

PARTIAL VICTORY

Railroads Do Not Escape Entirely Unscathed in Court

SYLLABUS IN THE CASE

Decision Rendered by Chief Justice Holcomb is a Lengthy One—Earnings and Stock Values are Elements Showing Real Value

The supreme court of Nebraska has handed down its decision in the mandamus suit brought to compel the state board of equalization to assess the franchises, etc., of the railroads.

As Judge Holcomb once occupied a position on the state board of equalization, he was supposed to be more familiar with the subject than any other member of the bench.

"We cannot escape the conclusion," says the court, "that both the tangible and intangible property of the railroad companies were in fact assessed as one property or one unit."

The two principal questions considered by the court were as follows: Has the board failed to assess property which under the law it is its duty to assess. Second, in making the assessment has the board acted fraudulently in valuing such properties for assessment and for that reason rendered void the action taken.

In effect the court finds that franchises and all intangible property must be and were assessed by the board; that the transaction was not tainted with fraud; that the board is clothed with quasi-judicial powers as to the valuation of such property and when it has acted on sufficient information and expressed an honest judgment as to such value, its judgment cannot be controlled by the writ of mandamus.

The following is the syllabus of the case:

1. Pleadings construed and held to present an issue of fraud in regard to the manner of making the assessment complained of.

2. It is the duty of the state board of equalization to value and assess for purposes of taxation, all railroad and telegraph properties of all kinds within the state, with the exceptions mentioned in sections 29 and 40 of the revenue act.

3. In assessing property for taxation the dominant idea of the organic law is that the revenues shall be raised by levying a tax on property by valuation, in such manner that every owner of property subject to taxation shall pay taxes in proportion to the value of the property owned.

4. The word "property" as used in the constitution is a generic term and includes all property of whatsoever description whether tangible or intangible.

While the revenue act provides the assessment for tax purposes of property at its fair cash value, the court will take judicial notice of the fact that for general revenue purposes the standard of value generally prevailing is far below the actual cash value of the property assessed.

5. In observing the constitutional rule of uniformity, property which escapes taxes altogether can not be taken into account in determining the standard of valuation of property actually taxed, returned or assessed, on which taxes are levied.

6. The state board of equalization, in the assessment of railroad and telegraph properties should include in its assessment the value of the franchises with the tangible property assessed.

7. In the assessment of railroad and telegraph property, the state board of equalization may consider not only the returns required to be made by sections 39 and 40, but also other information of a reliable character obtainable which may tend to establish the true value of the property assessed.

8. The provisions of section 32, of the revenue act, requiring the assessment of the capital stock of the corporations named therein, at its actual value, after deducting therefrom the value of the real estate and other personal property of such corporation assessed as such, are not applicable to the assessment made by the state board of equalization, of the properties of railroad and telegraph companies.

9. Sections 29 and 40 of the revenue act embrace the legislative plan and method of assessing railroad and telegraph property which are complete within themselves and capable of enforcement independent of the provisions of section 32.

10. In assessing railroad and telegraph property, it is the duty of the state board of equalization to secure all reasonable and necessary reliable information relative to the value of the entire property of each corporation assessed and assess such property as a unit or as one property.

11. In determining the value of the property assessed, it is the duty of the board to consider all factors having the elements of property, whether tangible or intangible, which enhance the value of the corporate estate, and value such property for assessment purposes so that the valuation placed thereon shall harmonize with the constitutional rule of uniformity.

12. Where railroad and telegraph properties are situated in more than one state, it is necessary to consider and determine the value of the whole property wherever situated as an entirety and then determine what proportion of the whole property is situated and used in this state and subject to taxation therein, the relation such part bears to the whole property as to its value being the basis on which the assessment is to be made.

13. The earnings of the stocks and bonds of a railroad corporation is an important factor with other pertinent information by which to determine the fair cash value of the property assessed which is represented by such stocks and bonds.

14. The earnings of a railroad company is evidence of a most important character in determining the true value of the property from which the earnings accrue and is one of the chief elements which give value to the property and should be considered in determining the value for assessment purposes of the entire corporate property which is assessed.

15. Where the property of a railroad corporation is assessed by the state board of equalization as a unit and in fixing the value thereof the board takes into consideration the fact that the property is being used for effectuating the objects of the corporation, is earning an income in the transportation of passengers, and carrying of freight for hire, and that such corporation is exercising the rights, powers and privileges of a corporation, organized for the purpose of engaging in business as a common carrier, such assessment so made would include and cover the intangible as well as the tangible property of the corporation and would be an assessment of its franchise.

16. Evidence examined in the case at bar and held that in the assessment of the properties of the railroad and telegraph companies by respondents the franchises of such corporations were valued and assessed in the assessment of the physical properties of such corporations.

17. The state board of equalization is by law constituted a special tribunal for the purpose of assessing railroad and telegraph properties and in the valuation and assessment of such property for taxation purposes, they are given exclusive jurisdiction.

THEY KILLED HIM

Officers Shoot Down Olsen, the Omaha Murderer

DIDN'T TAKE ANY CHANCES

When Fugitive Popped Gun the Officers Fired a Volley, Bringing Him Down—Identified by a Citizen—He Murdered His Sweetheart

A Bancroft, Neb., Sept. 22, dispatch says: Peter Olsen, of Omaha, who shot and killed his sweetheart, Mary Petersen, at her home on the evening of September 8, resisted capture near this place and was killed by the officers. His body was brought to town and identified by Peter Johnson, who had known him. Constable Coppel and a posse did the shooting.

The fugitive arrived at Bancroft on Saturday night and remained over night at the Park hotel. Sunday morning he went to a barber shop to get shaved, and while near the postoffice was seen by L. R. Fletcher, Jr., who had seen him a year ago at the home of Peter Johnson. Fletcher drove to Johnson's home and told him of Olsen's presence in Bancroft. Mr. Johnson came to town and imparted the information to Constable Coppel, who organized a posse to search for the man.

In the meantime the fugitive had left town on foot. He was reported on the way to Pender. The officers followed and overtook him three miles from Bancroft. They halted, concealed themselves, and demanded Olsen's surrender. The man was then about seventy-five yards away.

Instead of obeying the order to throw up his hands, he pulled out a revolver. Several shots rang out and Olsen fell with a bullet through the body. Only one ball struck him. It entered near the navel and passed through the body. When the officers came up to him his hand still clutched the revolver. The weapon had only one cartridge in it, which had been snapped several times. Only 15 cents was found on his person. The body was brought to this place and identified by Peter Johnson. It answered the description sent out from Omaha even to the clothes, a scar on the face and a scar on the body caused by a surgical operation for appendicitis.

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21. Held in the case at bar under the evidence the inference is not warranted that the respondents acted from improper motives and fraudulently in making the assessment complained of with the wrongful intention of discriminating in favor of the railroad and telegraph companies whose property was assessed.

22. Where an assessing officer or board disregards well known rules for the valuation of property assessed and has refused to consider reliable and pertinent information regarding such values and arbitrarily assesses property at a grossly inadequate sum, such assessment may be treated as fraudulent and as in law no assessment.

23. Where in the assessment of property for municipal purposes in cities of the metropolitan and first class different standards of valuation prevail than in the assessment of property generally throughout the state for general purposes, and the state board of equalization can not assess property in harmony with such different standards of valuation, it is the duty of the board to observe the rule of uniformity in the assessment of all other property in such cities which violates the constitutional provision requiring taxes to be uniform throughout such municipalities as an independent taxing jurisdiction. Quare.

24. The constitution requires that in the assessment of taxes for municipal purposes, such taxes shall be uniform with respect to persons and property within the jurisdiction of the body imposing the same.

25. Whether the provisions of law requiring the valuation of railroad and telegraph property for assessment purposes, made by the state board of equalization shall be taken and accepted as a correct assessed valuation of such property for municipal purposes in cities of the metropolitan and first class when a different standard of valuation prevails as to the assessment of all other property in such cities violates the constitutional provision requiring taxes to be uniform throughout such municipalities as an independent taxing jurisdiction. Quare.

26. The power of the state board of equalization to value and assess for tax purposes sleeping and dining cars operated on the railroads in this state is derived from the statute, it being within the province of the legislature to select a method by which all such properties shall be valued and assessed which is exclusive when no constitutional rule is violated.

27. It assessing sleeping and dining cars under the provisions of sections 39a and 40, the board can not value and assess the franchises or other intangible property of the corporations owning such cars as independent species of property. In estimating the value of such property for assessment purposes the assessing board in determining the value thereof is not confined alone to the cost of construction but may consider the value of the property assessed as a means of earning income, the profitableness of the use to which it is put, and ascertain and fix its true value for assessment purposes with reference to the value it has as used and by reason of its use.

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FREE HIGH SCHOOLS

State Superintendent Fowler Approves List of Twenty-Six

KEEPING HIGH SCHOOLS OPEN

The free high school or adjunct district law has been carried in eight counties in the state and as a result State Superintendent W. K. Fowler has approved twenty-six high schools as meeting the requirements of the law.

In June, 1891, the proposition to establish adjunct districts was submitted to the legal voters of the various districts. The proposition was not generally understood and it was defeated in every county in the state with the exception of Douglas. Last June seven other counties adopted the provisions of the law. The law provides for the submission of a proposition to constitute all of the territory of each county outside the high school districts as an independent taxing district, to be known as the adjunct district and to be organized solely that a tax not to exceed two mills on the dollar of assessed valuation might be legally levied and collected, for the purpose of paying the tuition of the graduates of the rural or common schools at the nearest approved high school in the county. The adjunct district has no officers; it builds its schoolhouses; it votes no bonds.

In the counties where the adjunct district has been established, the following high schools have been approved by the state superintendent as meeting the requirements of the law: Antelope county: Neligh, Oakdale, Elgin.

Case: Plattsmouth, Weeping Water, Elmwood, Louisville.

Cherry: Valentine.

Douglas: Omaha, South Omaha, Florence, Waterloo, Valley, Elkhorn.

Jefferson: Fairbury.

Knox: Creighton, Bloomfield, Wauka, Niobrara, Verdigree.

Madison: Norfolk, Madison, Tilden, Battle Creek, Newman Grove, Scotts Bluff, Gering.

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27. It assessing sleeping and dining cars under the provisions of sections 39a and 40, the board can not value and assess the franchises or other intangible property of the corporations owning such cars as independent species of property. In estimating the value of such property for assessment purposes the assessing board in determining the value thereof is not confined alone to the cost of construction but may consider the value of the property assessed as a means of earning income, the profitableness of the use to which it is put, and ascertain and fix its true value for assessment purposes with reference to the value it has as used and by reason of its use.

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AFTER THE MOROS

Captain Pershing Finds Forts of Rebelious Filipinos

MEETS SLIGHT RESISTANCE

Marches Right Into Heart of Rebel Country—Seven Strongholds Captured and Twenty-five of Enemy Killed—Other News

A Manila, Sept. 22, dispatch says: Up to Sunday the force commanded by Capt. John Pershing of the Fifteenth infantry, operating against the Moros in the island of Mindanao, had met with slight resistance in the Macin country and had captured seven forts, killed twenty-five and wounded twenty Moros. There were no American casualties.

Captain Pershing's courier reached Brigadier General Samuel S. Sumner at Camp Vicars today. The captain reported that he first moved on Gouan, where the troops took three forts. They then pushed on to Baynaba and captured two more forts. From Pantran to Sanir, in the country dominated by the sultans of Cali and Butig and the two sultans of Macin, the column was frequently fired upon. Captain Pershing communicated with the Macin sultans, but they refused to recognize the Americans and remained obstinate.

When the courier departed Captain Pershing had planned to attack Macin today. Macin is situated a short distance from Sanir, where the troops rested.

General Sumner has forwarded additional rations to Captain Pershing.

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FALLS UNDER THE WHEELS

Burlington Conductor Fatally Mangled at Bentley

WANT TROOPS WITHDRAWN

President Palma Thinks Cuba Can Care for Itself

The government of the United States is to be required to terminate the last vestige of its authority in Cuba. The war department has been advised formally by the department of state that President Estrada Palma has notified Minister Squires that he desires the American troops remaining in Cuba to be withdrawn.

The state department does not undertake to pass on this request, but transmits it to Secretary Root, holding that the problem presented is purely a military one involving the competency of the new Cuban government to take over and care for the coast defenses now in American hands, and thus make sure that the country is not exposed, without any military protection, to a possible foreign enemy.

It is a matter that could not be hastily decided, and it may be discussed with President Roosevelt while the secretary is in the west.

At present there are eight companies of coast artillery in Cuba.

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