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Bankruptcy Law—Bankruptcy Act—Section 77—Jurisdiction of Bankruptcy Court Over State's Right of Eminent Domain.—Commonwealth v. Bartlet

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at any rate, the Court should leave to Congress the determination whether to make special exceptions to the antitrust laws for the special circumstances of the music industry.⁴⁹ The case raises also the question of the extent to which unions and employers may justify their anticompetitive schemes on the ground that they directly benefit the employee union members. *Carroll* has confused the once clear distinctions between an employer and his employees with such concepts as "labor group work" and by division of the employer's functions. The great expansion of "legitimate union interest" by *Carroll* seems unjustified in light of the extensive economic power already possessed by unions such as the AFM. A single union in an industry such as music possesses a great deal of bargaining power because of the diversified nature of the management with which it must deal. The musicians' union "exercises rigid and monolithic control over much of the music industry,"⁵⁰ and does not need control of the management prerogative of price setting to protect its interests.

Secondly, *Carroll* seems to defeat the purpose of the NLRA to promote collective bargaining by denying the full-time leaders their appropriate status as employers and by allowing the union unilaterally to impose job conditions without collective bargaining. The whole thrust of both *Oliver* and *Jewel Tea* was that the union has a right to protect its members' interests by restrictions determined through collective bargaining. But neither case suggests that unions may restrain competition by refusal to bargain collectively, by coercion of employers into the union and consequent imposition of anticompetitive conditions through unilaterally adopted bylaws and regulations. As the dissent stated, "The Court treads dangerous ground in seeking on its own motion to deny to a particular industry the normal competitive conditions envisioned by the antitrust laws, conditions usually viewed as essential for maintaining services and prices at satisfactory levels."⁵¹

DOUGLAS K. MAGARY

Bankruptcy Law—Bankruptcy Act—Section 77—Jurisdiction of Bankruptcy Court Over State's Right of Eminent Domain.—*Commonwealth v. Bartlett*.¹—The Boston & Providence Railroad had been undergoing reorganization² proceedings in the District Court for the District of Massachusetts since 1938. The proceedings were being held pursuant to Section 77 of the Bankruptcy Act,³ which provides for the reorganization of railroads

⁴⁹ 391 U.S. at 121-22 (dissenting opinion).

⁵⁰ 372 F.2d at 159.

⁵¹ 391 U.S. at 122 (dissenting opinion).

¹ 384 F.2d 819 (1st Cir. 1967), cert. denied, 390 U.S. 1003 (1968).

² A reorganization involves a business plan for winding up the affairs of a bankrupt corporation, in this case a railroad, by selling its property.

It is usually accomplished by the judicial sale of the corporate property and franchises, and the formation by the purchasers of a new corporation. The property and franchises are thereupon vested in the new corporation and its stock and bonds are divided among such of the parties interested in the old company as are parties to the reorganization plan.

Black's Law Dictionary 1462 (4th ed. 1968).

³ 11 U.S.C. § 205 (1964).

engaged in interstate commerce, if and when a railroad's petition of insolvency is approved. Under section 77, it is the function of the Interstate Commerce Commission to consider all proposed reorganization plans and to rule on them accordingly.⁴ After a reorganization plan has been approved by the ICC, it is submitted to the bankruptcy court for the purpose of insuring that the rights of creditors and stockholders of the debtor have been protected and that certain other procedural requirements have been met.⁵ Section 77 further provides:

If the petition is so approved, the court in which the order is entered shall, during the pendency of the proceedings under this section and for the purposes thereof, have *exclusive jurisdiction* of the debtor and its property wherever located⁶ (Emphasis added.)

While this reorganization was taking place, the Commonwealth of Massachusetts sought to take by its power of eminent domain⁷ land owned in fee⁸ by the Boston & Providence. The land in question consisted of a seven-mile strip which the Commonwealth wanted for use as a highway. At the time, this land had a railroad line running over it operated by the trustees of the New York, New Haven and Hartford Railroad, a substantial creditor of the Boston & Providence. The United States District Court for the District of Massachusetts had approved a reorganization plan, subject to the approval of creditors and stockholders, whereby the land desired by the Commonwealth of Massachusetts would be transferred to the New Haven Railroad.⁹ To prevent this transfer from taking place the Commonwealth sought a declaratory judgment that the consent of the ICC and the bankruptcy court was not a jurisdictional prerequisite for taking the land by eminent domain.

While the case law dealing with this issue is somewhat sparse, the majority of courts have interpreted the phrase "exclusive jurisdiction" in section 77 to require that before a state could take the land of a railroad undergoing reorganization proceedings, it first had to obtain the consent of both the ICC and the bankruptcy court having jurisdiction over the reorganization. In light of these earlier decisions, the district court found that the authorization and approval of the ICC and the bankruptcy court was a prerequisite to the taking by the Commonwealth.¹⁰ On appeal, the Commonwealth conceded the fact that approval by the ICC was a prerequisite for any taking. What the Commonwealth sought, however, was a determination that, once ICC approval had been obtained, the consent of the bankruptcy

⁴ 11 U.S.C. § 205(d) (1964).

⁵ 11 U.S.C. § 205(e) (1964).

⁶ 11 U.S.C. § 205(a) (1964).

⁷ Mass. Gen. Laws Ann. ch. 160, § 7 (1958) provides that "[t]he commonwealth may, at any time after one year's written notice to a railroad corporation, take its railroad, franchise and other property by eminent domain under chapter seventy-nine." Chapter 79 sets out the statutory guidelines for the state's eminent domain power.

⁸ Land owned in fee is the "largest estate therein which [a] person may have." Black's Law Dictionary 741 (4th ed. 1951).

⁹ The New Haven Railroad was also undergoing reorganization under Section 77 of the Bankruptcy Act. The court having jurisdiction over the New Haven's reorganization was the United States District Court for the District of Connecticut.

¹⁰ 266 F. Supp. 390, 393 (D. Mass. 1967).

court having "exclusive jurisdiction" under section 77 was not a jurisdictional prerequisite for the Commonwealth in taking the railroad property by eminent domain.¹¹ On appeal, the United States Court of Appeals for the First Circuit, amending the lower court's ruling, HELD: The consent of the bankruptcy court having "exclusive jurisdiction" over the reorganization proceedings of an insolvent railroad is not a prerequisite for the taking by a state of that railroad's property by eminent domain.¹²

In making its determination, the court of appeals decided that the phrase "exclusive jurisdiction" was not meant to endow the bankruptcy court with "exclusive jurisdiction" over each and every matter affecting the debtor's property. The court found instead that the phrase "exclusive jurisdiction" must be read in conjunction with the further wording of section 77, requiring the "exclusive jurisdiction" of the court to be "during the pendency of the proceedings and for the purposes thereof."¹³ (Emphasis added.) In so doing, the court held that a state's taking of railroad land by eminent domain is not one of the "purposes" that Congress had intended to be within the "exclusive jurisdiction" of the bankruptcy court.¹⁴ This determination directly conflicts with earlier decisions in three other circuits.

In *Chicago, R.I. & P. Ry. v. City of Owatonna*,¹⁵ a railway was undergoing reorganization in accordance with Section 77 of the Bankruptcy Act. Part of the land owned by the railroad was situated in the city of Owatonna. The city tried to condemn this land under the terms of its charter. The Court of Appeals for the Eighth Circuit stated the main issue in the case to be whether the permission of the bankruptcy court was essential to a valid condemnation. The court found that such consent was a jurisdictional prerequisite.¹⁶ It stated that once property was in the custody of the bankruptcy court it could not be affected by proceedings in another court.¹⁷

Similar reasoning was used by the Fourth Circuit Court of Appeals in *Buckhannon & N.R.R. v. Davis*.¹⁸ In this case, a receiver had been appointed for the bankrupt Parkersburg Branch Railroad Company under the Bankruptcy Act of 1887.¹⁹ The Buckhannon and Northern Railroad Company sought to initiate condemnation proceedings against the receiver as specified by West Virginia law. The Buckhannon needed an easement to cross, at grade, the right of way and roadbed of the Parkersburg at the point desired to be condemned. The Circuit Court of the United States for the Northern District of West Virginia granted the Buckhannon permission to commence the suit

¹¹ It is important to realize at this point the significance of this concession by the Commonwealth. It conceded the fact that its power of eminent domain was not without limitation. The sole issue facing the appellate court, therefore, was whether the Commonwealth, after obtaining the approval of the Interstate Commerce Commission, also had to obtain the consent of the bankruptcy court having jurisdiction over the reorganization.

¹² 384 F.2d at 822.

¹³ *Id.* at 820.

¹⁴ *Id.* at 822.

¹⁵ 120 F.2d 226 (8th Cir. 1941).

¹⁶ *Id.* at 227.

¹⁷ *Id.*

¹⁸ 135 F. 707 (4th Cir. 1905).

¹⁹ Act of March 3, 1887, ch. 373, § 3, 24 Stat. 554, and Act of Aug. 13, 1888, ch. 866, 25 Stat. 436, as cited in *Buckhannon & N.R.R. v. Davis*, 135 F. 707, 710 (4th Cir. 1905).

against the receiver but did not stipulate the court in which the proceedings should be initiated. The Buckhannon then notified the receiver that it would apply to the state court to appoint commissioners to determine a fair compensation to be paid to the Parkersburg. The receiver applied to the Circuit Court of the United States for the Northern District of West Virginia to restrain the Buckhannon from initiating the suit in the state court. The federal court enjoined the Buckhannon from suing in the state court, holding that condemnation proceedings must be instituted in the federal court having jurisdiction over the bankrupt.²⁰

A third case which conflicts with the holding in *Bartlett* is *United States v. Dorigan*.²¹ This case involved a conflict between two federal laws, the Bankruptcy Act and the Safety Appliance Act.²² Under the Safety Appliance Act, the United States Attorney was required to bring the suit for violation of the Act in the district where the violation occurred.²³ Acting in accordance with this requirement, the United States brought suit in the United States District Court for the Eastern District of New York against the New Haven Railroad. At the time, the railroad was already in bankruptcy court under Section 77 of the Bankruptcy Act giving "exclusive jurisdiction" of all proceedings involving a railroad undergoing reorganization to the bankruptcy court. Faced with the dilemma of two conflicting federal statutes, the United States District Court for the Eastern District of New York ruled that the Government's failure to obtain the permission of the bankruptcy court was a jurisdictional defect, and, unless the consent of the bankruptcy court was obtained within sixty days, the complaint would be dismissed.²⁴ Thus, the court seemingly established the need for the bankruptcy court's consent before any action could be brought against a railroad undergoing reorganization.

While the *Bartlett* decision is clearly in conflict with these previous cases, it is submitted that *Bartlett* was correctly decided on its facts. The appellate court in *Bartlett* cited *Palmer v. Massachusetts*²⁵ as authority for its holding. *Palmer* also dealt with the New Haven Railroad which was undergoing reorganization under section 77. The trustees, acting under the requirements of Massachusetts law,²⁶ applied to the Massachusetts Department of Public Utilities to abandon eighty-eight New Haven passenger stations.²⁷ While this application was pending, creditors of the New Haven petitioned the bankruptcy court for an order directing the trustees to discontinue similar services. The bankruptcy court held that section 77 gave it jurisdiction to rule on the petition of the creditors and that the Massachusetts Department of Public Utilities had no jurisdiction over the matter.²⁸ On appeal, the

²⁰ 135 F. at 711.

²¹ 236 F. Supp. 106 (E.D.N.Y. 1964).

²² 45 U.S.C. § 1 (1964).

²³ 45 U.S.C. § 18 (1964).

²⁴ 236 F. Supp. at 109.

²⁵ 308 U.S. 79 (1939).

²⁶ Mass. Gen. Laws Ann. ch. 160, § 128 (1958).

²⁷ The trustees applied to the Massachusetts Department of Public Utilities rather than to the Interstate Commerce Commission because the curtailment of these services was considered purely an intrastate matter. See *Palmer v. Massachusetts*, 308 U.S. 79, 84, 88 (1939).

²⁸ 308 U.S. at 83.

United States Supreme Court held that just as the ICC is the federal administrative body authorized to resolve questions of interstate abandonments, so the state regulatory agency is the body empowered to determine intrastate abandonments.²⁹ The importance of the *Palmer* case is that it establishes the principle that the "exclusive jurisdiction" of the bankruptcy court is not unlimited and that there exist certain areas where the bankruptcy court's jurisdiction does not apply. If a state regulatory agency can, under certain circumstances, pre-empt the jurisdiction of the bankruptcy court, there must also be circumstances where the state's interest can similarly take precedence over the jurisdiction of the bankruptcy court.

In reaching its decision, the *Bartlett* court relied principally on the rationale of *United States v. New York, N.H. & H. R.R. (New Haven)*.³⁰ In the *New Haven* case, the court³¹ was faced with a conflict between the "exclusive jurisdiction" phrase of the Bankruptcy Act and a federal statute which said that condemnation of real estate by the United States was to be brought in the district where the land was located. In making its determination, the court construed section 77's phrase "for the purposes thereof" as *limiting* the "exclusive jurisdiction" of the bankruptcy court. The court held that the bankruptcy court had "exclusive jurisdiction" only over those matters which go to the "purposes" of the proceedings.³² In speaking of these purposes, the court said: "But it seems clear that the exclusivity of its (bankruptcy court's) control is 'for the purposes (of the proceedings)' and its reach should not be construed beyond the needs which the court has power to fulfill."³³ With this rationale, the *New Haven* court held that the condemnation of real estate by the United States was not one of the "purposes" over which the bankruptcy court has "exclusive jurisdiction."³⁴

The construction that the *New Haven* court gave to section 77 by interpreting the phrase "for the purposes thereof" as limiting the "exclusive jurisdiction" of the bankruptcy court to those "needs which the court has power to fulfill" was adopted by the *Bartlett* court in the present case. It used the *New Haven* reasoning to hold that the state's taking of railroad property was not one of the "purposes" over which the bankruptcy court was meant to have "exclusive jurisdiction."³⁵

For the determination whether or not a state's condemnation of railroad property is one of the "purposes" for which the bankruptcy court has "exclusive jurisdiction," it is necessary to understand the purposes and the consequences of a railroad reorganization. By establishing a special provision to deal with the reorganization of interstate railroads, Congress evidenced an awareness of the special situation presented by a bankrupt railroad. Unlike the ordinary bankruptcy situation, a bankruptcy involving a railroad has the additional effect of interrupting the flow of interstate commerce. Thus, in

²⁹ Id. at 84, 89.

³⁰ 348 F.2d 151 (1st Cir. 1965).

³¹ It is interesting to note that this case, like *Bartlett*, was decided by the First Circuit Court of Appeals.

³² 348 F.2d at 152.

³³ Id.

³⁴ Id.

³⁵ 384 F.2d at 820-22.

examining the reorganization of a railroad under section 77, it is important to view the section in the context of the objectives set out by Congress in the Interstate Commerce Act.³⁶

Under the Interstate Commerce Act, Congress sought to insure the smooth and orderly flow of commerce among the various states.³⁷ To achieve this objective it vested the Interstate Commerce Commission with the power of enforcing the provisions of the Act. One such provision of the Act provides that no railroad subject to its provisions "shall abandon all or any portion of a line of railroad, or the operation thereof, unless and until there shall first have been obtained from the Commission a certificate that the present or future public convenience and necessity permit of such abandonment."³⁸ The reason for such a requirement is obvious. Without this requirement voluntary abandonment or an abandonment brought about by a state exercising its eminent domain power could result in the eventual disruption of the entire interstate network of railroad line.

This same danger to interstate commerce is even more prevalent in a railroad insolvency proceeding where the various creditors and stockholders of the debtor seek to participate in the distribution of the debtor's property. Thus, to effectuate the objectives of the Interstate Commerce Act, Congress passed Section 77 of the Bankruptcy Act to insure that a railroad's insolvency would not result in a distribution of property in any way that would interfere with the flow of interstate commerce. To insure that the provisions of section 77 would be carried out in conformity with those of the Interstate Commerce Act, the ICC was entrusted with the responsibility of approving all reorganization plans and of determining whether such plans were compatible with the public interest.³⁹ In the event that any property was to be abandoned under a plan of reorganization, it was the task of the ICC to determine the fair value of said property.⁴⁰

It is clear, therefore, that the ICC's function in a reorganization proceeding is to determine that course of action which will best carry out the objectives of the Interstate Commerce Act in an unbroken flow of interstate commerce. On the other hand, the function of the bankruptcy court in a reorganization proceeding goes to an entirely different matter. It is the bankruptcy court's function to protect the rights of the various creditors and stockholders of the debtor and to make certain that the procedural requirements of section 77 have been met.⁴¹ After the ICC has approved the plan, the bankruptcy court's only concern should be to see that the various creditors and stockholders fairly participate in the distribution of property set out in the plan.

In line with this reasoning, it is submitted that a state's taking of railroad property by eminent domain comes *solely* within the regulatory prerogative of the ICC. Congress has vested the ICC with the responsibility

³⁶ 49 U.S.C. § 1 (1964).

³⁷ See "National Transportation Policy," preface to Interstate Commerce Act, 49 U.S.C. § 1 (1964).

³⁸ 49 U.S.C. § 1(18) (1964).

³⁹ 11 U.S.C. § 205(d) (1964).

⁴⁰ 11 U.S.C. § 205(e) (1964).

⁴¹ *Id.*

of dealing with the abandonment of railroad property. If the ICC decides that a state's taking of railroad property will not interfere with the public interest in the flow of commerce, the fact that the railroad is also undergoing reorganization should in no way affect this determination. After the ICC determines the fair value of the land, the only concern of the bankruptcy court should be to see that the money paid for the property is fairly distributed among the creditors and stockholders. Therefore the *Bartlett* court correctly found that a state's taking by eminent domain was not one of the "purposes" for which the bankruptcy court has "exclusive jurisdiction."

Aside from the clear separation of powers between the bankruptcy court and the Interstate Commerce Commission, there is an extremely strong public interest that further supports the wisdom of the *Bartlett* holding. The Boston & Providence had been undergoing reorganization proceedings under section 77 for twenty-nine years. To say that a state could be prohibited from taking land vital to its interest for this long a period of time would be to subjugate the interest of the public to that of a small group of private creditors and stockholders. Further, in such a situation, the bankruptcy court is only postponing the taking because once the land in question came out of the reorganization proceedings, the state could take the land by applying to the ICC. In the *Bartlett* case, there is an even stronger argument for not having to obtain the bankruptcy court's consent. If the proposed reorganization plan of the bankruptcy court to give the land in question to the New Haven were approved, then the land would be under the "exclusive jurisdiction" of the bankruptcy court in Connecticut where the New Haven was undergoing reorganization. This outcome would mean that the Commonwealth would then have to wait until the land came out of the Connecticut court, in further frustration of the public need to build a highway. Such a result could not be tolerated.

A state's right of eminent domain is within the sovereign power of the state and, if accompanied by just compensation, needs no other justification.⁴² In the case of a taking of an interstate railroad, if the ICC, the agency vested with the responsibility of insuring the orderly passage of interstate carriers, allows the taking, the bankruptcy court, not concerned with these matters, should not be permitted to rule against the public interest. The only matter properly remaining for the consideration of that court is the correct distribution of the compensation paid by the state. It is to this purpose that "exclusive jurisdiction" of the bankruptcy court should apply. Such a limited jurisdiction appears especially wise when it accommodates the power of the state to carry out projects of public need.

MARK P. HARMON

⁴² 1 P. Nichols, *The Law of Eminent Domain* § 1.13(4) (3d rev. ed. J. L. Sackman 1964).