

ing shall be given, so far as practicable, within twenty days after the entry hereof and proof be filed as part of the proceeds of this case.

"Administrative orders will be accorded, if necessary, for further guidance in the course of the accounting, to the end that this determination may be fully carried out according to the intent thereof.

"Upon the coming in and confirmation of the report of the referees, judgment shall be rendered in respect to the matters covered thereby in accordance with such confirmation."

In a concurring opinion, Chief Justice Winslow does not share the doubt in regard to the right of the State to raise taxes in acquiring and handling land as a forest reserve. It is as follows:

"My difficulty with the opinion" (of the court) "stated in a general way, is this: It so limits and circumscribes the powers of the state with regard to the afforestation and reforestation that it leaves little more than a shell behind. At least this is the way the opinion impresses me and the way I think it will be generally understood.

"There are three general propositions which I think should be stated in this case clearly and fully, without hedging them about with limitations, qualifications, and provisos which render them practically useless, and those propositions are as follows:

"First, the acquisition, preservation, and scientific care of forests and forest areas by the State, as well as the sale of timber therefrom for gain in accordance with the well understood canons of forest culture, is pre-eminently a public purpose. It would be a mere affectation of learning to dwell upon the value to a state of great forest areas. That has been established long since and is not open to question. The lamentable results which have followed the cutting of forests over large areas, the serious effects of such cutting upon climate, rainfall, preservation of the soil from erosion, regularity of river flow, and other highly important things which go to make the welfare of the state, are matters of history. They need not be descanted upon.

"Second, before a public purpose of the first rank in importance, there can be no question of the power of the state to levy taxes for the accomplishment of the purpose. The power of taxation exists for every public purpose unless some constitutional prohibition, either federal or state, has taken it away. I find no such prohibition. I confess my inability to understand the reasoning which finds it in that clause of the Constitution which commands the legislature to levy an annual tax to defray the estimated expenses of the state. The power of taxation is one of the necessary attributes of sovereignty. To say that, because the Constitution makers thought best to make a specific provision that taxes should be levied for certain purposes, they intended thereby to interdict taxation for all other purposes, is to my mind unthinkable. Besides, if afforestation and reforestation be public purposes, then the moneys spent in carrying them on are necessarily and properly expenses of the state and come within the constitutional command. The expenses of a state include the moneys which it spends in carrying out the public purposes which the legislative judgment directs to be carried out.

"Third, afforestation and reforestation of large areas are not 'works of internal improvement' within the meaning of the Constitution. In stating the proposition, I accept the definition given in the case of the *State vs. Froehlich*, 115 Wis. 32; 91 N. W. 115; 58 L. R. A. 757; 95 Am. St. Rep. 894. It was there said that the term includes 'those things which ordinarily might, in human experience, be expected to be undertaken for profit or benefit to the property interests of private promoters, as distinguished from those other things which primarily, and preponderantly merely facilitate the essential functions of government'. In the same opinion it was said, in substance, that this classification does not exclude the possibility that some of the dominant characteristics of one class

may be present, but, of course, not dominantly in illustrations of the other class.

"Now I affirm that it is not to be expected in the light of human experience in this land at least, that the establishment and conservation of great forest areas for the public good should be undertaken by private enterprise, and I also affirm my belief, as previously stated, that such work is preëminently a public work, and hence one of the essential functions of government. It has not been recognized as such until recently perhaps, but that is merely because the conditions which make it such have only recently arisen and become acute. So in my judgment every act which is necessary to be done in successfully carrying on afforestation and reforestation, including the purchasing of the necessary lands, may properly be done by the state. My original opinion was that this might properly be done by the state. My original opinion was that this might properly include the erection of sawmills and the manufacture of lumber out of the timber which under the rules of scientific forestry ought to be cut, but I yielded my opinion on this point, and I stand by the concession. I do think, however, that it covers every necessary and proper act up to and including the sale to third persons of standing timber which ought to be cut.

"I have not desired to argue out these propositions, but only to state them." (Northwestern Reporter, Vol. 151, No. 3, pp. 377-378, *State vs. Donald*.)

Following out the decree of the Court, a special referee (Samuel D. Hastings) was appointed to render the accounting ordered by the court (see 11th item of the decree). Mr. Hastings, with reference to the newly acquired lands, says in part:

"The judgment is that they have the cast of the constitutional trust fund lands and will be administered accordingly, until upon a full accounting, it shall be found what part, if any, will remain after fully restoring the integrity of the trust fund lands and trust funds.' The accounting shows a large indebtedness to each of the four constitutional trust funds. The integrity of said funds will not be fully restored until all of said indebtedness is paid. The reason for such lands having such cast is stated in the opinion as follows: 'On account of the unwarranted confusion of the different classes of trust fund lands with lands purchased by proceeds of trust fund lands and other moneys, including money drawn from the general fund, and income from trust funds and other confusions, all must be regarded as having the cast of trust fund lands and money, so far as necessary to the full restoration of such trust fund lands and property, and identification of the amount belonging to each fund as to the date of chapter 367, Laws of 1897, and further back if found practicable.' * * *

"I have construed the opinion and judgment of the court to be that upon the facts and conclusions pointed out in this report all the newly acquired lands have the cast of Normal School lands, and are to be administered as such until the entire debt of the General Fund as found in this report is fully paid.

"Following the interpretation of the Court's opinion and judgment, and of the constitution and statutes, as above explained, I find and report:

1st. As to the Normal School Fund:

(a) All of the lands conveyed to the State of Wisconsin pursuant to the provisions of the Act of Congress approved September 28, 1850, and the Act of Congress approved March 2, 1855, and known as swamp and indemnity lands, respectively, to which the state still holds title, belong to the Normal School Fund. * * *

"(m) The General Fund is indebted to the Normal School Fund in the sum of One Million Five Hundred and Seventeen Thousand Five Hundred and Fourteen Dollars and Twenty-three Cents. (\$1,517,514.23), which arose as follows: