

THE PEOPLE v. SALEM.

THE PEOPLE EX REL. THE DETROIT AND HOWELL RAILROAD
Co. v. THE TOWNSHIP BOARD OF SALEM.

CHRISTIANCY, J. (Concur)

The magnitude of the interests involved in this case has made me cautious in reaching a conclusion; and though the case was very fully and ably argued on both sides at an early period in the term, and I was strongly inclined to the opinion that the act in question was unconstitutional, I still had some doubts; and, with my views upon such questions, to doubt would be to uphold the law. I was desirous of hearing further argument, and the case has been reargued with such ability, thoroughness and research as is seldom equaled. Without expressing any opinion upon other questions discussed, my doubts upon the main question in the case have been resolved.

I concur fully in the opinion of my brother Cooley. And I concur also in that of the Chief Justice, so far as it relates to the power of the State, or any of its municipalities, to levy taxes for such merely incidental benefits as results from the building and operation of a railroad, or the prosecution of a private enterprise.

I am entirely satisfied such merely incidental public benefits cannot be made the basis of the right to raise taxes from the people, to be paid or loaned to a railroad corporation or other private parties for their own use, and without securing to the general or local public any greater interest in, benefit from, or control over the work or enterprise, than would have accrued from it, had the same been completed or carried on by the proprietors without such public aid.

My reasons for this conclusion have been so fully and ably presented by my brother Cooley as to render it unnecessary for me to repeat them, and I will add but a single consideration, which I think of some importance, and upon which he has not touched.

The theory upon which this and other acts granting aid to railroad corporations have been passed, and upon which they are sought to be maintained, is this: that, in this way, railroad accommodations may be secured in localities where, but for such aid, the roads would not be constructed at all, or until a later period; that experience has demonstrated that railroads expedite the settlement and improvement of the country through which they run, adding largely to the value of real estate and promoting the prosperity of nearly all branches of business; that the aggregate of these incidental benefits, if estimated in money, would sometimes equal, if not exceed, the benefits which the company or its stockholders derive from the work, when in successful operation; in other words, that the stockholders reap but a part of the profit and advantage arising from the expenditure of their capital in the construction and operation of the road, while the public, or people along and near the line, receive the balance. It is therefore supposed to be but reasonable and equitable that the latter should contribute a part of the expense of the work, from which they derive such incidental benefits.

This theory at the first view seems plausible and just. A little reflection, however, and a recurrence to the fundamental principles upon which corporations are created by the State, will readily demonstrate that this theory is unsound upon any legal principle,—a mere legal fallacy, and no more just than sound. These incidental benefits which railroad corporations thus confer by the construction and operation of their roads, are the only consideration or compensation which they pay, or which the public receive for the large powers and exclusive privileges which the State has bestowed upon the corporators beyond those enjoyed by the citizens of the State generally, including the exercise of the sovereign power of eminent domain, and which, but for those incidental benefits, would be wholly unjustifiable and highly injurious to the people of the State. No one can fail, upon a little reflection, to see that these incidental benefits constitute the sole inducement and only possible justification to the government for the grant of such important and exclusive privileges. This is the fundamental legal idea upon which alone corporations are, or can be, created at all.

The corporation, therefore, in the reception and enjoyment of these large powers and privileges, upon all legal and constitutional principles, must be considered as having received a full equivalent and compensation for those same incidental benefits which are now again urged as the basis of new and further compensation, as the foundation for the imposition of direct taxes for the increase of their funds; when they could never have had an existence as corporations but for the virtual promise and reasonable expectation that such benefits were to be enjoyed by the people without further compensation.

Such is one of the absurdities into which courts would be led, by elevating a mere incident into the place of its principal; a course of reasoning which, if applied to the Constitution, would furnish a ready method for avoiding any constitutional restriction.