

concerning values. It also sets out distinctly what the evidence discloses as to the cost of production, expenses of the business, etc. He concluded that the prescribed rate of one dollar per thousand feet would not yield a return of six per centum and was therefore confiscatory. With this conclusion the court below agreed, and we find nothing whatever suggested by the Attorney General in brief or oral argument which would justify material modification or reversal of the final decree in so far as it so adjudges and directs appropriate injunctions.

As the statute is clearly confiscatory and therefore invalid under the Fourteenth Amendment, it was unnecessary for the trial court to consider other objections thereto, and we have not done so.

The decree of the District Court will be modified by excluding therefrom those parts which declare the Act invalid for any reason except that enforcement would result in confiscation. Thus modified, it is affirmed. All costs of the appeal will be taxed against appellant.

*Affirmed with modification.*

MR. JUSTICE BRANDEIS concurs in the result.

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OTTINGER, ATTORNEY GENERAL OF NEW YORK, v. BROOKLYN UNION GAS COMPANY.

OTTINGER, ATTORNEY GENERAL OF NEW YORK, v. KINGS COUNTY LIGHTING COMPANY.

APPEALS FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF NEW YORK.

Nos. 358, 365. Argued October 18, 19, 1926.—Decided November 29, 1926.

An Act of New York, c. 899, (1923), prescribing a gas rate of one dollar per thousand feet, *held* confiscatory. P. 581.

7 F. (2d) 192; *Id.* 628, modified and affirmed.

APPEALS from decrees of the District Court enjoining enforcement of a New York rate-fixing statute, in suits by the Brooklyn Union Gas Company and the Kings County Lighting Company against the Attorney General of the State and the New York Public Service Commission.

*Mr. John Holley Clark, Jr.*, with whom *Messrs. Albert Ottinger*, Attorney General of New York, *William Hayward*, *Charles E. Buchner*, and *Anthony P. Ludden* were on the briefs, for appellant.

*Mr. William N. Dykman*, with whom *Mr. Jackson A. Dykman* was on the brief, for the Brooklyn Union Gas Co.

*Mr. Samuel F. Moran*, with whom *Mr. John D. Monroe* was on the brief, for the Kings County Lighting Co.

MR. JUSTICE McREYNOLDS delivered the opinion of the Court.

Separate suits were begun by appellees in the United States District Court, Eastern District of New York, against the Public Service Commission and the Attorney General of that State. They sought injunctions against enforcement of the Act of June 2, 1923, c. 899, Laws of New York 1923, by which the Legislature directed that gas of six hundred and fifty British thermal units should be sold at not more than one dollar per thousand feet. Prior to June 2, 1923, under orders of the Commission, the Brooklyn Union Gas Company had been charging one dollar and fifteen cents and the Kings County Lighting Company one dollar and thirty cents per thousand feet for gas of five hundred and thirty-seven British thermal units.

The causes were referred to different masters. They took much evidence, and each reported that the rate prescribed by the Legislature would yield less than five per centum upon the fair value of the complainants' property devoted to public use. With some exceptions, not now

important, these reports were approved and the court adjudged the statute confiscatory and therefore invalid. Also, that it was unreasonable and invalid in respect of the standard of six hundred and fifty British thermal units. 7 Fed. (2d) 192, 628.

The Commission declined to ask for an appeal to this court. The Attorney General, upon petitions which allege, "that in substance the decree restrains the defendants from enforcing in any way Chapter 899 of the Laws of 1923 of the State of New York and declares that said statute violates or is in contravention of Section 10 of Article I and of the Fourteenth Amendment of the Constitution of the United States," sued out broad appeals and has presented many assignments of error—one hundred and seven in No. 358, and twenty-one in No. 365. But we find no reason whatever advanced by him in brief or oral argument which would justify reversal of either decree.

The statute was clearly confiscatory in effect and there was no necessity for the District Court to consider any other objection thereto. We have not done so.

The decrees will be modified by excluding therefrom such parts as adjudge the statute invalid for any reason except conflict with the Fourteenth Amendment because confiscatory in effect. Thus modified, both are affirmed. All costs will be taxed against appellant.

*Affirmed as modified.*

MR. JUSTICE BRANDEIS concurs in the result.

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LAMBERT v. YELLOWLEY ET AL.

APPEAL FROM THE CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

No. 47. Argued April 30, 1926.—Decided November 29, 1926.

1. The provision of the National Prohibition Act that "Not more than a pint of spirituous liquor to be taken internally shall be