

PORTLAND RAILWAY, LIGHT AND POWER COMPANY *v.* RAILROAD COMMISSION OF OREGON
(NO. 2).

ERROR TO THE SUPREME COURT OF THE STATE OF OREGON.

No. 120. Argued May 1, 2, 1913.—Decided June 10, 1913.

57 Oregon, 126, affirmed, on the authority of the preceding case.

THE facts are stated in the opinion.

Mr. Franklin T. Griffith, and *Mr. Joseph S. Clark*, with whom *Mr. Frederick V. Holman* was on the brief, for plaintiff in error.

Mr. A. M. Crawford, Attorney General of the State of Oregon, and *Mr. Clyde B. Aitchison*, with whom *Mr. R. R. Giltner* and *Mr. R. M. Sewell* were on the brief, for defendant in error.

MR. JUSTICE DAY delivered the opinion of the court.

The Oak Park Improvement Association, a voluntary organization of persons residing in and about the stations on the Oregon City Division of the plaintiff in error, the Portland Railway, Light and Power Company, known as the Oak Grove District and comprising Milwaukie Heights, Courtney, Oak Grove, Center and Risley, sought by complaint filed with the Railroad Commission of Oregon to have the Commission fix reasonable fares and to order their substitution for those found to be unreasonable and unjustly discriminatory. The Commission, upon hearing, found that the rate of fare of fifteen cents charged

by the Railway Company between the City of Portland and the Oak Grove District was unreasonable and unjustly discriminatory, and ordered the Railway Company to charge in lieu thereof a ten cent fare and to give the same transfer privileges to passengers traveling between Portland and the Oak Grove District that were accorded to passengers on the Mt. Scott Division of the plaintiff in error. The Supreme Court of Oregon, relying upon the conclusions reached by it in the *Milwaukie Case* (*Portland Railway, Light & Power Co. v. Railroad Commission*, 56 Oregon, 468), decided this day by this court, *ante*, p. 397, affirmed the decree of the Circuit Court confirming the order of the Commission, 57 Oregon, 126, and the case is here on writ of error.

The findings of fact in the present case are practically identical with those in the *Milwaukie Case*, *ante*, p. 397, except the exclusion of facts applying to Milwaukie alone and the substitution of facts pertinent to the Oak Grove District, and show that the circumstances and conditions under which the plaintiff in error transports passengers between Portland and certain stations named for a fare of ten cents, with transfer privileges, are substantially the same as the circumstances and conditions under which the plaintiff in error transports passengers between Portland and the Oak Grove District, except as to the rate of fare and the giving of transfers, and that, while the charges of the Railway Company upon the Oregon City Division are not in themselves unreasonable, they are "unjust and unreasonable, discriminatory and give undue preference."

This case, denominated the *Oak Grove Case*, and the *Milwaukie Case* were heard together in the Supreme Court of Oregon and have been presented together in this court. The contentions asserted in this case are the same contentions set up in the *Milwaukie Case*, and the opinion in the latter case (*ante*, p. 397) has dealt with the controversy

here presented. In view of the conclusions reached in that case, we see no reason to disturb the judgment of the Supreme Court of Oregon in the present case, and it is accordingly

Affirmed.

MACLEOD *v.* UNITED STATES.

APPEAL FROM THE COURT OF CLAIMS.

No. 259. Argued April 25, 1913.—Decided June 10, 1913.

The local government of a conquered country being destroyed, the conqueror may set up its own authority and make rules and regulations for the conduct of temporary government, and to that end may collect taxes and duties to support the military authority and carry on operations incident to the occupation.

An occupation giving the right to the conqueror to exercise governmental authority must be not only invasion but also possession of the enemy's country.

Messages and papers of the Presidents may be referred to by the courts as matters of public history.

The military occupation by the United States, during and after the war with Spain, of the Philippine Islands, and the conduct of the military government thereof, did not extend to places which were not in actual possession of the United States, until they were reduced to such possession.

Executive orders regarding the collection of duties on goods imported into the Philippine Islands during the military occupancy thereof by the United States did not apply to any ports, such as Cebu, during the time that they were not in the possession and under the control of the United States.

The principles of international law were recognized by the Executive in issuing orders concerning the government of the Philippine Islands during military occupancy thereof, and this court will not construe an order directing payment of duties on imports as relating to goods brought into ports in the possession of the *de facto* government of the insurgents.