicable to payment by check and not upon any provision of the Interstate Commerce Act. P. 521.

36 F. (2d) 180, reversed

CERTIORARI, 281 U. S. 709, to review a judgment of the Circuit Court of Appeals which affirmed a judgment of the District Court in favor of the railroad company in an action to recover freight charges.

Mr. Stanley S. Gillam for petitioner.

Mr. A. C. Erdall, with whom *Messrs. F. W. Root, O. W. Dynes*, and *C. O. Newcomb* were on the brief, for respondent.

MR. JUSTICE BRANDEIS delivered the opinion of the Court.

The Chicago, Milwaukee, Saint Paul & Pacific Railroad Company brought this action in the federal court for Minnesota to recover from the Fullerton Lumber Company freight charges on a carload of coal shipped to it. The case was tried without a jury. The defence was payment. It appeared that, upon delivery of the car, the carrier had, as customary, accepted the defendant's check on a local bank for the amount of the charges; that it had delayed presenting the check for payment; and that meanwhile the bank had failed. The defendant contended that it was relieved from liability because of the carrier's unjustifiable delay in presenting the check. The trial court ruled that the Interstate Commerce Act requires that a carrier's charges be paid strictly in currency; and that since the check had not been paid, the defendant was liable even if the carrier's failure to receive the money was due wholly to its own negligence. Judgment entered for the carrier was affirmed by the Circuit Court of Appeals. 36 F. (2d) 180. This Court granted a writ of certiorari. 281 U. S. 709.

It has long been settled that payment of a carrier's charges must be made in money; and that the payment must be cash as distinguished from credit.¹ The purpose

¹ Conference Ruling No. 207 of Interstate Commerce Commission (September 15, 1906); *Louisville & Nashville R. Co. v. Mottley*, 219 U. S. 467, 476; *Chicago, Indianapolis & Louisville Ry. Co. v. United States*, 219 U. S. 486; *Chicago & North Western Ry. Co. v. Lindell*, 281 U. S. 14, 16. Compare Ex parte No. 73, 57 I. C. C. 591, 596; 63 I. C. C. 375; 69 I. C. C. 351. Rules promulgated June 4, 1920, permitted the carrier to extend credit for ninety-six hours after delivery, and provided that "the mailing [within this prescribed period] by the shipper of valid checks, drafts, or money orders which are satisfactory to the carrier," should be deemed proper payment. Ex parte No. 73, Rule 5, 57 I. C. C. 596a, 596b.

of the requirement is solely to prevent rebates or unjust discrimination and to ensure observance of the tariff rates. Compare *Chicago & North Western Ry. Co. v. Lindell*, 281 U. S. 14, 16. The Interstate Commerce Act does not in terms prescribe that the charges shall be paid in money; that is, in coin or currency. There is no reason for denying to the parties the convenience and safety incident to making payment, in accordance with the prevailing usage of business, by means of a check payable on demand drawn on a going bank in which the drawer has an ample deposit.

Whether in the case at bar the defendant is liable depends, not upon any provision of the Interstate Commerce Act, but upon the rules of law generally applicable to payment by check. These, and other questions which have been argued, need not be considered by us.

Reversed.

UNITED STATES ET AL. *v.* ATLANTA, BIRMINGHAM & COAST RAILROAD COMPANY.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF GEORGIA.

No. 88. Argued January 29, 30, 1931.—Decided February 24, 1931.

1. A passage in a report of the Interstate Commerce Commission specifying the maximum amount the Commission finds may be included by a railroad company in its balance sheet statement as representing investment in newly acquired road and equipment, and notifying the company that it will be expected to adjust its accounts in accordance with the finding within 60 days from service of the report, is not an "order" of the Commission, and jurisdiction of a suit to annul it is not conferred on the District Court of three judges by the Urgent Deficiencies Act of October 22, 1913. P. 527.
2. Such a report can not be considered as an order, for purposes of attack, by reading it in connection with an earlier certificate of