No. 14623

Supreme Court of Illinois

Cook County

vs.

Chicago, Burlington & Quincy R. R. Co.

STATE OF ILLINOIS,

SUPREME COURT,

THIRD GRAND DIVISION.

No. 281

J. W. Middleton & Co., Stationers, 196 Lake St.

SUPREME COURT OF ILLINOIS.

THIRD GRAND DIVISION.

APRIL TERM, A. D., 1864.

COOK COUNTY, APPELLANT,

vs.

CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY, APPELLEE.

Argument for appellant

The only question arising in this case is a question of construction of the 4th section of the act to amend the assessment and revenue laws, approved Feb. 14, 1855, and found on page 994 of the statutes by Purple.

The railroad company rendered to the county of Cook a list of personal property, to be by the county assessed for taxation. This list did not contain the rolling stock owned by said company, and used as well on the road or part of road leased as on the road owned by them. The Board of Supervisors of Cook county added to the list as subject to taxation, the value of their rolling stock, to-wit: $39,000, used on the leased road in that county. The company contend that they are bound to pay taxes on their rolling stock in those counties only in which they *own* a railroad. That the road owned by them passes through the counties of Dupage, Kane, Kendall, Bureau, Henry and Knox; and that they have paid the tax assessed on the value of their rolling stock in those counties. That they own no road in the county of Cook, but that they run their cars from the Junction, so called, in Dupage county, eastward to the city of Chicago, a distance of 28 miles on the road of the Galena and Chicago Union Railroad Company, by virtue of, and under a lease from that company.

The question arises, does the fact that the appellees use their rolling stock upon a leased road in the county of Cook, exempt them from the payment of taxes upon that stock in that county? The appellants affirm that it does not.

By the provisions of the revenue law, personal property not specially exempt from taxation, is to be taxed in the county where *situated*, and the tax there paid. But inasmuch as it would operate a hardship that the rolling stock of a railroad company which during every day is found in half a dozen counties, should be required to pay a full tax in each of them, the statute referred to was passed, requiring them to pay in the several counties by a certain rule.— What is that rule?

The language of the section referred to, is as follows: "The rolling stock shall be listed and taxed in the several counties, towns and cities, *pro rata* in proportion as the main track in such county, town or city bears to the whole length of the ~~whole."~~ road.

What road? The road *owned* by the company whose stock is subject to be taxed? That is not the language of the act. In the language quoted there is nothing to exclude the idea that the main track may be composed in part, or even in whole of a leased road.— The word "main" is not significant of ownership, either full or partial. It does not purport proprietorship. That term is used here in a plain sense—it is used in contradistinction to "side tracks and turn outs." The list is to set forth all; but the main track, not the side tracks, and turn-outs, is to be the measure for payment.

Is the key to the construction to be found in the first part of the section which reads thus—"the ~~statute~~ schedule or list of the taxable property of railroad companies, shall set forth a description of all the real property owned or occupied by the company in each county, town and city through which said road may run," &c.? Now we maintain that this part of the section sustains our position. The schedule or list of taxable property is to set forth not only the taxable property, but to set forth the real property owned or *occupied*.— It is to be remarked that it is in the alternative clearly purporting two distinct ideas, two separate states of things. If the construction contended for by the appellees is correct, the meaning of the legislature would have been expressed had it left out the word "occupied" —it is there, and it has a meaning, and the court is bound to allow its meaning. It has a different meaning from the word owned.— Real estate may be occupied that is not owned. The meaning of the term is to *employ*, *to use.* If the legislature when it employed this language had in view a leased road, could it have used a more expressive term? A leased road is constantly occupied, used, and that for the operation of personal property of the most important kind, paying the largest profits, and which by the clearest principles and policy of the revenue law, is to pay for that use, and the accruing emoluments to the owners of that personal property.

Should it be said that this conclusion would make the same road leased by several companies, the basis of taxation for each one of them, it is not denied that such would be the fact. And what is the objection to it? The road itself would have to pay but once, but the personal property would have to pay according to its value and its ownership; and that is just what the law intends,—the rule and measure of payment being according to the length of the road used.

But suppose we stand upon the term *owned;* the conclusion of the counsel for the appellees would by no means follow. Does not the lessee of property own it, at least in a limited sense? And what is there repugnant to the idea of ownership for the purpose which we seek to effectuate.

There is a public policy in the matter of revenue and taxes, which ought to be carried out with even handed justice to all, and no distinction made unless the law has made it.

The company say they have just such an amount of taxes to pay, and it makes no difference with them where they pay them. But it makes a difference with the counties entitled to receive them, if they fail to receive them; and it is incumbent on the company to know its obligation and to discharge it.

As a general thing personal property is subject to taxation in the place where it is. And why should not the same principle prevail in reference to the rolling stock of a railroad unless there be something in the law to prevent it. Why should not that kind of personal property pay taxes in the county of Cook, if it is used there, as well as in another county where it is used?

If the only tax to be paid was a State tax, it would be of no importance where it was paid. But taxes are assessed for county purposes as well as State. And in truth the State is as much interested in county institutions and county improvements as the State is in those peculiarly its own, and in the payment of the salaries of her public funtionaries—so that the interests of the counties are the interests of the State.

The principle contended for by the appellees would lead to strange results. The company own a road, and run their trains through six counties; they are assessed for $39.000, and they pay on this sum as a basis in all those counties, but if they owned a road in one county only, and still run through all the others, they would pay all to the one county in which they owned the road, notwithstanding they received as much patronage, and made as large profits in each of the other counties. Would this be an equitable scale? But one answer can be given. If such is the law, it is an egregious mistake. The rule provided by statute was meant to be founded not only in justice, but also in analogy to the law, as it is in reference to other personal property,

If the proposition of the appellees be correct, then if a railroad company operated its rolling stock wholly upon a leased road, they would have no tax at all to pay upon it. Can the law be so lame as this? Can such a conclusion be tolerated? When it comes to this, one company had better build a road, and another use it.

There would here be a division of labor profitable to those concerne l, but very injurious to the public.

Besides, it is not the same thing to the company in what county it pays its taxes. If the assessment were the same in each county, it might be the same thing. But the assessment might be greater in one county than another, and in such a county as Cook would be likely to be high; the temptation of the company would therefore be to escape it. If one-seventh of the taxation on $39,000 was required to be paid to the county of Cook, the aggregate might be larger than if the whole were required to be paid to the other six counties.

The company owns its road in six counties, and leases a road in Cook county. If the distance were the same, and the assessment the same in each county, it would be the same thing to pay the whole in six counties, as it would to pay the whole in seven parts; but if the assessment in Cook county were two mills on the dollar higher than in the other counties, it would be to the advantage of the company to pay the whole in the six counties.

If it should be said that the rule of construction contended for, would make those using a leased road owners for the purpose of taxation upon the road itself, the reply is that by no provision of law is real estate assessed to but one owner; and the law is equally clear that all personal property must be taxed to those who own it, and that the counties in which it is used have a right to the benefit of that taxation; and that in case of railroad property (personal) the length of the road used (occupied) is the measure of taxation.

CLARK, CORNELL & NORTON,

Att'ys for Appellants.

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Cook County

vs

Chicago Burlington
& Quincy R Road Co

Record & Errors

Filed Apr 26. 1864
L Leland Clk

SUPREME COURT OF ILLINOIS.

THIRD GRAND DIVISION.

APRIL TERM, A. D., 1864.

COOK COUNTY, APPELLANT,

vs.

CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY, APPELLEE.

ABSTRACT.

The appellees, the Chicago, Burlington and Quincy Railroad Company, filed their bill in equity in the Superior Court of Chicago, to enjoin the county of Cook and their treasurer, Keely, from the collection of a tax assessed by the Board of Supervisors of said county, upon the rolling stock of the Company, for the year 1862.

[redacted]

2 [redacted]

That the Company owns certain real estate, and fixed and stationary personal property, and other personal property in the county of Cook, subject to taxation, a list and schedule of which for the purpose of taxation for the year 1862, was made out by the company, and filed with the county clerk of the county of Cook, in pursuance of, and as required by the statute of the State of Illinois, relating to the assessment of property, and the collection of taxes and revenue,
3 a copy of whcih is attached and made a part of the bill.

That said schedule contained a just and true list of all the real estate, of all the fixed and stationery personal property, and of other personal property of the company in the county of Cook, excluding the rolling stock, and which by the laws of Illinois, is denominated, and required to be denominated personal property, no part of which is listed or scheduled in the county of Cook, for the reason that the company has no track or railroad in the county of Cook.

[redacted] 4

The bill further sets forth, that the Board of Supervisors, of the county of Cook, at their session, &c., added to the said list or schedule, filed by complainant, the rolling stock of said complainants as-

[redacted]

(Signed)

WALKER & DEXTER, Solicitors for Comp'nts.
CLARK, CORNELL & NORTON,
Attorneys for Deft's.

[redacted]

Errors assigned by appellant—

1. That the Court erred in overruling the demurrer to the bill.

2. In decreeing the tax levied by the defendant to be illegal.

3. In restraining the defendant from collecting said tax.

Defendants joinder in error.

281 151

Cook County
vs
Chicago Burlington
& Quincy R.R. Co

Abstract

Filed April 26,
1864
L Leland Clk

1

UNITED STATES OF AMERICA,

STATE OF ILLINOIS, COUNTY OF COOK, SS.

Pleas, before the Honorable, the Judges of the Superior Court of Chicago, within and for the County of Cook and State of Illinois, at a regular Term of said Superior Court of Chicago, begun and holden at the Court House, in the City of Chicago, in said County and State, on the first Monday, being the Fourth day of May in the year of our Lord One Thousand Eight Hundred and Sixty Three and of the Independence of the United States of America the Eighty Seventh

Present, The Honorable John M Wilson Chief Justice of the Superior Court of Chicago.

Van H Higgins
and Grant Goodrich Judges.

Joseph Knox Prosecuting Attorney.

David J Hammond Sheriff of Cook County.

Attest, Thomas B Carter Clerk.

Be It remembered, That heretofore to wit On the Seventh day of May in the year of Our Lord One thousand Eight hundred and Sixty Three, there was filed in the office of the Clerk of said Superior Court of Chicago by Walker & Dexter Solicitors for the Complainants a Certain Bill to enjoin the collection of a Tax which is in the words and figures following to wit;

2 State of Illinois
County of Cook ss

Superior Court of Chicago

To the Judge of the

Your Orator The Chicago Burlington and Quincy Rail Road Company shows to your that it is a Corporation duly organized and existing under the Laws of the State of Illinois and that under and by virtue of such Laws your orator was authorized to Construct and Maintain, and that it was constructed and is now operating a railroad from the Junction so called in the County of DuPage in said State Southwardly to Galesburg in the County of Knox in the same State

Your Orator further shows to your that it owns no rail road from the said Junction in DuPage County Eastward to or into the City of Chicago, nor does it own maintain or operate any rail road in or within the limits of the County of Cook in said State.

That from the said junction to the said City of Chicago your Orator runs its trains over the railroad of the Galena and Chicago

3 Union Rail Road Company under a Contract of Lease, and pays to that Company a stipulated rent for the right and privilege of using its road for that purpose, and your Orator in like manner runs its trains on and over the Peoria and Oquawka Rail Road from Galesburg aforesaid westward to East Burlington; and under a Lease held of the said Peoria and Oquawka Rail Road Company granting to your Orator that right, and that your Orator owns no rail Road in the State of Illinois west of Galesburg.

Your Orator further shows to your Honor that it owns certain real Estate and fixed and stationary personal property and other personal property in the County of Cook subject to taxation, a list and schedule of which for the purposes of taxation for the year AD 1862 was made out by your Orator and filed with the County Clerk of said County of Cook in pursuance of and as required by the Statute of the State of Illinois relating to the assessment of property and the Collection of taxes and revenue, a Copy of which schedule or list is hereto attached and made a part of this bill of Complaint;

Schedule

That said Schedule contains a part

4 and true list of all the real Estate of all the fixed and stationary personal property and of other personal property of your Orator in the County of Cook excluding the rolling stock, and which by the laws of Illinois is denominated and required to be denominated personal property no part of which is listed or scheduled in the County of Cook for the reason ~~that~~ your Orator has no track or railroad in the said County of Cook.

Your Orator further shows to your Honor that the whole length of your Orators main track is one hundred and thirty eight miles and extends from the Junction aforesaid through the Counties of DuPage Kane Kendall Bureau Henry and Knox and that the whole amount of its rolling stock is $~~39~~ 474.335, and that all the said rolling stock of your Orator was listed scheduled and taxed and the taxes have been paid thereon for the AD 1862 by your Orator in the said several Counties through which its said road passes between said Junction and Galesburg pro rata in each county in proportion as the length of the main track in each County bears to the whole length of your Orators said Rail Road.

$474.335
+

5

Your Orator further shows to your Honor that the Board of Supervisors of the said County of Cook at their session had at the Court House in said County added to the said list or schedule filed by your Orator the rolling stock of your Orator aforesaid at the sum of Thirty-Nine Thousand Dollars (~~which includes the personal property~~ "of your Orator) and have levied a tax thereon amounting to the sum of $569.66 Dollars and the said Treasurer of said County is now about to proceed to sell the property of your Orator situated in said County for the purpose of collecting the same.

569 66

Your Orator further shows to your Honor that the length of the Galena and Chicago Union Rail Road in the said County of Cook over which your Orator runs its trains is twenty eight miles and the said County of Cook and said Seely the Treasurer of said County whom your Orator prays may be made parties defendant hereto insist that because your Orator runs its trains over said portion of the said Galena and Chicago Union Rail Road in the County of Cook in virtue of said Contract of Lease, that

6 your Orator is legally bound to pay taxes upon the whole of its rolling stock owned by it, and wherever situate while on the contrary your orator contends that the levy of such tax on said rolling stock by the County of Cook was illegal and unjust, that your orator is once taxed on said property in the said respective Counties through which its said road passes and has paid the taxes thereon and is not liable to be again taxed for the same property in the County of Cook,

In tender consideration whereof and for as much as your Orator is remediless at the common law and is only relievable in a Court of Equity where matters of this nature are properly cognizable and relievable

To the end therefore that the said defendants may fully answer all and singular the premises without oath which is hereby waived, and that the said defendants and the agents officers and servants of the said County of Cook may be perpetually enjoined from collecting that part of said taxes which is levied upon the said rolling stock of your orator

7 and that the said tax may be declared illegal and void and be set aside and declared to be no claim against your orator and that your orator may have such further and other relief as the nature of its case shall require and as shall be agreeable to Equity.

And that your orator may have the usual subpoena to be issued out of and under the seal of this Court against the said County of Cook and the said Michael Keely Treasurer of said County defendants herein returnable at the next term of this Court and your orator will ever pray &c.

Chicago Burlington and Quincy Rail Road Company
by J. M. Walker its Solicitor

With Depts }
of Counsel }

State of Illinois }
County of Cook } ss

J. M. Walker being first duly sworn deposes and says that he is the agent and attorney for the Chicago Burlington and Quincy Rail Road Company the Complainant in the foregoing bill of Complaint and that he makes this

8 affidavit for and on behalf of said Complainant that he has read the foregoing bill of Complaint and knows the contents thereof and that the same is true save as to those matters therein stated to be upon information and belief and as to those matters he believes it to be true.

J W Walker

Subscribed and sworn to before me this 21st day of April AD 1863

William F Whitehouse
Notary Public

Seal

And thereupon on the said seventh day of May in the year last aforesaid the said defendants by their solicitors Messrs Clark Cornell and Norton filed in said Court their certain Demurrer to the said bill of Complaint which said demurrer is in the words and figures following towit

9

Superior Court of Chicago
In Chancery

~~State of Illinois~~
County of Cook ss

The Demurrer of the County of Cook and Michael Keeley defendants to the bill of complaint of The Chicago Burlington and Quincy Rail Road Company, Complainant.

These defendants respectively by protestation not confessing or acknowledging all or any of the matters and things in the said complainants bill to be true in such manner and form as the same are therein set forth and alleged do demur thereto and for cause of demurrer show, ~~that~~ the said complainant hath not in and by his said bill made or stated such a case as doth or ought to entitle him to any such relief as is therein sought or prayed for from or against these defendants; Wherefore these defendants demand the judgment of this Honorable Court whether they shall be compelled to make any further or other answer to the said bill or any of the matters and

10 things therein contained and pray to be hence dismissed with their reasonable costs in this behalf sustained,

Clark Cornell & Norton
Solrs for Defts,

And afterwards to wit on the said seventh day of May in the year last aforesaid said day being one of the days of the May Term of said Court the following among other proceedings were had and entered of record in said Court to wit,

The Chicago Burlington and Quincy Rail Road Company
vs
The County of Cook and Michael Keeley

Bill to Enjoin Collection of Tax

This day comes said Complainant by Walker & Dexter its Solicitors the said defendants appearing by Clark Cornell & Norton their Solicitors and filed a demurrer to the bill of complaint filed in said cause and the cause coming on to be heard upon the said demurrer to the bill of complaint and Counsel being heard thereon and the Court being fully advised in the premises It is considered by the Court that the said demurrer be and is hereby overruled and

11 that said defendants answer said bill of complaint forthwith or be defaulted.

And afterwards to wit on the ninth day of May in the year last aforesaid said day being one of the days of the May Term of said court, the following amongst other proceedings were had and entered of record in said Court, to wit.

The Chicago Burlington and Quincy Rail Road Company
vs Bill to enjoin collection of a Tax
The County of Cook
and Michael Keeley

And now at this day again comes the said complainant by its Solicitors and it appearing to the court that said defendants have not answered said bill in pursuance of the order so made by the Court as aforesaid, but have therein made default.

It is therefore ordered that their default be and is hereby taken and entered herein of record which is accordingly done.

12 And afterwards to wit on the Eleventh day of May in the year aforesaid said day being one of the days of the said May Term of said Court, the following Decree among other proceedings were had and entered of record to wit.

The Chicago Burlington and Quincy Rail Road Company
vs
The County of Cook and Michael Keeley

Bill to enjoin collection of a Tax

Decree.

This cause coming on this day to be heard upon the pleadings filed herein and it appearing to the Court that heretofore to wit on the 7th day of May AD 1863 the said defendants by their attorneys Clark Cornell & Norton appeared in said cause and filed a demurrer to the bill of complaint filed herein and that said demurrer was then and there overruled and the said defendants ordered to answer said bill forthwith or be defaulted, and it further appearing to the Court that said defendants have not answered said bill in pursuance of the order so made by the Court as

13 aforesaid but have made default therein,

It is therefore ordered adjudged and decreed and this Court by virtue of the power and authority therein vested doth order adjudge and decree that the said tax mentioned in said bill of complaint levied by the County of Cook on the rolling stock of the Complainant herein be and the same is hereby declared and adjudged to be illegal and void, and the same is hereby set aside and vacated, and declared and decreed to have been levied without authority of law;

And the defendants herein their agents officers and servants are herein and hereby perpetually restrained and enjoined from collecting or proceeding to collect said tax,

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Superior Court of Chicago

State of Illinois
County of Cook ss

The Chicago Burlington & Quincy Rail Road Co
vs
The County of Cook and Michael Keeley

In Chancery

It is hereby stipulated and agreed by and between the parties to the above entitled cause that the sole object of said cause is to have it judicially determined whether the Complainants are liable to taxation for their rolling stock in the County of Cook, and all technical imperfections in the pleadings or proceedings are hereby expressly waived with a view to a decision of this single question

Walker & Dexter
Solrs for Complts

Clark Cornell & Norton
Attys for Defendts,

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State of Illinois
County of Cook } ss

I Thomas B Carter
Clerk of the Superior Court of Chicago
in said County of Cook do hereby certify
that the written and foregoing is a full true and
complete transcript of the Bill of complaint
demurrer and stipulation on file in my office
together with the several orders and decree
Entered of record in said court, in a certain
Cause lately pending in said Court, on the Chancery
side thereof wherein The Chicago Burlington
and Quincy Rail Road Company was the
Complainant and the County of Cook and
Michael Keeley its Treasurer were Defendants

In Testimony whereof I have
hereunto set my hand and affixed
the seal of said Superior Court of
Chicago done at Chicago this
twelfth day of May AD 1863
and of our Independence the
Eighty Seventh Year

Thomas B Carter Clerk

Superior Court of Chicago
May Term AD 1863

The Chicago Burlington and Quincy Rail Road Company
vs
The County of Cook and Michael Keeley Treasurer &c

Transcript

Fees $6.50

Walker & Dexter
Sol for Complt

The State of Illinois
Third Grand Division

The County of Cook
Pltff in Error
vs
The Chicago Burlington
and Quincy Rail Road Co
Defendt in Error

In the Sup Court –
To April Term
A D 1864

And now the said County of Cook pltff in Error comes and says there is manifest error in the record in this to wit –

1 The court below erred in overruling the defendants demurrer to complainants bill of complainant.

II. The court below erred in decreeing the tax levied by the defendant illegal & void.

III The court below erred in granting a perpetual Injunction against the defendt restraining them from the collection of the tax levied.

Clark Cornell & Norton
Attys for Pltff in Error.

State of Illinois }
Third Grand Division } ss

In The Supreme Court of Illinois To April Term 1864

The Chicago Burlington & Quincy Railroad Company
ads
The County of Cook

Joinder in Error

And the said Chicago Burlington & Quincy Railroad Company defendant in Error, by its Counsel J M Walker now comes and says, that there is no Error either in the record and proceedings aforesaid, or in giving judgment aforesaid in manner and form as above assigned and therefore he prays that the said judgment may be affirmed and that his costs may be adjudged to him &c —

J M Walker Counsel
for Deft in Error

281 150

Cook County
vs
The Chicago Burling-ton & Quincy R R Co

Record & Assignment of Errors.

Filed April 26. 1864
L. Leland
Clerk

Filed May 9, 1864
L Leland Clk

STATE OF ILLINOIS.

SUPREME COURT.

COOK COUNTY, ET AL.,
Plaintiffs in Error,
VS.
THE CHICAGO, BURLINGTON AND QUINCY RAILROAD COMPANY,
Defendants in Error.

Error to Cook County

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ARGUMENT OF WALKER & DEXTER,

Counsel for Defendants in Error.

CHICAGO:
JAMESON & MORSE, PRINTERS.
1864.

SUPREME COURT,

APRIL TERM, A. D. 1864.

COOK COUNTY, ET AL., *Plaintiffs in Error,*
vs.
THE CHICAGO, BURLINGTON AND QUINCY RAILROAD COMPANY, *Defendant in Error.*
Error from Cook Co.

This cause comes up from the equity side of the Superior Court of Chicago.

The bill was filed by the defendant in error, and alleges the incorporation and organization of the company, and that by its charter it was authorized to construct, and has constructed and is operating a railroad from the "Junction," so-called, in the county of Du Page, in the State of Illinois, to Galesburg, in the county of Knox; that its road and *main* track is one hundred and thirty-eight miles in length, and passes through portions of the counties of Du Page, Kane, Kendall, Bureau, Henry and Knox; that it owns no road east of the said "Junction," nor any within the county of Cook, but that from said "Junction" to and into the city of Chicago, it runs its trains over the track of the Galena & Chicago Union Railroad Company, under lease, and pays to that company a stipulated rent for the use of its track for that purpose; that it in like manner runs its trains over a portion of the Peoria & Oquawka Railroad, under a lease, and that it owns no road west of Galesburg.

The bill also alleges that the complainant owned certain "*fixed and stationary" personal property*," "*real estate*," and "*other personal property*," situate in and which is taxable in the county of Cook; that it made a schedule of the same for the purpose of taxation for the year A. D. 1862, and filed the same with the Clerk of Cook county, as required by law; that said schedule contains a just and true statement of all the property of the complainant situate in the county of Cook, aside from its rolling stock, which, by the laws of Illinois, is designated and required to be designated as "*personal property*;" that said schedule contains no part of its rolling stock; that the whole amount of its rolling stock is $474.335, and that the same and the whole thereof was scheduled and taxed, and the taxes paid thereon for the year 1862, in the said counties of Du Page, Kane, Kendall, Bureau, Henry and Knox, *pro rata*, ~~on~~ as the length of main track in each county, ~~being~~ bears to the whole length of the said company's road.

That the Board of Supervisors of Cook county, at their fall session in 1852, altered said schedule, filed with the Clerk of Cook county, and added thereto thirty-nine thousand dollars of the rolling stock of the company, and levied thereon a tax amounting to the sum of $569.60

That the said alteration of the schedule and the taxation of the rolling stock of the company, in the county of Cook, is illegal; that the ~~session~~ Treasurer of Cook county is about to proceed to collect the tax so illegally assessed.

The bill prays that the tax of the rolling stock may be declared void, and be set aside, and the defendants perpetually enjoined from collecting the same.

The defendants demurred to the bill.

The following stipulation was made and filed in the case:

STATE OF ILLINOIS, } ss. *Superior Court of Chicago.*
COUNTY OF COOK. }

The Chicago, Burlington and Quincy Railroad Company,
vs.
The County of Cook and Marshal Kelley.

It is hereby stipulated and agreed, by and between the parties to the above entitled cause, that the sole object of said cause is to have it judicially determined whether the complainants are liable to taxation for their rolling stock in the county of Cook; and all technical imperfections in the pleadings or proceedings are hereby expressly waived, with a view to a decision of this single question.

WALKER & DEXTER,
Sol's for Comp'lts.
CLARK, CORNELL & NORTON,
Atty's for Def'ts.

The cause was heard upon the demurrer to the bill and the above stipulation, by the Hon. John M. Wilson; the demurrer overruled,—The defendants defaulted for want of answer; the tax declared to be without authority of law, and its collection perpetually enjoined.

To reverse this decision, the case, upon a writ of error, comes into this court.

The only question involved in this discussion is as to the meaning and construction to be given to Sec. 4 of the amendment of Feb. 14, 1851, of the ~~Railroad~~ Revenue Law.

The following is a copy of so much of the section as relates to the question in dispute:

"The schedule or list of taxable property of railroad companies shall set forth a description of all the real property owned or occupied by the company, in each county, town and city through which such railroad may run; and the actual value of each lot or parcel of land, including the improvements thereon, except the track or superstructure of said road, shall be annexed to the description of such lot or parcel of land. Said list shall set forth the number of acres taken for the right of way, stations or other purposes, from each tract of land through which said road may run, describing said road as near as practicable, in accordance with the surveys of the United States, giving the width of the strip or parcel of land, and its length through each tract; also the whole number of acres and the aggregate value thereof in said county, town or city. All *the property mentioned in this section* shall be denominated "*real property.*"

"The list aforesaid shall set forth the length of the *main track* and the length of all side tracks and turn-outs in each county, city and town through which the road may run, with the actual value of the same, and the value of the improvements at each of the several stations, when said stations are not a part of city or town lots. The said stations and track shall be denominated "*fixed and stationary personal property.*"

"The list shall contain an inventory of the rolling stock belonging to said Company, with the value thereof; said rolling stock shall be denominated "*personal property.*" Also a statement of the value of all other personal property owned by said Company, in each county, city and town. *The length of the whole of the main track within this State, and the total value of the rolling stock, shall be set forth in said list. The rolling stock shall be listed and taxed in the several counties, towns and cities* PRO RATA, *in proportion as the length of the main track in each county, town or city bears to the whole length of the road. All other property* shall be *listed* and *taxed* in the county, *town* or *city where the same is located or used.*"

It appears from the record that the entire rolling stock of the Company was listed and taxed, and the taxes thereon paid for the year 1852, in the counties of Du Page, Kane, Kendall, Bureau, Henry and Knox, *pro rata* in each of these counties, in proportion as the length of the track in each county bears to the whole length of the road, from the "Junction" in Du Page county to Galesburg in Knox county.

It also appears that all *the other property* of the Company located in the county of Cook, or used in that county, was listed by the Company in Cook county, and taxed, and the taxes thereon paid. And all the property of the Company, exclusive of its rolling stock, was in like manner listed, assessed, and taxes thereon paid, in the several counties where the same was situated. The entire property of the Company, including its rolling stock, therefore, had been once taxed, but the authorities of Cook county, notwithstanding this, altered the Schedule filed by the Company, and subjected thirty-nine thousand dollars of the rolling stock of the Company, which had been once taxed in the counties through which the Company's road ran, to another and a double tax.

This was clearly without authority, and beyond the power of officers of Cook county. The statute provides clearly and distinctly the places *where*, and the *manner in which*, the rolling stock of the Company shall be listed and taxed. It is to be done in each of the counties through which its road runs, and such proportion in each as the main track in each bears to the whole length of the road. As the length of the main track decreases in each county, the amount of rolling stock to be taxed in such county becomes proportionately less, as the main track in any one county diminishes, and whenever in any county there is *no main track*, in such county *none* of the rolling stock of the company. can be taxed,

The statute provides but one mode of assessing and taxing the rolling stock of a railroad company, and that is by means of *its main track*. Take away *the main track* and the levy and assesment of the tax becomes impossible, and for the reason that the statute having provided a mode in *which*, and *place where* all the rolling stock of a railroad company is to be taxed, it must be taxed in *that mode*, and in *that place*, and not otherwise or elsewhere. The maxim, "*expressio ~~unies~~ unius ~~et~~ est exclusio ~~altena~~ alterius*" applies.

Co. Litt., 210.
Broom's Max., 505.

The rule that where a statute provides a particular mode in which property is to be taxed, it must be done in the manner described, or not at all, is well settled

26 *Penn. Stat.*, 242.
26 *Georgia*, 242.
3 *Brevard*, 306 & 396.

It appears from the record that the Eastern terminus of the company's road is at the junction, in Du Page county, and that it owned no road nor a foot of track within the limits of Cook county. The ~~necessity~~ means, therefore, did not exist in the county of Cook for assessing and taxing the whole or any part of the rolling stock of the defendant in error, and consequently none of it could be legally taxed in that county.

The means or instruments, if you please, of assessment and taxation of the rolling stock did exist in the other counties mentioned. Those counties were embraced by the termini of the road. In each of them there were some part of the main track, and the whole of them included the entire track of the defendant. The statute gave to those counties the right to have the entire rolling stock of the company assessed and taxed in them, and to each its proportionate part. The company could not, if it would, have avoided having all its rolling stock subject to taxation in those counties. The statute prescribes and enjoins it. The record states that the entire rolling stock of the company was listed and taxed in pro~~per~~-rata amounts assessment in those several counties through which its track passes, and the taxes paid for the year 1862. The same rolling stock, therefore, could not be legally taxed in the county of Cook for that year, and the action of the Board of Supervisors of Cook county, in assessing and taxing the same, was without the authority of law.

Property must not be subject to a double tax, or rather, to taxation in two different places at the same time. Such is not the policy of the law. If the rolling stock of the defendant~~'s~~ company might be legally taxed in Du Page county and the counties lying to the westward, it could not be taxed in the county of Cook. And so are the authorities.

Bank of Georgia vs. Savannah, Dudley R., 131.
Blackwell on Tax Titles, p. 198.

It will be said that the defendant's company, in the year 1862, run its cars over a part of the track of the Galena & Chicago Union Railroad Company, within the county of Cook, under a contract or lease, and that for the purpose of taxing its rolling stock it must be ~~decreed~~ deemed to be the owner of such part of that track.

We answer, in the first place, if such had been the intention of the Legislature, it would have required Railroad Companies to set forth in their lists the track *used* by them, or *over which their cars may run.* This would have been the natural language to convey such an idea. But no such language is used. *Each Company* is required to set forth "*the length of the main track * * in each county,*" * * and "*the length of the whole main track within the State.*" This language undoubtedly means the main track owned by each Company within the State, that which by its charter it had the right to construct and operate, and not that piece of road which, so far as its chartered powers are concerned, it certainly had no right to construct or own, and possibly, and very probably, no power rightfully to lease or use. Each road was to give the length of its own main track in the State, for the sole purpose of taxing its own rolling stock. And it clearly was not the intention of the Legislature that any piece of road should perform the twofold office of representing for taxation the rolling stock of the Company to which it belonged, and also that of a Company to which it did not belong.

Nor was it the intention that any Railroad Company should be required to set forth the length of its own main track in the county and State, and also that of one or more other Railroad Companies, in whole or in part. The simple meaning of the Statute, and the only reasonable construction to be given to it, is, that each Company is to give the length of its own track alone, and that for the sole purpose of taxing its own rolling stock, and not that belonging to another corporation.

Again, if this portion of the Galena track is to be considered the track of the defendant Company for taxation, in one sense, why not in another, and so in every other? The statute requires, as we have seen, that the list of each Company "shall set forth the length of the main track and the length of all side tracks and turn-outs in each county, city and town through which the road may run, with the actual value of the same and the value of improvements at each of the several stations. The said track and stations shall be denominated "*fixed and stationary personal property.*"

It is certain that the "main track" here spoken of, is that by means of which the *pro rata* share of the rolling stock in each county is to be taxed. If any part of the rolling stock of the defendant Company is to be taxed in the county of Cook, it must be done by means of the twenty-eight miles of the Galena track within the county of Cook, and the defendant Company should set forth this twenty-eight miles in its list. But if the law requires this to be stated in the defendant's list, it must require the other things mentioned in the sentence last ~~section list~~ quoted, to be also stated, to wit: the side-tracks and turn-outs, stations and improvements + values ~~themselves~~. For the same section and language which calls for the one, requires also the other. But these stations, improvements, + tracks, constitute the "*fixed and stationary personal property*" in such county, city or town, of the Company required to set forth the same in its list. Now if the defendant Company is required by the law to set forth this "fixed and stationary personal property" made up of this twenty-eight miles of the Galena track and stations, it is because, for the purpose of taxation, it belongs to it, and because it is liable to be taxed therefor, for that is the sole object for which it is required to be listed. But this would be to subject the same property to be fully taxed as the "*fixed and stationary personal property*" of two separate and distinct corporations at the same time, which would be absurd and repugnant to every principle of law and justice. Such, therefore, cannot be the construction of the statute, and the defendant Company was not required by the statute to set forth in its list any part of the Galena track.

Then, again, it will be said that the trains of the defendant Company being run into the county of Cook, and a large portion of its rolling stock being in constant use in that county, the legislature would unjustly and unfairly discriminate against the property holders of that county to require the entire rolling stock of the Company to be listed and taxed in other counties.

To this we answer:

1st—That whether the law be just or not is for the Legislature and not for the Courts. It is for the Court to administer the law as it finds it—not to make law.

2d—The Court held in *Sangamon and Morgan Railroad v. Morgan County*, (14 *Ills.*, 163,) that the rolling stock of a Railroad is personal property; that personal property follows the residence of the owner, if the owner resides within the State. And that where the owner was a corporation, said corporation will be considered to be in the State, and its residence where its principal office or place of business is. It accordingly held in that case that the rolling stock of the Sangamon & Morgan Railroad Company was not taxable in Morgan county, but that it must all be taxed in Sangamon county, for there were situated the principal offices and place of business of the Company.

This inequality of taxing the rolling stock of a Railroad, therefore, was not created by the above statute. It existed before, and to a much greater extent than it now does under the statute. And yet in that case the Court enforced the law as it found it, and did not feel itself called upon to attempt an alteration by the exercise of legislative powers.

But it is very evident from the language used in section four, that the Legislature did not expect or intend that the rolling stock of a Railroad Company should be taxed in the county, city or town where it might chance to be or be used.

After providing that the rolling stock shall be listed and taxed in the several counties *pro rata* as the length of the main track in such county be to the whole length of the road, it provides that "All other property shall be listed and taxed in the county, town or city where the same is *located* or *used*," thereby clearly and certainly implying that it was not the intention of the act that the rolling stock of the Company must necessarily be taxed in the county where the same may be kept or used.

But we need not extend these remarks. We think there is no doubt that the rolling stock of the defendant's Company was legally listed and taxed in the counties of Du Page and those to *the westward through* which its road passed: that the action of the Board of Supervisors of Cook county, in again taxing the same for the year 1862, was unauthorized: and that the Court below in so deciding committed no error.

March 28th, 1864.

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