

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE SOUTHERN DISTRICT OF NEW YORK.
IN EQUITY.

-----: :
: :
FRANK R. BRUSHABER, :
Complainant, :
against : DOCKET NO.
: E 11 p. 121.
UNION PACIFIC RAILROAD COMPANY, :
Defendant. :
: :
-----: :

This cause came on to be heard at the April Term of this Court, 1914, and thereupon, after hearing counsel, and upon consideration thereof, it was

ORDERED, ADJUDGED AND DECREED that the motion of the defendant to dismiss the bill of complaint herein, upon the ground that Section 2 of the Act of the First Session of the Sixty-Third Congress, which became a law on October 3, 1913, generally known as the "Tariff Act" and set forth in the bill of complaint herein, is constitutional and valid and that the complainant has not in and by said bill made or stated such a cause as doth or ought to entitle him to any such relief as is therein sought and prayed from or against this defendant, be and the same hereby is granted, and that the said bill of complaint be and the same hereby is dismissed, with costs to be taxed by the Clerk.

Dated, this 24th day of April, 1914.

H. G. Wood
United States Circuit Judge.

Notice of settlement waived:

Davis Auerbach & Cornell
Solicitors for complainant.

Docket # 11 p. 121

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK.
IN EQUITY.

Frank R. Brushaber,
Complainant,
against

Union Pacific Railroad Company,
Defendant.

DECREE DISMISSING BILL OF COMPLAINT.

HENRY W. CLARK,
Solicitor for defendant,
165 Broadway,
New York City.

FILED
APR 25 1914
S. D. OF N. Y.

UNITED STATES DISTRICT COURT,
Southern District of New York.

In Equity.

FRANK R. BRUSHABER,
Complainant, :

-against-

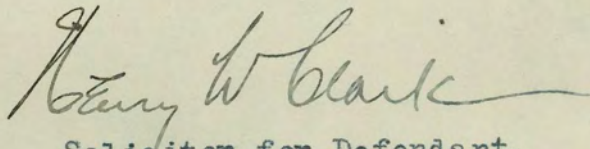
UNION PACIFIC RAILROAD COMPANY,
Defendant. :

Docket No. E-11-121.

To the Clerk of the United States District Court for the
Southern District of New York:

Please enter my appearance as solicitor for the de-
fendant in the above entitled cause.

April 4, 1914.



Solicitor for Defendant.

Office and Post Office Address
165 Broadway,
New York City, N.Y.

UNITED STATES DISTRICT COURT for
the Southern District of New York
In Equity

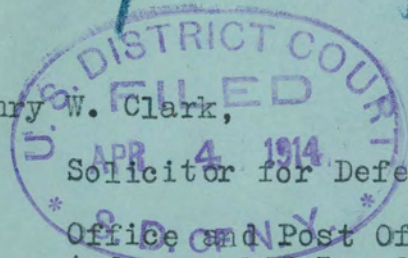
6011
FRANK R. BRUSHABER,
Complainant,
~~against~~

UNION PACIFIC RAILROAD COMPANY,
Defendant.

E 11 - 121.

NOTICE OF APPEARANCE
121

Henry W. Clark,
Solicitor for Defendant,
Office and Post Office
Address, 165 Broadway,
New York City, N.Y.



Wp 10

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK.
IN EQUITY.

-----: :
: :
Frank R. Brushaber, : :
Complainant, : :
against : DOCKET NO. E 11,
: p. 121.
Union Pacific Railroad Company, : :
Defendant. : :
: :
-----:

Now comes the defendant and moves that the bill of complaint herein be dismissed upon the ground that Section 2 of the Act of the First Session of the Sixty-Third Congress, which became a law on October 3, 1913, generally known as the "Tariff Act", and set forth in the bill of complaint herein, is constitutional and valid, and that the complainant has not in and by said bill made or stated such a cause as doth or ought to entitle him to any such relief as is therein sought and prayed from or against this defendant; and said motion will be brought on for hearing before this Court at a term thereof to be held in the United States Post Office Building in the Borough of Manhattan, City of New York, on the 24th day of April, 1914, at 10:30 o'clock in the forenoon, or as soon thereafter as counsel can be heard.

Dated, April 20, 1914.

Henry W. Clark
HENRY W. CLARK,
Solicitor for defendant,
165 Broadway,
New York City.

To
DAVIES, AUERBACH & CORNELL,
Solicitors for complainant,
32 Nassau Street,
New York City.

Due and timely service of the foregoing notice of motion this 21st day of April, 1914, is hereby admitted.

Davis Auerbach Cornell
Solicitors for Complainant.

Docket E 11, p. 121

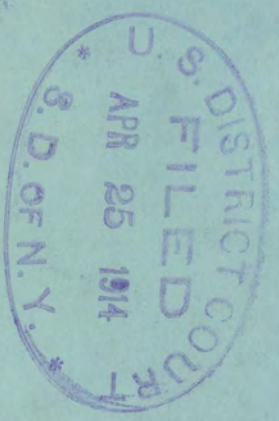
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK.
IN EQUITY.

Frank R. Brushaber,
Complainant,
against

Union Pacific Railroad Company,
Defendant.

MOTION TO DISMISS.

HENRY W. CLARK,
Solicitor for Defendant,
165 Broadway,
New York City.



IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE SOUTHERN DISTRICT OF NEW YORK.

-----X
FRANK R. BRUSHABER, :
 :
 Complainant, :
 :
 -against- : IN EQUITY.
 :
 UNION PACIFIC RAILROAD COMPANY, :
 :
 Defendant. :
-----X

TO THE JUDGES OF THE DISTRICT COURT OF THE
UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK:

The above-named complainant considering himself aggrieved by the decree made and entered by the above-mentioned court in the above entitled cause, on the day of April, 1914, wherein and whereby it was ordered, adjudged and decreed that the motion of the defendant to dismiss the bill of complaint be sustained and that this cause be dismissed, DOES HEREBY APPEAL to the United States Supreme Court from said decree; and complainant prays that this his appeal may be allowed and that a transcript of the record and the proceedings and papers upon which said decree was made, duly authenticated, may be sent to the Supreme Court of the United States.

Dated, New York, April 24th, 1914.

Warriss A. ...
Solicitors for Complainant.

appeal allowed.

H. G. Wood
U.S. J.

6. 11-121

DIST. COURT OF UNITED STATES: SOUTHERN DIST. OF NEW YORK.

FRANK R. BRUSHABER,

Complainant,

-against-

UNION PACIFIC RAILROAD COMPANY

Defendant.

(ORIGINAL.)

NOTICE OF APPEAL.

DAVIES, AUERBACH & CORNELL,

Attorneys for Complainant,

MUTUAL LIFE BUILDING,

34 NASSAU STREET,

NEW YORK CITY.

S. D. OF N. Y. *
APR 25 1914
S. D. OF N. Y. *

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE SOUTHERN DISTRICT OF NEW YORK.

X, of the Amendments to the Constitution of the United States

-----X
THAT the court erred in adjudging that
FRANK R. BRUSHABER, :
Complainant, :
-against- : ASSIGNMENT OF
UNION PACIFIC RAILROAD COMPANY, : ERRORS.
Defendant. :
-----X

is sought to be imposed thereby upon the defendant Union
Pacific Railroad Company, are constitutional and valid.

Now comes the complainant and files the following
FOURTH. That the court erred in adjudging that
assignment of errors upon which it will rely upon its appeal
the provisions of Section 2 of the Act hereinabove referred
from the decree made by this Honorable Court on the
to, set forth in the bill of complaint herein, relating to
day of April, 1914, in the above entitled cause:

FIRST. That the court erred in granting the
upon the net income of corporations, joint stock companies
motion made by the defendant to dismiss the bill of com-
or associations and insurance companies, so far as any tax is
plaint herein and in holding that the said bill was without
sought to be imposed thereby upon the property of the defend-
equity.

SECOND. That the court erred in adjudging that
except of income prior to the passage of said Act, are con-
Section 2 of the Act of the First Session of the Sixty-third
constitutional and valid.

Congress, which became a law on October 3, 1913, generally
FIFTH. That the court erred in adjudging that the
known as the "Tariff Act", set forth in the bill of complaint
provisions of Section 2 of the Act hereinabove mentioned,
herein, is constitutional and valid and that the said section
set forth in the bill of complaint herein, relating to making
was not violative of the third clause of the Second Section
returns of net income and payment of taxes imposed upon the
of Article I. and the fourth clause of the Ninth Section
net income of corporations, joint stock companies or associa-
of Article I. and the first clause of the Eighth Section of
tions and insurance companies, so far as any tax is sought to
Article I. and the implied limitations and restrictions
be imposed thereby upon the income of the defendant Union
upon the taxing power of the United States contained in the

Constitution of the United States and of Articles IV., V. and X. of the Amendments to the Constitution of the United States.

THIRD. That the court erred in adjudging that the provisions of Section 2 of the Act hereinabove referred to, set forth in the bill of complaint herein, relating to making returns of net income and payment of taxes imposed upon the net income of corporations, joint stock companies and associations, or insurance companies, so far as any tax is sought to be imposed thereby upon the defendant Union Pacific Railroad Company, are constitutional and valid.

FOURTH. That the court erred in adjudging that the provisions of Section 2 of the Act hereinabove referred to, set forth in the bill of complaint herein, relating to making returns of net income and payment of taxes imposed upon the net income of corporations, joint stock companies or associations and insurance companies, so far as any tax is sought to be imposed thereby upon the property of the defendant Union Pacific Railroad Company, acquired through the receipt of income prior to the passage of said Act, are constitutional and valid.

FIFTH. That the court erred in adjudging that the provisions of Section 2 of the Act hereinabove mentioned, set forth in the bill of complaint herein, relating to making returns of net income and payment of taxes imposed upon the net income of corporations, joint stock companies or associations and insurance companies, so far as any tax is sought to be imposed thereby upon the income of the defendant Union

Pacific Railroad Company, received as dividends upon the stocks of corporations held by it which are also subject to taxation upon their net income under said Act, are constitutional and valid.

SIXTH. That the court erred in adjudging that the provisions of Section 2 of the Act hereinabove referred to, set forth in the bill of complaint herein, relating to deducting and withholding taxes upon income of individuals arising or accruing from coupons or registered interest, and making returns with respect to such amounts so withheld, are constitutional and valid.

SEVENTH. That the court erred in holding that the provisions of Section 2 of the Act hereinabove mentioned, set forth in the bill of complaint herein, relating to deducting and withholding a certain proportion of the indebtedness of corporations arising or accruing from coupons or registered interest, so far as the duty is sought to be imposed thereby upon the defendant Union Pacific Railroad Company of making such deductions from the amounts payable for coupons or registered interest, and of paying the same to the Collector of Internal Revenue of the government of the United States, or any other person, irrespective of the taxable status of the income of the persons receiving such registered or coupon interest, and without knowledge or means of knowledge of the taxable status of the income of such persons, are constitutional and valid.

EIGHTH. That the court erred in not decreeing that the complainant was entitled to the relief prayed for or some part thereof.

NINTH. That the court erred in dismissing said bill with costs.

WHEREFORE, the appellant, complainant in the court below, prays that the decree of said court may be reversed; and in order that the foregoing assignment of errors may be part of the record the complainant presents the same to the court and prays that such disposition may be made thereof as in accordance with law and the statutes of the United States in such case made and provided.

All of which is respectfully submitted.

Davis A. A. A. A. A.
Solicitors for Complainant.

E 11-124

DIST. COURT OF THE UNITED STATES: SOUTHERN DISTRICT OF NEW YORK.

FRANK R. BRUSHALTER,
Complainant,

-against-

UNION PACIFIC RAILROAD COMPANY,

Defendant.

(ORIGINAL.)

ASSIGNMENT OF ERRORS.

DAVIES, AUERBACH & CORNELL,

Attorneys for Complainant,

MUTUAL LIFE BUILDING,

34 NASSAU STREET,

NEW YORK CITY.

FILED
APR 25 1914
S. D. OF N. Y.

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IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE SOUTHERN DISTRICT OF NEW YORK.

-----X
: FRANK R. BRUSHABER, :
: Complainant, :
: -against- : IN EQUITY.
: UNION PACIFIC RAILROAD COMPANY, :
: Defendant. :
-----X

On motion of Messrs. Davies, Auerbach & Cornell,
solicitors for the complainant, it is

ORDERED that the appeal to the Supreme Court of
the United States from the final decree filed and entered
herein on the 24th day of April, 1914, be and the same
hereby is allowed, and that a certified transcript of the
record and all proceedings herein be forthwith transmitted
to the United States Supreme Court, at Washington, D.C.; and
it is further

ORDERED that the bond on appeal be fixed at the
sum of \$250.00 - the same to act as a supersedeas^{to} bond and
also as a bond for any costs and damages on appeal.

Dated, April 24th, 1914.

H. E. ...

~~...~~
Judge of the District Court of the
United States for the Southern
District of New York.

DIST. COURT OF THE UNITED STATES: SOUTHERN DISTRICT OF NEW YORK.

FRANK R. BRUSHAER,

Complainant,

-against-

UNION PACIFIC RAILROAD COMPANY,

Defendant.

(ORIGINAL.)

ORDER ALLOWING APPEAL.

DAVIES, AUERBACH & CORNELL,

Attorneys for Complainant,

MUTUAL LIFE BUILDING,

34 NASSAUSTREET,

NEW YORK CITY.

FILED
APR 25 1914
S. D. OF N. Y.

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UNITED STATES OF AMERICA, SS:

THE PRESIDENT OF THE UNITED STATES

TO

UNION PACIFIC RAILROAD COMPANY, GREETING:

YOU ARE HEREBY cited and admonished to be and appear at the Supreme Court of the United States at the City of Washington within thirty days from the date of this writ, pursuant to an appeal allowed by a Judge of the District Court of the United States for the Southern District of New York in the Second Circuit, filed in the Clerk's office of the District Court of the United States for the Southern District of New York, in a cause wherein Frank R. Brushaber is appellant and you are appellee, to show cause, if any, why the decree entered against the said appellant as in the said appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

WITNESS, the Hon. *H. G. Swann*, Judge of the District Court of the United States for the Southern District of New York in the Second Circuit at the Borough of Manhattan in the City of New York, in the District and Circuit above named, this *24th* day of April in the year of Our Lord One thousand nine hundred and fourteen.

H. G. Swann
U.S.J.

H.G.W. to wit on the 4th day of May

71-121

DISTRICT COURT OF THE UNITED STATES: SOUTHERN DISTRICT OF NEW YORK.

FRANK R. REUSHAER,
Appellant,

- against -

UNION PACIFIC RAILROAD COMPANY
Appellee.

(ORIGINAL.)

CITATION

FILED
DISTRICT COURT
APR 25 1914
S. D. N. Y.

DAVIES, AUERBACH & CORNELL,

Attorneys for Appellant,

MUTUAL LIFE BUILDING,
34 NASSAU STREET,
NEW YORK CITY.

Service advised this
25th day of April 1914

Henry W. Stant
Declarator for Appellee

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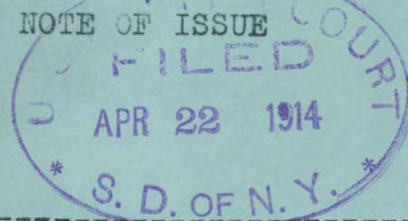
U. S. DISTRICT COURT - Southern
District of New York In Equity.

FRANK R. BRUSHABER,
Complainant,

~~against~~

UNION PACIFIC RAILROAD COMPANY,
Defendant.

Docket No. E-11, page 121



Henry W. Clark,
Solicitor for Defendant,
165 Broadway, New York.