No. 14516

Supreme Court of Illinois

Neustadt et al

vs.

Ill. Cen. R. R. Co

STATE OF ILLINOIS,

SUPREME COURT,

Third Grand Division

No. 212

Neustadt

vs

Ills Cen RR

Opinion

2033

Mr. Justice Breese delivered the opinion of the Court:

~~Breese J.~~ The question arising on this record is, have the corporate authorities of the City of LaSalle, power to levy a tax for municipal purposes upon the property of the Illinois Central Rail road company situated within the limits of that city?

By the act incorporating the Illinois Central Rail road company approved Feb. 10. 1851 it is provided by Section 22, that the lands selected under the act of Congress, and thereby authorized to be conveyed, shall be exempt from all taxation under the laws of this State, until sold and conveyed by said corporation or trustees, and the other stock, property and effects of said company shall be in like manner exempt from taxation for the term of six years from the passage of this act. After the expiration of six years, the stock property and effects belonging to said company shall be listed by the President, Secretary or other officer with the auditor of State, and an annual tax for State purposes shall be assessed by the auditor upon all the property and effects

of every ~~kind~~ name, kind and description belonging to said corporation. Whereon the taxes levied for state purposes shall exceed three fourths of one per centum per annum, but excess shall be deducted from the gross proceeds or income herein required to be paid by said corporation to the state, and the said corporation is hereby exempted from all taxation of every kind, except as herein provided for. (Ohio Laws. 1851 page 72.)

The act to incorporate the Illinois Central Rail road company, of which the above letter is part, is a contract between the state and the company, which cannot be changed, or amended without the consent of both contracting parties. ~~A [illegible] of this contract, [illegible] with the corporation to be [illegible] by this act, [illegible] the power of taxation to be exercised [illegible]~~

In consideration of the undertaking of the company to construct a great thoroughfare which should involve the expenditure of millions, and which was an experiment, ~~with uncertainty of revenue [illegible]~~ and [illegible], [illegible]

per cent of the gross amount of ~~[illegible]~~ its receipts or income to be paid to the State, the company was relieved from the payment of all other taxes, to be assessed as provided for in the ~~[illegible]~~ section. The language is plain and explicit, "the said corporation is hereby exempted from all taxation of every kind except as herein provided for."

This being the contract ~~of~~ between the State and the corporation, no city or town authority can impose a tax for municipal purposes, on the property of that company ~~[illegible]~~ which may be within their limits.

Ill. Cent. R. R. Co. vs. The Co. of McLean 17 Ill. 291

The judgment of the circuit court is affirmed.

Judgment affirmed.

~~Look up the case of McLean Co vs Ill. Cent. R. R.~~

212 — 144

Arnstadt & city of LaSalle

vs

Ill. Central R. R. Co.

Opinion by Breese J.

Appeals.

C. R.

Record Book 13, p 96,

Comp?

SUPREME COURT OF ILLINOIS.

THIRD GRAND DIVISION.

APRIL TERM, A. D. 1863.

MORRIS NEUSTADT and the CITY OF LA SALLE, Plaintiffs in Error,
vs.
THE ILLINOIS CENTRAL RAIL ROAD COMPANY, Defendant in Error,
} *Error to La Salle County Circuit Court.*

RECORD.

STATE OF ILLINOIS, } ss.
LA SALLE COUNTY,

Pleas before the Honorable Madison E. Hollister, the Judge of the Ninth Judicial Circuit of the State of Illinois, and the presiding Judge of the La Salle County Circuit Court, at a term of said court, commenced and held at the Court House, in Ottawa, on Monday, the 2d day of February, A. D. 1863, the same being the first Monday in said month of February, and the eighty-seventh year of the Independence of the United States of America.

Present, the Honorable Madison E. Hollister, the Presiding Judge, Absalom B. Moore, Clerk, William R. Milligan, Sheriff, David P. Jones, States Attorney.

Be it remembered, that, on the 7th day of March, A. D. 1863, a certificate was filed in said court, in the words and figures following, to-wit:

STATE OF ILLINOIS, } ss. Circuit Court for said County,
LA SALLE COUNTY, } February Term, A. D. 1863.

THE ILLINOIS CENTRAL RAIL ROAD COMPANY,
vs.
MORRIS NEUSTADT and the CITY OF LA SALLE.
} *Injunction.*

I, Madison E. Hollister, Judge of the Ninth Judicial Circuit of the State of Illinois, do hereby certify that, on the trial of said cause, the following question of law arose, viz:

Whether the act of the General Assembly, passed the 23d day of June, A. D. 1852, incorporating the City of La Salle, confers upon

said city the right to levy a tax, for municipal purposes, upon all the property of said rail road company, situated within the limits of said city, or does the act of the General Assembly, passed February 10th, 1851, still continue in force, with reference to property of said company, situated within said city, and exempt said company from the payment of any such taxes on any of said property.

Upon which question I held that said company was not liable to pay such taxes on said property, and by agreement of Glover, Cook and Campbell, solicitors for complainant, and E. F. Bull, solicitor for defendants, I make this certificate so that the question may be presented to the Supreme Court for its decision thereon.

Witness my hand and seal, this seventh day of March, A. D. 1863, at Ottawa, in La Salle County, Illinois.

M. E. HOLLISTER, {SEAL.}
Judge of 9th J. D., State of Ill.

STATE OF ILLINOIS, }
LA SALLE COUNTY, } ss.

I, Absalom B. Moore, Clerk of the Circuit Court in and for said county, do hereby certify that the foregoing is a true, full and complete copy of a certificate filed in said cause on the 7th day of March, 1863, the same being one of the days of the said February term of said court for said year; and I further certify that said cause is undecided and still depending in said court.

Witness my hand and the seal of said court, at Ottawa, this 17th day of April, A. D. 1863.

A. B. MOORE, Clerk,
CHAS. H. HOOK, Deputy.

And now come the said plff's in error, and assign the following cause of error on the above record, viz:

The court erred in holding that the property of said deft. in error, situated within the city of La Salle, was exempt from the payment of city taxes.

E. F. BULL, Att'y for Plff's in Error.

144 212

SUPREME COURT.

MORRIS NEUSTADT AND THE CITY OF LA SALLE, Plff's in Error,
vs.
THE ILLINOIS CENTRAL RAIL ROAD COMPANY, Deft's in Error.

RECORD.

E. F. BULL, for Plff's in Error.

Filed April 23 1873
L. Leland
Clk.

SUPREME COURT OF ILLINOIS.

THIRD GRAND DIVISION.

APRIL TERM, A. D. 1863.

MORRIS NEUSTADT and the CITY OF LA SALLE, Plaintiffs in Error, *vs.* THE ILLINOIS CENTRAL RAIL ROAD COMPANY, Defendant in Error,	*Error to La Salle County Circuit Court.*

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LA SALLE COUNTY,

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said city the right to levy a tax, for municipal purposes, upon all the property of said rail road company, situated within the limits of said city, or does the act of the General Assembly, passed February 10th, 1851, still continue in force, with reference to property of said company, situated within said city, and exempt said company from the payment of any such taxes on any of said property.

Upon which question I held that said company was not liable to pay such taxes on said property, and by agreement of Glover, Cook and Campbell, solicitors for complainant, and E. F. Bull, solicitor for defendants, I make this certificate so that the question may be presented to the Supreme Court for its decision thereon.

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M. E. HOLLISTER, { SEAL. }
Judge of 9th J. D., State of Ill.

STATE OF ILLINOIS, }
LA SALLE COUNTY, } ss.

I, Absalom B. Moore, Clerk of the Circuit Court in and for said county, do hereby certify that the foregoing is a true, full and complete copy of a certificate filed in said cause on the 7th day of March, 1863, the same being one of the days of the said February term of said court for said year; and I further certify that said cause is undecided and still depending in said court.

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E. F. BULL, Att'y for Plff's in Error.

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SUPREME COURT.

MORRIS NEUSTADT AND THE CITY OF LA SALLE, Plff's in Error,
vs.
THE ILLINOIS CENTRAL RAIL ROAD COMPANY, Deft's in Error.

RECORD.

E. F. BULL, for Plff's in Error.

Filed April 23. 1863
S Sleand Clk

SUPREME COURT OF ILLINOIS.

THIRD GRAND DIVISION.

APRIL TERM, A. D. 1863.

MORRIS NEUSTADT and the CITY OF LA SALLE, Plaintiffs in Error, *vs.* THE ILLINOIS CENTRAL RAIL ROAD COMPANY, Defendant in Error,	*Error to La Salle County Circuit Court.*

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I, Madison E. Hollister, Judge of the Ninth Judicial Circuit of the State of Illinois, do hereby certify that, on the trial of said cause, the following question of law arose, viz:

[redacted]

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CHAS. H. HOOK, Deputy.

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Filed April 23. 1863
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said city the right to levy a tax, for municipal purposes, upon all the property of said rail road company, situated within the limits of said city, or does the act of the General Assembly, passed February 10th, 1851, still continue in force, with reference to property of said company, situated within said city, and exempt said company from the payment of any such taxes on any of said property.

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Judge of 9th J. D., State of Ill.

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Witness my hand and the seal of said court, at Ottawa, this 17th day of April, A. D. 1863.

A. B. MOORE, Clerk,
CHAS. H. HOOK, Deputy.

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E. F. BULL, Att'y for Plff's in Error.

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SUPREME COURT.

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vs.
THE ILLINOIS CENTRAL RAIL ROAD COMPANY, Deft's in Error.

RECORD.

E. F. BULL, for Plff's in Error.

Filed Apl 23. 1863
S Gilman Clk

State of Illinois } ss Pleas before the Honorable Madison
La Salle County } E. Hollister the Judge of the ninth
Judicial Circuit of the State of Illinois, and the presiding
Judge of the La Salle County Circuit Court at a term of said
Court commenced and held at the Court House in Ottawa
on Monday the 2d day of February A.D. 1863. the same
being the first Monday in said month of February
and the Eighty ~~Sixth~~ Seventh year of the Independence
of the United States of America.

Present. The Honorable Madison E. Hollister the Presiding Judge
Absalom B. Moore Clerk
William R. Mulligan Sheriff
David P. Jones States attorney

Be it remembered that on the 7th day of March
A.D. 1863, a certificate was filed in said court, in
the words and figures following, to wit;

"State of Illinois } Circuit Court for said County
La Salle County } ss. February Term A.D. 1863

The Illinois central
Rail Road Company
vs } Injunction.
Morris Nemstodt and
The City of La Salle

I. Madison E. Hollister
Judge of the ninth Judicial Circuit of the State

of Illinois do hereby certify that on the trial of said cause the following question of law arose, viz;

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— Upon which question I held that said Company was not liable to pay such taxes on said property and by agreement of Glover Cook and Campbell Solicitors for complainant, and E. F. Bull solicitor for Defendants, I make this certificate so that the question may be presented to the Supreme Court for its decision thereon.

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M. E. Hollister (Seal)

Judge of 9th J.D. State of Ills.

State of Illinois }
La Salle County } ss I Absalom B. Moore clerk of the Circuit Court in and for said County, do hereby certify that the foregoing is a true, full and complete copy of a certificate filed in said cause on the 7th day of March 1863, the same being one of the days of the said February Term of said Court for said year; and I further certify that said cause is undecided and still depending in said Court.

Witness my hand and the seal of said Court at Ottawa this 17th day of April A. D. 1863.

A. B. Moore clerk
Chas N. Hook deputy

And now come the said Plaintiffs in error and assign the following cause of error on the above record viz:
The court erred in holding that the property of said deft. in error, situated within the city of Lasalle was exempt from the payment of city taxes
E. F. Bull
Atty for Pltffs in error

144 212

Supreme Court

Morris Neustadt &
The City of LaSalle
Plffs. in error

vs.

The Ill. Cent.
R. R. Co —
Deft in error

~~Abstract of~~ Record

Filed A. 23. 1843
S Sleane
Clk

E. F. Bull
for Plffs. in error

$1.00 fee paid by
E. F. Bull Plffs Solr

delivered the opinion of the Court:

Mr. Justice Blake, This was an action of debt on an appeal bond in the penalty of twelve hundred dollars, brought by the plaintiff against the administratrix of the deceased obligor, and the surviving obligor. There was a trial by jury, and a verdict rendered for plaintiff for twelve hundred dollars debt and eight hundred and twenty seven 36/100 dollars and thirty six cents damages, on which the following judgment was entered: It is therefore considered by the court that the said plaintiff have and recover of the said defendants the said sum of twelve hundred dollars for his debt, and the said sum of eight hundred and twenty seven 36/100 dollars and thirty six cents for his damages; also his costs and charges by him herein expended, and that he have execution therefor.

The points here are, that the entry of the judgment is erroneous in this, that it should have been for twelve hundred dollars the ~~debt~~ penalty of the bond to be discharged on payment of $827.36 the damages found by the jury.

This objection is well taken. Austin vs. The People, 11 Ill. 452; Foley vs. Cole, id. 562.

Another objection is, that the court erred in execution against the administratrix, when it should have been, that the

Ray the Lessee in due course of administration.

A good judgment could not be rendered in this action inasmuch as there is a misjoinder of parties. The administratrix should not have been a party, and it was error to join her with the surviving obligor. The action lies against him alone. The only objection raised, as to the form of the judgment, strong conclusively, the improper joinder for which as against the survivor Eggleston, he is charged de bonis propriis ~~the judgment should be against him~~ ~~personally aside~~ as to the administratrix, the judgment should be against her de bonis testatoris ~~representative character~~. Thus rendering a joint judgment wrong in the lower court.

~~This is no clear better rule, principle that this, that you cannot join in the same action a party sued in his own right with one sued as administrator or executor.~~

The rule is well settled, if a contract is severable or joint and several the administrator of the deceased may be sued at law in a separate action but he cannot be sued jointly with the survivor because one is to be charged de bonis [illegible]

testators and the other de bonis propriis
1 Ch. Pl. 50.

In some states, as in N. Carolina by statute, an administrator of a deceased joint obligor may be sued jointly with the surviving obligor. Brown vs. Clay 1 Haywood, 107.

The nonsuit is reversed.

~~In this opinion the whole court concurred.~~

Judgment reversed.

Eggleston et al.
vs
Beck for the use &c

opinion by
Bacon J.

O.K.

Recorded Book 13
p.p. 87, 88,
Compared