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GENERAL GRIGSBY

Argument for the State, Carland Explains the Poof the Railroads in His Opinion.

mary fight in the most imentest ever known in South finished last Wednesday, d States District Judge Car-r Fal's handed down an oping a temporary injunction aroad commissioners putting the new schedule of freight er rates. The railroads were by a large array of lega' coun-Attorney General Grigsby, Null, Fred M. Brown and C.

full report of the proceedings at Falls Press, the opinion by and and the argument by At-gal Grigsby are here given:

### the Judge's Opinion.

d to the motion for a temporon in the several cases, which gued before this court, it is essary to say that no person keenly the responsibility which by law upon the court in mat-kind. It needs no argument of counsel in order that the fully appreciate the delicacy gion in which the court is enit is asked to restrain by a at the contemplated action of But, however distasteful gs. But, however distasteful my be for the presiding judge, r is found to exist and the discharge of the duties of the odge, it is the opinion that it t, then it is its duty to act in so as to preserve the rights ties, so far as possible, and so presiding judge of this court in g of this court is concerned, it m that duty regardless of conin any matter which in the the judge it ought to act.

rd to these cases which are now efore the court it is necessary some of the fundamental laws ntry which in part and to great introl judiciary action. It was roper by counsel in the arguthese motions, to call attention fundamental principles of gov-That perhaps was proper, and proper for the court to call atsome other principles which are bree. There were other remarks counsel which I have fai'ed to reason for in an application of They were such remarks as used, if allowed to be used at ea jury, and then only for the of inflaming the prejudice of a what purpose they were used earing of this application I can-estand, unless it was for the pur-

being published.

The all governed by the constituthe United States. By its terms supreme law of the land. Noth-e laws of any state to the contwithstarding. That constitution that no person, (which includes ion) shall be deprived of life, r property without due process lso provides that no state n of the law. The people of the any person of the equal South Dakota, when they asked into the union of states, desection 26 of article 26 of their Rights that South Dakota was an ble part of the American union, constitution of the United States me law of the land. This belaw that governs us, these railway come before the court and by equity framed so as to state the ast so as to entitle it to be tried

we no discression about the case by these bills upon this hearing. the decision of the United States court and of the honorable cirtice for this circuit, which conthese bil's state a case, which e complainants a standing in the equity for the purpose of trial.

proceedings by these bills to grant orary writ of injunction, so as to the rights of the parties until the can be tried. The issuing of a may injunction in no way decides estion in the care of the threshold of the parties. on in the case, and it cannot in of this kind be considered even an n, as to what the ru'ing and judgof the court will be upon the final

cases having been brought here wing been stated that the facts are at to give the court jurisdiction, at question is whether or not damconvenience would be irreparable mporary injunction was not allowed. the court inquired of counsel at the a argument what would be the re-the temporary injunction was not d. To that question (with due re-to the counsel for the defendants) I at have a satisfactory answer or re-lf this temporary injunction is not d, the rates wil' go into effect, be-it must be presumed that the comhedule of rates. Now I am asked to defendants publish in advance of nal, and do all that the companies to prevent them from doing in these

here is another feature to the case that is in regard to the multiplicity Courts cannot speculate upon the commissioners will do or what as of the state may do. They look to the question as to what it sible on the part of these pardo if the railway companies do not put in the rates and the temporary injunction is not granted.

"I do not know of any power in a court of equity to enjoin the prosecution of a criminal offense on the part of the state of South Dakota, and certainly if these railway companies refuse to put in these rates under this law they would be guilty of a criminal offense.

"The companies, of course, are entitled to an adequate remedy. That remedy must be as full and complete as the nature of the case requires. The tribunals that fix the laws, as far as this court is concerned, have decided that this proceeding is a proper proceeding, and the only adequate way by which railway companies can protect themselves from unjust action on the part of railway commissioners.

"So the question is simply left to the court to decide whether it will stay the operation of these rates until this case can be tried. It seems to me that there is no other alternative than to issue in each one of these cases a temporary writ of injunction against the railway commissioners from causing to be published this schedule of rates. There will be no injunction issue against the attorney general or the other parties, mentioned in the suit, and there will be an order of the court in each case.

"I might refer to some points made by coursel for the defendants, which the counsel may think that the court has overlooked, but I have tried and endeavored to give this case as much patient and careful consideration as possible, and the argument has extended over a wide field. Some of the arguments would be applicable were the case before the court for final hearing.

"It was suggested by the attorney general that the bills were not good, for the reason that the bills had stated the expenses and earnings of the state of South Dakota alone, without taking in the whole line of road, and that position was sought to be enforced by citing the recent tax case in the United States surreme court, that held that the state of Ohio could only assess railway property for the purpose of taxation by taking the whole value of the road into consideration, and on the whole value find the proportionate value for the state of Ohio. But it does not seem to me that that is a parallel case, and in the absence of any other authority, I feel controlled by the opinion of Judge Brewer in the case of Aimes vs. the Union Pacific, where he asserts that that method would not be permissible It may be that the United States supreme court will find some new method by which the earnings and expenses can be apportioned, but until that time I am governed by Judge Brewer's decision.

"There was another matter in regard to the Chicago and Northwestern road only claiming a reduction of \$1,000. Now, I read these bills when they were filed, and I read them again last night, and I find that the Chicago and Northwestern road alleges that that is the reduction on its freight business, and goes on further and states a reduction of 3 per cent on pas-

senger rates. "There are of course some illustrations as to the courts issuing injunctions in favor of railroads and not to anybody else, which I do not think counse' intended to have any influence with this court, for the reason that no railway that I am aware of has failed through business com petition and went into a court of equity and asked the court to help them out. It is only when the legislature in an attempt to regulate the rates through the board of railway commissioners impose a schedule of rates that will not allow the companies to exist and do business, that come into court.

"Therefore the temporary injunction is granted.

### Attorney General Grigsby's Argument.

The attorney general prefaced his argu ment with the statement that the ab'e, convincing and conclusive argument preented to the court by Mr. Null, was founded upon the most conservative of the decisions that have been rendered by the highest courts in support of the claims made by the defendants in these cases.

"I now propose," said the attorney general, "to direct the attention of the court to the most advanced ground which has been taken by the highest court of the land in maintaining, what may be called, the rights of the people as against the

corporations "That the legislature of a state has a right to fix, either directly by an act of the legislature, or indirectly through a commission, reasonable passenger and freight rates, upon traffic wholly within the state borders, is now so well settled as to be beyond controversy.

"Another general rule is: That the power of the courts to suspend the enforcement of rates fixed by a railway commission can only be invoked when such rates yield an income so small as to leave absolutely nothing above operating

The first case before the supreme court of the United States upon this question arose under a statute of I'inois declaring certain warehouses to be public warehouses and fixing a maximum of charges. Chief Justice Wait del'vered the majority opinion of the court on March 1, 1877. He said: 'It is insisted, however, that the owner of property is entitled to a reasonable compensation for its use, even though it be clothed with a public interest, and that what is reasonable is a judicial and not a legislative question.' After giving reason for holding that the legislature had the power to determine what is reasonable compensation the learned judge uses this significant language. We know that this is a power that may be abused; but that is no argument against its existence. For protection against abuses by legislatures, the people must resort to the pol's and not to the courts.' Peop'e of Illinois, 94 U. S. 113.

"In what are known as the granger cases, which arose over the statute of Iowa, regulating rates of fare and of freight (the identical question before this court) the United States supreme court said: 'Where property has been clothed with a public interest, the 'egislature may fix a limit to that which in 'aw sha'l be reasonable for its use. This limits the courts as well as the people. If it has been improperly fixed, the legislature, not the courts, must be appealed to for the

change.

tes supreme court said: 'It is stated all charges must be reasonable, and that none but reasonable charges can be exacted; and it is urged that what is a reasonable charge is a judicial question. On the contrary, it is pre-eminently a legislative one, involving consideration of solicy as well as of remuneration, and is usually determined by the legis'ature 'y fixing a maximum of charges in the char ter of the company, or afterwards, if its hands are not tied by contract.

Right in the face of these emphatic and positive declarations from the highest court in the land, it will be contended by corporation attorneys in this case that if the rates fixed by the commissioners do not yield a reasonable rate of interest on the money invested, it will be the duty of this court to declare those rates to be null and void.

"I say no. This court has nothing to do with the amount of profit any company shall be allowed to make in this state. Concede that the rates fixed will furnish to either company any net profit whatever, after paying taxes and operating expenses and that company has no case before this court.

"Such is the doctrine emphatically declared and oft repeated by the highest tribunal, and I challenge this whole array of corporation lawyers, every one of whom I know to be a star in his line, to point out a single paragraph in any opinion rendered by a majority of the supreme court that in the slightest degree recedes from the rule I have stated.

"I know that one of the judges, Brewer, sitting at circuit, has undertaken to establish the rule that courts can interfere when the rates do not yield a reasonable income, and he defines a reasonable in-come to be one that will pay all expenses

and the interest on the mortgage bonds. "That rule has not been adopted by he supreme court, and if it ever is, goodbye, railroad commissioners. Your occu-pation will then be gone. Whenever it is lecided that interest on the bonds must be paid before your right to act begins, there will never again be anything for ou to do in the line of fixing rates.

"According to the allegations of the implaint of the Chicago, Milwaukee and St. Paul company, in this case, that company will have left after these rates are put into effect a margin of at least 2 per ent net profit, over and above operating expenses and taxes, and that by the most iberal figuring that can be done in their

That road, according to the rules es-

tablished, has no case in this court.

The attorney general then proceeded to oad from the very latest decision of the inited States supreme court, which for bear out the principles that he contends

He then said that gross earnings of the ompanies stated in the complaints to be the gross earnings of the roads in this state were not fairly made, as shown by the schedules themselves.

More than 80 per cent, he said, of these gross earnings, come from receipts on in-terstate traffic. The state is given credit for its share of this interstate business on what is called the "pro rata mileage basis."

That is to say, if a company charges \$100 for hauling a car of hogs from Yankton to Chicago, 560 miles, the state has credit for such proportion of the \$100 as 60 mi'es hears to 560, or about \$11. Such he claimed was not a fair basis for such credit. He claimed that the railroads themselves, in dealing with each other, a lowed to the company, holding the initial point of the business done, much more than a pro rata share of the charges for the entire haul

"He claimed that the roads in the state were entitled to credit for very near, if not quite, a pro rata mileage share of the entire not earnings of the who'e system of which the road in the state was a part. In support of that doctrine he read from United States supreme court decision, as with the views of the supreme court of Arkansas, as disclosed in the opinion contained in the record, and which were to the effect that the correct test was as to the effect of the act on the defendants entire line, and not upon that part which was formerly a part of one of the conso'idating roads; that the company cannot claim the right to earn a profit from every mile, section, or other part in which the road might be divided, nor attack as unjust a regulation which fixed a rate at which some such part would be unrenumerative; that it would be practically impossible to ascertain in what proportion the several parts should share with others in the expenses and receipts in which they participated; and, finally, that to the extent that the question of injustice is to be determined by the effects of the act upon the earnings of the company, the earnings of the entire line must be estimated as against all its legitimate expens es under the operation of the act within the limits of the state of Arkansas Louis and San Francisco Railroad company, vs. Gill, 156 U. S. 573.

"The true value of a line of railroad is something more than an aggregation of the values of separate parts, operated separately. It is the aggregate of those vi ues, plus that arising from a connected operation of the whole, and each part of the road contributes not merely the va'ue arising from its independent operation, but its mileage proportion of that flowing from a continuous and connected operation of the who'e. This is no denial of the mathematical proposition that the whole is equal to the sum of all its parts. because there is a value created by, and resulting from the combined operation of a'l its parts as one continuous 'ine. This is something which does not exist, and cannot exist, until the combination is formed. Now, when a road runs into two states each state is entitled to consider as within its territorial jurisdiction, and subject to the burdens of its taxes what may perhaps not inaccurately be described as the proportionate share of the value flowing from the operation of the entire mileage as a single continuous road. It is not bound to enter upon a disintegration of values, and attemut to extract from the total value of the entire property that which would exist if the miles of road within the state were operated seperately. Take the case of a ralroad running from Columbus, O., to Indianapolis, Ind. Whatever of value there may be resulting

from the continuous operation of that road is partly attributed to the portion of the road in Indiana and partly to that in Ohio, and each state has an equal right to reach after a just proportion of that value, and subject it to its taxing pro-The question is, how can equity be secured between the states, and to that a division of the value of the entire property upon the mileage basis is the legitimate answer. Taxing a mileage share of in Indiana is not taxing property outside the state. ..... In the nature of things it is practically impossible-at least in respect to railroad prop erty-to divide its value, and determine how much is caused by one use to which

it is put and how much by another. Take the case before us; it is impossible to disinteregrate that portion of the road in Indiana and determine how much of that value springs from its use in doing interstate business, and how much from doing business entirely within the state An attempt to do so would be entering upon a mere field of uncertainty and speculation." Decided May 26, 1894, in Cleveland, C. C. and St. P. R. Co., vs. Backus, 154 U. S. 1045.

The attorney general then called attention to the fact that the companies had alleged their operating expenses in a lump sum, they had not itemized so that the court could pass on whether they are reasonable and economica, and quoted from Justice Brewer in the case of Chicago and Grand Trunk railway vs. Wellman: "It is agreed that the defendants operating expenses in 1888 were \$2,404, 516.54. Of what do these operating expenses consist? Are they made up partia' ly of extravagant sa'arier-fifty one hundred thousand dollars to the president and in like proportion to subordinate officers? Surely, before the courts are called upon to adjudge an act of the legislature fixing the maximum passenger rates for railroad companies to be unconstitutional, on the ground that its enforce ment would prevent the stockholders from receiving any dividends on their investments, or the bondholders any interest on their loans, they should be fully advised as to what is done with the re ceipts and earnings of the company, for if so advised it might clearly appear that a prudent and honest management would, within the rates prescribed, secure to the bondholders their interest, and to stockholders reasonable dividends. While the protection of vested rights of property is a supreme duty of the courts, it has not come to this, that the legislative power rests subservient to the discret on of any railroad corporation which may, by exorbitant and unreasonable salaries

call operating expenses. In conclusion he said, that he had on'y examined the complaints of the Chicago, Milwaukee and St. Paul and the Chicago and Northwestern companies. That of either of those companies would give to South Dakota lines a fair proportion of the gross earnings from interstate traffic. and deduct a fair proportion of the operating expenses, there would be left to that company a handsome net profit, 4 to 6 per cent over and above operating ex-

or in some other improper way, transfer

its earnings into what it is pleased to

That these facts were fairly deduced from the complaints and that therefore neither of those companies were entitled to any relief from this court.

French Need of Wheat. Paris, Sept. 13.—The Matin, in an article on the grain supply, says it will be necessary to import 30,000,000 quintals of wheat this season on account of the failure of the crop. The importation of this quantity of wheat will yield \$28,000,000 duty.

General Secretary E. V. Smalley announces that the executive committee of the National Sound Money league, has appointed John V. Farwell, Jr., of Chicago vice president of the league for Illinois.

### "Reforms" for the Philippines

Madrid, Sept. 13.— The reforms for the Philippine islands, which were agreed upon at a cabinet meeting, upon which occasion the draft of the proposed decree was approved and sent to the queen regent for her signature, include a modification of the pe nal code in regard to secret political associations, especially to one known as "The Pact of Blood," which will be severely proceduted. The other reforms for the islands ore drafted with the intention of assuring justice to the patives.

Nearly a Million. St. Louis, Sept. 13. — The property and plants of the Edison Illuminating company of this city were disposed of for \$914,000 at a foreclosure sale. The property was bought by A. D. Brown, a representative of the stock and bondholders' organization company.

Mgr. P. G. Toner, missionary apostolic and honorary chaplain to the pope and chaplain general to the An erican warships, was stricken by heat in his room in a Philadelphia hotel. He died shortly afterward.

### Excitement Continues.

Madrid, Sept. 13. - The excitement caused by the capture by the Cuban insurgents of Victoria de las Tunas, Province of Santiago de Cuba, continues here. The Imparcial describes it as a catastrophe for Spain. In official circles efforts are being made to minimize the importance of the insurgents' success. The Spanish authorities are convinced that an expedition is about to start with the object of speedily effecting the recapture of Victoria de las Tunas.

### Develish Work.

Evansville, Ind., Sept. 13.-In Warrick county George Slaughter, a negro, criminally assaulted Mrs. Will Jones and made his escape. Slaughter finally returned. James Robinson, a colored deputy sheriff, arrested Slaughter and took him to Mrs. Jones for identification. When Mrs. Jones recognized him Slaughter pulled his revolver and killed her and her husband and es caped.

# Scrofula Cured

"When three months old my boy was troubled with scrofula. There were sore places on his hands and body as large as a man's hand, and sometimes the blood would run. We began giving him Hood's Sarsaparilla and it soon took effect. When he had taken three bottles he was cured." W. H. GARNER, West Earl, Pennsylvania.

### **Hood's** Sarsaparilla

Is the Best-in fact the One True Blood Purifier. Hood's Pills cure Sick Headache. 25c.

"CRAPS."

Geme Was Introduced in New Or-leans Society 100 Years Ago. Savanaah (Ga.) News: If there is one game to which the Savannah negro is game to which the Savannah negro is devoted above all others it is craps. City or country, it is all alike. On Sunday the country negroes gather in little groups in the shade of trees, out of sight of the "big house," and play all day long, or until the wages which they received on Saturday night are gone. In the cities they gather on the wharves, in the corners of warehouses, or any favorable spot out of sight of the "cop," and play for any amount they may posand play for any amount they may pos-sess, from coppers to dollars. The Savannah bootblacks and news-

boys, like those of any other city, gamble away their earnings, and many a gamo is carried ou in the lanes, the players is carried ou in the lanes, the players often becoming so interested that they lose all thought of the policeman until that worthy appears in their midst and nabs a couple of the players. White boys play the game, too, but negroes of all sizes and ages "shoot" craps. There is only one other game which equals craps in fascination for them, and that is policy and as policy is more liable to be icy, and, as policy is more liable to be interfered with by the police, craps has all the advantage.

There are fascinations about the game peculiarly African. It is not without its intricacies; the ordinary "come seven, come eleven," plan of the game is simple. come eleven," plan of the game is simple enough, but there is a crowd around the players, and there may be a half dozen interested in the game and a dozen side bets. How they manage to keep the run bets. How they manage to keep the run of the game is a mystery to the ordinary observer, but they do so with unerring accuracy. Fights over rap games are

The expressions common to the game are amusing. "New dress for de baby," exclaims one. "See my gal Sunday night," exclaims another. "De little number two," says one as the unlucky number shows up. "I eight you," says another, meaning that he bets that number will not turn up before the "lucky

ber will not turn up before the "lucky seven." And so it goes.

The city council of New Orleans has just passed a law making the game of craps illegal. It does not matter where is is played, whether in the streets, in the club or at home, craps is specially singled out as the most depraved of gambling games, not to be tolerated anywhere. The game, according to a writer where. The game, according to a writer in Harper's, is of New Orleans origin, and over one hundred years old. Bernard de Marigny, who entertained Louis Phillips when he came to Louisma, and who stood seventy years ago at the head of the creoic colony of the state as its most wealthy and prominent citizen—he was entitled to call himself marquis in France -was the inventor, or father, of "craps," and brought it in high favor as the fashionable gambling of the day. When no laid off his plantation, just below the then city of New Orleans—it is now the Third district, but was then the Faubourg Marigny—and divided it up into lots, he named one of the principal streets "Craps," and explained that he did so because he had lost the money he re-ceived from the lots on that street in this favorite game of his. It remained Craps street until a few years ugo, when a pro-test was raised against such a disreputable name for a very quiet and respectable street, especially given to churches. After Bernard Marigny's death craps as a gambling game tescended in the social scale, and was finally ropropolized mainly by negroes and street gamins.

To Cure Constipation Forever. If C. C. C. fall to cure, druggists refund m

### Facetiously Intended.

"One of Mack's bridal presents was a lawn mower, and it made him furious.

"Furious! He ought to have been

pleased."
"No; you see he married a grass widow."—Puck.

Hall's Catarrh Cure

## Is taken internally. Price, 75c.

# An Eloquent Comment.

"I would have you know, fellow," said Charlie Van Beet, "that I come down from the real Knickerbocker

"It's a terrible come-down," said the man.-Cleveland Plain Dealer.

# Profitable.

Visitor (in the penitentiary)-I suppose the profits from making counterfeit money were quite large? Convict-Well, yes, it was a lucre-

ative business while it lasted.-Judge.

It is asserted that the wealth of the Rothschilds has doubled in the last twenty years, and is now \$2,000,000,000.

## Awarded

Highest Honors-World's Fair. Gold Medal, Midwinter Fair. ·DR

10 YEARS THE STANDARD.