

1958

## Union Pacific Railroad Co. v. Structural Steel & Forge Co. : Supplement to Appellant's Reply Brief

Utah Supreme Court

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### Recommended Citation

Reply Brief, *Union Pacific Railroad Co. v. Structural Steel & Forge Co.*, No. 8785 (Utah Supreme Court, 1958).  
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IN THE SUPREME COURT OF THE STATE OF UTAH

UNION PACIFIC RAILROAD CO., )

a corporation, )

Plaintiff and Respondent, )

v. )

STRUCTURAL STEEL & FORGE CO., )

a corporation, )

Defendant and Appellant. )

Case No. 8785

FILED

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Clerk, Supreme Court, Utah

**SUPPLEMENT TO APPELLANT'S REPLY BRIEF**

Appellant wishes to call the Court's attention to the following case and quotation therefrom which was just discovered by appellant's counsel and which was communicated to respondent on this date:

"On the question of jurisdiction the appellant insists that the meaning of a published tariff is involved in such way that a preliminary determination as to that must be made by the Interstate Commerce Commission. See *Great Northern Railway Co. v. Merchants' Elevator Co.*, 259 U.S. 285, 42 S.Ct 477, 66 L.Ed. 943; *Texas & Pacific Railway Co. v. American Tie & Timber Co.*, 234 U.S. 138, 34 S.Ct. 885, 58 L.Ed. 1255; *Norge Corporation v. Long Island R. Co.*, 2 Cir., 77 F.2d 312. These cases, however, and others of like import deal with actions by shippers against carriers

**\*\* [I-3] Of course, the Interstate Commerce Commission only has such jurisdiction as has been conferred upon it by Congress, and that does not give it the power to make orders adjudicating claims of carriers against ships and requiring the payment of such claims. See Davis v. Rochester Can Co., 220 App. Div. 487, 221 N.Y.S. 666, affirmed Mellon v. Rochester Can Co., 247 N.Y. 521, 161 N.E. 166 Laning-Harris Coal & Grain Co. v. St. Louis & San Francisco R. Co., 15 I.C.C. 37. So jurisdiction of such a controversy as this is vested exclusively in the courts." Pennsylvania R. Co. v. Fox & London. (C.C.A. 2 - 1938), 93 F.2d 669 (emphasis added).**

DATED this 9<sup>th</sup> day of September, 1958

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