The Iron Will

A Novel By

Margaret Culkin Banning

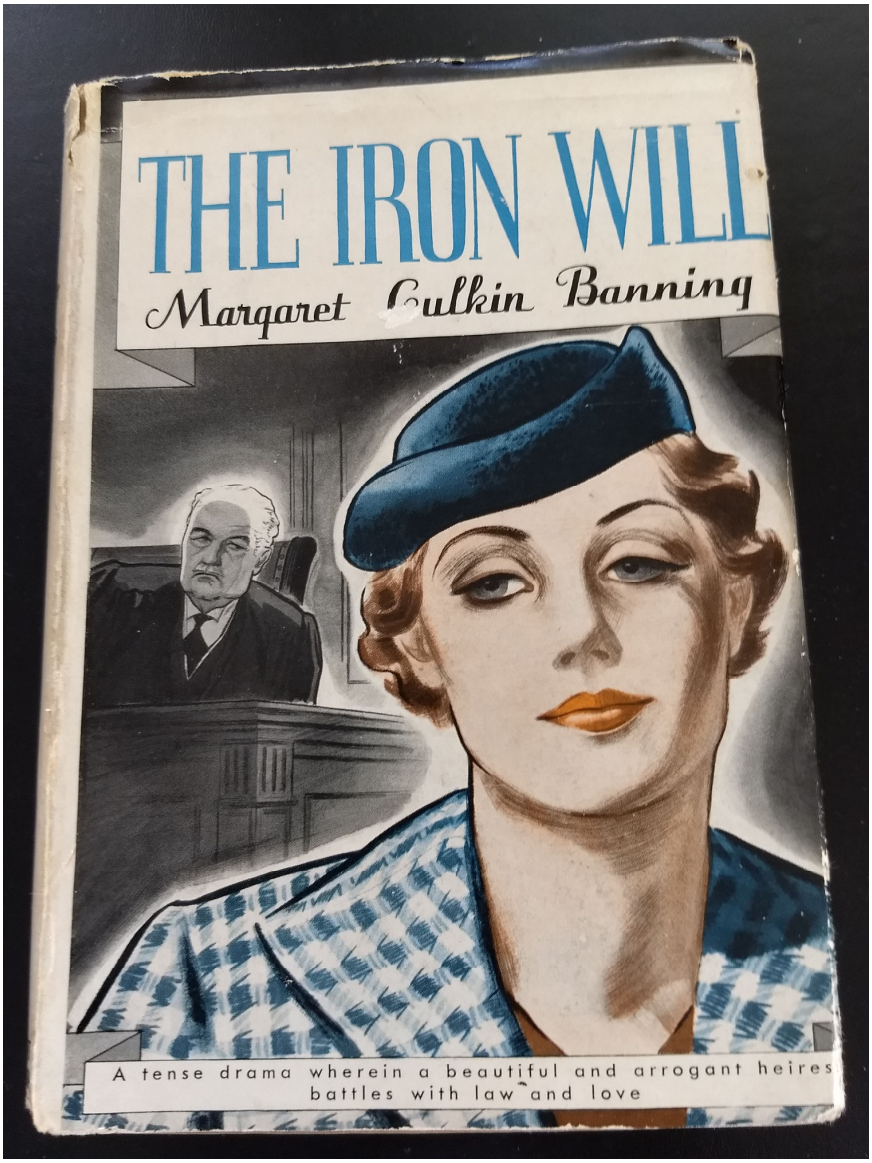
A Reconsideration By

Dr. Zabelle Stodola

On March 8, 2018, Amisha Padnani published a column in *The New York Times* titled "How an Obits Project on Overlooked Women Was Born." [1] In it she describes how she established Overlooked, "a history project recalling the lives of those who, for whatever reason, were left out of *The Times's* obit pages." Many of the forgotten were women who either achieved fame in their day or who waited for posterity to recognize them, and they included such luminaries as poet Sylvia Plath, novelist and activist Nella Larsen, and photographer Diane Arbus. You are probably expecting me to add Margaret Culkin Banning—the subject of my essay—to this list. But when Banning died in 1982, she was one of the rare women who merited a *Times* obituary. Edwin McDowell headlined his tribute on January 6, 1982, "Margaret Culkin Banning; Wrote 40 Books and 400 Stories." [2]

Well known in her time but little known in ours, Margaret Culkin Banning is a prime candidate for literary recovery as a gifted author and shrewd social commentator on such controversial issues as birth control, alcoholism, adultery, working women, mixed religious marriages, politics, sexism, economic inequality, classism, and philanthropy. She found legal topics compelling and used them knowledgeably throughout her career in both non-fiction and fiction,

including the short stories "The Perfect Juror" (1926) and "The Day in Court" (1932) and the novels *Money of Her Own* (1928), *The Iron Will* (1936), *The Quality of Mercy* (1963), *Mesabi* (1969), and *The Will of Magda Townsend* (1974). In some of these works, the law appears tangentially, but in "The Perfect Juror" and *The Iron Will*, for example, the law itself is the main subject.[3]



Original Cover of *The Iron Will*[4]

Margaret Culkin was born in 1891 in Buffalo, Minnesota, the second of four children. Her father, William E. Culkin, was a lawyer (later a Minnesota State Senator) who moved his family to northern Minnesota after landing an appointment as Register of the Land Office in Duluth. From early on, Banning was a voracious reader and a talented writer. In 1912 she graduated from Vassar, spent a year in Chicago, and then moved back to Duluth as a social worker. Her marriage to lawyer Archibald Tanner Banning in 1914 ended in divorce fifteen years later. As a single mother with two children to support, Banning describes her changed circumstances in *The Book of Catholic Authors*, "When I sold the first book I had no need of money, but in a short time that necessity arose. Fortunately, I soon had friends among the editors of several leading magazines."[5] Indeed, throughout a sixty-year writing career, Banning published work in *Cosmopolitan*, *Harper's*, *Ladies Home Journal*, *McCall's*, *The Saturday Evening Post* and elsewhere. Some of her work appeared in *The Reader's Digest* and so reached an even wider readership. Her first novel—*Barbara Lives*—was published in 1917 and her last—*Such Interesting People*—in 1979. According to her own statement in *Catholic Authors*, many of her novels came out yearly with the prestigious publisher Harper and Row.

In 1944, Banning married LeRoy Salsich, president of the Oliver Mining Company, but kept her ex-husband's surname on her publications. Although she said in the *Catholic Authors* feature, "Minnesota has always been my home base as well as my birthplace," from 1972 on she lived at her estate in Tryon, North Carolina, though she maintained a summer house in Brule, Wisconsin. In 1982 she died at her Tryon home aged ninety. Banning's son, Tanner Banning, stated in *The New York Times* obituary that she was writing a new novel at the time of her death.

Margaret Culkin Banning in 1935.
Newpaper Clipping Photograph,
Margaret Culkin Banning Biographical Folder,
Collection of the Duluth Public Library

Several sites offer more details about her life, including *The New York Times* obituary, a profile in *Minnesota Author Biographies*, and mini biographies in archival listings at Boston University and Vassar, which together house the majority of the Banning Archives.[6] Another short but useful biography, by David Ouse, came out in the Duluth publication *Zenith City Online*.[7] But I think the most perceptive information is what appears within *The Book of Catholic Authors* because Banning herself wrote it.

The Iron Will's **1936 publication places it in the early part of Banning's long career when she needed a regular income from her writing. It was first serialized in *The Saturday Evening Post* over five issues from January 18 to February 15, 1936, before being published separately the same year by Harper & Brothers/Grosset & Dunlap. In this way, like many authors before and since, Banning was remunerated twice with immediate payment for the magazine selections and ongoing royalties for the full-length novel.**

The Post **could not assume that its subscribers read consecutive issues and followed the plot, so it provided a helpful synopsis of *The Iron Will* at the beginning of each subsequent serialized part after the initial one: "Big money was coming to trial. The city of Twin Ports had always been nervously conscious of the money back of the iron-mining companies that had made the city. And now the companies, taxed beyond endurance, had decided to fight what they considered confiscatory levies. Leading them was the Greysolon Mining Company, which had leased the Temple properties. Under the terms of the lease, they had to pay royalties whether they worked the mine or not. For two years, in the face of rising costs and taxes, they had not been able to operate at a profit and had closed down. Capable Marshall Crinton, chief counsel for the company, had written the owner, Brigid Temple, asking her to accept a reduction of royalty. In Paris, attractive level-headed Brigid who had inherited the Temple stubbornness along with the Temple mine, refused the request. At the same time she regretted she had not learned more about her mines from Peter Harlow, likable young mining engineer. But Crinton had sent for Harlow as an expert witness."**

The overview continues, but let me cut to the chase: Brigid Temple returned to Twin Ports (loosely based on Duluth) and became embroiled not only in the trial proceedings but also in the city's social life. She renewed her acquaintance with mining expert Peter Harlow (of course!) and ultimately accepted his marriage proposal. While Banning shrewdly left the legal judgment against

Greysolon in limbo, the rest of the plot resolved after Brigid Temple took a trip to the mines, saw the desperation of the unemployed Depression-era miners, heeded local advice on the potential of new mining techniques, and agreed to a reduced royalty in return for Greysolon re-opening and conducting research on how to process lower-grade ore. So the novel's title is a clever pun on Brigid's "iron will" as well as the willful behavior of other people involved with iron mining.

Since the entire novel centers on a technical court case that Banning's audience needed to understand, she adopted the literary technique of secondary characters discussing the situation early on and helpfully filling in her readers too. Here is how Ben, a young court reporter, explains things to his girlfriend, Jessie: "The mining companies didn't pay their taxes because they thought they were too high. Their claim is that the mining towns and the tax commission and all the politicians are bleeding them to a fare-you-well. The only way they could get into the courts to have their claims threshed out in the open was to refuse to pay their taxes and force the state to sue them. So now the state is suing them for the unpaid taxes and penalties and all the rest. It's a whole lot of money. Millions." [8] He then adds that some mining companies must pay a royalty to the property owner from whom they rent land even when the mines are inactive. This is the case with Brigid Temple, who is well aware that her contract contains such an ironclad stipulation.

Because I am a literary critic specializing in the recovery of American women writers, I'd like to briefly discuss Banning's skills as a novelist before I consider the legal background of *The Iron Will.* This novel is unusual among Banning's other works because it centers entirely on a court case and takes place over a short period. But this legal framework allows her to develop a compelling ancillary plot and convincing characterization. For example, she presents a range of lawyers and explores their strengths and weaknesses as people and professionals. There is Marshall Crinton, Chief Counsel

for the Greysolon Mining Company, a clever and conscientious attorney who nevertheless is overly influenced by his beautiful but bored and status-conscious wife, Julie. There is his trusted associate, Joe Zane, a small, stout man hopelessly in love with an independent and attractive wealthy widow, Elinor Thomas, who finally comes into his own at the end of the trial with a brilliant legal summation. And there is Aloysius Finley, a flamboyant, ambitious politician with his eye on higher office, who represents the state. All three have much to gain and lose from their performance during the case as well as its eventual outcome.

To determine that result, Banning introduces three judges, an unusual number in a courtroom where a single judge generally presides. As with the three attorneys just described, Banning succeeds in individualizing these judges too. Judge Van Veek, "a vast man, possessed of quietness . . . spread peace and was gentle," especially towards women. Nearsighted Judge Ray "was a fine grammarian, as well as the most scholarly lawyer in the state." Finally, Judge Mayhew's "calmness and fearlessness" helped to intensify his judicial authority. To sum up these men, Banning uses a series of effective similes and metaphors. Mayhew "looked like a jurist, more than Judge Van Veek, who had the air of a retired country gentleman, or than Judge Ray, who had dried away like a too assiduous schoolmaster." [9]

The Iron Will **also contributes to the field of law and literature, meaning 1) those works in which legal topics play a prominent role and which may be based on actual cases, situations, and characters, or 2) those works apart from case law that can be used in law school and beyond to examine law, crime, and justice in more nuanced, interpretive, inclusive, and philosophical ways.[10] Criminal law has also spawned several specific literary genres, including detective novels and murder mysteries. Indeed, apart from studies about Banning as a regional, Midwestern, writer, genre criticism is the only other area where** ***The Iron Will*** **has generated literary attention. For**

example, in a book on the legal thriller, Terry White describes *The Iron Will* as "a Bildungsroman [i.e. coming-of-age novel] featuring a youth, iron mining and a trial in Minnesota that consumes the entire 239-page novel."[11] And Lars Ole Sauerberg singles out *The Iron Will* as an early example of "a feminist agenda" in the modern legal thriller: "Mrs. Banning must surely have seen the potential for legal thriller genre feminist awareness already then."[12]

But what evidence is there that Banning did more than dabble with the law in *The Iron Will*? First, consider the "Author's Note" and "Prefatory Note" before the novel proper begins. In the former, Banning writes, "The economic, historical and legal situations in this narrative are based on fact, but all the characters are imaginary, as is the procedure of the trial related in the story." And in the latter, she closes by saying, "I am grateful . . . to the several members of the bench and bar who helped me on technical points of law; and to all my neighbors in the iron region who have been so interested and so kindly." While authors can be disingenuous or even duplicitous when talking about their composition process, material, and intent, corroborating evidence suggests that Banning told the truth. [13]

Advertisement for *The Iron Will* published in the *Duluth Herald*, January 16, 1936

Biographical Files: Margaret Culkin Banning, Archives and Special Collections, Kathryn A. Martin Library, University of Minnesota Duluth

Second, a review of *The Iron Will* by Lenore K. Snodgrass, published by the *Duluth News Tribune* on May 3, 1936, sheds important information on Banning's likely sources for the novel.[14] Snodgrass opens her review by saying, "A newspaper item of April

10 stated that idle mines near Gilbert and Bovey [on the Iron Range] are to open for operation soon. This reviewer's first thought was not of the general improvement in industry that this announcement revealed, but it was: 'I wonder if those are Brigid Temple's mines?'" She ends by commenting that readers in the Northland will not only enjoy a good story, but will "gain the added pleasure of recognition, the satisfaction which comes from a common knowledge of scene and circumstance, and the pride of having a local situation, colorful and dramatic, well interpreted and fairly treated." While I have not been able to locate the "newspaper item" Snodgrass mentions in her introduction, I can contextualize her comment about the two towns near inactive mines.

It was the huge Oliver Iron Mining Company that controlled much of the ore extraction in the three major districts on the Iron Range: Canisteo (where Coleraine-Bovey is located), Hibbing-Chisholm, and the Eastern District (which includes Gilbert).[15] Founded in 1892 by Henry W. Oliver, the Company became a subsidiary of United States Steel in 1901 and later a division of the larger entity. Up to 1929, when the stock market crashed, the Iron Range economy had been in great shape. In fact, historian Bill Beck observes that "the U. S. steel industry had broken records in 1929 with production of more than 63 million tons of finished steel." [16] But in 1930, shipments from the Mesabi Range, where Oliver operated, went down twenty-five percent, and by the spring of 1931, some mines did not open at all."[17] A year later, in 1932, almost none were operational, and "Two of every three workers on the Mesabi Range were laid off for extended periods from 1932 through the middle of the decade." [18] Far from experiencing heavy losses only in 1932, "In the end, the steel companies chalked up 1933, 1934, and 1935 as lost years, too."

But decreased production and demand were not the only problems for big companies like Oliver and, by extension, the workers who depended on them for a livelihood. Questions loomed about how long the ore deposits and traditional extraction methods

would last. Also, since the 1890s, the state had wrestled with how much to tax mining companies and had gradually increased the rates. By 1910 or so, "Minnesota was taxing the mining industry for both the ore removed and the ore still in the ground . . . and the tax rate applied to mining companies in Minnesota was higher than that applied to any other industry in the state." [19] Minnesota legislators justified such high tariffs by saying that a portion of the companies' substantial profits ought to help fund civic improvements in the mining towns and surrounding communities. John Baeten quotes the Minnesota law historian C. J. Buell who in 1915 summed up this line of thought regarding state levies versus personal profit-taking, "'There will not be so many useless millionaires in the world; but there will be more useful citizens who can afford to have decent homes and comfortable surroundings.'" [20]

A 1948 article titled "Iron Ore Taxation in Minnesota," by then-Commissioner of Taxation for Minnesota G. Howard Spaeth, explains the complex taxes levied on mines: "In addition to ad valorem taxation, we administer both an occupation and a royalty tax on iron ore. The occupation tax law was enacted in 1921; the royalty tax law in 1923. The constitutionality of both laws has been upheld by the United States Supreme Court." [21]

Predictably, these rates did not sit well with companies like the Oliver Iron Mining Company, so they used the courts in a series of ongoing lawsuits to argue for lower taxation and in some cases to delay, challenge, or refuse to pay taxes and royalties. The dispute of 1915 was settled out of court at the end of 1916 with Oliver agreeing to pay back taxes.[22] But in *Oliver Iron Mining Company v. Lord*, 262 U.S. 172 (1923), the U. S. Supreme Court found that the companies were indeed liable for taxes.[23] Some years later, in *Marble v. Oliver Mining Company*, 172 Minn. 263 (1927), the Supreme Court of Minnesota judged against the lessee, Oliver Mining Company, because it had covenanted to pay all taxes and assessments in the original lease. The lessee was therefore responsible for repaying the

royalty tax to the lessor, Belle L. Marble, who had footed the bill.[24] Three years later, in *State ex rel. Oliver Mining Co. v. Armson*, 181 Minn. 221 (1930), the Supreme Court of Minnesota once again found against the Oliver Mining Company regarding the amount owed in taxes.[25] What we see, then, is a concerted attempt by the mining companies to challenge if not intimidate individual lessors and the state.

Margaret Culkin Banning, 1950.
Photograph in the Margaret Culkin Banning Biographical Folder,
Collection of the Duluth Public Library

How much did Margaret Banning know about the cases cited above or a range of other related mining lawsuits up to 1930? As a lawyer, Register of the Land Office in Duluth, and State Senator, William E. Culkin would have been conversant with these issues, if not the actual cases, and may have discussed them with his family, and possibly Margaret's first husband, Archibald T. Banning, did too (though they divorced in 1929). But Banning was her own woman and was keenly aware of community issues and politics. Some fascinating insight occurs in her 1930 novel *Mixed Marriage*, where the heroine, Marie Hawley, is a mining property heiress.[26] Not only a love story in which Marie, who is Catholic, marries an amateur metallurgist and aspiring politician who is not Catholic, *Mixed Marriage* contains detailed data on the kinds of mining issues I have already described. Here, for example, is information that Father Carroll, Marie's parish priest, has gleaned about the fictional mining town, Carmine, where he and Marie live: "Reduced to simple terms, the fact seemed to be that the mines were being taxed past the patience of the operating companies. To the land tax had been added royalty taxes, occupational taxes, tonnage taxes, until every piece of ore that was brought out of the mines was a great expense as well as a yield. If there was not sufficient profit in mining the ore, the operators threatened to close down. Many of the smaller independents had already done so." [27] These are the words of an author who has done due diligence (in this case, research) and is comfortable with technical and legal information.

But the case on which *The Iron Will* is almost certainly based occurred later, in 1936, when Margaret Banning was an established author who was even more involved in her community and searching for appropriate material to use in her novels. It is *State v. Oliver Iron Mining Company*, 198 Minn. 385 (Minn. 1936)(posted in the Appendix, at 21-37). Tax Commissioner Spaeth's article "Iron Ore Taxation in Minnesota" specifically cites this ruling as a decisive case: "In this suit were involved 43 properties of the Oliver Iron Mining Company

and a few others. The sole issue was that of overvaluation. The trial court, sitting in Duluth, found values aggregating approximately 18 percent below those claimed by the State, the total value found by the court being $81,864,845 full and true value as compared to $100,477,732 determined by the Tax Commission. In both trial and appellate courts the use of the Hoskold formula of appraisal was recognized and sustained." [28]

The Supreme Court of Minnesota did not issue its decision in *Minnesota v. Oliver Iron Mining Co.* until December 11, 1936, almost a year after *The Iron Will* appeared in *The Saturday Evening Post* (which is one reason why the novel left the case's outcome in limbo). Nevertheless, the trial proceedings that swirled around locally focused on these competing but complementary interests: mining companies that bristled at how much tax they paid to the state and how many royalties they owed to the property owners from whom they leased land; property owners who dug in their heels and pointed to contracts that clearly stipulated the mining companies were responsible for paying taxes and royalties; the state that enforced laws on tax collection; and the miners who needed the mines to stay open so they could earn a living wage (this essay is not the place to get into labor unrest on the Iron Range in the 1920s and 1930s, but there was plenty of it).

You will recall from the earlier biographical profile of Banning that she married LeRoy Salsich in 1944. At the apex of a long career in mining he had become president of the Oliver Iron Mining Company in 1930.[29] **Although Margaret Banning was divorced by then, Salsich remained married to his first wife, Elisabeth, until she died a decade later. The Salsichs and the Bannings formed part of Duluth's social elite, so it's likely they knew, or knew of, each other. However, I cannot confirm what exactly led to the courtship and then marriage of Margaret Banning and LeRoy Salsich in 1944. By that time, they were important enough nationally that their union merited mention in the November 27, 1944 issue of *Time Magazine*: "Married.**

Margaret Culkin Banning, 53, cozy, women's magazine serialist; and LeRoy Salsich, 64, Duluth, Minn., iron mine executive; both for the second time; in Manhattan." [30] **How offensively sexist to relegate Margaret Culkin Banning to the ranks of a "cozy, women's magazine serialist." She was an intelligent, prolific, and talented social commentator in the mold of Edith Wharton and Henry James. And *The Iron Will* is just an early example of a long career dedicated not just to the craft of writing but to a host of social and political activities.**

Biographical Profile

Zabelle Stodola (who also publishes under her full professional name, Kathryn Zabelle Derounian-Stodola) is professor of English, Emerita, University of Arkansas at Little Rock. She received her PhD from Penn State University in 1980. She has published six books with trade and academic presses and numerous articles focusing on early to nineteenth-century American women writers and on the Indian captivity narrative. Her most recent book-length publications are *The War in Words: Reading the Dakota Conflict through the Captivity Literature* (Lincoln: University of Nebraska Press, 2009) and, with co-editor Carrie R. Zeman, *A Thrilling Narrative of Indian Captivity by Mary Butler Renville: Dispatches from the Dakota War* (Lincoln: University of Nebraska Press, 2012).

She resides in Duluth. Her email address is kzstodola@ualr.edu

NOTES

[1] Amisha Padnani, "How an Obits Project on Overlooked Women Was Born," *The New York Times*, March 8, 2018, A2. Available at https://www.nytimes.com/2018/03/08/insider/overlooked-obituary.html

[2] Edwin McDowell, "Margaret Banning; Wrote 40 Books and 400 Stories," Obituaries, *The New York Times*, January 6, 1982. Available at https://www.nytimes.com/1982/01/06/obituaries/margaret-banning-wrote-40-books-and-400-stories.html

[3] Banning was particularly fascinated with wills, and she clearly already knew or obtained professional information about them. For example, in *Money of Her Own*, the precise stipulations and wording of a will play havoc with a couple's relationship throughout much of the novel. In *The Quality of Mercy*, a widow threatens to change her will and withhold ongoing funding of a charity hospital. The hospital had originally been endowed through her late husband's will, but when she discovers that a young unmarried pregnant woman died because he stipulated that only married pregnant women be treated, she successfully pressures the hospital board to change its policy. And throughout her highly autobiographical novel *The Will of Magda Townsend*, an aging writer and mother considers how best to word her will and divide her assets while she reminisces on her long life.

[4] *The Iron Will* (New York: Harper & Brothers Pub., 1936)(republished later that year by Grosset and Dunlap). *The Iron Will* has not been republished since 1936 and is very hard to find, even from antiquarian booksellers.

[5] Margaret Culkin Banning, autobiographical essay. Originally published in *The Book of Catholic Authors: Informal Self-Portraits of Famous Modern Catholic Writers,* 6th Series (Detroit: Walter Romig, 1960), available at http://www.catholicauthors.com/banning.html

[6] Margaret Culkin Banning, Minnesota Author Biographies, available at http://collections.mnhs.org/mnauthors/index.php/10001316. See also, respectively, http://hgar-srv3.bu.edu/collections/collection?id=121372 and https://specialcollections.vassar.edu/collections/manuscripts/findingaids/banning_margaret_culkin.html. The holograph manuscript of *The Iron Will* is in the Howard Gottlieb Archival Research Center at Boston University. Unfortunately, I have not been able to examine it as the BU Archives do not allow Xerox or electronic reproduction and I cannot travel to Boston for on-site research.

[777] David Ouse, "Margaret Culkin Banning." Originally published in *Zenith City Online* (2012-2017) at http://zenithcity.com/archive/people-biography/margaret-culkin-banning/

[8] *The Iron Will*, 4.

[9] All quotations in this paragraph come from *The Iron Will*, 38.

Multi-judge panels in certain cases in district court, such as that portrayed in the novel, were unusual but not rare. They seemed to have been convened when the case was controversial. They were authorized by law. Stat. c.5, §183, at page 43 (1927), provided:

> Sec.183. Several judges—Division of business, etc.—In districts having more than one judge, the one longest in continuous service, or, if two or more be equal in such service, the one senior in age, shall be the presiding judge thereof. . . . . Each may try court or jury causes separately during the same term and at the same time, or two or more of them may sit together in the trial of any cause or matter before the court. If there be a division of opinion, that of the majority shall prevail. If the division be equal, that of the presiding judge, or, if he be not sitting, that of the judge senior in age, shall prevail.

A three-judge panel was convened in *The Iron Will*. The actual case that inspired the novel, *State v. Oliver Iron Mining Co.*, was tried "before five of the judges of the eleventh judicial district." (Appendix at 22).

[10] Some texts often used in Law and Literature classes include Truman Capote, *In Cold Blood*; Fyodor Dostoyevsky, *Crime and Punishment*; Ernest Gaines, *A Lesson before Dying*; Margaret Glaspell, *A Jury of Her Peers*; Franz Kafka, *The Trial*; Harper Lee, *To Kill a Mockingbird*; Herman Melville, *Billy Budd*; William Shakespeare, *The Merchant of Venice*; and Richard Wright, *Native Son*.

[11] Terry White, *Justice Denoted: The Legal Thriller in American, British, and Continental Literature* (Westport, Connecticut: Praeger, 2003), 23.

[12] Lars Ole Sauerberg, *The Legal Thriller from Gardner to Grisham: See You in Court!* (London: Palgrave Macmillan, 2016), 112.

[13] An advertisement for *The Saturday Evening Post* serialization of *The Iron Will* published in the *Duluth Herald* on January 16, 1936, boasts of Banning's

veracity, "A Duluth writer, from her intimate knowledge of the iron country and its problems, tells the story of the girl who inherited . . . *THE IRON WILL*."

And here is an interesting tidbit from Pat Coleman's "High Priestess of the Women's Magazine," posted on July 16, 2010 on the Minnesota Historical Society's website. Coleman argues for Banning's novel *Mesabi* (1969) being included in a list of the 150 Best Minnesota Books and comments, "In a holographic note on the half title of the MHS's library copy, Banning says that is order to get the novel right it 'took three years of research to feel that I was sure of my facts.'" Although *Mesabi* appeared thirty years after *The Iron Will*, I believe that even early in her writing career, Banning researched her novels carefully. Also, interestingly, *Mesabi* is something of a sequel to *The Iron Will*, not regarding character but regarding the evolution of iron ore mining twenty years after the earlier novel was set. See http://discussions.mnhs.org/collections/2010/07/%E2%80%9Chigh-priestess-of-the-women%E2%80%99s-magazine%E2%80%9D/.

[14] Lenore K. Snodgrass, "Iron Ore and Taxes," review of *The Iron Will* in the *Duluth News Tribune*, May 3, 1936.

[15] For a map of Oliver Mining Company's operations (undated, but probably in the 1950s) see the Oliver Iron Mining Company Website at https://www.missabe.com/graphics/oliverops.gif

[16] See Bill Beck, *A County Built on Iron: St. Louis County, Minnesota, 1856-2006* (Virginia Beach, Virginia: Donning Publishing Company, 2006), 101.

[17] Beck, 102.

[18] This and the next quotation come from Beck, 103.

[19] John Baeten, "Contested Landscapes of Displacement: Oliver Iron and Minnesota's Hibbing District," *Change over Time* 7.1 (Spring 2017), 57.

[20] Baeten, 57. See also C. J. Buell, *The Minnesota Legislature of 1915* (St. Paul: C. J. Buell, 1915), 33.

[21] G. Howard Spaeth, "Iron Ore Taxation in Minnesota," *Proceedings of the Annual Conference on Taxation under the Auspices of the National Tax Association*, 41 (1948), 239.

[22] Baeten, 58.

[23] See https://www.law.cornell.edu/supremecourt/text/262/172 at the Cornell Law School Legal Information Institute.

[24] See Minnesota Supreme Court's ruling in Marble v. Oliver Mining Co., 172 Minn. 263 (Minn. 1927).

[25] See State ex rel. Oliver Iron Mining Co. v. Armson, 181 Minn. 221 (Minn. 1930).

[26] Margaret Culkin Banning, *Mixed Marriage* (New York: Harper, 1930).

[27] Banning, *Mixed Marriage*, 93.

[28] Spaeth, 233. Spaeth goes on to add "In the years immediately following this litigation, little effort was made by the then existing Tax Commission to carry out the mandate of the courts," 233.

The complete text of the decision of the Minnesota Supreme Court in State v. Oliver Iron Mining Co., 198 Minn. 385 (Minn. December 11, 1936), is posted in the Appendix, at 21-37.

Douglas Hedin, founder and editor of MLHP, also believes the 1936 *Oliver* case was the inspiration for *The Iron Will*. He writes, "I am very sure that Banning attended sessions of the Duluth trial, and spoke with the lawyers and the judges (she thanks 'several members of the bench and bar' in her 'Prefatory Note'). Several times she quotes the judges in her novel as asking the lawyers whether they couldn't compromise, settle. I am sure this happened in real life—the judges in the real tax dispute in Duluth suggested compromise."

Personal email to the author, July 13, 2018.

[29] See profile on Salsich at the American Institute of Mining, Metallurgical, and Petroleum Engineers website when it presented him with the AIME William Lawrence Saunders Gold Medal in 1947, http://www.aimehq.org/programs/award/bio/leroy-salsich-0

[30] "Milestones, Nov. 27, 1944," *Time Magazine.* Available at http://content.time.com/time/magazine/article/0,9171,796913,00.html

Appendix

The court case that formed the basis for *The Iron Will* was tried in district court in Duluth and then appealed to the Minnesota Supreme Court which issued its decision on December 11, 1936. It was not unanimous. The court divided 4-1. Associate Justice Julius J. Olson wrote for the majority, which included Royal A. Stone, Clifford L. Hilton and Charles Loring. Chief Justice John P. Devaney dissented. The complete texts of their opinions follow.

No. 30,723.
Supreme Court of Minnesota.

STATE v. OLIVER IRON MINING CO

198 Minn. 385 (Minn. 1936)

Decided December 11th, 1936

JULIUS J. OLSON, JUSTICE.

We have for review orders of the trial court refusing new trials after findings and orders for judgment had been entered in proceedings brought by the state to enforce the unpaid taxes levied upon 43 iron ore mines on the Mesaba Range, St. Louis county, the issue being whether the trial court reached proper results in respect to the values of these mines for taxation purposes as of May 1, 1932. Defendant Oliver Iron Mining Company and 14 other subsidiaries of the United States Steel Corporation declined to pay the last half of the 1932 taxes upon 36 iron ore mines in St. Louis county. Five companies owning seven different mines and occupying similar situations are the other defendants.

The tax commission, pursuant to statutory authority, fixed the valuations for assessment purposes upon these mines as of May 1, 1932. As permitted by and in conformity with the statute, the owners, for the purpose of raising the issue respecting valuations, refused to pay the second half of the taxes so levied, and the state proceeded to enforce judgment for the remaining portion. Proper pleadings were framed and issues joined. At the opening of the trial the state offered in evidence the delinquent list of real estate taxes for the year 1932, particular reference being had to the properties here involved. Having thus made a *prima facie* case, it rested.

The sole issue was the value of these several mines as of May 1, 1932. The cases were heard before five of the judges of the eleventh judicial district. There was a lengthy and most thorough trial. Four of the judges joined in the findings made and therein fixed and determined the valuation to be placed upon each of these properties. As to seven mines the court found that the valuations placed thereon by the tax commission were proper and ordered judgment for the payment of the unpaid portion of the taxes and for interest, penalties, and costs. Respecting the remaining properties, the court determined the true value as to each thereof and ordered judgment for that part of the tax which the decreased valuations justified.

The state, excepting only the properties as to which it had prevailed, moved for amended findings or, if such were denied, for new *388 trials. Except for certain relatively unimportant matters, the court denied the state's motions. The mining companies sought similar relief as to the properties against which the court had sustained the valuations of the commission. Their motions having been denied, they too appeal. So the contending forces are both appellants and respondents here.

There is and can be no question that the basis for taxation of mining property has for its foundation statutory authority and direction. 1 Mason Minn. St. 1927, §§ 1992 and 1992-1, provides:

"1992. All property shall be assessed at its true and full value in money. In determining such value, the assessor shall not adopt a lower or different standard of val-

ue because the same is to serve as a basis of taxation, nor shall he adopt as a criterion of value the price for which the said property would sell at auction or at a forced sale, * * * but he shall value each article or description of property by itself, and at such sum or price as he believes the same to be fairly worth in money. * * * In valuing real property upon which there is a mine or quarry, the same shall be valued at such price as such property, including the mine or quarry, would sell for at a fair, voluntary sale, for cash.

"1992-1. It shall be the duty of every assessor and board, in determining the value of lands for the purpose of taxation and in fixing the assessed value thereof, to consider and give due weight to every element and factor affecting the market value thereof, * * *."

In an exhaustive memorandum prepared and concurred in by four of the district judges, the theory and bases for the conclusions reached are fully and adequately stated. A dissenting memorandum was filed by the dissenting judge. A reading of the two memoranda clearly points out the issues presented here for determination. We shall take up first the theory upon which the majority proceeded. The court found that there was no cash market for sales of iron ore properties upon the Mesaba Range "from a willing seller to a willing buyer, upon which a Tax Commission or a court can base a valuation of such properties. All parties to these proceedings admit it." *389

The formula adopted by the majority is known as the Hoskold formula. This is now accepted, so the trial court found, "by both the State and the defendants as the best available basis for valuing ore deposits. It is used by other State Tax Commissions in making valuations of ore deposits, and is used by mining men in buying and selling ore properties. It is approved by the courts. Newport Min. Co. v. City of Ironwood, 185 Mich. 668 ; State Tax Comm. v. Magna Copper Co. 41 Ariz. 97, 15 P.2d 961 . But its use is that of a guide, its results to be modified according to the judgment of parties interested as to the accuracy of the factors used in applying it. The purpose of the formula is (1) to ascertain the difference between the selling price of the ore and the cost of producing it, and (2) to ascertain the factor to be used in order to arrive at the present worth of the estimated future profits of the ore produced from the property to be valued."

The court remarked that it had been working under "great difficulties"; that the "prosperity" years were abnormal on that side and that the "depression" years had been just as abnormal in the other direction. Hence, so the court thought, "in the use of the formula, we have had to compose differences, sometimes quite reluctantly, because no one of us could be certain how much of the past in the iron mining industry could be depended on to reflect the long future with which we had to deal."

In fixing the value of iron ore it has been the custom over a period of more than 20 years to take the "Lake Erie price" as a basis. In fixing values in the instant case the court took into account the actual Lake Erie price for the years 1929 to 1934. The court thought that in fixing the price as of May 1, 1932, it had a "right to consider subsequent years as a test of our conclusion that the base price that prevailed from 1929 to 1932 will continue into the future." During these years, so the court found, no Mesaba Range ore "has been sold above the Lake Erie price; and some ore has been sold below" the same. The thought of the court was that this theory gave to the state "the highest possible profit spread under the Hoskold formula and therefore the maximum valuation insofar as the selling price determines it." Respecting the propriety of this *390 formula, the court said that at least since 1929 it has been a "pegged" price. "We do not say that in criticism of it; for it is a top, not a bottom, price. If it is pegged high, it has its social as well as its economic implications. Unless there is a profit spread between the producing cost and the selling price, the industry cannot operate."

The application of the Lake Erie price seems to be the rock upon which the court split. The dissenting judge was of opinion that it was "a fixed, fictitious and artificial price which the ore companies themselves have made," and for their own advantage. He was of the view that the mining companies "are undoubtedly in a position to prove the value of their ore bodies by substantial evidence of real probative force, they having all of the information necessary to make such proof. The state, of course, was without such information and unable to furnish proof of that kind. Defendants being in a position to furnish substantial evidence as to the value of their ore bodies, ought not to be permitted to base such values on the Lake Erie price which, as I view it, is a device of their own creation to fix values as they desire."

Speaking of the majority memorandum, the dissenting judge said: "It is also stated in said memorandum that such price was pegged high. As I view the matter, there is no evidence of any probative value before us from which it may be said whether it is high or low." For this reason the dissenting judge thought that the presumption of law going with valuations placed upon property assessed by the taxing authorities had not been met and overcome by the mining companies and as a consequence the valuations placed by the tax commission should be sustained and judgment ordered for the state for the full amount of the levy.

In summary fashion, these, then, are the principal issues for determination. There are others, to be sure, argued at length by counsel, but as far as necessary to decision we shall discuss these later.

There are certain elements common to all cases which may be considered and disposed of together. *391

1. At the bottom of the state's theory of the case is the claim, quoting from counsel's brief, that "no valuation for assessment purposes may be overthrown unless the taxpayer, upon whom the burden rests, shows 'clearly' and 'manifestly' that his property has been overassessed." With this hypothesis assumed, counsel for the state proceed with the assertion that the Lake Erie price and the Hoskold formula are inadequate to form the bases for defendants' expert testimony; hence that the trial court in making its findings and conclusions was not possessed of competent evidence adequate to sustain defendants' valuations. This also seems to have been the view of the dissenting judge.

Important here and to be kept constantly in mind is the fact that the jurisdiction of this court is appellate. We cannot take the place of the trial court, which after all is, under the statute, the trier of the facts. Sitting in review, our jurisdiction upon fact issues is necessarily limited to one question: Are the findings of the triers of fact sustained by the evidence? That is the general rule. Our cases uniformly so hold. See Exrieder v. O'Keefe, 143 Minn. 278, 279, 173 N.W. 431 ; C. Gotzian Co. v. Truszinski, 169 Minn. 199, 202, 210 N.W. 880 ; In re Establishment of Judicial Road, 176 Minn. 94 (syllabus paragraph 2), 222 N.W. 578 ; Alexander v. Wells-Dickey Co. 177 Minn. 101, 102, 224 N.W. 849 ; Sommers v. City of St. Paul, 183 Minn. 545, 552, 237 N.W. 427 . The next question naturally follows: Are tax valuation cases to be classified under a different rule, and, if so, what is the rule to be applied? Referring to our cases we find that Chief Justice Brown in State v. South St. Paul Syndicate, 140 Minn. 359, 360, 168 N.W. 95 , a tax case, speaking for a unanimous court, said:

" *The rule guiding this court in, the review of the findings of the trial court in proceedings of this kind is the same as that applied in ordinary civil actions; and to justify interference with such findings it must appear that they are clearly and manifestly against the evidence.* In the light of the rule we have read the record with care and find no reason for disturbing the findings here under review. The evidence is conflicting as to the actual value of the property; the trial court was familiar with the situation and location *392 of the land, and in position to give proper weight to the opinions of the various witnesses. A discussion of the evidence would serve no useful purpose. It is not clearly or manifestly

against the findings and there must therefore be an affirmance." (Italics supplied.)

And later, in State v. Koochiching Realty Co. 146 Minn. 87, 89, 90, 177 N.W. 940 , the same jurist said, and we deem his language so pertinent to present issues as to require a somewhat extended quotation:

"The defense of unfair and unequal real-estate assessments, in resistance of the tax judgment provided for by our taxation procedure, has been available to the property owner in this state for many years, in fact, since the revision of the tax code in 1874. Chapter 11, section 79, G. S. 1878. The statute giving the defense was first construed in County of Otter Tail v. Batchelder, 47 Minn. 512, 50 N.W. 536 , where it was held that to authorize a reduction of the tax complained of in any particular case, it must be made to appear that the assessment was fraudulently made, or so grossly excessive as to justify the conclusion of a 'demonstrable mistake of fact,' following the rule applied in local assessment proceedings by municipal corporations. State v. Board of Public Works, 27 Minn. 442, 8 N.W. 161 , and State v. District Court of Ramsey County, 29 Minn. 62, 11 N.W. 133 . But the defense so given was subsequently rendered of no practical value to the property owner, if it was not in effect wholly taken away, in State v. Lakeside Land Co. 71 Minn. 283, 73 N.W. 970 , and State v. West Duluth Land Co. 75 Minn. 456, 78 N.W. 115 . The decision in the last of which was handed down in February, 1899, and brought from the legislature at the 1902 special session, an amendment of the statute by the insertion therein of a clause to the effect that in cases where real property 'has been * * * taxed at a valuation greater than its real and actual value,' the court on the defense being made and sustained by the evidence 'may reduce the amount [of the tax] * * * and give judgment accordingly.' The amendment is embodied in the revised section of the statute as it appears in G. S. 1913, § 2108. *393 The former statute authorized a reduction only where it was made to appear that the assessment was unfair and unequal. *The amendment was a distinct change and evidently intended to overcome the decisions referred to above. It explicitly authorizes a reduction in all instances of overvaluation, and must be deemed as abrogating anything to the contrary found in the decisions construing the former statute.*" (Italics supplied.)

Among our later cases the following are of value: State v. Savage, 155 Minn. 501, 193 N.W. 114 ; In re Potlach Timber Co. 160 Minn. 209, 199 N.W. 968 ; In re Enforcement of Taxes Delinquent for Kanabec County, 164 Minn. 522, 204 N.W. 640 ; In re Delinquent Real Estate Taxes, Ramsey County, 165 Minn. 489, 206 N.W. 657 ; State v. Trask, 167 Minn. 304, 306, 307, 209 N.W. 18, 19 . From the case last cited the following quotation seems appropriate:

"From the evidence before us, if we were finding the facts, some of us would find the values much less; but if we did we would differ greatly in our estimates. *The fixing of values, in review of the taxing authorities, is not committed to us but to the district court;* and with the burden on the objecting landowner and with due regard to the returns of the taxing officers it was justified in making the findings assailed." (Italics supplied.)

The same result was reached in the recent case of State v. Walso, 196 Minn. 525, 265 N.W. 345 .

2. There can be no denial that after all the position contended for by the state is based upon a rule of *prima facie* only. As such, it must give way to facts when these are adequate to overcome the state's *prima facie* case. If this were not so the effect of 1 Mason Minn. St. 1927, § 2120, which gives the taxpayer the right to defend against an assessment upon the ground that his property "has been assessed and taxed at a valuation greater than its real and actual value," and giving to the court the power to reduce the amount of taxes, would be lost, in fact, made meaningless.

This court in State ex rel. Inter-State Iron Co. v. Armson, 166 Minn. 230, 232, 207 N.W. 727, 728 , said: *394

"The primary responsibility for a correct determination of the tax rests upon the commission. In placing a valuation upon the ore, the commission occupies a position much the same as that of an assessor, who exercises a quasi-judicial function in determining the value of property subject to taxation, Stewart v. Case, 53 Minn. 62, 54 N.W. 938, 39 Am. St. 575, and whose determination is presumed to be the expression of his honest judgment. State v. London N. A. M. Co. 80 Minn. 277 (286), 83 N.W. 339 . It is well settled that in reviewing an order or determination of an administrative board, this court will go no further than to determine: (1) Whether the board kept within its jurisdiction; (2) whether it proceeded on a correct theory of the law; (3) whether its action was arbitrary, oppressive or unreasonable and represented its will and not its judgment; and (4) whether the evidence was such that it might reasonably make the order or determination in question. State ex rel. Dybdal v. State Securities Comm. 145 Minn. 221, 176 N.W. 759 , and cases collected in Dunnell, Dig. 1921 Supp. § 397b."

And in County of Rock v. McDowell, 157 Minn. 296, 196 N.W. 178 , and State v. Meek, 161 Minn. 334, 201 N.W. 536 , this court held that introduction of the delinquent tax list makes a *prima facie* case for the state in cases where the property owner answers and seeks to avoid the imposition of the tax or to have his tax burden lessened by showing overvaluation of his property. But, in the language of the court, the case so made is *prima facie* only, and as such must give way when adequate, competent, and credible evidence opposed thereto comes into the case.

That the court was fully cognizant of the rules applicable to its problems adequately appears in its memorandum wherein, amongst other things, it said:

"The Tax Commission has, since its inception, used a classification of iron ore properties, which has been modified from time to time, as a basis for valuations for tax purposes which was apparently not satisfactory either to the Tax Commission or to the defendants. In this proceeding the State does not undertake to defend or justify the valuations thus made. It does not now ask us *395 to accept such valuations as either accurate or proper. It does ask us to apply rules as to burden of proof so that no change be made in such valuations; but it does not assert that such valuations represent either relatively or absolutely the true values of such properties. Indeed, the State's valuations at this trial differ more widely from the Tax Commission valuations than the defendants' do."

And the court pointedly calls attention to the fact that the formula used by defendants was approved by the tax commission's engineering expert; that no member of the commission testified in support of the valuations placed by them upon these properties or the method employed in making such valuations; that "under such a state of the record, the claim that the defendants have not sustained the burden of proof, howsoever heavy such burden may be in Minnesota, cannot be sustained. While the court acts merely as a reviewing body in such cases as these, the practical situation here requires us to make an original valuation. The testimony of the State's witnesses, the arguments of counsel for the State, and the entire conduct of the trial invite us to make an original valuation of the properties as a basis for our review of the valuations made by the Tax Commission."

3. As has been said, the basis for the assessment of property is fixed and defined by statute. 1 Mason Minn. St. 1927, §§ 1992 and 1992-1, heretofore quoted. So the question to be answered is: What was the sale or market value of each of these mines at the time of assessment? If there are insufficient sales to establish a market value based thereon, "there is no way of determining values except by the judgment and opinion of men acquainted with the lands, their adaptability for use, and the circumstances of the surrounding community." State v. Fritch, 175 Minn. 478, 480, 221 N.W. 725, 726 ; State v. Russell-Miller Mill. Co. 182 Minn. 543, 544, 235 N.W. 22 ; State ex rel. City of

South St. Paul v. McNiven, 183 Minn. 539, 540, 237 N.W. 410 .

In the cases for review there is no disagreement as to the fact that sales of mining properties are not sufficient in the locality of these mines to establish a market price or value. It is likewise *396 without dispute that the usual and accepted method of valuing mining properties is based upon a computation of the present worth of estimated future profits. In the tax commission's 1932 report that is made the basis for determination of values. It there said: "Future profits are used as a basis of value. As practically all of the iron ore mined in Minnesota is sold at Lower Lake Ports, the price of the ore at these points is used. It is necessary, therefore, to determine the cost of delivering the ore to the Lower Lake, Ports. The various factors used to obtain the value per ton may be summarized as follows:" (Then follows a list of the various items to be considered in arriving at the net and true value of the property; in fact, the state used as exhibits at the trial the valuation sheets employed by the commission. A copy of one of these, all being alike as to form, is found in the margin.[2]) *397

2. "Plaintiff's Exhibit U-1 [Record, Vol. 5, pp. 112-113] No. 1. (O. I. M. Co. #20) Property: Nelson Company: Northern Development Co., Fee VALUATION AS OF MAY 1, 1932 ---------- ---------- ITEM OPEN PIT UNDERG'D TOTAL ---------- ---------- - A. TAX DISTRICT: Eveleth City B. DESCRIPTION: Lot 1, Sec, 31-58-17 C. RESERVE TONNAGE OF UNMINED ORE ..... 5,102,100 1,025,000 6,127,100 D. LAKE ERIE SELLING VALUE PER TON ..... $4.708 $4.708 $4.708 E. ESTIMATED COSTS PER TON: 1. Mining ..... $ .318 $1,394 2. Miscellaneous ..... .097 .210 3. Transportation (Rail Lake) ... 1.741 1.741 4. Development ..... .116 .058 5. Plant ..... .046 .068 6. Ad valorem tax on unmined ore .... .608 .310 F. TOTAL OF ITEM E ..... 2.926 3.781 G. ESTIMATED FUTURE INCOME (Item D minus Item F) .. 1.782 .927 H. LESS RETURN OF 6% ON FUTURE INVESTMENT IN DEVELOP- MENT, PLANT AND WORKING CAPITAL ..... .051 .137 I. ITEM G MINUS ITEM H .... 1.731 .790 J. PRESENT WORTH OF ITEM I FOR 33-YEAR LIFE, AT 6% (Factor .431219) ..... .746 .341 K. LESS INACTIVE TAXES AND RE- TURN AT 6% FOR A O YEAR PERIOD ON OPEN PIT AND A 3 YEAR PERIOD ON UNDER- GROUND .... .050 L. BALANCE PRESENT WORTH BEFORE DEFERMENT ..... .746 .291 M. PRESENT WORTH PER TON OF ITEM L, DEFERRED O YEARS ON THE OPEN PIT AND 3 YEARS ON THE UNDER- GROUND, AT 6% INTEREST: Deferred Period Factor

Open Pit .... No .... Years ..... Underground 3 Years .839619

PRESENT WORTH PER TON .746 .244

TOTAL VALUATION OF PROPERTY $3,806,167 $250,100 $4,056,267

MINNESOTA TAX COMMISSION VALUATION $3,798,802

No. 1 (O. I. M. Co. #20) Property: Nelson

DATA MAY 1, 1932, VALUATION

---------- ---------- ITEM OPEN PIT UNDERG'D TOTAL ---------- ---------- C. RESERVE TONNAGE OF UNMINED ORE ..... 5,102,100 1,025,000 6,127,100 AVERAGE ANALYSES: 1922-31 Dried 212 deg. F. Nat. L. Erie Tons Iron Phos. Sil. Moist Iron Value B. 3,490,500 60.68 .040 6.35 11.20 53.88 $5.029 NB. 2,217,000 58.23 .068 6.33 14.40 49.84) PR. 419,600 53.07 .096 8.41 18.00 43.52) NB.) PR. 2,636,600 57.39 .072 6.66 14.97 48.80) $4.282

D. Lake Erie SELLING VALUE PER TON (Average 1922-1931) $4.708

E. ESTIMATED COSTS PER TON:

1. MINING: Cost Total Per Tonnage
Type Tons Ton Cost Of Ore

R.R. (Ore 3,334,200 .246 $820,213 ..... (L. O. 119,200 .206 35,283 .....) MS(Ore 1,767,900 .421 744,286 ..... (L. O. 49,800 .471 23,456 .....) Total O. P. $1,623,238 5,102,100 $ .318 4. DEVELOPMENT: Cost Total Cu. Yds. Per Yard Cost O.P. Surface L. O. .30 $ 6,840 Rock 780,000 .75 585,000

Total Cost ... $591,840 Total Tons ... 5,102,100 $ .116

It will be noted that in the exhibit "Lake Erie Price" is made the basis for the sale value of the ore. This method appears to have been in use by the commission over a period of many years. The chief objection raised to it, on the part of the state and the dissenting judge, is that the mining companies are supposed to have determined the value, or, put in different form, that they fixed Lake Erie prices. We have examined the record and find no difficulty in sustaining the trial court that the Lake Erie price is in fact high and that ore sold by so-called independent mining companies at times sells for less than this price and never higher; that it is accepted by competing steel industries as a measure of iron ore value; that taxing authorities in this and other states use it as the measure of fixing the value of iron ore for taxation purposes. Any purchaser, whether of iron ore or an iron mine on the Mesaba Range, would necessarily have to base his computation of value upon, and only upon, the "Lake Erie Price." That is so because that price is and has been the only recognized standard of value. Under these circumstances, we can see no reason for disturbing the *398 findings of the trial court. It recognized and applied this price as a means of arriving at taxable value because it was in fact the only recognized standard. *399

Much is said by counsel for both sides in their briefs with regard to the so-called "commercial appraisal method." Counsel for the state in their brief say, amongst other things:

"Essentially, the commercial appraisal method seeks to determine the quantity and quality of ore in the ground, the price at which it will sell when mined, the cost of mining, and the life of the mine, in order to fix the period of time when the resulting profit will be realized. The values are then arrived at by reducing these profits to their present worth. Involved in the latter calculation is a determination of the rate of return which will induce a willing buyer to purchase a given property and which a willing seller will forego in order to make a sale."

The so-called Hoskold formula has been in use over a very long period of time. There is substantial evidence that its use extends back over a period of nearly 100 years by valuation engineers in connection with making sales of mining property and with regard to the conduct of mining operations; also by taxing authorities where such properties are involved. Briefly, the method according to that formula is one of estimating the future profits to be made from the venture, the time at which those profits will be received, and then computing present value under a plan which provides for the return of capital to the investor. It is based upon the assumption that as the ore is mined the income of each year must be considered partly as a return of capital and partly as a profit on the venture. Again, referring to brief of counsel for the state, it is said with regard to the Hoskold formula:

"There was no dispute upon the part of the State about the fact that computations of *value made in accordance with the above described commercial appraisal method would present a competent and probably the only available guide as to the present worth of mines in Minnesota* if the factors used in the calculation were true and correct." (Italics supplied.)

Counsel, however, dispute "the propriety of calculating the sinking fund at a low safe return rate." *400

From the conduct of the trial as shown by the record before us, we entertain no doubt that all parties recognized the Lake Erie price and the Hoskold formula

as appropriate means for ascertaining the value of the assessed mines. The difference of opinion comes not from the Lake Erie selling price or the Hoskold formula but rather and fundamentally because of the various items of deduction from that price that should properly be made when applied according to the formula itself.

As is natural and perhaps proper, both sides to this controversy claim that the court erred regarding fact issues adverse to their respective contentions. Thus we find various subdivisions into which counsel in their briefs have divided their attacks. To discuss each separate item would involve a task that is not only arduous but, we think, wholly unnecessary because, after all, the issues of fact having been found and determined by the triers thereof, our only inquiry, as already has been stated, is whether the evidence reasonably sustains the conclusions reached.

Among the contentions made, we think a discussion of the following necessary:

(1) For the state it is claimed that the court should have considered a ten-year average, or perhaps a longer one than that, as to the selling price of iron ore at Lake Erie points. The court took a five-year average, the years 1929 to 1931. The mining companies were of opinion that the court adopted a wrong period of time in determining the ore value. Of course the important thing to determine was the value of the particular property as of May 1, 1932. No one claims that the selling price of ore on that particular day would necessarily determine the value of a mine although it undoubtedly would have some bearing. A mine has a future ahead of it. That future depends upon many contingencies. Mention of these is unnecessary because they will readily come to anyone's mind who is willing to give the matter some thought. As stated by counsel for the state:

"The selling price on May 1, 1932, if genuine, is informative to some extent. Selling prices for the preceding five years add to available knowledge. But the purpose of the inquiry is to forecast *401 the future, and the question is whether under all the circumstances either the 1932 price or the five-year average price, or some other price, will be the average or representative price to be realized as the ore is mined in coming years."

They inform us that in the year 1918 iron ore prices were fixed by the federal government. During that year the opening Lake Erie price was changed twice during the shipping season. At the beginning of the season non-Bessemer ore was quoted at $5.05 per ton. That price was increased to $5.50, and later to $5.75 during that season. In 1919 there was a falling off, and prices dropped back to $5.55. In 1920 there was an increase of demand, and prices rose to $6.55. In 1921 shipments were again reduced, and the published price was reduced to $5.55. The drop continued in 1922, and there was a reduction to $5.05. However, in 1923 the price was increased to $5.55 per ton. Thereafter from 1924 until 1929 the price range was from $4.25 to $4.75. Since then it has hovered around the lower figure, that is to say, about $4.50 per ton. Counsel for the state are of the view that the Minnesota occupation tax may have had something to do with the stability of the price of late years. Undoubtedly that factor was considered by the trial court and found not adequately sustained. At any rate, the findings of the court have substantial support in the evidence, and that eliminates further consideration by us.

(2) Capitalization and the rate of interest to be applied and used are subjects of much discussion by counsel for both parties. Dr. Leith testified that an eight per cent rate should be made the basis for fair compensation to the risk involved. In respect to capital rate invested upon a safety basis he thought a four per cent rate should be applied. The state's contention was that six and four per cent rates, respectively, would be more fair. The court found that the rates should be seven and four per cent. There is other testimony in the case ranging from ten per cent as to the capitalization risk and four per cent as the minimum respecting the safe annual income rate. The Michigan

tax commission at first used the rates of five and four per cent and finally adopted the six per cent rate as to both items. Wisconsin has used various rates *402 ranging from six to ten per cent. Here, too, we think a fact question was presented and that neither the state nor the owners have just cause to complain.

(3) It is claimed in behalf of the state that "mining properties are essential and inseparable parts of the great steel industry of the country. Their value as properties to be bought or sold must be considered in the light of the fact that they are so linked. It is true that people speculate in mining properties. There undoubtedly are iron ore deposits held by persons or companies not owners of or affiliated with furnaces or steel plants. But such ownerships are rare and exceptional."

The fact that most of these mines are owned by subsidiaries of the United States Steel Corporation is made much of by the state. It is conceded, however, "that we must, theoretically at least, arrive at valuations of these properties without reference to their ownership; we must speculate on what prospective purchasers would bid for existing properties in the hands of owners who would be free to sell or not to sell their mines as their judgment advised."

That is one of the difficulties with which taxing authorities have to deal. Each property is a separate unit. The fact that one may own several such units, under our taxation plan and system, does not change the necessity of charging each unit with the tax that it must bear as such unit. The law does not permit us, nor anyone else for that matter, to place a higher value upon a series of mines owned by a large corporation and a different rate or ratio with respect to mines individually owned. On this phase the court said:

"We are not permitted under the statute to consider consumer-ownership of ore bodies as a factor of valuation. Nor may we apply the unit-of-value rule. It is applicable in the assessment of railroad, telegraph, telephone, and express companies, where, from the very nature of the property, the value of any particular part can be determined only by a consideration of the whole. * * * In the exercise of the right to assess for purposes of taxation, we are limited by the market value of the property in this state. American Bauxite Co. v. Board, 119 Ark. 362, 177 S.W. 1151 ; Union R. T. *403 Co. v. Kentucky, 199 U.S. 194, 26 S.Ct. 36, 50 L. ed. 150, 4 Ann. Cas. 493."

(4) Considerable space is devoted to the so-called exhaustion period. In behalf of the state it was claimed that the average exhaustion period should be computed upon a basis of 36 years. The mining companies, on the other hand, sought to have the court find that such period should be at least 40 years. The court adopted a middle base, fixing that period at 38 years. Here, as elsewhere, there was ample room for difference of opinion. The court was not compelled to take either theory, and we think the evidence sustains the court in fixing the period stated.

(5) Another item concerning which complaint is made relates to interest on future investments in development, plant, and working capital. Counsel for the state say:

"We do not quarrel with the calculation relating to future investment in plant and development, transportation, or direct mining costs as to underground ores. As to underground ores, we question only the calculation of the interest return on taxes to be paid."

A great deal of discussion is devoted to the amount of working capital, the development of the mining plant as such, interest on future investments, deduction in the way of taxes that must be met, and the cost of selling commissions. All these and other items have received at the hands of respective counsel much attention and detailed argument. As to all of these there is considerable difference of opinion between what the contending forces are seeking to accomplish and the result reached by the trial court. We think the evidence sustains the court's findings. There are some, however, requiring separate discussion.

(6) As an item of deductible costs, the trial court permitted deduction of occupation and federal corporate income taxes. The state does not object to the occupation tax as being a proper item of deduction, but it seriously attacks any deduction for income taxes. Important to bear in mind, of course, is the fact that the income tax here involved is the corporate income tax, not that of the individual stockholder. We think the following cases sustain *404 the trial court: Galveston Elec. Co. v. City of Galveston, 258 U.S. 388, 42 S.Ct. 351, 356, 66 L. ed. 678; Georgia R. P. Co. v. Railroad Comm. 262 U.S. 625, 633, 43 S.Ct. 680, 67 L.ed. 1144; Municipal Gas Co. v. Public Service Comm. 113 Misc. 748, 186 N.Y. S. 541, 549. The supreme court in the Galveston Elec. Co. case said (258 U.S. 399):

"In calculating whether the five-cent fare will yield a proper return, it is necessary to deduct from gross revenue the expenses and charges; and all taxes which would be payable if a fair return were earned are appropriate deductions. There is no difference in this respect between state and federal taxes or between income taxes and others. But the fact that it is the federal corporate income tax for which deduction is made, must be taken into consideration in determining what rate of return shall be deemed fair. For under § 216 the stockholder does not include in the income on which the normal federal tax is payable dividends received from the corporation. This tax exemption is therefore, in effect, part of the return on the investment."

The mining companies complain about the court's findings here in that only two-thirds of the tax was deducted. Their claim is that the entire tax should be so deducted. There is much force to the argument. However, we think the court was justified in its findings that:

"The federal corporate income tax (Line E-10) is held to be a cost item to such extent as the individual stockholder in the mining company is relieved of payment of his personal income tax by reason of the payment of the corporate income tax by the Mining company. (Citing Galveston Elec. Co. v. City of Galveston, 258 U.S. 388 , and other cases.) We have allowed two-thirds of the corporate income tax as a cost against the mining operation."

(7) A word should be said respecting selling commissions. The court allowed five cents per ton as to that item. The testimony in the case would justify a higher rate. The experts testifying for the defendants were unanimously of that opinion. The state, however, contends that as the United States Steel Corporation subsidiaries *405 are not selling ore, that they are both producers and consumers, hence there can be no selling or commissions for selling. They freely concede, however, that this is an item of cost properly applicable in computation of the occupation tax. If that be true it would seem equally appropriate to consider it as an item entering into the value of a piece of property on the part of one who wishes to make such investment. Obviously, to make a profit there must be a sale to someone, and to make such sale there must be service. A prospective buyer, an investor, purchasing a mine would very naturally, and we think with entire propriety, take into consideration all items of expense to which he must necessarily be put before realizing a profit, and profit is the very basis for determining values in these cases. See State ex rel. Bennett Min. Co. v. Armson, 166 Minn. 243, 207 N.W. 732 .

(8) Another item that has brought about serious conflict between the contending forces is the moisture content of iron ore. The moisture to which reference is made is not free water which drains off, but moisture which remains in the ore when and as shipped. Of course, in computing the value of ore water must be squeezed out of it. From samples taken a chemical analysis is made. The ore sample is heated to 212 degrees Fahrenheit. This causes the moisture to evaporate and permits "dry iron analysis," thus making scientific accuracy possible. The moisture content as to mines here involved was obtained from drill-hole samples. As such, the amount of moisture is difficult to determine with accuracy; hence recourse was had

to the opinions of men experienced in that line of endeavor. For the state it is claimed that these opinions should be discarded; that rather an estimate with respect to ore shipped from the same locality would furnish a better guide. These arguments were properly and exhaustively submitted to the triers of fact. They chose to adopt, to a limited extent only, the testimony of the experts for defendants. They had advantages of seeing and observing the witnesses, all men of merited and well-recognized standing and reputation.

This subject is one with which the court wrestled seriously. After the cause was heard additional testimony was requested and furnished. *406 As to 11 of the 36 properties involved the court accepted the moisture estimates presented by defendants, but as to the remaining 25 properties, as to both Bessemer and non-Bessemer ores, moisture was found to be less than that testified to by defendants' witnesses. The net result was to increase the computed present worth of the 25 mines over and above the amount which would have resulted had defendants' estimates been used throughout. It is said in behalf of the state that these estimates furnished by defendants "are but conjectures and are unreliable." An examination of the record does not justify this characterization. The value and weight of this and all other testimony was obviously for the triers of fact. Opinions founded upon expert knowledge cannot be classified as conjecture but rather as helpful guides in finding just results. Some experts are worthy of belief, and their testimony, because of their standing in the profession and the reasonableness and convincing qualities of their testimony, may be highly regarded; others may not be so qualified. With the trial court rested the duty of determining this fact issue. We cannot, nor should we, interfere.

There are many factors entering into this difficult question. Drill and shipping records of 95 per cent of the properties on the Mesaba Range were available for study, and so were the horizons from which shipments had been made. The result, as near as opinion can be said to justify such, reflects with reasonable accuracy the true facts. Testimony was furnished as to each mine. That the court gave this matter serious and efficient consideration the court's memorandum abundantly bespeaks.

(9) Entwined with what we have been discussing is also a deduction referred to as "revision of analysis." The dissenting judge said that he was "entirely satisfied * * * that the additional tonnages existing therein [the mines involved] will more than compensate the mining companies for any revision of analysis." The quoted statement is in the nature of an admission that defendants had established that iron ore as and when produced does not correspond in analysis with drill samples. The drill sample analysis is, for various reasons, not entirely reliable, but experience has taught those engaged in this industry that "there is not a very *407 wide range or difference of opinion between engineers familiar with that problem." It is a factor, and a proper one, entering into the computation of the present worth of a mine. No purchaser would shut his eyes to the probabilities in this respect any more than he would in respect of any other item going into the factors that intelligent judgment requires before an investment is made.

(10) Another item entering into the discussion relates to silica penalties. It appears that ore containing silica in excess of ten per cent is subject to a penalty, in other words, a lower price on the market than the ore containing ten per cent or less. In behalf of the state it is claimed that because these mining companies own many mines containing less than ten per cent silica and use the ore of this type to mix with ore of higher silica content that therein and thereby they in fact suffer no loss, hence that they should pay upon the basis of their entire holdings as and when mixed rather than upon the basis of each individually owned mine. The same argument could be used with equal effectiveness to a farmer who owns a bin of No. 4 wheat and one of No. 1. If by mixing these he improves the grade to an average of, we will say, No. 2 and as such realizes a higher price for the combined mixture than

he would if he sold the contents of each bin separately, therefore he should be taxed upon the mixture rather than upon each individual bin. We know of no law relating to taxation permitting such classification, at least not until the mixed product is brought into being. And where, as here, the ore is still in the ground, we admit our inability to see any justification for such basis of assessment. So to hold is to make law, not to interpret it. It may readily be conceived that such assessment would run counter to constitutional objection. As heretofore said, each mine is a separate piece of property. We cannot place the owner of two mines, one of high silica content and another of low content, thereby making mixture possible, in a different position as to each such mine than another who happens to own but one.

(11) The witnesses are in agreement that there should be some initial period provided during which the operations of specific properties would be deferred. Counsel have divided this period into *408 two parts: (a) Physical deferment due to the time necessary for physically preparing the properties for shipment of ore; and (b) a depression deferment or postponement due to the financial conditions existing in and immediately preceding the taxable year, 1932. The court was of opinion that:

"We have allowed a deferment period of one year on the inactive developed properties and of three years on the reserves. The evidence is quite persuasive in support of the one-year period for the inactives, and both the State and the defendants use the three-year period for the reserves." With respect to the depression period the court said: "We have allowed no deferment period for the depression. We hold with the State that depression and boom periods are, or should be considered to be, inherent in the Hoskold formula." The court was of the view that opinions respecting the persistence of the depression were "too frail and diverse for a court now to use as a basis for determining the present worth of estimated future profits."

To determine future profits it was of course necessary for the court "to forecast the future." In doing so, however, it held that it was the duty of the court "to dare to test even expert opinion" by the trained experience and unbiased judgment of a court.

We have experienced no difficulty in coming to the same conclusion as that reached by the trial court. The position taken appears sound.

4. As to two mining properties, the court, using the same formula as had been employed in fixing the valuation of other mines, found the value of the ore in the Forster mine to be $2,312,362. The assessed valuation was $2,422,814. As to the Mountain Iron-Rathbun mine, the finding of iron ore value was $10,074,306. The assessed valuation was $10,145,322. In round numbers the differences in value are approximately $110,000 in the one and $71,000 in the other. Later, upon motion by the state and over the objection of the owner, the court changed its order and sustained the assessment as returned by the state. In its memorandum so sustaining the assessment the court said: *409

"Two members of the Court signing the attached order are of opinion that the order should be based upon the ground that the percentage of decrease in the full and true value of this mine, as found by the Court, is so small as not to make it 'manifest that there was an over-valuation' by the State. State v. Trask, 167 Minn. 304, 209 N.W. 18 , and cases cited."

The dissenting judge was of the view that it was the duty of the court to make its own findings in respect to values; that when the valuation had been so found, whether greater or less than that of the assessing authorities, it became its duty to determine such fact, and that the conclusion of law had to follow the finding and was binding. Obviously, the majority thought it was governed by the rule that unless there be a "manifest" overvaluation by the state the assessment must stand. In State v. Koochiching Realty Co. 146 Minn. 87, 89, 90, 177 N.W. 940 , the opinion clearly determines what the duty of the court is in this class of cas-

es. The language of the statute is plain, i. e., relief is to be had when the property has been taxed "at a valuation greater than its real and actual value."

We think the dissenting judge was right. The overvaluation here is substantial and cannot be governed by the *de minimis* rule. The findings established that there was obviously "a valuation greater than its real and actual value." In consequence, a reduction "in all instances of overvaluation" should follow. Having used the same formula throughout, we can see no sound reason for a departure. To the extent of the overvaluation involved as to these two mines the order should be corrected.

5. There remains for consideration the mining properties owned by the so-called "independents." Their position is in substance and effect the same as that of the other mining companies with which we have been dealing. They contend, exactly as do the Oliver Iron Mining Company and its affiliates, that the trial court placed too high a valuation upon their mines and did not allow sufficient deduction for the various items we considered with respect to the other properties heretofore discussed. *410

Our particular attention is directed to the St. James and the Miller-Mohawk mines. These properties were acquired by the present owner in 1929 at the so-called peak of the high prices. The purchase price was $660,000 cash. At that time these mines were assessed by the tax commission upon a basis of full and true value of $1,075,000. Later, after the depression came, the owner sought to have the commission reduce the taxable value. Counsel say that in 1932, "at the height of the depression, the tax commission was still carrying the full and true value of these combined properties at $818,000 in spite of the fact that, as stated, they were sold for $660,000 in 1929."

Of course sale price is always an important element in determining value. But it is not the only method. A purchaser may make an unusually good bargain, and he may likewise make a bad one.

We have carefully examined the record respecting the evidence adduced and find that there is competent evidence to sustain the findings of the trial court. Clearly that ends the matter with us.

The other mines present fact issues only, and what we have hereinbefore said respecting the Oliver Iron Mining Company and its affiliates applies with equal force here.

In conclusion, it is fair to counsel to say that these cases have been presented in excellent fashion. The briefs have been very helpful. The voluminous record has been much simplified because of the briefs submitted and the oral arguments made.

Our conclusion is that the evidence sustains the findings made below; that file only two properties as to which there is error are the Forster and Mountain Iron-Rathbun mines. As to these the cause will be remanded for further proceedings in harmony with the views herein expressed. As to all other properties the orders of the trial court denying new trials stand affirmed.

DEVANEY, CHIEF JUSTICE (dissenting).

I cannot subscribe to the opinion of the majority of the court.

This decision presents no difficult legal question, but does possess far-reaching social and economic implications. It is clearly settled in the law that the burden is on the defendants to prove that the *411 valuations placed by the tax commission on their properties are clearly and manifestly excessive. State v. Koochiching Realty Co. 146 Minn. 87, 177 N.W. 940 ; In re Potlach Timber Co. 160 Minn. 209, 199 N.W. 968 ; State v. Trask, 167 Minn. 304, 209 N.W. 18 .

The defendants sought relief through the courts from what they claimed to be excessive valuations placed on their properties by the tax commission, and secured

it. The sole problem for this court is to determine whether or not there is credible evidence presented by the defendants to support the trial court's decision. In my opinion, clearly there is not.

The rock on which we split (and on which the lower court divided) is the Lake Erie base price. It is the foundation stone upon which defendants' entire case rests, and no other question is of more than incidental importance. It is therefore unnecessary for the purpose of a dissent to discuss or consider the many other questions presented on this appeal, among which are the Hoskold formula, penalties, discount and sinking fund rate, exhaustion period, moisture and silica content, and selling commission.

The Lake Erie base price is a device through which the defendants are in effect here permitted to fix the amount they are to pay the state in taxes, not only *ad valorem* but also occupational. (The eminently practical result that it is possible for the mining companies to achieve if they are permitted to peg the Lake Erie price low is shown in the fact that for the year 1923 they paid to the state occupational taxes in the amount of $6,126,443, and in the year 1929, when the shipments were higher and the pegged price lower, they paid only $3,786,352. Minn. Tax Comm. Rep. 1932, P. 81.)

As far as can be ascertained, this is the first time in our courts that the Lake Erie base price has ever been the subject of judicial scrutiny. What, therefore, is the Lake Erie base price? What is its significance? How is it arrived at? What does it mean in this case? Judge Martin Hughes, one of the trial judges in the court below, in a well considered dissenting memorandum, thus characterizes it: *412

"The so-called Lake Erie base price is fixed in a peculiar manner. The first chance sale of ore at the opening of the season fixes the maximum base price at Lake Erie ports. The price paid at that sale is published in the trade magazines and from that the sellers of iron ore learn the maximum price that they are to receive for their ore during that season. It is plain that such price is not one that is arrived at in a free, open market, but is, on the contrary, a fixed, fictitious and artificial price which the ore companies themselves have made."

In my opinion, there is no foundation in the record for the statement in the majority opinion that all parties recognized the Lake Erie base price as an appropriate means for ascertaining value. The position of the state respecting the Lake Erie base price is stated as follows:

"That Lake Erie published prices are artificial and unreal and do not reflect or indicate the market price or true value of iron ore, is completely demonstrated in the proposition that the published Lake Erie price of all classes of ore was the same in each of the years 1929, 1930, 1931 and 1932, although there was shipped from Minnesota in 1929, 47,478,167 tons of ore; in 1930, 34,881,010 tons; in 1931, 17,309,211 tons; and in 1932 approximately 2,250,200 tons. (Minn. Tax Com. Rep. 1932, p. 51). And Minnesota produces about sixty per cent of all iron ore consumed in the steel industry of the United States.

"To say the least, there can be no fair certainty that the Lake Erie price indicates the true value of iron ore. If that be so, no calculation which assumes the value of a ton of iron ore to be that stated in Lake Erie published prices can have sufficient certainty to overthrow any valuation placed upon iron ore for assessment purposes; using such a factor, no one can know whether the result arrived at is right or wrong. * * * This testimony is based upon rumor or hearsay; no witness knew definitely or exactly where the trade papers got the figure which they posted as the Lake Erie price for the year." *413

The arbitrary and artificial character of the Lake Erie price cannot better be illustrated than to observe that the Lake Erie price of ore has remained exactly the same for the past six years, whereas pig iron, which is no more than smelted ore, has fluctuated in price from year to year during the same period, the price per ton

never being the same for any two consecutive years. There is and has been a continuing free market for pig iron, the market price of which varies from day to day.

In this record, nowhere has there been any attempt to show the relationship between the Lake Erie annual pegged price for iron ore and the pig iron price variations, the prices of which should be, if they are true prices, as clearly and patently related as are the market prices of wheat and flour. We would not listen in patience to a value fixed on a pegged, artificial, or arbitrary price of wheat which totally disregarded a fluctuating market value for flour. Nowhere has there been any effort made by the defendants to give to the court those figures and facts in their possession which would show the relationship between iron ore values and pig iron prices. On the contrary, the defendants sought to sustain values by showing the Lake Erie pegged or artificial price of iron ore and sought to support this fictitious price with expert opinion where fairness should have required them to place in the hands of the court all facts and figures which would have thrown light upon the full and true market value of iron ore. It will not do for the defendants to hide behind expert opinion and fail to produce facts. Their position taken respecting the Lake Erie base price characterizes their entire attitude throughout this lengthy hearing, the purpose of which should have been to arm the court with facts so as to permit it to determine whether or not the taxes assessed were in truth excessive and therefore unfair.

The tax here imposed is the same tax as that imposed on other real property in the state. There is no statute setting up a different method of valuation for mining property. In this connection again I quote from Judge Hughes' dissenting memorandum:

"Computing the value of ore bodies upon the present worth of the net profits to be made therefrom, while all other real property in *414 the state is assessed upon its real value, seems unfair. By that method of valuation the owners of ore bodies are placed in a special, favored class; there is no other property in the state that is assessed for ad valorem tax purposes in the same manner as are the ore bodies."

The power to tax has been defined as the power of the state to enforce proportional contribution from persons and property for the support of the government for all public needs. The power is essential to the existence of an organized political community. In the language of Nicol v. Ames, 173 U.S. 509, 515, 19 S.Ct. 522, 525, 43 L. ed. 786:

"The power to tax is the one great power upon which the whole national fabric is based. It is as necessary to the existence and prosperity of a nation as is the air he breathes to the natural man."

There is no room in the law of taxation for the bestowal of special favor. There is no basis in the law and no sound reason why the mining companies should be treated differently than are other taxpayers. Again quoting from the dissenting memorandum of Judge Hughes bearing upon the position of defendants that they should pay taxes based on the present worth of net profits computed on the basis of ore values as determined by the Lake Erie price:

"If all real property in the state were assessed upon that basis from whence would the revenues be derived to pay the running expenses of the state and its political subdivisions?

"I have no doubt that the farmers, who as a class have been operating at a loss for the last 15 years and have been headed toward bankruptcy, would be pleased if they had been permitted to pay taxes on the present worth of their net profits. They have been paying taxes upon the valuation of their farms although there were no profits. The owner of an office building which now and for some time past has been sparsely tenanted would undoubtedly prefer to pay taxes upon the basis of the present worth of his net profits instead of upon the value of his building. The home owner, and in fact all other property owners would undoubt-

edly be pleased *415 at the opportunity to exchange the present method of valuation upon their properties for the one that has been applied to the mines.

"The defendants claim that owing to there being but few sales of ore bodies there is no other means of determining their values except by the use of their method. It is true that ore bodies are not frequently the subject of purchase and sale. Many other classes of property are likewise very infrequently sold. Large buildings in the big cities are rarely sold; sales of farms, except by judicial process, have been rare for some years; but this has not necessitated the introduction of a unique method for determining their values."

The objections to basing tax values on the Lake Erie price are not answered by stating that it is a price that is pegged high. Whether it is pegged high or pegged low, it still is admittedly artificial, fictitious, and arbitrary. On this first opportunity given to the courts of this state to inquire into the facts respecting the Lake Erie price and its relationship, if any, to a fair valuation of mining properties, that inquiry should have been made fully and fairly. This was not done. The result is that those most vitally interested are by this decision placed in the singular position of being able to control the amount of tax revenue to be paid the state.

To allow the defendants to overturn a tax valuation without requiring them to product all facts and figures and all evidence of real probative value to which they alone have access showing the full and true value of their properties offends my sense of fairness and justice and is totally wanting in legal precedent. No court anywhere has ever overturned a state tax valuation when the attack upon such valuation has been based upon a pegged, fictitious, and artificial value, unrelated to values fairly arrived at in a free and open market.

As a matter of law, the defendants herein have, in my opinion, in every respect failed to sustain the burden of proof which the law imposes upon them. They have failed to produce information upon which accurate values could have been determined. They have relied upon pegged prices sustained by expert testimony when they possessed every fact and figure needed for an intelligent and fair determination of their claim of excessive valuation. They are entitled *416 to no relief for the plain reason that they produced no credible testimony upon which the court could find that the valuation as fixed by the tax commission was unfair or excessive.

The orders of the trial court should be reversed.