

Syllabus.

BUTTE, ANACONDA & PACIFIC RY. CO. v. UNITED STATES.

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

No. 8. Argued October 16, 17, 1933.—Decided November 20, 1933.

1. Money paid out by the Government as the result of deliberate construction of a statute on a question of known importance and difficulty, was not paid "by mistake," even if the construction was erroneous. P. 134.
2. In adjudicating the rights of carriers to the bounty granted by § 204 of the Transportation Act, 1920, the Interstate Commerce Commission sits as a special tribunal, whose decisions are not appealable and bind the Government as well as the claimants. Pp. 135, 142.
3. In the performance of its functions as such tribunal, the Commission necessarily has jurisdiction to decide questions of the construction of the statute upon which depend the merits of the claims before it. P. 136.
4. Where award and payment have been made, the Government can not recover the money upon the ground that the Commission misconstrued a provision of the statute respecting the merits of the claim. Pp. 136, 141.
5. Among other conditions to relief expressed in § 204, *supra*, is that the carrier shall have "sustained a deficit in its railway operating income for that portion . . . of the period of Federal control during which it operated its own railroad." *Held*, that the question whether a "deficit" was sustained when operation was without actual or "red ink" loss but with a less favorable balance than during the "test period" preceding Federal control, was a question going to the merits of a carrier's claim and not to the Commission's jurisdiction over it. P. 136.

61 F. (2d) 587, reversed.

time, *Brussels*, 1904, 316) as is the lien on the ship, but is more like the possessory lien of the land carrier and, like it, does not survive the unconditional delivery of the cargo. See *Cutler v. Rae*, 7 How. 729; *4885 Bags of Linseed*, 1 Black 108, 113; *The Bird of Paradise*, 5 Wall. 545; *The Eddy*, 5 Wall. 481, 494, and the full discussion in *Wellman v. Morse*, 76 Fed. 573.

CERTIORARI, 289 U.S. 717, to review the affirmance of a judgment for the United States, entered on the pleadings, in an action to recover, with interest, money paid to the railway company on an award of the Interstate Commerce Commission under § 204 of the Transportation Act, 1920.

Mr. Daniel M. Kelly, with whom *Mr. John A. Groeneveld* was on the brief, for petitioner.

The construction of § 204 by the Interstate Commerce Commission by virtue of which petitioner was reimbursed was correct, as carrying out the intention of the Congress and as a liberal interpretation of the Transportation Act, declared to be remedial by this Court.

The Interstate Commerce Commission was vested by §§ 204 and 212 with power and jurisdiction to interpret the law and determine the facts. The exercise of this jurisdiction was not an exertion of a power delegated to the Interstate Commerce Commission as such.

The decision of the Commission awarding reimbursement to petitioner was and is final and conclusive. It can not be re-opened, reviewed, reversed or set aside, there being no such concurrent or subsequent authorization by Act of Congress. *Work v. Rives*, 267 U.S. 175. Distinguishing *Wisconsin Central Ry. Co. v. United States*, 164 U.S. 190. Cf. *Great Northern Ry. Co. v. United States*, 277 U.S. 172; *United States v. Great Northern Ry. Co.*, 287 U.S. 144; *Continental Tie & Lumber Co. v. United States*, 286 U.S. 290; *United States v. Arredondo*, 6 Pet. 691.

The Commission was constituted a court to deal with these claims. The test of its jurisdiction is whether it had power to enter upon the inquiry, which concededly it had, and not whether its conclusions in the course of the inquiry were right or wrong; for if the law confers the power to render a judgment in a particular case, then

the court has jurisdiction. *General Investment Co. v. New York Central R. Co.*, 271 U.S. 228.

The complaint simply charges, not fraud, not mistake of fact, not mistake of law, not lack of power, but solely "erroneous and unwarranted construction." An erroneous and unwarranted construction of the law or the facts is no basis for setting aside the decision and award of reimbursement. *United States v. Great Northern Ry. Co.*, 287 U.S. 144; *United States v. Wildcat*, 244 U.S. 111; *United States v. Moser*, 266 U.S. 236, 242; *United States v. California & Oregon Land Co.*, 148 U.S. 31; *U.S. ex rel. Railway Co. v. Interstate Commerce Comm'n*, 11 F. (2d) 554, 556, cert. den., 273 U.S. 706; *Wyandotte Terminal R. Co. v. United States*, 64 Ct. Cls. 326, cert. den., 276 U.S. 630; *U.S. ex rel. Railway Co. v. Interstate Commerce Comm'n*, 8 F. (2d) 901, 902, cert. den., 270 U.S. 650; *U.S. ex rel. Empire & S. E. Ry. Co. v. Interstate Commerce Comm'n*, 45 F. (2d) 293, 294, cert. den., 283 U.S. 834; *Northern Pacific Ry. Co. v. Interstate Commerce Comm'n*, 23 F. (2d) 221, 223, cert. den., 275 U.S. 572.

The error in the decision below is further clearly demonstrated by an analysis of the decisions of this Court in *Crowell v. Benson*, 285 U.S. 22; *Interstate Commerce Comm'n v. Illinois Central R. Co.*, 215 U.S. 452; *Southern Pacific Co. v. Interstate Commerce Comm'n*, 219 U.S. 433; *Interstate Commerce Comm'n v. Union Pacific R. Co.*, 222 U.S. 541; and *Tagg Bros. & Moorhead v. United States*, 280 U.S. 420, 442.

Section 204 of the Transportation Act is not an amendment or part of the Interstate Commerce Act, nor is the procedure under § 204 to be governed by the Interstate Commerce Act. *Great Northern Ry. Co. v. United States*, 277 U.S. 172, 180.

The Commission had no power to rescind its award—*a fortiori*, it had no such power after its personnel had

been changed. In our system of government, where changes of officers are so frequent, it is of great importance that there shall be no right in a new officer to reverse the decisions of his predecessors. Unless this principle is followed, administrative and judicial action would become involved in chaos; hence the reason for the rule of finality. *Grifenhagen v. Ordway*, 218 N.Y. 481; *Walling v. Brown*, 76 Pac. 318; *Francis Palms*, 7 L.D. 147.

If the position of the Government is sound in this case, each succeeding Commission may make and revoke certificates and treat petitioner's claim as constantly before it. The principles already discussed and the finality attached to the certificate itself under § 212 (a) (cf. *United States v. Great Northern Ry. Co.*, 287 U.S. 144), preclude such subsequent action. Nor does Title II of the Transportation Act, by amendment or otherwise, contain any provision authorizing the Commission to grant rehearings and correct miscalculations.

The reimbursement paid to petitioner was in no sense a subsidy or bonus, and the Government has no other or better right than any individual to reclaim it. The money *ex aequo et bono* belongs to petitioner.

The payment of the money to petitioner was the result of a compromise and settlement.

Assistant Attorney General Stephens, with whom *Solicitor General Biggs* and *Mr. Elmer B. Collins* were on the brief, for the United States.

The courts below and the Commission in its first ruling and last decision were right in holding that since petitioner made a profit, it was not entitled to a payment under § 204.

The decisions below accord to the term "deficit" its normal and accepted meaning and are in harmony with this Court's decision in *Continental Tie & L. Co. v. United States*, 286 U.S. 290.

More discrimination results from petitioner's construction than from the Government's.

The authoritative legislative history of § 204 does not support the view that Congress intended to compensate not only carriers which had deficits but also those which had merely a diminished income during federal control.

The courts were not bound by the Commission's interpretation; they had jurisdiction to construe the statute and determine whether the payment was within the Commission's authority. *Wisconsin Central R. Co. v. United States*, 164 U.S. 190, 210; *Grand Trunk Western Ry. Co. v. United States*, 252 U.S. 112; *United States v. Burchard*, 125 U.S. 176; *Burnet v. Porter*, 283 U.S. 230. These decisions foreclose all questions with respect to the right of the Government to recover a payment resulting from an erroneous conclusion by its agent as to the legal effect of the particular statute under, or in reference to which, he is proceeding.

Manifestly, the power to construe the statute and determine whether it authorized the payment to petitioner was either in the courts or in the Commission. If we should be wrong in the view that the courts had such power, then we contend that the Commission was empowered to reconsider and correct its first decision; and that if, as petitioner argues, the Commission had exclusive power to construe the statute, the courts must be bound by its final decision. The Commission has consistently exercised the power to reopen and correct its decisions with respect to claims under §§ 204 and 209. If the Commission's jurisdiction was exhausted by its first and unauthorized action, and if that action also was conclusive upon the courts, then the Government is left in the anomalous position of possessing the right to recover an unauthorized payment, but with an absolute denial of its right to recover for lack of a forum.

The question whether a particular carrier was within the purview of the section is purely judicial, for that question is fundamental or "jurisdictional." *Crowell v. Benson*, 285 U.S. 22, 54 *et seq.* In this case the Commission was not exercising its power as an agency of Congress to regulate commerce. *Great Northern Ry. Co. v. United States*, 277 U.S. 172, 180.

The decision below, therefore, is not in conflict with *Work v. Rives*, 267 U.S. 175, or other decisions construing the Dent Act prior to amendment, because that Act then expressly declared that the decision of the Secretary of the Interior was "conclusive and final." Nor is there conflict between the decision below and the decision in *Great Northern Ry. Co. v. United States*, *supra*, or *United States v. Great Northern Ry. Co.*, 287 U.S. 144. Distinguishing: *United States v. Ferreira*, 13 How. 39; *United States v. Arredondo*, 6 Pet. 691; *United States v. Wildcat*, 244 U. S. 111.

Recovery may not be denied on the grounds (1) that petitioner is entitled to retain the money *ex aequo et bono*, or (2) that the payment was a compromise.

MR. JUSTICE BRANDEIS delivered the opinion of the Court.

This action was brought by the United States, on August 23, 1929, in the federal court for Montana to recover the sum of \$487,116.31 paid to Butte, Anaconda & Pacific Railway Company on March 26, 1925. The payment was made pursuant to a certificate of the Interstate Commerce Commission for that amount, issued March 20, 1925, and addressed to the Secretary of the Treasury. Deficit Settlement with Butte, Anaconda & Pacific Ry., 94 I.C.C. 617. The Secretary, after receiving from the Comptroller-General his certificate approving the payment, issued a warrant for that sum and transmitted it

to the Treasurer of the United States. The Treasurer paid the Railway.

The proceeding before the Commission originated in a claim for \$600,527.35 filed with it by the Railway under § 204 of Transportation Act, 1920, 41 Stat. 460, entitled "Reimbursement of Deficits during Federal Control."¹ Upon due hearing, the Commission concluded that the Railway was entitled to \$487,116.31; and it offered to issue a certificate for that amount on condition that the Railway sign a release accepting the amount "in settlement of all claims against the Government under said section 204." This condition was agreed to. About two years after the money received had been disbursed by the Railway, partly in dividends to stockholders, partly in the expenses of operation, the Commission issued an order purporting to reopen the proceeding; and set a hearing "for the purpose of affording the Railway opportunity to show cause why the certificate issued on March 20, 1925, should not be revoked and its claim dismissed." The Railway, appearing specially, protested against the action of the Commission in attempting to reopen the proceeding; and challenged its power to do so. On March 7, 1927, the Commission entered an order purporting to cancel the certificate of March 20, 1925, and to dismiss the Railway's claim. Deficit Settlement with Butte, Anaconda & Pacific Ry., 117 I.C.C. 780. On June 8, 1928, the Under-Secretary of the Treasury demanded of the Railway repayment of the \$487,116.31 received by it. Repayment was refused. Fourteen months later, this action was begun to recover the money.

¹ The term Federal control means, in this connection, the period from December 28, 1917 to March 1, 1920, during which the possession, use, control and operation of railroads and systems of transportation were taken over or assumed by the President. Proclamation of December 26, 1917; 40 Stat. 1733.

The case was first heard upon defendant's demurrer to the complaint. That demurrer was overruled. The defendant set up by answer the terms on which the payment had been made and the disposition of the money received. Then the case was heard upon the plaintiff's demurrer to the answer; that demurrer was sustained; and judgment for the Government was entered in the sum of \$487,116.31 with interest at 8 per cent. from the date of the demand and costs. The Circuit Court of Appeals affirmed the judgment. 61 F. (2d) 587. This Court granted certiorari, 289 U.S. 717.

The action is brought to recover money paid by mistake. The charge is that the money was paid, because, in 1925, the officials misconstrued the word "deficit," so as improperly to extend the scope of § 204. That is a charge, not of mistake but of error of judgment—a judgment necessarily exercised in the performance of the duties of office. Neither the Commission in issuing the certificate, nor the Secretary of the Treasury, the Comptroller-General or the Treasurer when co-operating to make the payment, labored under any mistake of fact; or overlooked any applicable rule of law; or was guilty of any irregularity in proceeding. Moreover, if the word "deficit" was misconstrued, the error was not due to inadvertence. Ever since the enactment of Transportation Act, 1920, it had been recognized that the construction to be given the word "deficit" presented a difficult and important question. In 1920, before hearing those interested, the Commission attributed to the word the meaning now contended for by the Government. Protests against its then interpretation led the Commission to set, in 1921, a public hearing for the consideration solely of that question.² Counsel for many railroads participated and submitted briefs. On February 7, 1922, the

² See Annual Report of Interstate Commerce Commission for 1921, pp. 21-22; for 1922, p. 34.

Commission stated its conclusion in an elaborate report. In the Matter of the Construction of the Word "Deficit" as Used in Paragraph (a) of Section 204 of the Transportation Act, 1920, 66 I.C.C. 765. The rule there announced was consistently acted upon for over two years and a half. Under it, the Commission issued certificates to 71 carriers, including that here attacked.³ Then there was a change in the membership of the Commission. On October 17, 1925, it overruled, in Deficit Status of Bingham & Garfield Ry. Co., 99 I.C.C. 724, its earlier decision; and in March, 1927, instituted against Butte, Anaconda & Pacific Railway Company the proceeding to revoke the certificate on which payment had already been made.⁴ Obviously, "Mistake . . . there was none, but merely a revision of judgment in respect of matters of opinion." *United States v. Great Northern Ry. Co.*, 287 U.S. 144, 151.

The United States claims that the money can be recovered because it was a disbursement made without the authority of Congress. The argument is that the Commission had no authority to issue a certificate, and the financial officers of the Government had no authority to pay money, except to a carrier which had suffered a "deficit" in operations during the period of Federal control; that, properly construing that word, the Railway had not suffered a "deficit"; and that, having received the money which the officials were not authorized to pay, the Railway must restore it, since in dealings with the Government one is bound, at his peril, to know the limits of the authority of its agents. We have no occasion to determine which of the Commission's interpretations of the word "deficit" is the correct one. For we are of

³ Annual Report of Interstate Commerce Commission for 1928, pp. 13-14.

⁴ Annual Report of Interstate Commerce Commission for 1925, pp. 24-25.

opinion that the Government cannot recover the money paid in 1925, even if the Commission erred in attributing to the word "deficit" the meaning then acted on.

The decision was on the merits. The case is no different than it would have been, if the Commission had erred in any other ruling on a matter of law; or in a finding strictly of fact; or in some finding as to maintenance, depreciation or value—determinations called findings of fact but which rest largely in opinion. In making those decisions the Commission would necessarily act in a *quasi-judicial* capacity. If it misconstrued the term "deficit," it committed an error; but it did not transcend its jurisdiction. Since Congress has not provided a method of review, neither the Commission nor a court has power to correct the alleged error after payment made pursuant to a certificate. The Government cannot recover, because when Congress, by § 204, imposed the duty to certify to the Treasury the amounts severally due to carriers, it required the Commission—and hence authorized it—to determine whether the claimant was entitled to relief.

In making its determinations the Commission was required to decide many things besides the meaning of the term "deficit" or the amount thereof, if any. To appreciate the broad scope of the Commission's duty, we must consider the occasion and the character of the legislation and the precise question of construction here involved. On December 28, 1917, the President took possession and assumed control of all the railroads in the United States. By the Federal Control Act, March 21, 1918, 40 Stat. 451, Congress provided for compensation equal to the "average annual railway operating income for the three years ended" June 30, 1917, called the "test period."⁵ Later,

⁵ By the Federal Control Act, March 21, 1918, 40 Stat. 451, Congress authorized the President to agree with the several carriers that compensation for the period of Federal control shall be paid at a rate equal to their annual railway operating income for the three

the Director-General surrendered the possession and control of many short-lines. Their owners operated them thereafter privately during some part of the period of Federal control. These owners claimed that such private operation had resulted in heavy losses attributable to the continued Federal control of the main transportation systems of the country. They urged upon Congress that the surrendered short-lines ought to be put into as good a position financially as they would have been in, if the Director General had retained possession of them throughout the period of Federal control. Recognizing that they had suffered, Congress included in Transportation Act, 1920, the provision for compensation contained in § 204. Paragraph (a) describes the carriers entitled to compensation:

“The term ‘carrier’ means a carrier by railroad which, during the period of Federal control, engaged as a common carrier in general transportation, and competed for traffic, or connected, with a railroad under Federal control, and which sustained a deficit in its railway operating income for that portion (as a whole) of the period of Federal control during which it operated its own railroad or system of transportation; but does not include any street or interurban electric railway which has as its principal source of operating revenue urban, suburban, or interurban passenger traffic or sale of power, heat, and light, or both; . . .”

Paragraphs (c), (d) and (e) direct the Commission to ascertain the data from which the amount of deficits or losses are to be calculated; paragraph (f) fixes the amounts payable; and paragraph (g) provides:

“The Commission shall promptly certify to the Secretary of the Treasury the several amounts payable to car-

years ended June 30, 1917—called the “test period.” Section 204 provided for determining similarly the amount of the deficit [or losses] payable by reference to such “test period.”

riers under paragraph (f). The Secretary of the Treasury is hereby authorized and directed thereupon to draw warrants in favor of each such carrier upon the Treasury of the United States for the amount shown in such certificate as payable thereto. An amount sufficient to pay such warrants is hereby appropriated out of any money in the Treasury not otherwise appropriated."

Claims under § 204 were filed by 461 carriers.⁶ Each claimant insisted that it had suffered a "deficit." The controverted question of construction discussed in this case is whether, by the use of the word "deficit," Congress intended that compensation should be paid to those carriers only which had suffered an actual [red-ink] loss in operation, or intended to put all the short-lines into as good a position as they would have been in if the Director General had retained possession throughout Federal control. If "deficit" be held to mean actual loss in operation, many of these carriers would receive nothing, as they had earned net income, although at a rate less than during the "test period." But it might prove upon investigation of the accounts that some carriers who had vainly claimed compensation on the basis of lessened income as compared with the "test period" were entitled to compensation because they had actually suffered a [red-ink] loss in operation. Compare Deficit Status of Fairport, Painesville & Eastern R. Co., 124 I.C.C. 323, 145 I.C.C. 684. This is true, because, while on the face of the accounts there appeared to have been net income, it might prove that there was, during the period, an operating loss, by reason of the fact that the carrier had failed to make the proper maintenance and depreciation charges. Where the right to compensation depends upon the propriety of the maintenance and depreciation

⁶ Annual Report of Interstate Commerce Commission for 1929, p. 11.

charges, it may be impossible to determine, until the completion of the investigation into the accounts, whether the carrier is entitled to relief. Compare *Great Northern Ry. Co. v. United States*, 277 U.S. 172; *Continental Tie & Lumber Co. v. United States*, 286 U.S. 290; *Great Northern Ry. Co. v. United States*, 287 U.S. 144.

On the other hand, many a carrier may be denied compensation although the fact is unquestioned that a [red-ink] operating loss had been suffered. Such denial has been based sometimes on failure to prove other essential facts; sometimes because of a ruling on matter of law. The Commission has been required, in passing upon claims under § 204, to decide, in addition to the meaning of the word "deficit," many controlling questions of statutory construction which in a sense are preliminary. Among them are: What did Congress mean by the phrase "in general transportation"?⁷ What did Congress mean by the phrase "compete for traffic . . . with a railroad under Federal control"?⁸ What did Congress mean by the phrase "connected with a railroad under Federal con-

⁷ In Deficit Claim of Manitou & Pike's Peak Ry., 79 I.C.C. 1; 94 I.C.C. 767; Deficit Status of Glenfield & Western R. Co., 150 I.C.C. 39; and in Deficit Status of Massillon Belt Ry. Co., 154 I.C.C. 1, it was held the term had a broader significance than "common carrier"; that it meant a carrier which might be utilized by the Government in the prosecution of the War; that, by this term, Congress intended to differentiate between railroads (common carriers) with reference to their utility and necessity as a part of the transportation system of the country; and that freight transportation, rather than passenger transportation, was considered a test of this utility and necessity. The claims were dismissed because these carriers did not meet the test erected.

⁸ In Deficit Claim of Manitou & Pike's Peak Ry., 94 I.C.C. 767, 773, the claim was dismissed, among other reasons, because it was not shown that the competition was of such a character that the short-line suffered, through diversion, loss of traffic that otherwise might have moved over its line.

trol" ?⁹ What did Congress mean by the phrase "common carrier" ?¹⁰ What did Congress mean by "a system of transportation" ?¹¹ Did Congress intend to grant compensation to a carrier part of whose line is in a foreign country? ¹² Did Congress intend that compensation should be granted to carriers which had failed either during the period of Federal control or during the "test period" to render reports to the Commission and to keep their accounts in conformity with its rules? ¹³ Did Con-

⁹ In Deficit Claim of Manitou & Pike's Peak Ry., 94 I.C.C. 767, 773, it was held, also, that although the carrier joined in through passenger rates with railroads under Federal control, it was not within this phrase, because there was not such a connection as would permit the regular and general transfer of freight. Compare In Matter of Final Settlement with the Nevada-California-Oregon Ry., under § 204 of the Transportation Act, 1920, 71 I.C.C. 548; Deficit Settlement with Nevada County Narrow Gauge R.R., 90 I.C.C. 75, where it was held that there may be a connection between a narrow gauge and a standard gauge railroad within the meaning of paragraph (a).

¹⁰ Compensation was denied as not having been so operated, In the Matter of the Application of the Allegheny & South Side Ry. Co., etc., 71 I.C.C. 90; Deficit Status of Northern Liberties Ry., 72 I.C.C. 265; Deficit Status of Scottdale Connecting R.R., 124 I.C.C. 101; Deficit Status of Calumet, Hammond & South Eastern R. Co., 154 I.C.C. 229; Deficit Status of Gideon & North Island R. Co., 158 I.C.C. 329; Deficit Status of Mississippi & Western R.R., 175 I.C.C. 486, 489; Deficit Status of Elk & Little Kanawha R. Co., 180 I.C.C. 10.

¹¹ Deficit Settlement with Cripple Creek & Colorado Springs R. Co., 82 I.C.C. 129; 90 I.C.C. 271.

¹² In Deficit Status of United States & Canada R.R.-Grand Trunk, Lessee, 76 I.C.C. 455, it was held that although this carrier made separate returns to the Commission which showed a deficit, compensation was not recoverable, the part of the system in the United States being but a small portion of that of the controlling Canadian corporation. Compare Deficit Status of Duluth, Winnipeg & Pacific Ry. Co., 76 I.C.C. 689—a part of the Canadian Northern System.

¹³ The Commission held that Congress could not have intended to grant compensation in such cases, although § 204 did not in terms exclude carriers in intrastate commerce. Deficit Status of Empire &

gress intend that a certificate should issue where the operating loss was due to expenditures arising from occurrences unusual in the conduct of the carrier's business?¹⁴ Did Congress intend that a certificate should issue where the operating loss was due to causes other than the War or the Federal control of the main lines of transportation?¹⁵ Did Congress intend that a railroad technically under Federal control, but which actually was operated by its owners, should receive compensation under § 204?¹⁶

While § 204 granted a bounty, it conferred a right, and constituted the Commission a *quasi*-judicial tribunal to adjudicate claims thereunder. Thus it was called upon to pronounce a formal judgment on rights asserted. A decision adverse to the carrier on any one of the suggested questions of construction might compel dismissal of the claim;¹⁷ thus relieving the Commission of the necessity of enquiring whether a deficit had been suffered. But it does not follow that such a decision would determine an issue of jurisdiction. Under this legislation, whether a

Southeastern Ry. Co., 117 I.C.C. 609. Many claims were dismissed on this ground. See, e.g., Deficit Status of Rural Valley R.R., 131 I.C.C. 509; Deficit Status of Dexter & Northern R.R., 138 I.C.C. 25; Deficit Status of Kentucky, Rockcastle & Cumberland R.R., 138 I.C.C. 27; Deficit Status of Eureka Hill Ry., 138 I.C.C. 29; Deficit Status of Pine Bluff & Northern Ry., 145 I.C.C. 251; Deficit Status of Massillon Belt Ry. Co., 154 I.C.C. 1.

¹⁴ Deficit Status of West Virginia Northern R. Co., 82 I.C.C. 431.

¹⁵ See Deficit Status of Calumet, Hammond & Southeastern Ry., 154 I.C.C. 229; New York & Pennsylvania Ry. Co. Deficit Claim, 162 I.C.C. 796; Arcata & Mad River R. Co., Deficit Status, 162 I.C.C. 641; Crittenden R. Co., Deficit Claim, 166 I.C.C. 548; Deficit Status of Elk & Little Kanawha R. Co., 180 I.C.C. 10.

¹⁶ See Deficit Status of Abilene & Southern Ry., 72 I.C.C. 333; 79 I.C.C. 547; Deficit Status of Duluth, Winnipeg & Pacific Ry., 76 I.C.C. 689; Deficit Status of United Ry., 86 I.C.C. 661.

¹⁷ Of the 461 claims filed, 180 in all were dismissed by action of the Commission. Annual Report of the Interstate Commerce Commission for 1931, p. 10.

claimant seeking "relief has the requisite standing is a question going to the merits and its determination is an exercise of jurisdiction." Compare *General Investment Co. v. New York Central R. Co.*, 271 U.S. 228, 230. Though it were charged that the Commission erred in so dismissing the claim, the carrier could not by mandamus compel it to proceed with the enquiry. See *Abilene & Southern Ry. Co. v. Interstate Commerce Comm'n*, 56 App. D.C. 40; 8 F. (2d) 901; *Cripple Creek & Colorado Springs R. Co. v. Interstate Commerce Comm'n*, 56 App. D.C. 168; 11 F. (2d) 554; *Empire & S.E. Ry. Co. v. Interstate Commerce Comm'n*, 59 App. D.C. 391; 45 F. (2d) 292; *Interstate Commerce Comm'n v. U.S. ex rel. Arcata & Mad River R. Co.*, 62 App. D.C. 92; 65 F. (2d) 180. Compare *Interstate Commerce Comm'n v. Humboldt Steamship Co.*, 224 U.S. 474; *Louisville Cement Co. v. Interstate Commerce Comm'n*, 246 U.S. 638.

Under § 204, the Commission exercises functions broader than those customarily conferred upon auditing or disbursing officers. It sits as a special tribunal to hear and determine the claims presented. Compare *Work v. Rives*, 267 U.S. 175, 182; *Great Northern Ry. Co. v. United States*, 277 U.S. 172, 182. It renders a judgment upon a full hearing. In deciding any one of the enumerated questions of construction, as in other rulings of law or findings of fact, the Commission may err. The victim of the error may be either the carrier or the Government. Although the decision on the question of construction be favorable to the carrier, it may still fail to secure compensation, because there was, in fact, no deficit, whatever meaning be given to that word. On the other hand, an erroneous decision in favor of the carrier, on any of those questions, may result in the issue of a certificate and the payment thereunder of money which should not, and but for the error would not, be made. Since authority to pass upon the meaning of the word "deficit," and

upon each of the other questions of construction, is essential to the performance of the duty imposed upon the Commission, and Congress did not provide a method of review, we hold that it intended to leave the Government, as well as the carrier, remediless whether the error be one of fact or of law. Compare *United States v. Great Northern Ry. Co.*, 287 U.S. 144. The rule declared in *Wisconsin Central R. Co. v. United States*, 164 U.S. 190; *Grand Trunk Western Ry. Co. v. United States*, 252 U.S. 112, is not applicable here. The decision in *Continental Tie & Lumber Co. v. United States*, 286 U.S. 290, is not inconsistent with this view.

Reversed.

DAKIN, RECEIVER, v. BAYLY, LIQUIDATOR.

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

No. 44. Argued October 20, 1933.—Decided November 20, 1933.

1. Where by state statute, with reference to which a bank and its depositors presumably contracted, the bank is held only to the exercise of due diligence in forwarding checks for collection, and its liability is conditioned on receipt of final payment from the collecting bank, thus making the relation between bank and depositor (until final payment is received) one of agency merely, the depositors have a right of action against the collecting bank for any default in collection or remittance. P. 146.
2. Upon the record in this case, *held* that a bank to which checks were forwarded by another for collection stood in the relation of agent to the depositors of the individual items in the forwarding bank, and was liable to them for failure to remit cash or its equivalent in satisfaction of the amounts collected. P. 147.
3. A bank against which an action is brought to recover a debt owed by it individually to the plaintiff bank *held* not entitled to set off a demand which it asserts in an agency capacity. P. 148.
4. Where, at the time of the insolvency of a collecting bank, which had sent drafts to a forwarding bank in settlement for items collected by it, the collecting bank remained liable as sub-agent