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99 Md. 540, 58 A. 216

Court of Appeals of Maryland.
MAYOR, ETC., OF BALTIMORE
v.
CONSOLIDATED GAS CO.
June 8, 1904.

Appeal from Superior Court of Baltimore City; Henry D. Harlan, Judge.

Action by the mayor and city council of Baltimore against the Consolidated Gas Company. From a judgment for defendant on an agreed statement of the facts, plaintiff appeals. Affirmed.

West Headnotes

Gas 190 ⚿11
190k11 Most Cited Cases
Under Baltimore City Code, § 10 , providing for an inspection of new meters put in use by any gas company, and directing the payment of a fee for such inspection; section 11 , providing that no meter shall be set, unless sealed, as required by the preceding section; and section 12, requiring a reinspection of discontinued meters, without fixing any fee-the inspection fee is limited to new meters, and no charge can be imposed for reinspection.

Submission of Controversy 365 ⚿7
365k7 Most Cited Cases
Where a cause was submitted to the court for its opinion on the facts, the judgment will not be reversed because the statement of facts was not in proper form, as the court, under Code Pub.Gen.Laws, art. 26, § 15, may draw all inferences of fact or law that court or jury could have drawn from the facts agreed on as if they had been offered in evidence on a trial.

Argued before McSHERRY, C.J., and FOWLER, BRISCOE, BOYD, SCHMUCKER, and PAGE, JJ.

Albert C. Ritchie, for appellant.
Vernon Cook, for appellee.

BRISCOE, J.
This case was submitted to the superior court of Baltimore city upon an agreed statement of facts, and from a judgment entered for the defendant this appeal has been taken. The question presented for our determination involves a construction of certain ordinances of the mayor and city council of Baltimore, codified as sections 10 , 11 , and 12 of article 28 of the Baltimore City Code. By section 10 it is provided that it shall not be lawful for any new meter to be furnished or put in use in this city by any gas company which shall not have been previously proved to be correct and sealed by the general superintendent of lamps and inspector and sealer, except during such time as from any cause the office shall be vacant, or shall, after request made, refuse or neglect to prove, and, if correct, seal, the meters furnished at his office by any gas company for that purpose, and for said proving and sealing the company shall pay said officer the sum of 25 cents for each and every new meter so proved and sealed as aforesaid. Any gas company convicted before a justice of the peace of violation of the provisions of this section shall forfeit the sum of $10, and a further sum of $5 for each and every day that such meters are allowed to be continued in use after a notice ordering its discontinuance has been served upon such company by him. By section 11 it is provided that no meter shall be set, unless it be sealed and stamped in the manner required by the preceding sections; and by section 12 it is also provided that it shall not be lawful for any gas company to put in use in the city of Baltimore any gas meter which shall have been discontinued, or any meter which has been in the use of any other consumer, unless the same has been reinspected and restamped by the general superintendent of lamps and inspector and sealer of gas meters. Any gas company convicted before a justice of the peace of the violation of the provisions of this

section shall forfeit the sum of $10, and the further sum of $5 for each and every day that each of said meters are allowed to be continued in use after a notice has been served upon such gas company by him.

It is contended upon the part of the mayor and city council of Baltimore that the city is not only entitled, under the provisions of the ordinances, to charge a fee of 25 cents for each new meter inspected and sealed, but also to charge the same fee for the reinspecting and restamping of discontinued or old meters as required by section 12 of that article. The appellee admits the right of the city to charge for the inspection of new meters, under the tenth section, but denies its power to impose a tax for the reinspection of the meters that have been discontinued and have again been put in use. The facts of the case, according to the agreed statement filed in the case and incorporated in the record, are as follows: In May, 1903, the appellee, the Consolidated Gas Company, delivered to the superintendent of lamps and lighting of Baltimore city 4,551 new gas meters, to be inspected and tested by him; and, having been ***217** duly tested, they were sealed and stamped, with a seal containing the words, "Inspected, Baltimore," and were afterwards put in by the gas company upon the premises of consumers in the city of Baltimore, and the appellee paid the sum of 25 cents for each meter so proved and sealed. Subsequently these meters were discontinued and removed from the premises where they had been installed, and, after being repaired, were delivered during the months of May and June of the same year to the superintendent of lamps and lighting for reinspection, and, after being reinspected and restamped, were again put in use in the city of Baltimore, and that the appellee refused to pay a charge of 25 cents per meter for the reinspection and restamping of the discontinued meters; and it further appears that the monthly average of meters, both new and discontinued, inspected and sealed by the superintendent, includes about 500 to about 1,500 discontinued meters.

The single question presented upon this state of facts is this: Can the appellant, the mayor and city council of Baltimore, require the appellee, the gas company, to pay a fee of 25 cents per meter for the reinspection and restamping of what are called "discontinued gas meters"? And this, as we have said, depends upon the construction of the ordinances applicable to the case. The language of the tenth section, supra, is perfectly clear, and it provides that it shall not be lawful for any new meter to be furnished or put in use in the city by any gas company which shall not have been previously proved to be correct and sealed by the general superintendent of lamps and sealer, and for this proving and sealing the company shall pay the sum of 25 cents for each and every new meter so proved and sealed. It appears from the twelfth section, however, that while it is made unlawful for any gas company to put in use any meter which has been discontinued or which has been in the use of any other consumer, unless the same has been reinspected and restamped, the section omits to provide a fee or charge to be paid by the company for the reinspection and restamping of discontinued meters. It provides a penalty for the violation of the provisions of the ordinance, but no charge is fixed in this section, or any other part of the ordinance, for the reinspection and restamping of discontinued meters. So, when the ordinance states in one section that a fee shall be charged for the inspection of new meters, and in another section, relating to discontinued meters, it omits to provide an inspection fee, the reasonable conclusion is that there was no intention to impose a charge for any meters, except new ones. The rule is well settled that, when a statute is clear and free from ambiguity, it must be construed to mean what is plainly expressed therein. Nor does the eleventh section of the ordinance help the appellant's contention. This section provides that no meter shall be set unless it be sealed and

stamped in the manner required by the preceding section. Now, since the tenth section distinctly directs that the charge of 25 cents shall be limited "to each and every new meter so proved and sealed," we do not see how the eleventh section, even should we read into it that portion of the tenth section which applies alone to new meters, could be construed to authorize a charge for the inspection of discontinued meters. The eleventh section is confined to "the sealing and stamping" of all meters, but does not provide a charge for the meters covered by the twelfth section. We are of the opinion, then, for the reasons stated, that under the ordinances heretofore set out the inspection fee is limited to new meters, as required by the tenth section, and that the ordinance does not provide a charge for the reinspection and restamping of discontinued meters.

As to the objection, argued at the hearing, that the agreed statement of facts is not in proper form to present the questions to be passed upon by the court, we need only say that since Acts 1888, p. 546, c. 317 (Code Pub.Gen.Laws, art. 26, § 15), the court is at liberty, upon cases submitted upon agreed statement of facts, to draw all inferences of fact or law that court or jury could have drawn from the facts so agreed or stated, as if they had been offered in evidence upon a trial before the court and jury. It appears from the agreement filed in the case that the court was authorized to enter judgment for the plaintiff or for the defendant, in accordance with the opinion of the court upon the facts, with right to either party to appeal. The approved practice in such cases is stated by this court in Tyson & Rawls v. Western Nat. Bk., 77 Md. 421, 26 Atl. 520, 23 L.R.A. 161, and in Salfner v. State, 84 Md. 302, 35 Atl. 885. While the practice there stated has not been fully followed here, yet, as it appears that the case was submitted to the court for its opinion upon the facts, we find no sufficient reason for reversing the judgment for the reason indicated. In B.C. & A. Ry. Co. v. Wicomico Co., 93 Md. 128, 48 Atl. 853, it was said it was the duty of the court to declare the law upon the facts stated, and its action is subject to review by this court upon the law of the case, without being restrained by the provision of law referred to.

For the reasons stated, the judgment will be affirmed. Judgment affirmed, with costs.

Md. 1904.
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