

I am sorry to report, gentlemen, that in the years following 1932 the Norris-La Guardia Act has practically been erased through judicial decisions.

I recall just a short time ago sitting in a board of directors meeting of the directors of one of these organizations and one of the members of the board made the remark that there ought to be a law which would deprive the courts of jurisdiction to issue injunctions in labor disputes.

I said, "Well, there is such a law on the books now." He looked at me incredulously. I tried to explain what had happened to that law, but I think he still thinks I was pulling his leg. There can't be such a law as I described on the books, or else how would all these injunctions get issued.

Further, and again advertising to what has happened under Public Law 88-108, these brotherhoods are smarting under maladministration of that law in the district courts.

So it is their recommendation, and very strong recommendation, that if you should enact seizure, the instrumentality of seizure would be in the executive branch.

Further, I think it is fair to say that the executive branch is more appropriate to making the kind of decisions that have to be made in running a nationwide railroad system.

Receivership was developed by the courts as an instrumentality largely for dealing with the question of insolvency. If a business became insolvent, but it had a going concern value so that it couldn't practicably be liquidated or shouldn't be liquidated, receivership was a way of administering its affairs for the benefit of creditors. But here we have an entirely different kind of proposition. It is the kind of thing that more appropriately calls for action in the executive field pursuant to congressional authorization.

The CHAIRMAN. Mr. Springer.

Mr. SPRINGER. Counselor, you are distinguishing here, as I understand it, the difference between a going concern and, we will say, the East Coast Railway, is that your thought? The East Coast Railway, as I understand it, has been in receivership for about 30 years, roughly in that neighborhood. You are familiar with it?

Mr. SCHOENE. It was, Mr. Springer, but it has been out of receivership for a while.

Mr. SPRINGER. You are right. But you are talking about that as a receivership where there apparently was insolvency over a long period of time, as distinguished from the problem of a going concern.

Mr. SCHOENE. Yes.

Mr. SPRINGER. It is a distinction of what kind of administration ought to take over in case of seizure. Am I right?

Mr. SCHOENE. That is exactly right, Mr. Springer.

Mr. SPRINGER. Thank you.

Mr. SCHOENE. Another issue which has been discussed in connection with seizure is whether seizure should be complete or partial.

If I may again refer to Senator Javits' bill, his bill, I think, contemplates that it would be possible to operate the railroads only to the extent that is necessary to protect the national defense and the public welfare, and provides for the court, through a receiver, to make the determination of how much operation would be necessary.