

Bailey Vs. Magwire

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Appeal No. : 89 U.S. 215

Appellant : Bailey

Respondent : Magwire

Judgement :

Bailey v. Magwire - 89 U.S. 215 (1874)

U.S. Supreme Court Bailey v. Magwire, 89 U.S. 22 Wall. 215 215 (1874)

Bailey v. Magwire

89 U.S. (22 Wall.) 215

APPEAL FROM THE CIRCUIT COURT FOR

THE EASTERN DISTRICT OF MISSOURI

SYLLABUS

1. A claim of exemption from county and municipal taxation cannot be supported, any more than a claim from state taxation, except upon language so strong as that, fairly interpreted, no room is left for controversy. No presumption can be

made in favor of the exemption, and if there be reasonable doubt, the doubt is to be solved in favor of the state.

2. The fact that in an act amending the charter of a railroad corporation, special provision is made for ascertaining the taxes to become due by the corporation to the state (nothing being stated about the manner of ascertaining other taxes), is not of itself enough to work an exemption of the property of the corporation from all taxation not levied for state purposes. Silence in regard to such other taxes cannot be construed as a waiver of the right of the state to levy them. There must be something said affirmatively and which is explicit enough to show clearly that the legislature intended to relieve the corporation from this part of the burdens borne by other real and personal property before such an act shall amount to a contract not to levy them.

3. A provision in such an act prescribing a mode for ascertaining the tax due the state, by which provision the president of the company is required to furnish to the auditor of the state a statement under oath of the actual cash value of the property to be taxed, on which the company is directed to pay the tax due the state, within a certain time, to the treasurer under penalties does not amount to a contract that the state will not pass any law to assess the property of the company for taxation for state purposes in a different manner.

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4. But if a particular mode has been prescribed for assessing the property of a particular company, that mode should be followed until in some way a different mode is prescribed.

5. Whether or not an act prescribing such particular mode has been impliedly repealed by a general revenue act not in terms repealing it is a matter peculiarly within the province of the highest courts of the state, whose acts are the subjects of the question, to decide. And when such courts have decided the question, their decision is controlling.

Bailey and others, foreign stockholders, in the Pacific Railroad Company, a corporation existing and organized under different special acts of the State of Missouri, filed a bill in the court below against a certain Magwire, collector of state, county, school, and city taxes for the county and city of St. Louis, Missouri, to enjoin his collection of such taxes assessed for the year 1869, on the said railroad company under the general tax law of the state, the ground of the application being that by acts of the Missouri Legislature governing the said railroad company, and which acts, as the company asserted, made a contract with it, the company:

1st. Was not liable for any county, school, or city taxes at all.

2d. Was not liable for state taxes under the act in virtue of which they had been assessed, but was liable for them only under another act -- a special act relating to itself and prescribing a manner for assessment &c.;, different from the manner which had here been followed.

The case was thus:

The charter of the Pacific Railroad Company was granted in 1849, and counties, cities, and towns along its line were authorized to subscribe to it, but it contained no provision exempting its property from taxation. [[Footnote 1](#)]

By an act of 1851, amendatory of the charter, [[Footnote 2](#)] it was enacted that the capital stock, together with all their works

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and other property, and all profits which should arise from the same should be vested in the respective shareholders of the company forever, in proportion to their respective shares, and that the same should be deemed personal estate and be exempt from *all public charge or tax whatsoever*, for the term of five years from the passage of the act. This exemption, of course, would have expired in 1856.

At the time of the passage of this act, as before and since, there existed in Missouri, under its public statutes, a general scheme of taxation of all property in the state; this scheme embracing all property of corporations over and above their

capital stock, as well as the property of citizens in the counties where it was situated.

In this state of things, the exemption given by the Act of 1851 not having yet expired, the Legislature of Missouri, on the 25th of December, 1852, passed another act amendatory of the charter. This act lent its credit to the company by issuing to it state bonds to the amount of \$1,000,000, to be used after the expenditure of a like sum raised from other sources, and it gave to the company a large body of lands which Congress had given to the state.

By a twelfth section, it made the following enactment as to taxation:

"SECTION 12. The said Pacific Railroad shall be exempt from taxation until the same shall be completed, opened, and in operation, and shall declare a dividend, when the roadbed, buildings, machinery, engines, cars, and other property of such completed road, at the actual cash value thereof, shall be *subject to taxation at the rate assessed by the state on other real and personal property of like value.* "

"And for the purpose of ascertaining the value of the same, it shall be the duty of the president of said company, on the first day of February in each year after such road is completed, opened, and put in operation and declares a dividend, to furnish to the auditor of the state a statement under his oath, of the actual value of the roadbed, buildings, machinery, engines, cars, and other property appertaining to such completed road, and from said statement, the auditor shall charge said company with

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the amount appearing to be due to the state, according to the statement furnished by the president of the company."

"And in case said company shall fail to pay into the state treasury, within thirty days after the first day of December in each year, the amount charged against said company as aforesaid, said company shall forfeit and pay to the State of Missouri, in addition to the sum with which said company may stand charged by

the auditor, ten percent per month, after the expiration of said thirty days, on the amount charged to said company, which sum charged against said company, together with the ten percent per month hereinbefore specified, may be recovered in the name of the State of Missouri by civil action in any court of competent jurisdiction, and should the president of said company fail to make out and furnish to the auditor of the state a statement as herein required, said company shall forfeit and pay to the state \$10,000 for such failure, which may be recovered in the name of the State of Missouri in any court of competent jurisdiction."

" *Provided* that if said company shall fail for the period of two years after said roads respectively shall be completed and put in operation to declare a dividend, then the said company shall no longer be exempt from the payment of the said tax, nor from the forfeitures and penalties in this section imposed."

This act of 1852 was accepted by the company, and the rights given by the Act of 1851 were thus surrendered.

The road was completed in April, 1866, and after April, 1868, and in each year since that time -- the company not having yet made any dividend -- the president of the company made returns of its taxable property in the manner required by the twelfth section of the Act of 1852, but not in any other manner.

At the time when the road was completed, \$3,614,500 of stock had been subscribed, of which \$2,500,000 had been subscribed by the counties and towns along the line of it.

In 1866, the Legislature of Missouri passed an act relating to the collection of revenue generally throughout the state. The mode prescribed for ascertaining the value of property of corporations generally was different from that prescribed by the twelfth section of the Act of 1852 for ascertaining

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the value of the property of the Pacific Railroad. But the Act of 1866 did not in terms nor by any plain implication repeal the twelfth section of the Act of 1852.

Whether it did so by any kind of implication was a question that came before the Supreme Court of Missouri, A.D. 1873, in *Pacific Railroad Company v. Cass County*, [[Footnote 3](#)] in which case the court decided that the Act of 1866 did not repeal the said twelfth section in any way.

In August, 1871, this decision not then having been made by the said supreme court, the assessors for St. Louis County, *acting under the provisions of the Act of 1866*, assessed a tax for state, county, school, and city purposes on the property of the Pacific Railroad Company, and seized upon its property, advertising it for sale. Thereupon the present bill was filed, by which various foreign stockholders in the company -- the company itself declining to act, and remaining passive -- sought to enjoin the collection of the tax.

Its positions, of course, were:

1st. That the twelfth section of the Act of 1852, respecting the taxation of the road, was and remained a contract between the State of Missouri and the railroad company; that it specifically provided for the *whole subject* of the taxation of the road, and that in virtue of it, the general revenue laws of the state were not intended to and did not apply to this particular company.

2d. That the said section accordingly exempted the company from taxation for county, school, and all other purposes except those mentioned in it.

3d. That if this were not all so, thus broadly stated, and if the section were not a contract as to all taxes, and did not, as such contract, furnish the only authority and rule by which this particular company was to be taxed, yet that, until repealed, it was the law governing the subject of taxation for state purposes; that, as was shown by the decision in *Pacific Railroad Company v. Cass County*, it had never yet been repealed, and therefore that certainly, as

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to the taxes for state purposes, the collector was to be enjoined.

The positions of the collector, on the other hand, were:

1st. That after the time limited in the twelfth section -- that is to say, as things turned out, after April, 1868 -- the property of the railroad company became subject to taxation, as any other property in the state, to state, county, municipal, and school taxation, and through any mode which the legislature of the state might see fit to prescribe.

2d. That the provisions of the said twelfth section constituted no contract in favor of the company as against the right of the state (after the time had elapsed during which the company was to be exempt from taxation) to provide by law for the taxation of the property of the company in any manner it should see fit, and for the general purposes for which any other property in the state was subjected to taxation, and finally,

3d. That in point of fact the said twelfth section had been repealed, impliedly, by the general purpose of the Act of 1866, so that even as to taxation for state purposes, it no longer applied.

The court below sustained the defendant in everything excepting as to *city* taxes (which, for reasons not necessary here to be stated, it deemed illegally laid), decreeing, of course, that the defendant might lawfully collect not only the county and school taxes, as he proposed to do, but also, in the same way, the state taxes. The bill to enjoin him from so doing was accordingly dismissed, and from the decree dismissing it this appeal was taken.

It may be well enough to mention that in a case which was in effect one between these same parties, and lately before this Court, it had been decided that the twelfth section of the Act of 1852 created a *contract* between the parties exempting the railroad from taxation until it was completed and for two years afterwards if it did not pay a dividend before the expiration of these two years. [[Footnote 4](#)]

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MR. JUSTICE DAVIS delivered the opinion of the Court.

It is contended on behalf of the appellants that the twelfth section of the Act of 1852 provides for the whole subject of the taxation of the road, that it exempts the road from all taxes except state taxes, and furnishes the only rule and authority by which these taxes can be ascertained and collected.

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It was held by this Court in the case of *Pacific Railroad v. Magwire* [[Footnote 5](#)] that this section created a contract between the state and the railroad company, exempting the road from taxation until it was completed and for two years thereafter if it did not pay a dividend before the expiration of these two years.

The inquiry is whether this contract goes further and exempts the road, after it has been completed for two years, from all other than state taxation, and whether the state is precluded from providing another mode of valuation for state taxes.

It is manifest that legislation, which it is claimed relieves any species of property from its due proportion of the general burdens of government, should be so clear that there can be neither reasonable doubt nor controversy about its terms. The power to tax rests upon necessity, and is inherent in every sovereignty, and there can be no presumption in favor of its relinquishment. While it were better for the interest of the community that this power should on no occasion be surrendered, this Court has always held that the legislature of a state, unrestrained by constitutional limitation, has full control over the subject, and can make a contract with a corporation to exempt its property from taxation either in perpetuity or for a limited period of time. If, however, on any fair construction of the legislation, there is a reasonable doubt whether the contract is made out, this doubt must be solved in favor of the state. In other words, the language used must be of such a character as, fairly interpreted, leaves no room for controversy.

The present claim is of perpetual exemption from county and municipal taxation, quite as essential to the wants of the people as taxation for state purposes.

It is conceded that this exemption is not granted in express terms, but it is argued that, taking the whole section together, it arises by necessary implication. We do not think so. Immunity from all taxation was given until the

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road was built and in operation two years, but after this it is declared

"That the roadbed, buildings, machinery, engines, cars, and other property of such completed road, at the actual cash value thereof, shall be subject to taxation at the rate assessed by the state on other real and personal property of like value."

This is a declaration that the taxation imposed upon the property of this company shall not be different from the taxation imposed upon other similar property, which conforms to the constitutional requirement "that all property subject to taxation shall be taxed in proportion to its value." If other property is charged with the payment of county, school, and municipal taxes, why not the property of this company? In no other way can the principle of equality in taxation, so essential to good government, be secured. If the legislature intended to apply a different rule in this case, it were easy to have said that the property of this company shall be subject to taxation "for state purposes." Instead of this, it is declared to be "subject to taxation." This obviously means general taxation -- such taxation as other property of like value is subjected to. No words of limitation are used, and none can be implied against the interests of the state. It is never for the interest of the state to surrender the power of taxation, and an intention to do so will not be imputed to it unless the language employed leaves no other alternative.

The motive for temporary exemption is apparent enough, because until the road was able to earn something, taxation might bear heavily upon it. But with the completion of the road, the reason for the exemption ceased, and it is difficult to see what inducement there was for the state to grant perpetual immunity from local taxation. In the original charter of the company, granted in 1849, there was no exemption from taxation. It is true the amendment of 1851 altered this so that the road was relieved of any public charge or tax for the period of five years, but

this privilege expired in 1856, and the provisions of the Act of 1852 on this subject were more favorable to the company. Besides receiving under this act a large body of lands, donated by

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Congress to the state to aid in the construction of railroads, it was enabled to complete its entire road and run it for two years without paying any tax whatever. By this means, it secured immunity from taxation until 1868, and any further immunity in this direction, if conceded by the state, would have been a mere gratuity. In view of all the legislation on this subject, it would seem quite clear that the General Assembly of Missouri, while recognizing in behalf of this road the propriety of temporary exemption from taxation, had no purpose to continue these exemptions indefinitely.

But it is said the section covers the whole subject of taxation, and as it provides for state taxes only, it excludes any other. If in the declaratory part of it the road had been subject to "state taxation," there would have been plausibility in the argument, to say the least, that the legislature intended to waive other taxation. But the provision is that after the temporary exemption from all taxation ceases by its own limitation, the property of the road shall be subject "to taxation" at the same rate as other property in the state. There is no restriction in this language, nor is there any rule of law by which a word can be imported to limit its meaning. It is true special provision is only made for the ascertainment and payment of a state tax, and nothing is said about the manner of ascertaining and paying other taxes. But this does not prove an intentional abandonment of all but state taxes. It proves nothing more than that the legislature thought proper, in the particular of state taxes, to modify the general revenue law so far as this corporation is concerned, leaving the provisions of this general law operative upon local taxation.

It would be a hard rule to apply to the legislation of a state to hold that the circumstance of making in the amendment to a charter of a railroad corporation special provision for ascertaining the tax due the state (nothing being said about the manner of ascertaining other taxes), works an exemption of the property of the

corporation from all taxation not levied for state purposes. Silence on such a subject

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cannot be construed as a waiver of the right of the state in this regard. There must be something said which is broad enough to show clearly that the legislature intended to relieve the corporation from a part of the burdens borne by other real and personal property. This was not done in this case, and the claim of exemption from local taxation cannot be sustained.

It is claimed, however, that even if this be so, the state is inhibited from altering the special provision on the subject of state taxation. This provision prescribes a mode for ascertaining the tax due the state. The president of the company is required to furnish to the auditor a statement, under oath, of the actual cash value of the property to be taxed, on which the company is directed to pay the tax due the state, within a certain time, to the treasurer, under penalties. And the claim is that the state legislature is prohibited from passing any law to assess the property of the company for taxation for state purposes in a different manner. It is not so written in the statute, nor, indeed, can any proper inference be drawn from what is written that the legislature intended to contract with the corporation in this particular. It would be strange indeed if it were so, for the mode of assessment might not work well and yet, if it formed the subject of a contract, it could not be changed. The principal thing in which the state and company were interested was the actual cash value of the property to be charged. This value was the basis of taxation, and it could not be a matter of moment how it was fixed, provided it were done correctly. In this result both the state and corporation had an equal interest. Both were interested in the means adopted only so far as they were efficient to secure the contemplated object. The exigency of the state required the revenue on the basis of actual value, and this, it is to be presumed, the corporation was willing to accord. At any rate, it was the duty of the state, in justice to other property owners, to use the appropriate means to ascertain this value. The ordinary method of doing this is by the instrumentality of officers appointed for

the purpose, but the state asked the railroad, through its president, to make the valuation, to which the corporation assented. This way of reaching the result was less expensive to the state, but more expensive to the corporation than the usual mode in which taxes are assessed. The president of the company could not make a true valuation without the expenditure of time and labor, and this repeated year by year as values of property constantly fluctuate. There is no presumption that he would not do it conscientiously, according to his best judgment, but still it was a favor to the state for him to do it at all, and certainly no one can contend that a state cannot waive at any time a provision for its own benefit. Apart from this view of the subject, the provision in question was simply a mode for ascertaining the true value of the property to be taxed, and if, on trial, it should turn out not to be the best mode for the purpose, surely the legislature has a right to change it and adopt another. This no one will question unless the legislature has surrendered its power over the subject by contract, which, in our opinion, has not been done in this case.

But, until the legislature appoints another mode for assessing and collecting the revenue due the state from this corporation, it must proceed in conformity with the provisions contained in the Act of 1852.

The whole subject we have discussed recently came before the Supreme Court of Missouri in the case of *Pacific Railroad Company v. Cass County*. The assessor of Cass County had levied taxes for both state and county purposes on the property of the company in the county, and the question was whether these levies were authorized. The Court held that the taxes for county purposes were rightfully assessed, under the general revenue laws, but that the taxes for state purposes were unauthorized, because section twelve of the Act of 1852 had not been repealed either by an express provision of a subsequent law or by necessary implication, and being in force, state taxes could only be collected in the way pointed out in that section.

As it is the peculiar province of the highest court of a state to decide whether or not the method pursued in the assessment and collection of taxes is in conformity with the law of the state, this decision is controlling.

It was not made until after this suit was instituted, and doubtless not promulgated until the rendition of the decree. The assessors of St. Louis County in this case imposed taxes for state, county, school, and city purposes. The bill charged that the whole proceeding was illegal, and sought to restrain the entire levy. On demurrer, the circuit court held that the city taxes were wrongfully levied and issued the proper order restraining them and dismissed the bill so far as it related to state, county, and school taxes. The court should have included state taxes in the restraining order. On this account, the decree must be reversed and cause remanded with directions to enter an order enjoining the collection of the state tax in the bill mentioned. In all other respects, the decree is right.

Decree reversed and remanded.

[[Footnote 1](#)]

Session Acts of 1849, p. 219.

[[Footnote 2](#)]

id. 1851, p. 271.

[[Footnote 3](#)]

53 Mo. 26.

[[Footnote 4](#)]

[*Pacific Railroad v. Magwire*](#), 20 Wall. 36.

[[Footnote 5](#)]

[87 U. S. 20](#) Wall. 36.

