

FIGURES OF GOLDSBOROUGH COMPANY'S SHARE VALUE SET BY COMMITTEE BY COUNSEL

ARGUMENT MADE BY GOLDSBOROUGH GIVES DETAILED INFORMATION AS TO VALUES, PROFITS, AND DIVIDENDS. COMMITTEE ON THE DISTRICT OF COLUMBIA GIVES PRECEDENTS FOR OPPOSITION

Fight Upon the Pending Resolution Based on Court's Decision.

Following is the continuation of the hearing last evening before the House of Representatives Committee on the District of Columbia on Representative Coudrey's bill concerning the Washington Gaslight Company, Attorney R. H. Goldsborough resuming his argument.

HOUSE OF REPRESENTATIVES.
Monday, May 2, 1910.
The committee met at 8 o'clock, Mr. Samuel W. Smith (chairman) presiding. The Chairman—Mr. Goldsborough, you have had an hour this evening. Mr. Goldsborough—I think probably I will be able to get through in that time. I shall try to do so.

The Chairman—You surprise me. Mr. Goldsborough—is that 80? I should like to know the author of the resolution (Mr. Coudrey) here.

The Chairman—Of course, we have no assurance that he will be here.

STATEMENT OF RICHARD GOLDSBOROUGH, ESQ., COUNSEL FOR THE WASHINGTON GASLIGHT COMPANY.—(Continued.)

Mr. Goldsborough—Mr. Chairman and gentlemen of the committee, when I left off at the last meeting I had about concluded the review and analysis that I had the honor to submit to the committee on the evening of the 29th of April. Although the great case of the Chicago, Milwaukee and St. Paul Railroad Company against Minnesota was not technically decided by a united court, for Justice Bradley delivered a dissenting opinion in it, nevertheless it practically is the law of the land as to the fundamental principles that are applicable to the case here at issue.

Mr. Coudrey—May I present you with a copy of this brief?

Mr. Goldsborough—I thank you.

Mr. Coudrey—I think you find that I resume the argument at the bottom of page 25. There is a copy here also for Mr. Coudrey.

Mr. Hazleton—I thank you very much for all the members of the committee.

Mr. Coudrey—Is this copy of the hearing on April 23, which was published in the papers—of course, a paid advertisement.

Mr. Goldsborough—Yes, sir; of my argument.

Impossible to Make Full Report.

Mr. Coudrey—While we have no right to criticize anything that the gas company wants to spend money for, still this is not a full copy of the hearing on that date.

Mr. Goldsborough—It was impossible to make a full report.

Mr. Coudrey—Mr. Whitwell presented a statement that went into the details of the financial condition of the company, not included in that published statement, and it is not included in this statement.

Mr. Goldsborough—No, sir; but it is included in the proceedings of the hearing which are to be printed and not already printed, and I think they have been printed by the Government Printing Office. Obviously, it would have been impossible to have included in that hearing in one edition of the newspapers.

Mr. Coudrey—As long as we are going into the matter, I think it is very essential that we should have a full and complete statement of the facts as they are compiled by the assistant secretary of the company.

Mr. Goldsborough—I have there a full and complete statement of the assistant secretary of the company, all his testimony, and also the statement covering the period of twenty-four years under review. I should have been glad to have published the whole thing in the press. I have a copy of the statement of Mr. Whitwell, so that the argument in the matter would be intelligible, and being practically the official statement of the company as its case. As I remarked before, should have been glad to have published all of the testimony as heretofore, but that was simply impossible. In fact, the last gallery only went into the forms for a few minutes before 3 o'clock, as it was.

Now, to continue my argument, after the review of the case of the Chicago, Milwaukee and St. Paul Railroad Company, on page 25, at the bottom of the page.

As a further evidence of the fact that this reasoning is within the law as laid down in the leading cases on this subject, I beg to refer to a case that has been more honored by the Supreme Court than possibly any other State decision in the books, the case of Williams vs. Western Union, 33 N. Y. 152, which has never been questioned anywhere from one date to the present. In this case the court by an unanimous decision says: "Indeed, so far as the solvency and responsibility of a corporation is concerned, they are increased by a stock dividend where it has a surplus of property to correspond to the amount of shares issued. In such case the surplus property is secured and impounded for the benefit of the creditors of the corporation and for the public so that thereafter it can never be legally divided, withdrawn, or dissipated in any way, so long as every dollar of stock issued by a corporation is represented by a dollar of property, no harm can result to individuals or to the public by distributing the stock to the stockholders."

Finally, as conclusive of controversy, I beg to cite the case which went up from this District involving a stock dividend, declared by the Washington Gas Light Company, the defendant practically under suspicion of an appropriation of additional stock representing capital, or a division of profits and income, depends upon the substance and intent of the action of the corporation, as manifested by its vote or resolution; and ordinarily a dividend declared in stock is to be deemed capital, and a dividend in money is to be deemed income of each share.

Takes Nothing From Property.

"A stock dividend really takes nothing from the property of the corporation,

and adds nothing to the interests of the shareholders. Its property is not diminished, and their interests are not increased. After such a dividend, as before, the corporation has the full in all the corporate property; the aggregate interests therein of all the shareholders represented by the total number of shares; and the proportional interest of each shareholder remains the same. The only change is in the evidence which represents that interest, the new shares and the original shares together representing the same proportional interest shares, and the same amount represented before the issue of the new ones."

Now, let us see if we cannot prove conclusively so conclusively that "the who runs may read," and the wayfaring man, though a fool, may not err therein; that the reasoning in Williams vs. Western Union of Judge Ruger and Mr. Justice Gray in this case is true, and consequently that the reasoning in the adversary, Mr. Hazleton, and his disciples as to this matter is false. He says that the reasoning that inflated myself with dreams—dreams of riches almost beyond the hope of avarice—that we were to enjoy the fruits of what 100 years ago happened the next morning after we all pulled ourselves by our boot straps to get up the mountain, and then, why—the stock that was worth \$5 the day before the dividend was declared dropped to \$2.50 the day after the dividend came off. So we lost on the stock what we made on the dividend. Very well, what "fools mortals be!" For the stock, plus the dividend, was worth the day after it was declared exactly what the stock was worth the day before.

Why, then, did we issue those certificates if their issuance added no value to the property of the company, and added nothing to what imperial appraisers said it was worth, and to what Uncle Sam's assessor ruthlessly assesses it for?

Only Realizing Legal Interest.

The answer ought to be plain enough to those who have followed my argument to this point. The answer is, now, to escape from the false charge of declaring 30 per cent dividends (we have to do that to distribute 6 per cent per annum upon the value of our investment) when, in fact, at that nominal rate, the company has only realized a legal interest on our actually invested capital.

There is a charge is partisanship, pure and simple—Partisan partnership, at that—shooting poisoned arrows in retreat from untenable ground. It does not do us credit to be guilty of such a deed. It does vindicate my criticism that the only purpose that can be promoted by this kind of a company is the realization equal to the actual value of the property is to give verisimilitude to a statement in this case, in which the stock is not real. A thing that is letter true and spirit false cannot be either politically, economically, or morally justified. It is a thing that is a hybrid falsehood is at best defensible only on the theory that good fruit may be produced from a poisonous tree. The use of manure. But this treatment having repeatedly failed, I submit it would be profitable to cut these barren trees down.

To make our position perfectly plain, I say that the actual truth is, as the proof shows, that the Washington Gaslight Company has not distributed capital account for any one year since 1886. The year of the certificate dividend—a total of exceeding 5 per cent upon the actual value of the property in the conduct of its business. And has never earned in any year since that year an amount exceeding 1 per cent upon the actual value of the property in the investment as determined by the Humphreys appraisal, or as may be determined by a capitalization of the average rate assessed upon the property in the District of Columbia.

Offer to Prove Faith.

To prove our good faith in this defense, I beg the committee to consult corporation counsel or the Department of Justice to see if our contention here is not recognized there as undeniably true.

To come back to the argument. Now, honor bright, Mr. Chairman, if you had a house and lot that cost you \$2,000 40 years ago, or say 30 years ago, and its value had naturally increased to three times its original cost, until it was now actually worth at least \$3,000, according to the market standard of value, and you had raised upon it from \$20 to \$30, now, honestly—in such a case—if the government or the people should take the property, would you feel that you were exacting an extortionate profit if you priced it at its present actual value?

Well, as has been shown you, and I am going to further show you, that the Supreme Court says you have a perfect right in the moral right to make the government or the people pay you a reasonable rent or return upon its present value—irrespective of its cost—but to make the government pay you a greater price by mortgaging it for a part of its value, for the whole of its value, or for more than its value. And that the court further says: There is nobody in this country big enough to take it away from you, in whole or in part, without due process of law and just compensation. "If the court knows itself." And what is true of you is true of us. The fact that we happen to be a public utility proposition and you a personal one, or a political one, cuts no figure whatever in the equation.

Mr. Hazleton—The admitted facts present the following state of things: The accumulated profits of the company were kept undivided, and actually added to the capital of the corporation by investing them from time to time in its plant, works and plant, until the value of the works and plant amounted to a million dollars; no owner of particular shares, or of any interest therein, had the right to compel the company to divide or apportion those earnings, and while they remained undivided the invested capital stock of the company was increased to the same amount by the act of Congress of May 24, 1898, &c.

Continuing, the Court (p. 158) says as follows:

"Whether the gains and profits of a corporation should be so invested and apportioned as to increase the value of the shares of stock, for the benefit of all persons interested in it, either for a term of life or for years, or by way of remainder in fee, or should be distributed and paid out as income to the tenant for life or for years, excluding the remainder man from any participation therein, is a question to be determined by the action of the corporation itself, at such times and in such manner as its directors or officers may require or permit, and by a rule applicable to all holders of like shares of its stock."

Includes Gains and Profits.

It is thus apparent that the Supreme Court considers, as do all other courts, apparently, the term "earnings of a company" to include its gains and profits from every legitimate source. It is to be noticed also that in this case the Supreme Court uses the words "plants" or "works" as equivalent words of the property of the company.

In the case of the Chicago, Milwaukee and St. Paul Railroad Company, which I have mentioned, the Supreme Court, in 1880, in the case of Williams vs. Western Union, 33 N. Y. 152, which the Supreme Court took occasion to correct this very commission for assuming to doubt the obligation of Chicago, Milwaukee, and St. Paul in a similar matter, and I may add that the doctrine laid down in Chicago, Milwaukee, and St. Paul vs. Western Union, and Gibbons vs. Mahon, which we have just been considering, is now so universally recognized as good law and sound law that I shall not consider it necessary to refer to any further references other than those that incidentally touch it.

where all questions are involved. Out of the abundance of precaution, however, I will before dismissing this point, with the committee's permission, submit to it this further argument in regard to the application of the case in review to the case here under consideration.

If this resolution in effect denies to us what you have heretofore granted, and do now freely accord to our competitors and fellow public servants, apart from the question of fairness, it is obviously discriminatory legislation, and such a discriminatory legislation of the Constitution of the United States and ought not to receive Congressional sanction even if there was no reason to doubt—which I insist that there is not—the legality of a part of the company's present capitalization.

Not Overcapitalized.

But, Mr. Chairman, there is not and cannot be any legal question about the bona fides of the existing security capitalization of the Washington Gas Light Company, for the proof is overwhelming that it is in truth and fact the most undercapitalized public utility in this country, if not on the face of the globe. In the name of Mr. Chairman, in common sense, of all that is serious, of good report, and worthy of honest respect and consideration, I earnestly contend that a company is overcapitalized when—testimony in the case not only tends to show that it actually does prove, that it has beyond the possibility of reasonable doubt from three to four dollars of assets in physical property for every dollar of securities that are outstanding against it.

This fact once established makes it entirely immaterial in so far as the public is concerned, whether a company, whether or not its bonds or certificates were legally issued, if the company employs the same amount of capital of the business, I repeat, that property is its invested capital, and it is entitled to have the same protection upon every dollar of it, and to have every dollar of it that has never been capitalized now capitalized in securities for an amount equal to its actual value, whatever that may be.

Mr. Chairman, the language employed in all the simple and direct, so plain and obvious; so full and frank; that it looks like reflecting upon your intelligence, and your respectability. With all that only the willfully blind can fail to see the palpable application of all to this case.

Former Appraisal Cited.

Before summarizing our legal postulates, however, I feel that I ought to more formally marshal the law of the case and the evidence in it as to the value of our invested capital. First, in order of time, is the Humphreys appraisal of 1898, which established the facts of the value of the property of the company as of that date. Next comes the Humphreys & Glasgow appraisal of 1898, which established the facts of the value of the property of the company as of that date. Next comes the Humphreys & Glasgow appraisal of 1898, which established the facts of the value of the property of the company as of that date. Next comes the Humphreys & Glasgow appraisal of 1898, which established the facts of the value of the property of the company as of that date.

000? Let us see: Add to \$3,350,000 our funded debt of \$3,300,000, which at average market value (112) equals \$3,594,000, and we have total of \$12,500,000, which closely corresponds with the Humphreys appraisal of the property as a going concern at \$12,000,000.

Now, the plain and unmistakable point in all this is that if this company pays to the collector of taxes for the District of Columbia the amount of taxes which are capitalized upon the taxation rates established by law in this jurisdiction equals an assessment valuation of \$12,000,000, then the company's return ought to be appraised at \$12,000,000 for the purpose of fixing a reasonable rate for its services, even if there was no reason to doubt—which I insist that there is not—the legality of a part of the company's present capitalization.

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And again, on page 57:

"What the company is entitled to ask is a fair return from the value of that which it employs for the public convenience."

And again in San Diego, etc., vs. National City, 174 U. S. page 738, Mr. Justice Harlan, delivering the unanimous opinion of the court, says:

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Fair Profit Permitted.

In Regan vs. Farmers' Loan and Trust Company, 154 U. S. it was held that:

"The rate to be exacted by the Constitution must permit a reasonable profit on the company's property."

2. All public-service corporations have a right to make and distribute earnings upon the actual value of the property employed in the conduct of their business, irrespective of its ownership, and of course, irrespective of the number of public utility securities outstanding against it—or of their ownership.

It is a well-known fact that a great number, approximating at least 100 gas companies throughout the country, are operated under lease by either the United Gas Improvement Company of Pennsylvania, or the Gas Light and Coke Company of England, or other companies doing a similar business.

3. The Company's franchisees are property, and such a franchise which it is entitled to predicate earnings.

The third proposition is sustained by a long line of unanimous Supreme Court decisions, ending in the last case in the Supreme Court, delivered by the late Justice Peckham, in the case of People vs. O'Brien, 131 N. Y. 201, which was affirmed by the Supreme Court in the New York Consolidated Gas Case, in which he says, without qualification, "It cannot be disputed that a franchise of this nature is property and cannot be taken or used by others without compensation."

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established rates belong to the company making them, and their value may and should be included in the appraisal of the property used in every case.

7. It is not against public policy, as defined by the courts, for public service corporations to permanently invest undivided profits earned under statutory regulations and rates in extensions, betterments, or surplus of any kind or for any purpose. As to this proposition and the preceding one, I respectfully refer you to this resolution, which is in as full force, vigor, and effect today as it was in 1887, when this famous decision was rendered.

Recalls Noted Opinion.

In concluding, I beg to again direct your attention to the able opinion of Mr. Justice Moody, heretofore briefly referred to, speaking for a unanimous court in the Knoxville water case, delivered during the October term of last year:

"The courts, in clear cases, ought not to hesitate to arrest the operation of a remedial law, but they ought to refrain from interfering in cases of any other kind. Regulation of public service corporations which perform their duties under conditions of necessary monopoly is not a general statutory regulation, but a special regulation, and it is a delicate and dangerous function, and ought to be exercised with a keen sense of justice on the part of the courts. It is a frank disclosure on the part of the company to be regulated. The courts are not to be misled by the fact that saving property from confiscation, though they will not be found wanting where the proof is clear. The legislature and subordinate bodies to whom the legislative power has been delegated ought to do their part. The courts are not to be misled by the fact that the legislature has sought to invade it will seem to have greater force in the district which follows. The right gain to the consumer which he would obtain from a reduction in the rates charged by the service corporations is as nothing compared with his share in the ruin which the law would bring upon the private property its just reward, thus unsettling values and destroying confidence. On the other hand, the company to be regulated will find it to its lasting interest to furnish freely the information upon which a just regulation can be based."

It is unnecessary and perhaps would be out of place for me to add a word to this magnificent reasoned out admonition to the legislator, and to all whom it may concern.

Before closing my remarks, my obligations to many eminent counsel who have been consulted as to the legal points involved in this case, and especially my indebtedness to my associates, Messrs. R. Ross Perry & Son, for assistance derived from the very able brief prepared and filed by them in this case, before the Supreme Court of the District of Columbia two years ago.

I beg to thank you very much not only for your kind attention, but indulgence in postponing the hearing for my convenience, and I leave our case in your keeping in abiding confidence that you will give it fair and just consideration.—Adv.

of its own public service companies whose charters are accepted subject to such expressly reserved rights as are then in force or may thereafter be amended or imposed by future general laws, future constitutions, or general legislation.

But no State can undertake to do that sort of thing by private or special statute, nor can Congress do so by a private act especially enacted to affect private charters without due regard and respect to the rights of review reserved in and by the fourteenth amendment, which is in as full force, vigor, and effect today as it was in 1887, when this famous decision was rendered.

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2. All public-service corporations have a right to make and distribute earnings upon the actual value of the property employed in the conduct of their business, irrespective of its ownership, and of course, irrespective of the number of public utility securities outstanding against it—or of their ownership.

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The third proposition is sustained by a long line of unanimous Supreme Court decisions, ending in the last case in the Supreme Court, delivered by the late Justice Peckham, in the case of People vs. O'Brien, 131 N. Y. 201, which was affirmed by the Supreme Court in the New York Consolidated Gas Case, in which he says, without qualification, "It cannot be disputed that a franchise of this nature is property and cannot be taken or used by others without compensation."

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And again, on page 57:

"What the company is entitled to ask is a fair return from the value of that which it employs for the public convenience."

And again in San Diego, etc., vs. National City, 174 U. S. page 738, Mr. Justice Harlan, delivering the unanimous opinion of the court, says:

"What the company is entitled to demand, in order that it may have just compensation for the use of the property AT THE TIME IT IS BEING USED FOR THE PUBLIC."

And in the case of Stanlaws vs. San Joaquin, 192 U. S. page 201, Mr. Justice Peckham, delivering the unanimous opinion of the court, says:

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Again, in Southern Pacific vs. Railway Commissioners, 78 Federal Reports, pages 226-232:

"It is now well settled that legislation prescribing traffic rates, gas charges, and water rates, may be reasonable as regards both the company and the public, and whether the legislation is reasonable or not is a question for judicial investigation."

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"That a railroad company is entitled to earn at least the legal rate of interest upon the actual value of its property."

And finally, as to this point:

"If it be not true that actual value of the property (and not nominal value (the face value of the stock) is the thing—the true measure of the value of the property—then the case of Maryland a few weeks ago pass an act providing for such valuations in such cases? And coming nearest home, why did the House of Representatives, on Friday last, by a two-thirds vote, pass an amendment requiring that the company should be allowed to make exhaustive appraisements of the property of every railroad doing business in the State of Maryland? If the stock is not the true measure in overcapitalized cases, how can it honestly be said to be in undercapitalized cases? The amendment for the goose still sauce for the gander? If you cannot go behind the returns, so to speak—to the actual value of the property, do you so to show what value in the other?"

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