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BEATEN BY THE BOARD

The Nebraska Maximum Rate Bill Case Lost by Action of the Old Board.

FULL TEXT OF THE DECISION

Supreme Court Quotes 1891 Report of State Board as Proof That Rates Were Too High.

Extracts From Court's Opinion.

In 1891 the then existing Nebraska state board of transportation published a report on local railway rates in this state. The substance of that report was that local rates in Nebraska were already too low and ought to be raised. Thousands of copies of that report were printed at state expense and distributed over the state. Other thousands were printed and piled away in the basement of the capitol where they were found when the populists came into possession last year. The secretaries of the state board of transportation at that time were C. J. Dilworth, J. N. Kountny and C. W. Johnson.

It will be a matter of some interest to the people of Nebraska to know that the text of that 1891 report, used as a republican campaign pamphlet in the state, is incorporated into the decision of the supreme court of the United States as one of the strong reasons for setting aside the maximum freight bill of 1893. It will be a matter of still further interest to know that that report and the testimony of C. J. Dilworth, one of the secretaries of the board, are given by the supreme court as conclusive proof that reductions in local freight rates in the state are unreasonable. So that the state's case in the trial of the maximum freight bill was given away at the start by the state's own officers.

The complete text of the supreme court decision was received in Lincoln this week. It is a pamphlet of 26 pages, the first part of which is devoted to a history of the case, its trial before Circuit Judge Brewer and the assertion of the jurisdiction of the federal courts and their right to pass upon the case and determine the reasonableness of rates as superior to the state legislature and the courts.

Upon these propositions the court quotes numerous decisions by federal courts affirming the right of review by those courts of other enactments regulating tolls, etc., and sums the law so deduced up in three propositions, as follows, using the court's sworn language:

1. A railroad corporation is a person within the meaning of the fourteenth amendment declaring that no state shall deprive any person of property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

2. A state enactment or regulations made under the authority of a state enactment establishing rates for the transportation of persons or property by railroad that will not admit of the carrier's earning such compensation as under all the circumstances is just to it and to the public would deprive such carrier of its property without due process of law and deny to it the equal protection of the laws, and would therefore be repugnant to the fourteenth amendment of the constitution of the United States.

3. While rates for the transportation of persons and property within the limits of a state are primarily for its determination the question whether they are so unreasonably low as to deprive the carrier of the property without such compensation as the constitution secures, and therefore without due process of law, cannot be so conclusively determined by the legislature of the state, or by regulations adopted under its authority, that the matter may not become the subject of judicial inquiry.

Having thus affirmed its right to pass upon the case and decide the reasonableness of rates as fixed by the Nebraska legislature the court goes on to inquire into the reasonableness of a reduction in rates as shown by the testimony taken before Judge Brewer. And first upon this point the court says: "The conclusion reached by the circuit court was that the reduction made by the Nebraska statute in the rates for local freight was so unjust and unreasonable as to require a decree staying the enforcement of such rates against the companies named in the bill. Ames v. Union Pacific Ry. Co., 54, Fed. Rep. 165, 189. That conclusion was based largely upon the figures presented by Mr. Dilworth, while he was secretary of the state board of transportation, as well as a defendant and one of the solicitors of the defendants in these causes. He was a principal witness for that board. His general fairness and his competency to speak of the facts upon which the question before us depend are apparent upon the record. He stated that the average reduction made by the statute upon all the 'commodities of local rates' was 39.30 per cent; and this estimate seems to have been accepted by the parties as correct. He estimated that the percentage of operating expenses on local business would exceed the percentage of operating expenses on all business by at least ten per cent, and that it might go as high as twenty per cent or higher. And this view is more than sustained by the evidence

of witnesses possessing special knowledge of railroad transportation and of the cost of doing local business as compared with what is called through business. Indeed, one of those witnesses states that the cost of carrying local freight is four times as much as the cost of through freight per ton per mile; another that the cost of the short haul is "reasonably double the long haul." If due regard be had to the testimony—and we have no other basis for our judgment—we are not permitted to place the extra cost of local business at less than ten per cent greater than the percentage of the cost of all business."

"In answer to the questions propounded to him by the defendants constituting the state board of transportation, Mr. Dilworth stated that he had prepared himself with an estimate showing the number of tons of freight, commonly spoken of as local freight, hauled on the respective railways in Nebraska, and the amount received by the railway companies by way of tariff on tons of freight hauled, including through as well as local freight, was qualified to speak as to the amount received by the companies for both passengers and freight within the state, and the reduction that would take place in rates under the statute in question. He presented various tables showing the result of his investigations. One is known as exhibit 4, and is an estimate of local business, and the effect of house roll 33" on the Burlington, St. Paul, Fremont Union Pacific, Omaha, St. Joseph, and Kansas City companies for the year 1892. Another is called exhibit 19, and is a like estimate in respect of the same companies for the years 1891 and 1893. Another is known as exhibit 20, and shows 'tons carried tonnage per mile, and percentage of expenses for the years ending June 30th, 1891, 1892 and 1893 (Nebraska).'"

The supreme court then proceeds to quote the tabular statement prepared by Dilworth. These cannot be given at length in this article, but as the substance of them goes to the very root of the question of rate reduction in Nebraska, and we give an abstract of the figures for 1892. "Local freight" in these figures means a haul originating in Nebraska and terminating in Nebraska. According to Dilworth as quoted by the supreme court the effect of the maximum rate bill upon the different roads in Nebraska for 1892 would have been as follows:

Burlington road received for freight hauled locally, \$1,237,884. Received from all business done in state \$7,908,242. Amount of reduction by house roll 33, \$365,175. Per cent of reduction on all business done in the state, 4.10.

Eikhorn road received for freight hauled locally \$366,714. Received from all business done in state, \$2,093,657. Amount of reduction made by H. R. 33, \$99,310. Per cent of reduction on all business done in state, 4.7.

Union Pacific road. Received for freight hauled locally, \$398,362. Received from all business done in state, \$5,262,057. Amount of reduction by H. R. 33, \$117,487. Per cent of reduction on all business done in state, 2.2. C. St. P., M. & O. road. Received for freight hauled locally, \$123,933. Received from all business done in state, \$763,509. Amount of reduction by H. R. 33, \$36,294. Per cent of reduction on all business done in state, 4.7.

Omaha and Republican Valley road. Received for freight hauled in state, \$88,335. Received from all business done in state, \$1,261,294. Amount of reduction made by H. R. 33, \$26,043. Per cent of reduction all business done in state, 2.2.

The tables for 1891 and 1893 make practically the same showing as those for 1892. As summed up the showing is that during those years the expenses of Nebraska railroads were from 56 to 90 per cent of their gross earnings. Or stated in another way for every dollar the roads took in they paid out from 56 to 90 cents for expenses. In the case of the Burlington road this was 65 cents; the U. P. 56 cents. The Eikhorn 70 cents. These percentages are on the entire business. As the expenses on local business are greater in proportion than on other business Dilworth adds 10 per cent to the expenses of each of the roads for this additional cost. Then figuring the percentage of reduction in local rates by the maximum rate law at 39 1/2 per cent of the local rates alone he finds that during the years 1891-2-3 all the Nebraska companies would have either made very little on their local freight business or would have actually lost money upon it. Upon this question, however, there was a conflict of testimony, some of the railroad officials giving figures that did not correspond with those of Dilworth.

The next proposition passed upon by the court is a vital one—whether the state can reduce rates within its borders to a point near the cost of local service, but still leaving the railroads a good profit on its entire business handled in the state. The court holds that it cannot do so. That no matter how large the profits of a road on shipments in and out of the state, rates within the state cannot be reduced below in such state to the cost of doing such a point where they will also return a fair profit. Here is the court's opinion as found on page 21:

"It is further said in behalf of the appellants, that the reasonableness of the rates established by the Nebraska statute is not to be determined by the inquiry whether such rates would leave a reasonable net profit from the local business of affected thereby, but that the court should take into con-

sideration, among other things, the whole business of the company, that is, all its business, passenger and freight, interstate and domestic. If it be found upon investigation that the profits derived by a railroad company from the interstate business alone are sufficient to cover operating expenses on its entire line, and also to meet interest, and justify a liberal dividend upon its stock, may the legislature prescribe rates for domestic business that would bring no reward and be less than the services rendered are reasonably worth? Or, must the rates for such transportation as begins and ends in the state be established with reference solely to the amount of business done by the carrier wholly within such state, to the cost of doing such local business, and to the fair value of the property used in conducting it, without taking into consideration the amount and cost of the interstate business, and of the value of the property employed in it? If we do not misapprehend counsel, their argument leads to the conclusion that the state of Nebraska could legally require local freight business to be conducted even at an actual loss, if the company earned on its interstate business enough to give it just compensation in respect of its entire line and all its business, interstate and domestic. We cannot concur in this view. In our judgment, it must be held that the reasonableness or unreasonableness of rates prescribed by a state for the transportation of persons and property wholly within its limits must be determined without reference to the interstate business done by the carrier, or to the profits derived from it. The state cannot justify unreasonably low rates for domestic transportation, considered alone, upon the ground that the carrier is earning large profits upon its interstate business, over which, so far as rates are concerned, the state has no control. Nor can the carrier justify unreasonably high rates on domestic business done upon the ground that it will be able only in that way to meet losses on its interstate business. So far as rates of transportation are concerned, domestic business should not be made to bear the losses on interstate business, nor the latter the losses on domestic business. It is only rates for the transportation of persons and property between the points named in the state that the state can prescribe; and when it undertakes to prescribe rates not to be exceeded by the carrier, it must do so with reference exclusively to what is just and reasonable, as between the carrier and the public, in respect of domestic business. The argument that a railroad line is an entirety; that its income goes into, and its expenses are provided for, out of a common fund, and that its capitalization is on its entire line, within and without the state, can have no application where the state is without authority over rates on the entire line, and can only deal with local rates and make such regulations as are necessary to give just compensation on local business."

The court argues learnedly (as courts do) on both sides of the question argued below—whether the amount of bonds and stocks issued by a railroad company must be considered in fixing rates. On page 23 it says: "If a railroad corporation has bonded its property for an amount that exceeds its fair value, or if its capitalization is largely fictitious, it may not impose upon the public the burden of

such increased rates as may be required for the purpose of realizing profits upon such excessive valuation or fictitious capitalization; and the apparent value of the property and franchises used by the corporation, as represented by its stocks, bonds and obligations is NOT ALONE to be considered when determining the rates that may be reasonably charged."

But immediately after, on page 24, the court proceeds to kick over what little opinion it had expressed on the point in the following language: "We hold, however, that the basis of all calculations as to the reasonableness of rates to be charged by a corporation maintaining a highway under legislative sanction must be the fair value of the property being used by it for the convenience of the public. And in order to ascertain that value, the original cost of construction, the amount expended in permanent improvements, the amount and market value of its bonds and stocks, the present as compared with the original cost of construction, the probable earning capacity of the property under particular rates prescribed by statute, and the sum required to meet operating expenses, are all matters for consideration, and are to be given such weight as may be just and right in each case."

And now, having argued up and down all sides of the proposition submitted the supreme court of the United States proceeds to give its clinching argument against the maximum rate law by taking up the republican campaign document prepared by Joe Johnson, the famous republican letter writer, when one of the secretaries of the board of transportation in 1891, as follows:

In concluding this opinion it may not be inappropriate to say that the conclusions reached by us as to the effect of the Nebraska statute find some support in the report of the board of secretaries of the Nebraska board of transportation made in September, 1891 to the board itself and signed by Mr. Dilworth and his colleagues. That report was made pursuant to a resolution of the board requiring the secretaries to prepare a statement of facts in reference to the rates of transportation in Nebraska. It contains a brief history of what it characterizes as "the controversy on the question of freight rates between the people and the railroads of the state," and embodies such facts, figures and arguments as the secretaries gathered from both sides. The report says: "The present controversy between the people and the railroads of this state originally grew out of the question of rates or reduction of rates, but of control. The people, recognizing the railroads as common carriers, not entitled under the state constitution to the same broad liberty of action in business that the individual citizen has, wanted to control the roads. The roads, impatient of interference, wanted to control themselves, and manage their business in their own way." It further states: "We have given you in the foregoing a brief history of the rate matter as we have found it, and from that history and from the evidence and reports on file in our office we beg leave to submit in conclusion the following findings of facts: First, we find from the evidence and sworn statements and reports on file in our office, and from personal inspection that the railroads in this state could not be duplicated for a less sum than \$30,000 per mile, taking into

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(Continued on Fifth Page.)

ABOUT CO-OPERATION

All Opposed to the Rule of the Gold Syndicates and Trusts Should Unite on Candidates.

SENATOR BUTLER'S LETTER

Populists Will Not Submit to Another Co-Operation Like the One of 1896.

Terms Must Be Fair.

The following is a letter written by National Chairman Butler to State Chairman Young in reply to a letter from Mr. Young with reference to the political situation in Oregon. It explains why in the opinion of the national chairman of the people's party should propose a fair and honorable co-operation of the reform forces in Oregon. He shows that whether the proposition is accepted or rejected how it will advance the principles of the people's party and thereby the party itself.

The letter is as follows:

Hon. John C. Young, Baker City, Oregon: My Dear Sir:—Your letter received. You seem to interpret my letter to you as a letter of advice to the populists of Oregon to fuse with the democrats, or rather to surrender our principles and party organization to the democrats. My letter will bear no such interpretation, and I am therefore a little surprised at the tone of your reply. I am not in favor of fusion with any party, and I am not even in favor of co-operation unless such co-operation can be on fair and honorable terms, and the result of which will be the advancement of our principles, and therefore a victory for the people. I should never favor another national co-operation on the same terms as the one of 1896. Our party would not have submitted to that had it not been for the peculiar circumstances brought about by the sudden and unexpected developments at the Chicago convention. I do not suppose there is a populist in the nation who would be in favor of supporting the democratic ticket, or of any kind of co-operation with the democrats if they should in their next national convention go ahead and nominate a whole ticket and then expect to make terms with us afterwards to get us to support such a ticket. I certainly do not know a populist who would tolerate such a ticket with as great a misfit as Mr. Sewall on it, and I am sure that the great majority of the rank and file of the fair-minded voters of the Democratic party would not expect us to do so even if they put a better man up for vice-president.

But that is a long time in the future. Suffice it to say that it is practically the unanimous sentiment of the populists, so far as I know, that there can never be another co-operation such as the one of 1896. The thing that now confronts us is the campaign of 1898. Now what is best for our party to do in view of the last campaign and under present conditions. The course that will do the most to advance our principles, strengthen the party, test the sincerity of those who claim that they want to be our allies and thus put us in a position to gain recruits not only from their own ranks, but from the large and increasing numbers of the dissatisfied voters in the republican party, is the course that every true populist wants to pursue. Can you accomplish this purpose by declaring in advance that you do not want to co-operate with a man or a party, even if he or it will do fair and make an honest, square fight against the allied monopolies? If we take such a course the Bryan democrats will at once announce and will continue to declare it all through the campaign that they were in favor of co-operating on fair and honorable terms, and we will leave it so they can say that they were in favor of terms most advantageous to us, not only with reference to offices, but with reference to principles; and if we declare in advance that we will not co-operate with them under any conditions they will certainly take this position whether they are honest in it or not. If they do this, our party will be at a disadvantage from the beginning of the fight. We will not gain a recruit; certainly not from the democratic party, for we will have done the thing that will give the democratic leaders who are not sincere a chance to hide their insincerity and an opportunity to convince the rank and file of their party that we are not the ones who are sincere. Besides, we will not gain a recruit from the republican party, because every man who will leave the republican party will do it because he is determined to see that that party and its policies are defeated at the next election. Every such man believes that the way to do it is by fair and honorable co-operation of all who are against the rule of the gold syndicate and the allied trusts and monopolies. Therefore, if we declare that we will not co-operate with anybody on any terms we serve notice on the silver republicans that we do not want them, and hence it will force all of these people who each day are increasing in numbers to line up with the Bryan democrats, thus making the democratic party stronger and leaving us at a standstill if not weakening us, for

under these conditions we might lose some populist voters.

You say in your letter that the silver republicans will soon be betrayed by the Bryan democrats. If you think the Bryan democrats in your state are not sincere (and I confess that I know a number who claim to be Bryan democrats who I believe are not sincere) then by all means test their sincerity before the next campaign opens.

In short, make them a fair proposition for an honorable co-operation, not based on office alone, but covering the great underlying principles in this fight. Do this and if they decline your proposition you will then expose the insincerity of these leaders not only to the silver republicans, but to the rank and file of their own party. You will put them on the defensive from the beginning of the fight and put yourself in a position where you will not only align the silver republicans with you, but each day draw recruits from the rank and file of the democratic party. If the democratic party is not honestly with the people in this fight, if it will not prove its sincerity by repudiating its traitors and straddlers and marching boldly up and helping us to fight the allied and combined enemies of humanity, then it ought to die, and the quicker it dies the better. But the only way that the party can be killed, that is, the only way that the dishonest and insincere men in it can be thrust into the republican party where they belong, the honest and sincere men taken into the people's party where we hope to see them, is by showing the honest rank and file of that party that their leaders are not sincere, and that the party will again betray them as it did under Cleveland. We are now in a position to put this test to the party and to accomplish this and so much to be desired, and it would be criminal in us both from a party standpoint and from a standpoint of patriotic duty to fail to put their sincerity to this test at this juncture.

I believe that the rank and file of the democratic party and some of their leaders are as honest and sincere as any of us. The same I believe is true to a certain extent of the rank and file of the republican party. If this were not true then there would be no hope to redeem the government. Then let us so act that these elements can be brought together either under our party banner of Jeffersonian democracy and Lincoln republicanism, or if that cannot be accomplished at present, by an honorable co-operation. If we have not the sense and patriotism to take such a course, then somebody else must or the fight is lost and the institutions of the republic will go down under an oligarchy of sordid wealth. There were more than three million democrats in this country who were on the eve of leaving the democratic party when the democratic national convention convened in 1896. They would have left if Cleveland had been nominated or any straddlebug of voters as the rank and file. They have to-day no more confidence in the democratic leaders who supported Cleveland and who up to 1896 ridiculed silver and every other reform the people's party was advocating, they had then. They are simply staying in the party because they have faith in Bryan and Bryanism. If we ever get these voters in the future we must do it by pursuing such a course as will commend itself to these men, and at the same time expose the hypocrisy of the pretended Bryan democrat who is at heart a Cleveland democrat.

It is true, as you say, that we proved to these men and to the whole world our absolute sincerity, patriotism and unselfishness by supporting Bryan under the most trying circumstances in 1896, but the very fact that there was a co-operation in 1896 makes it all the more necessary that the responsibility should not be on our shoulders for the failure of a fair and honorable co-operation this year. If the democratic leaders in your state are sincere and they are attempting to backslide the party, then there is but one thing under heaven that can enable these leaders to continue to hold the honest rank and file in the party under their leadership, and that is for us to take a course that will allow such politicians to call attention from and to minimize the magnificent laurels that we won in 1896 by our unparalleled example of patriotism above party pride. In politics as in many other things, the world is inclined to judge us more by our present course than by what our past conduct has been, and this is especially true if our present course should seem to be less patriotic than our past. I am a considerable partisan myself, but if we wish to advance our party we must be wise before we are partisans. In a party that is a majority party partisanship is taught and instilled into the voters to try to hold them into the party even when it betrays the people and their interests; but a minority party to grow must break down these party prejudices, must appeal to men to put patriotism above party and in making such appeals we must set out our declarations. If what you say is true about the democratic leaders in Oregon, then a straight fight will be the inevitable result even after you have made your fair proposition to co-operate, but if you make a straight fight you want to make one in which you will gain recruits if not win a victory. Therefore let me appeal to you to take the wise course to prove the insincerity of these democratic leaders which you believe exists.

I trust, however, that you are mistaken. Oregon ought to have two populist congressmen. It is the great

(Continued on 5th Page.)

NEAR \$500,000,000 INVESTED IN TRUSTS SINCE MARCH 4, '97

1. U. S. Biscuit company; Norman B. Ream and Judge A. H. Moore of Chicago, leading organizers, \$25,000,000 cumulative preferred stock and \$30,000,000 common stock. Total	\$55,000,000
2. Brass foundry and machine combination at Jersey City; Adolph Zimm and W. S. Laporte of New York, organizers; capital	6,000,000
3. Consolidated Steel and Wire company of Chicago; John W. Gates of Chicago, leading organizer	87,000,000
4. Hostetter Gas Consolidation at Pittsburg; comprising five independent concerns	5,000,000
5. American Maltine combine, succeeding Chicago Brewing and Salting company	30,000,000
6. Consolidation of Edison Illuminating Company and Missouri Electric Light and Power company; A. D. Brown and Knickerbocker Trust company, New York City, organizers	4,000,000
7. Western Union Beef company, organized to succeed American Cattle Trust company, Chicago	13,000,000
8. Rubber Covered Wire Combine (undertaken), to control product by New York Insulation Wire Company (established)	20,000,000
9. Glucose Sugar Refining company of Chicago, organized in October, 1897	14,000,000
10. Attorney Levy Mayer of Chicago forms American Spirits Manufacturing company, a consolidation of all distillery interests of the country, with a capital of	50,000,000
11. Consolidation of hay interests in American Hay company organized at Detroit by forty-six shippers, with a capital consolidation limited to	5,000,000
12. International Paper company, incorporated at Albany, N. Y.; principal office at Corinth, N. Y.; capital consisting of \$25,000,000 preferred stock and \$25,000,000 of common	45,000,000
13. Stone Trust organized at Detroit; consolidating six large concerns to advance prices 15 per cent; aggregate capital	10,000,000
14. World Pool of Powder manufacturers formed in August, 1897, divided earth into three tributary provinces; one to be supplied by the American manufacturers; one by the European, and one-third by both; aggregate capital (est)	100,000,000
15. Preparation for an international American bank, with headquarters at New York and Washington; capital	10,000,000
16. Preparations for Carpet Trust at Philadelphia, with a capital of	10,000,000
TOTAL	\$483,000,000