

No. 14048

Supreme Court of Illinois

St. L. V. & T. H. R. R. Co.

vs.

Surrells

SUPREME COURT, STATE OF ILLINOIS,
Central Grand Division.
JANUARY TERM, A., D. 1877.

ST. LOUIS, VANDALIA AND TERRE HAUTE
RAILROAD COMPANY, APPELLANT,
VS.
JESSE R. SURRELLS, Collector, &c., APPELLEE. } APPEAL FROM EF-
FINGHAM.

ABSTRACT OF RECORD.

BILL.

PAGE 2. That the complainant is a railroad corporation acting under a charter granted by the legislature of Illinois, approved February 10th, 1865, and amended by act approved February 8th, 1867; that its capital stock, on the 1st days of May, 1873, 1874 and 1875 was of the nominal amount of \$2,374,650, being divided into 23,746½ shares of \$100 each, which by the terms of the acts aforesaid are deemed and declared to be and are personal property, and can only be issued and certified to those persons who subscribed and paid therefor in money, labor or property, to be used and expended in the construction and equipment of a railroad to be built by said complainant; that on the 1st day of May 1873, on the 1st day of May, 1874, and on the 1st day of May, 1875, said complainant, had in due conformity to law, issued outstanding shares of its capital stock to the amount aforesaid, to-wit, \$2,374,650, the ownership of all which shares of capital stock was then and ever since has been and now is evidenced by stock certificates regularly and duly issued by said company to the subscribers therefor; that complainant is unable to state the names and places of residence of the present holders of said stock, but alleges the fact to be that a large portion, to-wit, about 18,500 shares of the nominal value of \$1,850,000 are held and owned, and stand on the books of said company in the names of persons who are not citizens of the State of Illinois, but are citizens of other States; that on said 1st days of May, 1873, 1874 and 1875, the complainant did not own or have any pecuniary interest in any of said shares of capital stock issued by it, nor has it ever since those dates owned or had any such pecuniary interest.

That complainant did make a certain mortgage or deed of trust dated January 1st, 1867, to secure the principal and interest of a thirty years' loan and issued bonds therefor of like date at seven per cent. per annum payable semi-annually, the amount of the same outstanding being \$1,599,000, one bond for the sum of \$1,000 being lost; that complainant has issued additional bonds to the amount of \$2,600,000, secured by another and second mortgage upon the property and franchise of said complainant; and said company had on the 1st day of May, 1873, issued its income bonds of \$1,000 each for the aggregate sum of \$1,000,000 which were then outstanding at the rate of seven per cent. interest per annum, said bonds payable only out of the excess of income of each year over and above the cost of operating said railroad and the interest upon said first and second mortgage bonds, together with the payment of taxes and the proper cost of maintaining organization, which said income bonds have since that time been converted into preferred stock and cancelled and \$1,000,000 more of preferred stock provided for; that all of said bonds and preferred stock and securities have become by negotiation and sale, except so far as the said last named \$1,000,000 of preferred stock has not been disposed of, the property of persons and corporations other than the said complainant, and held largely if not entirely by persons and corporations who are not citizens of the State of

PAGE 5. Illinois; but of foreign countries and other states; that the complainant had
 " 6. not on the said 1st days of May, 1873, 1874 and 1875 any interest, estate or ownership whatsoever therein nor has it yet any.

That the complainant filed schedules of its property, &c., in the offices of the Auditor of Public Accounts, and the County Clerks in the counties on the line of its railroad for the years 1873, 1874 and 1875, as required by law; that the complainant scheduled its property in the County of Clark as follows for the year 1873:

" 7.	Lands and lots other than right of way.....	\$	750	00
	Rolling stock—proportion.....		65,066	06
	Main track.....		77,857	50
	Side track.....		3,537	25
	Right of way—376.27 acres.....		3,762	70
	Improvements on right of way.....		2,250	00
	Total.....		\$153,223	51

For said year 1873, in the county of Cumberland as follows:

	Rolling stock—proportion.....	\$	46,772	42
	Main track.....		55,875	00
	Side track.....		802	50
	Right of way—313.17 acres.....		3,131	70
	Improvements on right of way.....		2,250	00
	Total.....		\$108,831	62

For said year 1873, in the county of Effingham as follows:

" 8.	Lands and lots other than the right of way.....	\$	10,250	00
	Personal property other than rolling stock.....		5,000	00
	Rolling stock—proportion.....		56,736	00
	Main track.....		67,795	00
	Side track.....		3,789	50
	Right of way—322.55 acres.....		4,838	25
	Improvements on right of way.....		2,750	00
	Total.....		\$151,158	75

For said year 1873, in the county of Fayette as follows:

	Lands and lots other than the right of way.....	\$	1,708	00
	Personal property other than rolling stock.....		100	00
	Rolling stock—proportion.....		57,112	30
	Main track.....		68,232	50
	Side track.....		2,218	50
	Right of way—337.11 acres.....		5,656	65
	Improvements on right of way.....		1,000	00
	Total.....		\$136,027	95

For said year 1873, in the county of St. Clair as follows:

" 9.	Rolling stock—proportion.....	\$	28,640	26
	Main track.....		28,245	00
	Side track.....		5,555	00
	Right of way—20.67 acres.....		4,533	50
	Total.....		\$ 66,973	76

For said year 1873, in the county of Madison as follows:

" 9.	Lands and lots other than the right of way.....	\$	370	00
	Rolling stock—proportion.....		52,627	27
	Main track.....		62,867	50
	Side track.....		4,294	00
	Right of way—265.15 acres.....		5,243	00
	Improvements on right of way.....		4,750	00
	Total.....		\$130,151	77

For said year, 1873, in the county of Bond as follows :

Lands and lots other than right of way.....	\$ 599 50
Personal property other than rolling stock.....	100 00
Rolling stock—proportion.....	50,439 99
Main track.....	60,255 00
Side track.....	1,666 95
Right of way—297.97 acres.....	7,449 25
Improvements on right of way.....	3,250 00
Total.....	\$123,760 69

PAGE 9. That during the month of May 1873, the complainant filed in the Auditor's office sworn statements or schedules showing, among other things, the following :

Total capital stock.....	\$2,374,650 00
Amount held in this state.....	524,650 00
Amount held elsewhere in other states.....	1,850,000 00
Amount of each share.....	100 00

And it was therein alleged that said capital stock had no market value, and only a nominal value, and the fact is stated to be that said capital stock and shares of stock did not at that time have any market value for cash, that it was not then and never had been on sale at any stock market, that if sold or transferred at all it was only in a few shares at a nominal value and at few places along the line of its railroad, and that no dividend had ever been declared thereon, nor was there any reasonable prospect of the same being done so as to give any market value thereto either then or thereafter.

" 10. That according to said schedules so returned to the Auditor of Public Accounts and the said County Clerks the complainant assessed its property for taxation for the year 1873, as follows :

Railroad track.....	\$ 477,591 05
Rolling stock.....	352,395 00
Real estate—Lands.....	64,019 00
Real estate—Lots.....	162,468 00
Personal property.....	12,200 00
Total tangible property.....	\$1,068,673 05

" 11. That the complainant for the years 1874 and 1875, made like returns of assessments of its property to the said Auditor of Public Accounts, whereby it appears that on said 1st days of May, 1874, and 1875, the said capital stock and shares of stock did not have any market value for cash, and that it was not at either of said times on sale at any stock market, and if sold it was only for a nominal price along the line of its railroad.

" 11. That said statements and schedules were for each of said years, placed before the State Board of Equalization at its session for each of said years, whereupon it was and became the duty of said Board of Equalization to act judicially and not otherwise upon the evidence of value thus placed before it and contained in the sworn assessments made by the official representative of complainant for each of said years and to decide whether or no the same was sufficient to fix the assessed value of the tangible property and capital stock of said company, and if the members of said Board or any of them had personal knowledge of the particular and special articles of said property enumerated and assessed in said schedules and by that means or from information otherwise obtained, the said Board had official reason to believe and did believe that the said tangible property and capital stock or shares of stock were assessed as aforesaid for less than its fair assessable value, then it became and was the further duty of said Board to obtain and hear other and additional evidence of such value and so to obtain and hear it that the complainant should obtain notice or information thereof, and when such other and additional evidence was heard then to decide judicially whether all the evidence before it preponderated in favor of or against the assessment made by your orator, and if by this means it was judicially found by said Board that said assessment was too low, then and in that event only it became and was the duty of said Board to increase the same to the amount fixed by the preponderating evidence ; but the said Board did, in the manner more particularly hereinafter specified, arbitrarily, wantonly and without authority and without any evidence of witnesses heard before it,

or legal proof of any kind, increase the assessment of and for the year 1873, so as aforesaid reported to it, and which had been accepted both by said Auditor and said Board, to the sum of \$1,916,274 as and for the tangible property of your orator and fix the sum of \$2,173,694 as and for the "total assessment of capital stock," and did distribute the said assessed value of tangible property to the counties through which the railroad of complainant runs, as follows:

PAGE 13.	Clark.....	\$ 352,396 00
	Cumberland.....	246,644 00
	Effingham.....	309,480 00
	Fayette.....	305,687 00
	St. Clair.....	143,364 00
	Madison.....	289,816 00
	Bond.....	268,887 00
	Total.....	\$1,916,274 00

And did distribute the total assessment of capital stock to the said counties, as follows:

Clark.....	\$ 401,806 00
Cumberland.....	288,415 00
Effingham.....	349,943 00
Fayette.....	352,202 00
Bond.....	311,024 00
St. Clair.....	145,795 00
Madison.....	324,509 00
Total.....	\$2,173,694 00

- " 14. And complainant charges that the aforesaid increase in the assessment of said tangible property, and aforesaid assessments of said capital stock, are illegal and void, because the said Board had no authority of law and no jurisdiction to make them in the manner aforesaid, as will be more particularly and specifically hereinafter set forth; and if said Board had any such authority and jurisdiction said assessment was double taxation, in the manner following, to-wit: When the Board assessed the tangible property that was an assessment of the capital stock, yet in the record of its proceedings its tabular statement marked "A," is declared to be "the assessment of the capital stock of railroad companies," in which said tabular statement the aforesaid "assessment of capital stock" of \$2,173,694 is made against the complainant; that the complainant on the said 1st days of May, 1873, 1874 and 1875, had no other property than enumerated in the schedules and statements aforesaid; that all the property of the complainant is capable of full, easy and exact valuation, either by personal inspection or testimony of competent witnesses who have or might examine it;
- " 15. that the said Board did not personally inspect or examine the same, and had no personal knowledge of the items composing the same, or of the separate value of each, or of the aggregate value of all, and did not bring before it any witnesses to testify thereto at either of its sessions aforesaid, but did arbitrarily and illegally assume at its session in 1873, that the fixed property of your orator was of the cash value of \$1,346,999, and that the rolling stock of complainant was of the value of \$569,275, making the whole tangible property of complainant as already shown the sum of \$1,916,274, and having made such arbitrary, illegal and assumed assessment the said Board arbitrarily and illegally, as elsewhere more particularly appears, affixed the further assessment of \$2,173,694 as and for the pretended cash value of the capital stock of the complainant including the franchise of the complainant and over and above such tangible property as aforesaid, making a total assessment against the complainant of \$4,089,968, notwithstanding said total assessment of capital stock as made by said Board is within \$2,0956 of the value of said shares of stock, if the same were estimated at par, which is illegal, unjust, wrongful and oppressive in this, in that it is a much larger proportion of the actual value, even if the same were at par, than is assessed against individuals by the same Board, to-wit: more than twenty per cent. in excess thereof, yet the amounts aforesaid, for the year 1873, were certified to said Auditor by said Board and by him certified in certain proportions to the different counties through which said railroad runs so that all taxes allowed by law may be collected upon them, which said proportions are as hereinbefore stated.
- " 16. That at its session for 1874, the said Board did arbitrarily and without the examination of any witnesses in reference to the market cash value thereof, assess the equalized value of the capital stock of complainant in excess of the equalized value of capital stock and debt over equalized value of tangible prop-

erty, at the sum of \$1,037,117, after having assessed the tangible property of complainant at \$1,193,303, making an aggregate assessment of \$2,230,420; and the said Board did at its session in 1875 in like manner make a total assessment of capital stock against complainant of \$1,186,545 after having assessed the tangible property of complainant at \$842,048, making a total assessment for that year of \$2,028,593.

PAGE 16. That the distribution of said capital stock along the line of complainant's railroad for the year 1874, was as follows:

Clark	\$ 191,711 00
Cumberland	137,609 00
Effingham	166,966 00
Fayette	168,043 00
Bond	148,396 00
Madison	154,830 00
St. Clair	69,562 00
Total	\$1,037,117 00

" 17. And for the year 1875, as follows:

Clark	\$ 219,333 00
Cumberland	157,436 00
Effingham	191,022 00
Fayette	192,255 00
Bond	169,777 00
Madison	177,138 00
St. Clair	79,584 00
Total	\$1,186,545 00

" 17. Complainant is advised that the said defendant, collector of the said County of Effingham, and the public authorities, do give out and pretend, in order to sustain said illegal tax, that the same was assessed by said Board as and for the so-called capital stock of complainant including the franchise of complainant, when in reality it is an assessed amount of tax based upon the afore-said assumed value of the shares of stock issued by complainant and the assumed value of the mortgage bonds, also issued by your orator, and both of which are owned by others and not by the complainant, with the value of the tangible property of complainant deducted therefrom in order thereby to place an exorbitant value upon the franchise of your orator so as to make it appear that in the year 1873, the right to use tangible property of the assessed value of \$1,916,274 was of the assessed value of \$2,173,694, or \$257,420 more than its assessed value: that in the year 1874, the right to use the same tangible property at the assessed value of \$1,037,117 was \$156,186 less than its assessed value, and that in the year 1875 the right to use the same tangible property at the assessed value of \$842,048 was of the assessed value of \$1,186,545 or \$344,497 more than its assessed value, that is to say, that the franchise of your orator was worth \$2,173,694 for purposes of taxation in 1873, \$1,037,117 in 1874 and \$1,186,545 in 1875;

" 18. that the said Board in order to produce these results did adopt certain rules and principles set forth in the record of its proceedings which are contrary to law in this: that by means of them the said Board did not include the value of the franchise of your orator in the capital stock or franchise of your orator as the law requires it to do, but treated the same as included in the assessed value of the shares of stock and mortgage bonds of your orator, when in fact your orator had no interest in and no control over the said shares of stock and said bonds, and said Board thereby disregarded and violated that part of the revenue act of

" 19. 1872, which provides that when the capital stock or tangible property of a corporation shall be assessed for taxation, the shares of its stock shall be exempt; that the assessments and schedules forwarded to said Auditor and by him laid before the said Board were made pursuant to forms furnished by said Auditor wherein the capital stock of your orator was defined to be the capital stock authorized by your orator's charter to be subscribed and divided into shares, the market and actual value of which shares of stock were required to be given and which were therein given as hereinbefore mentioned under oath as required by law, which assessment and schedules were accepted by said Auditor, were laid before said Board, accepted by it and constituted the basis of its action in its proceedings for the assessment of the property of your orator; and your orator

" 20. is advised and believes that the Revenue law of 1872 intended to make and does make these sworn assessments and schedules *prima facie* evidence of the value of the property assessed by your orator whose official representatives in swearing thereto, were made witnesses for that purpose; and it is fur-

- ther advised and believes that the proper county officer before whom the same were laid accepted the same without any change, and although said Board had the right to change the same, as hereinbefore set forth, by judicial inquiry and upon proper evidence, yet your orator is informed and believes and charges that the said Board having no authority or jurisdiction to do so by law, did in the arbitrary and capricious manner hereinbefore set forth, without any evidence of the value of the several specific articles of property so assessed and embraced in said schedules and without any actual knowledge thereof, and without any notice to your orator, did at the session of said Board in 1873, disregard the assessment made in said schedules for that year and greatly and illegally increase them and in manner and form as hereinbefore stated, the excess in the assessment of said tangible property for that year being \$847,600.95; and instead of accepting the said sworn statement of said capital stock for that year the said Board disregarded the same, as they had no legal right to do and no jurisdiction to do, and illegally, arbitrarily and capriciously and without any evidence or notice to your orator or any actual official knowledge of the value thereof as your orator is informed and believes assessed the value of said capital stock as hereinbefore stated; all of which was done as your orator charges,
- " 21. for the purpose of discriminating unjustly against the railroad property of the State so as to impose an unfair and undue proportion of taxation upon it, greatly beyond what was a just proportion compared with other taxable property of the State, and all of which, so far as your orator is concerned, amounts in law to a fraud against your orator; and as to the assessments of capital stock for the years 1874 and 1875 the said Board arbitrarily and illegally changed the same as hereinbefore stated without any proof before them that the same had any market value, or what said value was, if it had any, or that any of the same had ever been sold for cash, or for how much, if so sold, when in fact as your orator alleges the same had no market value for cash as set forth in the schedule filed by your orator for the years aforesaid and was not on the market for sale and
- " 21. never had any more than a nominal value.

- Your orator further says that the said Board had authority given it by law to assess railroad property only within the meaning of that term as employed in the general system of taxation in the State of Illinois; therefore it was the duty of said Board either to accept as true the evidence furnished by your orator of the assessed value of the property, as set forth in the sworn schedules, as hereinbefore named, or to provide some means, either by open publicity to its proceedings, or otherwise to cause the railroad companies of the State, including your orator, to be notified or informed that evidence in reference thereto would be heard by and before it, so that said railroad companies, including your orator,
- " 22. might have accepted the same, or offered other evidence as your orator may have deemed best; and the said Board had no legal right to adopt any rules and principles which could confer upon it powers to do otherwise, and any such adopted by them for that purpose were and are void; yet the said Board did not, in the year 1873, give any notice by publication or otherwise to your orator of its intention to change said assessments or schedules, or to alter the assessed values fixed therein, or any such publicity to its proceedings as would have given the several railroad companies of the State, including your orator,
- " 23. an opportunity or the means of knowing or discovering what it intended to do; but its committee, charged with the duty of assessing the value of the capital stock of railroad companies, purposely as your orator believes, held back their report thereon, with the knowledge and consent of said Board until after night of the day immediately before the adjournment of said Board
- " 23. *sine die*, when after the Board had already had two meetings that day during the usual hours of business, it had a third meeting at nine o'clock in the night time at which last meeting the said committee made its report on assessment of the capital stock of railroads, at a time when the same could not be discussed or examined in detail, and when the Board could not examine the evidence, if any, upon which it was based or the calculations by which the results therein reached were arrived at, all of which it was the duty of the said Board to do, and which report was received and adopted by said Board, at the said late and unusual hour in the night time, and after the close of the business hours of that day; and the said Board in a short time afterwards adjourned the said night session until the next morning at 9 o'clock, at which time, and without the transaction of any business it adjourned *sine die*; all of which was done, as your orator is informed and believes, for the purpose of consummating the aforesaid unjust discrimination in the assessment of taxes for that year against railroads, by putting it out of the power of railroad companies, your orator included, to obtain any knowledge whatsoever of the proceedings of said Board to the prejudice of their interests, and by preventing them from presenting evidence to the Board showing the illegality and enormity of the assessments made against them, or from resorting to legal remedies for the redress of the

- wrongs so inflicted upon them, and was fraudulent in law and void; and your orator alleges in support of this, that after said Board had been in session for nearly two months, the aforesaid report of said committee and the final action of said Board covered an assessed value of railroad capital stock in the State of \$64,611,070, and an equalized and assessed value of their tangible property of \$68,885,452, making an aggregate of \$133,496,522, whereas the aggregate of the equalized value of all the lands in the State for said year, 1873, was \$582,416,667 as fixed at the same session of said Board for said year, 1873, thus
- " 24. making the railroad assessment between one-fourth and one-fifth of all the real estate assessment of the whole State; and the said Board at its same session fixed the equalized value of all the personal property in the State, owned by individuals, at \$287,292,899, of which the said railroad assessment is nearly one-half; and as the aggregate of this general assessed value of all the lands
- " 24. and personal property owned by individuals is \$869,709,476 your orator shows that the said assessed value of the railroad property is about one-sixth of the whole, which discrepancies in assessed values could not have existed as your orator believes if said railroad assessments had been justly, equitably and legally made, and could not have been produced by said Board, except in the manner aforesaid, adopted for the express and fraudulent purposes, as your orator believes, of making the aforesaid unjust and illegal discriminations against said railroad companies and your orator, and the special injustice and wrong done your orator is hereby shown in this, to-wit: that when, afterwards, in 1874, the said Board adopted a resolution giving the representatives of railroads an opportunity of appearing before it and the said railroad companies, and your orator especially, had permission to
- " 24. verify the assessments and schedules aforesaid for that year, both as to the value of tangible property and capital stock as the same were reported by the official representatives of said railroad companies and your orator, the said Board reduced its own estimates of the value of the tangible property of your orator from the aforesaid sum of \$1,916,274 to \$1,193,303 for said year 1874, showing a decrease in the assessed value in one year of the same property of \$722,971, and the said Board also reduced for the same year the assessed
- " 25. value of the capital stock of your orator from \$2,173,604 in 1873 to \$1,037,117 in said year 1874, showing a diminution in value of \$1,136,577 in one year; and in 1875, when said railroad companies and your orator had again the opportunity of appearing before said Board, it again and still further reduced the assessed value of the tangible property of your orator to \$842,048 or \$1,074,226
- " 25. less than in 1873, thus making the value of the tangible property of your orator assessable for taxation for 1875 \$179,420.50 less than the assessment of your orator made in said schedule for said year 1875, and in the same year, 1875, the said Board reduced the assessed value of the capital stock of your orator to \$1,186,545, showing a diminution in the assessed value of \$987,149, or nearly one-half in two years, and thus fixing an assessed value upon the whole property of your orator of \$4,089,968 for 1873, of \$2,230,420 for 1874, and of \$2,028,593 for 1875, making the assessment of 1873 \$1,859,548 in excess of that of 1874, and \$2,061,375 in excess of that of 1875, a discrepancy
- " 26. in assessed values which could not have existed in the assessment of 1873, had it been fairly and honestly made; and your orator further shows the manifest
- " 26. wrong and injury done by said railroad assessment of 1873 by the fact that in 1874 the said Board reduced the aggregate assessment of the capital stock and tangible property of all the railroad companies in the State from \$133,496,522 as fixed in 1873 to \$74,843,891, or \$58,652,631 in one year; and in 1875 it still further reduced the assessment of the same property to \$54,812,866, or \$78,683,656 less than it was assessed in 1873, a reduction of more than one-half, and with reference to the aforesaid assessment of capital stock for the year 1873 your orator is informed and believes that when the report of the committee appointed for that purpose was made to the Board it was acted on and adopted without any examination of the specific values of the property assessed or of
- " 27. the values distributed to each of the counties along the line of your orator's railroad or any calculation made to test their correctness, that all the tables and calculations contained in said report were made, as your orator is informed and believes, by a person unknown to your orator, who was not a member of said Board, and were adopted by the Board in gross and not in detail, and without any special knowledge or consideration of the details of said assessment; and your orator further shows that neither said Board or its committee, nor the said person unknown to your orator, nor any other person for them, heard or examined any witnesses as to the market cash value of the shares of capital stock of your orator, or of the market cash value of its debts or mortgage bonds, nor had they or any of them any personal knowledge of the same, nor
- " 27. did they or any of them proceed to inspect any of the property of your orator in order thereby justly to ascertain and estimate its value or any interest in it, nor did they or any of them request any officer belonging to your orator's com-

PAGE 27

pany, or any of its agents, or any person acting in its behalf, to furnish any information in the premises, nor did the said Board or its committee aforesaid, in truth and in fact take into calculation the actual market value in the State of Illinois, of all corporate indebtedness of your orator, and of all the shares of capital stock issued by your orator as of the said 1st day of May, 1873, but in truth and in fact the said result was arrived at by said Board, as your orator is informed and believes, or by its committee, or whoever drew up said report, by adopting as true the unsworn and unproved figures set down in some financial newspaper which undertook to state the value of bonds or stocks of railroad companies as they stood in the market of New York on days other than the 1st day of May, 1873, whereas your orator is informed and believes that the said publication did not contain any statement of the market value of the debts, or the market cash value of the capital stock issued by your orator as hereinbefore stated, but the same was reached and fixed by said committee or said Board, by conjecture merely, and without any judicial evidence whatever; and your orator charges that the figures so illegally adopted, without any proof to support them, as to the value of the debts and capital stock aforesaid, were incorrect and untrue; in fact that the said Board had no legal authority to assess the property of your orator on the basis of such fictitious prices in another and distant State, and that the said result, obtained as aforesaid, is in violation of law and void.

" 28. Your orator further shows that in truth and in fact, the said shares of capital stock and mortgage bonds had no market cash value in the State of Illinois on the 1st days of May, 1873, 1874 and 1875; that there were none of said shares of stock on the market for sale in said State, or elsewhere, at either of said times; that they had no cash value and could not have been sold or traded for more than ten cents on the dollar, if for so much; that no dividend has been earned or declared or ever paid on the same, and none was likely to be earned or declared for many years to come, but that the same were only of a nominal value on each of said days, based upon doubtful and uncertain increase of the gross and net earnings of your orator in future years, and the possible dividends consequent thereon, which nominal value was prospective merely; but your orator denies that such expectancy of value can be legally assessed either against your orator or against the holders of said shares, or be estimated with a view to taxation.

" 28. And your orator further shows that although the said railroad was so far completed as to be in operation, yet the business thereon has not been sufficient during all the years when in operation to pay the operating expenses and the interest upon its bonded debts, and no interest upon its income bonds has ever been paid, and no dividend made upon either preferred or common stock; that your orator should not be held liable to pay taxes for the year 1873 upon the tangible property aforesaid upon a larger assessment than \$1,063,673, the amount assessed and returned by your orator in the schedules heretofore named; but your orator has paid and tendered to the proper collectors in the several counties along the line of said railroad taxes upon the same assessed value of tangible property as that fixed by said Board for the year 1874, to-wit: \$1,193,303 which assessment of 1874 has been adopted because it is the value fixed by said Board at the first opportunity given your orator to be heard, and at the first attempt of said Board so to investigate the said question of values as to demonstrate the injustice and wrong inflicted by its illegal and *ex parte* proceedings of 1873; and your orator shows that the said taxes upon said tangible property for said year 1873 have been paid and tendered by your orator, as follows:

* * * * *

" 29. and your orator has paid the taxes in all said counties for the years 1874 and 1875 upon its tangible property, except in said counties of Madison and St. Clair, in both of which it was tendered and refused.

" 30. Your orator further shows that in said county there is illegally and fraudulently assessed against its property the following county taxes: for the year 1873, the sum of \$2,637.66; for the year 1874, the sum of \$2,973.34; for the year 1875, the sum of \$2,353.94. That the Board of Supervisors of said county

" 31. at its September term, 1873, required the sum of \$15,000 to be levied as a county tax for said year; that the said Board at its September session for 1874, required the sum of \$24,500 to be levied as a county tax for said year, and the said Board at its September session for 1875, required the sum of \$24,000 to be levied as a county and poor tax for said year; that said sum of \$2,637.66 for the year 1873, is largely in excess of the proportional amount that should be assessed against the property of your orator to raise the said sum of \$15,000 in said county for county tax for that year; that the said sum of \$2,973.34 county

PAGE 31. tax for the year 1874 is largely in excess of the proportional amount that should be assessed against the property of your orator to raise the said sum of \$24,000 required by said Board for that year, and that the sum of \$2,353.94 assessed against the property of your orator for the year 1875, is largely in excess of the proportional amount that should be assessed against the property of your orator to raise the sum required for county tax for that year, and that the order of said Board requiring \$24,000 for county and poor tax does not state separately the amount required for county and the amount required for poor tax, according to the statute in such case made and provided; that in said county there is illegally and fraudulently assessed against the property of your orator the following Court House taxes: For the year 1873, the sum of \$2,967.38; for the year 1875, the sum of \$1,177.00.

That the Board of Supervisors of said county at its September term, 1873, required for Court House tax for said year the sum of \$18,000 to be assessed against all the property of said county, and the said Board at its September term, 1875, required the sum of \$12,000 for Court House tax for said year to be assessed against all the property of said county; that the said sum of \$2,967.38 is largely in excess of the proportional amount that should be assessed against the property of your orator for the year 1873 to raise the said sum required of \$18,000 for Court House, and that the said sum of \$1,177.00 assessed against the property of your orator for the year 1875 is largely in excess of the proportional amount that should be assessed against the property of your orator to raise the said sum of \$12,000 Court House tax for said year 1875.

Here follows a statement showing that the railroad of complainant runs through certain school districts in Effingham county, the amount of taxes assessed against complainant in each of them for the years 1873, 1874 and 1875, and showing that the certificates of the school directors in a number of such districts were not returned and filed in the Town Treasurer's and County Clerk's offices within the time required by law.

That the County Clerk of said county in determining the rate per cent. of school tax to be extended on the Collector's books and to be collected in said school districts for the years 1873, 1874 and 1875, did not take into consideration, in computing said rate per cent. the proportionate share of said school districts respectively in the property of your orator, returned and certified to said County Clerk for taxation, but said County Clerk excluded the same and determined the rate per cent. in each of said districts sufficient to produce the amounts certified as aforesaid by the school directors of said districts and extended the same against the property of said school districts, and extended the rate per cent. so obtained against the property of your orator, whereby the taxes in said school districts were largely increased against your orator beyond the amounts authorized by law to be raised.

That in said county there is illegally and fraudulently assessed against the property of your orator for the year 1875, a city tax of \$722.16 for the city of Effingham, in said county; that the certificate of the City Clerk of said city bears date August 10th, 1875, and requires the sum of \$5,500; that the County Clerk of said county in determining the rate per cent. of city tax to be extended on the collector's book did not take into consideration the sum of \$15,000 distributed to said city of Effingham as the proportionate share of the property of your orator, but excluded the same, whereby the rate per cent. for said city tax was increased to the sum of \$1.50 on the \$100 valuation of property in said city, whereas the sum of \$1 on the \$100 valuation would have produced the sum of \$5,500 required by the certificate of the City Clerk aforesaid.

That for the year 1874, there is assessed against the property of your orator a city tax, for the city of Effingham, in said county, of \$724.17; that the certificate of the City Clerk of said city requires the sum of \$5,000; that the County Clerk in determining the rate per cent. of city tax to be extended on the collector's books for that year, did not take into consideration the sum of \$60,000 distributed to said city of Effingham as the proportionate share of your orator's property for taxation in said city, but excluded the same from such calculation, whereby the rate per cent. of said city tax was increased to the sum of \$0.85 on the \$100 valuation of property in said city, whereas the sum of \$0.60 on the \$100 valuation would have been a rate per cent. sufficient to have produced the said sum of \$5,000 required by the certificate of the said City Clerk for said year, making the sum of \$300 illegally assessed against your orator.

PAGE 43. Here follows a statement of amount of town taxes, road and bridge taxes
 " 44. for the years 1873, 1874 and 1875, assessed against the complainant.

" 45.

" 46.

" 47.

" 48.

" 49.

That the County Clerk in determining the rate per cent. of town tax, road and bridge tax to be extended on the collector's books and to be collected in said towns for the years 1873, 1874 and 1875, for the purposes aforesaid, did not take into consideration in computing said rates per cent. the proportionate shares of said towns respectively in the property of your orator returned and certified to said County Clerk for taxation, but said Clerk excluded the same and determined a rate per cent. for each of said towns for said years 1873, 1874 and 1875, sufficient to produce the amounts supposed to be needed in said towns for said purposes, excluding the property of your orator distributed to said towns for the years aforesaid, and afterwards said Clerk extended the rate per cent so ascertained as aforesaid against the property of your orator, distributed or apportioned among said towns as aforesaid, whereby the said taxes in the said towns were largely increased against your orator beyond the amounts authorized by law to be raised for said purposes, and were illegally and fraudulently increased the sum of \$

" 50-52. Prayer for injunction, &c.

" 54-56. Writ of injunction, &c.

" 57. General demurrer of defendant to complainant's bill.

" 58. Stipulation of parties as to *pro forma* order and appeal to this grand division.

" 59. Final order and decree of court, dissolving injunction and dismissing bill, &c.

" 60. Appeal bond.

" 62. Stipulation of parties as to portions of the record.

" 64. The errors assigned are :

1. The Circuit Court erred in sustaining the demurrer of the defendant to the complainant's bill.

2. The Circuit Court erred in dismissing complainant's bill.

3. The Circuit Court erred in not overruling the demurrer of the defendant to complainant's bill.

4. The Circuit Court erred in refusing the relief prayed in complainant's bill.

5. The Circuit Court erred in rendering final order or decree in favor of the defendant.

R. W. THOMPSON,
 T. J. GOLDEN,
 Attorneys for Appellant.

111

St. L. & T. v. T. H. R. R. Co

or

Surrells vs
appeal from Effingham

6024

13/048

FILED
JAN 20 1871
U.S. DISTRICT COURT
EFFINGHAM GA