Ratterman Vs. Western Union Telegraph Company

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Appeal No. : 127 U.S. 411

Appellant : Ratterman

Respondent : Western Union Telegraph Company

Judgement :

Ratterman v. Western Union Telegraph Company - 127 U.S. 411 (1888)
U.S. Supreme Court Ratterman v. Western Union Telegraph Company, 127 U.S. 411 (1888)

Ratterman v. Western Union Telegraph Company

Nos. 1360, 1361

Argued March 21, 1888

Decided May 14, 1888

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APPEALS FROM THE CIRCUIT COURT OF THE UNITED STATES

FOR THE SOUTHERN DISTRICT OF OHIO, WESTERN DIVISION

SYLLABUS

A single tax, assessed under the laws of a state upon receipts of a telegraph company which were partly derived from interstate commerce and partly from commerce within the state, and which were capable of separation but were returned and assessed in gross and without separation or apportionment, is invalid in proportion to the extent that such receipts were derived from interstate commerce, but is otherwise valid, and while a circuit court of the United States should enjoin the collection of the tax upon the portion of the receipts derived from interstate commerce,

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it should not interfere with those derived from commerce entirely within the state.

The decisions of this Court respecting the taxation of telegraph companies reviewed.

The case, as stated by the court, was as follows:

These are cross-appeals from a decree of the Circuit Court for the Southern District of Ohio, Western Division.

The suit was begun by a bill of complaint, filed by the Western Union Telegraph Company against Frank Ratterman, Treasurer of Hamilton County, in the State of Ohio. As the bill is not very long, it is here presented in full:

"To the judges of the Circuit Court of the United States for the Southern District of Ohio, Western Division:"

"The Western Union Telegraph Company, a corporation duly organized and existing under the laws of the New York and a citizen of said state, brings this its bill against Frank Ratterman, Treasurer of Hamilton County, Ohio, and a citizen of the Ohio."

"And thereupon your orator complains and says:"

"That its principal office is, and during the times hereinafter mentioned was, in the City of New York; that during said time, it had been and now is engaged in the business of receiving and transmitting for hire telegraph messages between different points in the United States, and in the carrying on of said business has offices in the City of Cincinnati and at other points in the County of Hamilton and in the State of Ohio, and has been engaged in the transmission of messages between said offices and other points both within and without the State of Ohio."

"That prior to 1869, your orator accepted in writing the provisions of the act of Congress of July 4, 1866, 14 Stat. 221; that your orator's wires, poles, batteries, office furniture, and other property in the Ohio have been and are taxed like other property in said state; that your orator's telegraph lines cross nearly all of the states of the union and occupy portions of British America, and that a large amount of the

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commercial transactions, business, and intercourse of the people is carried on by means of their wires; that in the month of May, 1887, your orator, under protest, delivered to the auditor of said county a statement, as required by Rev.Stat. Ohio, 2778, showing the entire receipts of your orator in said county for the year next preceding, which said gross receipts amounted to the sum of $175,210.88, and were principally for business between points in the State of Ohio and points outside the State of Ohio -- that is to say, the receipts of your orator for messages and business pertaining to commerce between the states, and not for messages between different points within the State of Ohio; that thereupon said auditor assessed a tax thereon amounting to five thousand two hundred and six and 90/100 dollars."

"Your orator says that said tax is illegal and void, and in violation of the Constitution of the United States."

"Your orator has offered to the defendant, and is ready and willing to pay to him, the taxes chargeable against its personal property within said county, but the

defendant refuses to accept payment thereof unless your orator also at the same time pays said total assessment for all of said gross receipts, and unless restrained, the defendant will impose and enforce the penalties for nonpayment of said tax provided for by Revised Statutes of Ohio, 2843, to the interference, stoppage, and destruction of your orator's business."

"Wherefore your orator prays that the defendant may be required to accept payment of so much of said tax assessment as covers the property of your orator in the said county, and that he may be enjoined by preliminary injunction and by final decree from levying or collecting the balance of said assessment."

"Your orator prays that a writ of subpoena may issue against the defendant, and that your orator may have such other and further relief as it is in equity and good conscience entitled to."

To this bill a general demurrer was filed, which was overruled by the court. The record then proceeds as follows:

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"And thereupon it was agreed by and between the complainant and the defendant that the cause be submitted to the court on the bill without further pleading to the same by the defendant, upon the following facts:"

"That of the entire receipts mentioned in the bill $142,154.18 were for business done by the plaintiff between its offices in said county and points outside of the State of Ohio -- that is, for messages and business pertaining to commerce between the states, and not for messages between different points within the State of Ohio -- and that the balance of said receipts, to-wit, $33,056.70, was for business between the offices of the plaintiff in said county and other points within the State of Ohio, and that, if said receipts had been so separated and apportioned, and said tax had been separately assessed on the basis of such separation and apportionment, the amount of said total tax of $5,206.90, apportionable to said receipts for interstate commerce, would be $3,931.51, and

the amount apportionable to said receipts for business between the offices of the complainant in said county and other points within the State of Ohio would have been $910.40, and that the remainder of said sum of $5,206.90, *viz.,* $364.99, was for tax assessed upon the personal property of the said complainant within the said County of Hamilton aforesaid, namely, upon its instruments, wires, poles, and other chattel property which were returned by said complaint to the auditor of said county at a valuation of $18,059."

"That Exhibit A, hereto annexed, and made a part of this stipulation, is a copy of the return made by complainant to the auditor of said county in pursuance of the law of the State of Ohio, and that said complainant made no other return, and furnished no other information to said auditor at the time of said return, save what is contained in said return."

"That Exhibit B, hereto annexed, and made a part hereof, is a copy of the return of the chattel property of said complainant made at the same time to said auditor."

"It is further agreed that the auditor of said county placed on the tax duplicate of said county said sums of $175,210.88 and $18,059 as the personal property of said complainant, to

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be assessed for taxation in said County of Hamilton, and that the rate of taxation assessed thereupon was the same as was assessed against the personal property listed for taxation by the citizens of said county."

"It is further agreed that complainant, prior to December 20, 1887, offered to pay the tax properly assessable against said return of $18,059 for personal property, but the defendant refused to accept payment of said assessment of $5,206.90 unless the whole were paid. The plaintiff did not disclose to said auditor at the time it made said return what portion, if any, of the gross receipts of its said offices in said county was for interstate commerce."

"It is further agreed that neither said auditor nor said treasurer had any actual knowledge that any portion of the returns of said gross receipts was for interstate commerce business, but said officers knew that plaintiff's said business included interstate commerce."

"And the only knowledge said auditor and said treasurer had of the business of said company, and what said receipts were derived from, was from the returns hereto annexed, marked 'Exhibit A,' and from their knowledge as aforesaid of the plaintiff's business."

"The cause being thus submitted to the court on the foregoing stipulation of facts and the argument of counsel, the court is of the opinion that said receipts and tax may be separated and apportioned, and that said tax, so far as so separated and apportioned to said receipts derived from the interstate commerce, is unconstitutional and void, but valid apportionable to said receipts derived from state business."

"It is thereupon ordered by the court, adjudged, and decreed that the defendant is hereby forever enjoined from collecting on said assessment of $5,206.90 more than the sum of $1,275.39, and an injunction is refused as to the balance of said tax. It is further ordered that the defendant pay the costs of this suit."

The judges of the circuit court, upon this state of facts, made the following certificate of a difference of opinion:

"This is to certify that at the hearing of the above-entitled

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cause before Hon. Howell E. Jackson, Circuit Judge, and George R. Sage, District Judge, said judges differed in opinion upon the following questions of law, to-wit:"

"Whether a single tax, assessed under the Revised Statutes of Ohio, 2778, upon the receipts of a telegraph company, which receipts were derived partly from interstate commerce and partly from commerce within the state, but which were returned and assessed in gross and without separation or apportionment, is wholly

invalid, or invalid only in the proportion and to the extent that said receipts were derived from interstate commerce. And the district judge being of the opinion that such a tax is wholly invalid, and the circuit judge being of the opinion that it is invalid only to the extent and in the proportion that the receipts upon which it is based were derived from interstate commerce, said question is hereby certified to the Supreme Court of the United States for its opinion."

"HOWELL E. JACKSON, *Circuit Judge* "

"GEO. R. SAGE, *District Judge* "

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MR. JUSTICE MILLER, after stating the case, delivered the opinion of the Court.

The case has been very fully argued before us upon all the matters properly presented by the record, and it seems probable from the amicable nature of the proceedings and the agreement as to a statement of facts upon which the case was to be tried, without any answer being filed to the bill, that the purpose was to obtain the judgment of this Court upon the general subject of the liability of the corporation to taxation upon the amount of its receipts, and that the certificate of a difference of opinion has been used for that purpose.

With regard to the question which is certified to us dividing the opinions of the judges of the circuit court, we do not think that there is any difficulty, and can hardly see how it arose in the present case. That question is

"Whether a single tax, assessed under the Revised Statutes of Ohio, 2778, upon the receipts of a telegraph company, which receipts were derived partly from interstate commerce and partly from commerce within the state, but which were returned and assessed in gross, and without separation or apportionment, is wholly invalid, or invalid only in the proportion and to the extent that said receipts were derived from interstate commerce."

We do not think this particular question is material in

this case, because the state of facts agreed upon by the parties makes this separation, and presents the matter to the court freed from the point raised by the question that the tax was not separable. Nor do we believe, if there were allegations either in the bill or answer setting up that part of the tax was from interstate commerce and part from commerce wholly within the state, that there would have been any difficulty in securing the evidence of the amount of receipts chargeable to these separate classes of telegrams, by means of the appointment of a referee or master to inquire into that fact, and make report to the court. Neither are we of opinion that there is any real question, under the decisions of this Court, in regard to holding that so far as this tax was levied upon receipts properly appurtenant to interstate commerce, that it was void, and that so far as it was only upon commerce wholly within the state that it was valid.

This precise question was adjudged in the case of *The State Freight Tax,* 15 Wall. 232. That was a case in which a statute of the State of Pennsylvania was examined which provided for a tax upon every ton of freight transported by any railroad or canal in that state at certain rates -- two cents fro one class of freight, three cents for another, and five cents for still another class. The payment of this tax was resisted by the Reading Railroad Company upon the ground that it was levied on interstate commerce. The company made returns to the accounting officers of the commonwealth in which they stated separately the amount of freight whose transportation was wholly within the state, and also the amount of the transportation of freight brought into or carried out of that state. This Court held that the tax upon the former class, being upon commerce wholly within the state, was valid under the law of Pennsylvania by which it was imposed, but that the latter classes, being commerce among the states, were not subject to such taxation.

This ruling shows that where the subjects of taxation can be separated so that that which arises from interstate commerce can be distinguished from that which arises

from commerce wholly within the state, the Court will act upon this

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distinction and will restrain the tax on interstate commerce while permitting the state to collect that arising upon commerce solely within its own territory.

In *Pensacola Telegraph Company v. Western Union Telegraph Company,* 96 U. S. 1 , it was decided by this Court that the telegraph was an instrument of commerce; that telegraph companies were subject to the regulating power of Congress in respect to their foreign and interstate business, and that such a company occupies the same relation to commerce as a carrier of messages that a railroad company does as a carrier of goods.

In *Telegraph Company v. Texas,* 105 U. S. 460 , the same question presented in this case was before the Court -- that of the power of the state to tax telegraphic messages received and delivered by the same corporation which is now before us. In that case no distinction was made by the statute between what we now call interstate messages and those exclusively within the state. This Court therefore, in reviewing the decision of the Supreme Court of the State of Texas, which had allowed no deduction for taxes on messages sent out of the state or by government officers on government business, said:

"It follows that the judgment, so far as it includes the tax on messages sent out of the state or for the government on public business, is erroneous. The rule that the regulation of commerce which is confined exclusively within the jurisdiction and territory of a state, and does not affect other nations or states or the Indian tribes -- that is to say, the purely internal commerce of a state -- belongs exclusively to the state is as well settled as that the regulation of commerce which does affect other nations or states or the Indian tribes belongs to Congress. Any tax, therefore, which the state may put on messages sent by private parties, and not by the agents of the government of the United States, from one place to another exclusively within its own jurisdiction will not be repugnant to the Constitution of the United States. Whether the law of Texas in its present form can be used to

enforce the collection of such a tax is a question entirely within the jurisdiction of the courts of the state, and as to which we have no power of review. "

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The Court reversed the judgment of the Supreme Court of Texas and remanded the cases with instructions for such further proceedings as justice might require. Evidently the purpose of this was to permit the supreme court of that state, if it could separate the taxes upon the two classes of telegrams, to do so and to render judgment accordingly.

In the recent case of *Western Union Telegraph Co. v. Commonwealth,* 125 U. S. 530 , decided at this term, a tax was levied upon that corporation, apportioned under the laws of Massachusetts upon the taxable value of its capital stock. The ratio which should have been allotted to that commonwealth may be supposed to have been properly apportioned to it, ascertaining that portion by means of the length of the lines of the company in relation to the entire mileage of its lines in the United States. The payment of the tax was resisted, however, partly upon the ground that it was levied upon interstate commerce, but mainly because it was asserted to be a violation of the rights conferred on the company by the Act of July 24, 1866, now Title LXV, 5263-5269 of the Revised Statutes. It was alleged that the defendant company, having accepted the provisions of that law, was entirely exempt from taxation by the state. This Court, however, held that this exemption only extended under that law to so much of the lines of the telegraph company as were, in the language of 5263,

"through and over any portion of the public domain of the United States, over and along any of the military or post roads of the United States which have been or may hereafter be declared such by law, and over, under, or across the navigable streams or waters or the United States."

It was shown in that case that of the 2,833.05 miles of the lines of the defendant corporation within the boundaries of Massachusetts, more than 2,334.55 miles came within the terms of that section, being over or along post roads, made such

by the United States, or over, under, or across its navigable streams or waters, leaving only 498.50 miles not within such description, on which the company offered to pay the proportion of the tax assessed against it, according to mileage, by the state authorities.

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We refer to this now only for the purpose of showing how easily the subject of taxation which is forbidden by the Constitution may be separated from that which is permissible in this class of cases. The Court held in that case that this tax, being in effect levied upon the capital stock or property of the company in the State of Massachusetts, which was ascertained upon the basis of the proportion which the length of its lines in that state bore to their entire length throughout the whole country, and not upon its messages or upon the receipts for such messages, was a valid tax. The question of interstate commerce as affecting the tax in that action was very little pressed by counsel for the company, but they relied upon the privilege granted by 5263, already cited, to companies which accepted its provisions, and upon the fact that a large proportion of the lines of the defendant telegraph company were over or along post roads or over, under, or across the navigable streams or water of the United States.

In the present case, counsel for the telegraph company have argued that this statute secures the corporation from taxation of any kind whatever, and especially as to receipts arising from messages sent over its lines; but that question does not arise in this action, because there is no allegation or averment, either in the bill itself or in the statement of facts, that any part of the lines of the telegraph company in the State of Ohio is built over or along a post road or comes within the provisions of 5263. The only reference to this subject is in the following allegation of the bill: "That prior to 1869, your orator accepted in writing the provisions of the act of Congress of July 24, 1866, 14 Stat. 221." Under this allegation, the complainant can, of course, claim no benefit from the provisions of that section, for it does not appear that any part of the company's line comes within the description of this section of the Revised Statutes.

Under these views, we answer the question in regard to which the judges of the circuit court divided in opinion by saying that a single tax, assessed under the Revised Statutes of Ohio upon the receipts of a telegraph company, which were derived partly from interstate commerce and partly from commerce

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within the state, but which were returned and assessed in gross and without separation or apportionment, is not wholly invalid, but is invalid only in proportion to the extent that such receipts were derived from interstate commerce. Concurring, therefore, with the circuit judge in his action enjoining the collection of the taxes on that portion of the receipts derived from interstate commerce and permitting the treasurer to collect the other tax upon property of the company and upon receipts derived from commerce entirely within the limits of the state, this decree is

Affirmed.