

Marye Vs. Baltimore and Ohio R. Co.

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Appeal No. : 127 U.S. 117

Appellant : Marye

Respondent : Baltimore and Ohio R. Co.

Judgement :

Marye v. Baltimore & Ohio R. Co. - 127 U.S. 117 (1888)

U.S. Supreme Court Marye v. Baltimore & Ohio R. Co., 127 U.S. 117 (1888)

Marye v. Baltimore & Ohio R. Co.

No. 223

Argued and Submitted April 12, 1888

Decided April 23, 1888

127 U.S. 117

*APPEAL FROM THE CIRCUIT COURT OF THE UNITED
STATES FOR THE WESTERN DISTRICT OF VIRGINIA*

SYLLABUS

While it is quite competent for the State of Virginia to impose upon the movable personal property of the Baltimore and Ohio Railroad Company (a corporation organized under the laws of Maryland) which is brought within its territory and there habitually used and employed the same rate of taxation which is imposed upon similar property used in like way by its own citizens, it has not done so in the taxing laws of the state which were in force when the tax in controversy was imposed. The statutes of Virginia relied upon by the plaintiff in error are not applicable to the Baltimore and Ohio Railroad Company, but are confined to corporations which derive their authority from the laws of Virginia.

This is a bill in equity filed by the Baltimore and Ohio Railroad Company against the taxing officer of the State of Virginia for the purpose of enjoining him from selling certain engines and cars, the property of the complainant, for the payment of a tax alleged to have been illegally assessed thereon. There was a decree in the circuit court granting the relief prayed for, from which this appeal is prosecuted.

The material facts in the case are these:

The Baltimore and Ohio Railroad Company is a corporation organized under the laws of Maryland, and a citizen thereof, by virtue of whose charter its rolling stock is exempt from taxation. The line of its road does not at any point lie in the State of Virginia. It however connects with certain roads belonging to corporations incorporated by various acts of the Legislature of Virginia, to-wit, the Winchester and Potomac Railroad, the Winchester and Strasburg Railroad, and the Strasburg and Harrisonburg Railroad, the last named being a part of the old Manassas Gap Railroad, and, during a portion of the time embraced in the period for which the taxes in question were levied, it worked the Valley Railroad from Harrisonburg to

Page 127 U. S. 118

Staunton. All of these roads were operated by the Baltimore and Ohio Railroad Company by virtue of leases or contracts, which company for that purpose furnished and used its own rolling stock, consisting of engines and cars. None of

the Virginia corporations owning either of these roads was the owner of any rolling stock. The manner in which this rolling stock was employed for this purpose is thus described:

"There is no such rolling stock assigned permanently to the four lines above named, or either of them, in the State of Virginia. The trains in which the rolling stock is used on the four lines above named now start from Lexington, Virginia, and pass through the State of Virginia, over the four lines of railroad above named, into the state of West Virginia, and thence into the State of Maryland, to the City of Baltimore, or, if any of the cars are destined to western points, thence from Harper's Ferry to the west, but the trains in which the cars are hauled are run solid from Lexington, Virginia (and formerly before the road was completed to Lexington from Staunton, Virginia) to Baltimore. None of the rolling stock is assigned permanently to service in the State of Virginia, nor is any of the rolling stock set apart to the four lines in that state, or to the four valley lines above mentioned at all, but such rolling stock is used interchangeably upon the main line and branches of the Baltimore and Ohio Railroad in the States of Maryland and Virginia, and indeed also upon the divisions of the Baltimore and Ohio Railroad in Pennsylvania, and in states west of the Ohio River, just as the necessities of the service of the company require. Sometimes this rolling stock will be found on the main line, sometimes on the Pittsburgh division, and sometimes on the trans-Ohio divisions, and there is none of it that is permanently set apart for use upon the four Valley lines in Virginia above described."

The several Virginia corporations owning these four railroads, respectively, made their annual reports to the Auditor of Public Accounts as required by law, and were by the Board of Public Works duly assessed on their roadways, tracks, depots, and other real estate owned by them. No tax was assessed or levied as against them on account of any rolling stock,

Page 127 U. S. 119

because they were not reported to be the owners of any. In the month of June, 1883, the Auditor of Public Accounts for the State of Virginia assessed the

Baltimore and Ohio Railroad Company for taxes on its rolling stock used on these roads for the years from 1870 to 1881, inclusive, amounting in the aggregate, for eleven years, to the sum of \$22,249.25, and placed the assessment in the hands of the Treasurer of Augusta County, Virginia for collection. This officer was proceeding to collect these taxes by a distraint of the rolling stock in question, the property of the complainant, when his proceedings were arrested by the injunction of the circuit court, afterwards made perpetual by its final decree.

The act of the general assembly of the State of Virginia under which the assessment and collection of these taxes are sought to be justified is contained in section 20, c. 119, of the Acts of the Virginia Legislature, session of 1881-1882, being part of the taxing laws of the state originally enacted in 1870 and 1871, and continued, with amendments, to the present time. The material part of the act applicable to this case is as follows:

"19. Every railroad and canal company not exempted from taxation by virtue of its charter shall report annually, on the first day of June, to the Auditor of Public Accounts, all of its real and personal property of every description as of the 1st day of February of each year, showing particularly in what county or corporation such property is located, and classifying the same under the following heads: first, roadway and track, or canal bed; second, depots, depot grounds and lots, station buildings and fixtures, and machine shops; third, real estate not included in other classes; fourth, rolling stock, including passenger, freight, cattle, or stock, baggage, mail, express, sleeping, palace, and all other cars owned by or belonging to the company, boats, machinery, and equipments, houses and appurtenances occupied by lock-gate keepers and other employees; fifth, stores; sixth, telegraph lines;

Page 127 U. S. 120

seventh, miscellaneous property."

"Every such company shall also report, on or before the first day of June of each year, the gross and net receipts of the road or canal for the twelve months

preceding the first day of February of each year, and in all cases the report shall be so made as to give the data on which the same is made. If such road or canal is only in part within the commonwealth, the report shall show what part is within the commonwealth and what proportion the same bears to the entire length of the road or canal, and shall apportion the receipts accordingly. The report herein required shall be verified by the oath of the president or other proper officer. Upon the receipt of every such report, it shall be the duty of the Auditor of Public Accounts to lay the same before the Board of Public Works, who shall, after thirty days' notice previously given to the president, treasurer, or other proper officer, proceed to ascertain and assess the value of the property so reported, upon the best and most reliable information that can be procured, and to this end shall be authorized and empowered to send for persons and papers should it be deemed necessary. A certified copy of the assessment, when made, shall be immediately forwarded by the secretary of the board to the president or other proper officer of every railroad or canal company so assessed, whose duty it shall be to pay into the treasury of the state, within sixty days after the receipt thereof, the tax which may be imposed thereon by law. A company failing to make such report or to pay the tax assessed upon its property shall be immediately assessed, under the direction of the Auditor of Public Accounts, by any person appointed by him for the purpose, rating their real estate and rolling stock at twenty thousand dollars per mile, and a tax shall at once be levied on such value at the annual rate levied upon the value of the other property for the year. Such tax, so levied, as well as the sum required to be paid upon the report hereinbefore mentioned, if the same be not paid at the time provided herein, shall be collected by the treasurer of some county in which such company owns property, to whom the auditor may deliver the assessment, or a copy thereof. The treasurer

Page 127 U. S. 121

may distrain and sell any personal property of such company, and shall pay the taxes into the treasury within three months from the time of the assessment, or a copy as aforesaid may be delivered to him. The compensation of such treasurer to be the same as he receives for collecting other taxes in his county or corporation."

It is admitted that this is the only legislation of the State of Virginia under which the tax in question can be justified. If it does not warrant the proceedings, there is no statute which does. The single question presented in the case is whether the Baltimore and Ohio Railroad Company, as to the property on account of which it is sought to be taxed, is liable to taxation under the provisions of this act.

Page 127 U. S. 123

MR. JUSTICE MATTHEWS delivered the opinion of the Court.

It is not denied, as it cannot be, that the State of Virginia has rightful power to levy and collect a tax upon such property used and found within its territorial limits, as this property was used and found, if and whenever it may choose, by apt legislation to exert its authority over the subject. It is quite true, as the situs of the Baltimore and Ohio Railroad Company is in the state of Maryland, that also, upon general principles, is the situs of all its personal property; but for purposes of taxation as well as for other purposes, that situs may be fixed in whatever locality the property may be brought and used by its owner by the law of the place where it is found. If the Baltimore and Ohio Railroad Company is permitted by the State of Virginia to bring into its territory, and there habitually to use and employ, a portion of its movable personal property, and the railroad company chooses so to do, it would certainly be competent and legitimate for the state to impose upon such property, thus used and employed, its fair share of the burdens of taxation imposed upon other similar property used in the like way by its own citizens. And such a tax might be properly assessed and collected in cases like the present, where the specific and individual items of property so used and employed were not continuously the same, but were constantly changing according to the exigencies of the business. In such cases, the tax might be fixed by an appraisement and valuation of the average amount of the

Page 127 U. S. 124

property thus habitually used, and collected by distraint upon any portion that might at any time be found. Of course, the lawfulness of a tax upon vehicles of

transportation used by common carriers might have to be considered, in particular instances, with reference to its operation as a regulation of commerce among the states; but the mere fact that they were employed as vehicles of transportation in the interchange of interstate commerce would not render their taxation invalid. No question on that account arises in this case.

But, looking at the statute under which the proceeding in question has been taken for the taxation of this property, we think it quite clear that it has no application to the rolling stock owned by the Baltimore and Ohio Railroad Company employed by it, in the manner described, in the operation of other railroads in Virginia. The terms of the act, indeed, include "every railroad and canal company not exempted from taxation by virtue of its charter," but that language, according to a general rule of interpretation, must be confined to corporations deriving their authority from the laws of Virginia. It is apparent also from the other expressions contained in the law, as well as its whole purview, that it was intended to apply only to such domestic corporations as, in the case of railroad companies, were the owners of railroads and the property usually appurtenant thereto lying and being within the state. According to the description of the act, the railroad company is supposed to own a roadway and track, depots and depot grounds, station buildings and fixtures, and machine shops, together with real estate, rolling stock, and telegraph lines. Every such company is required to report its gross and net receipts, and a specific provision is made that if its road is only in part within the commonwealth, the report shall show what part is so, and what proportion the same bears to its entire length, apportioning the receipts accordingly. In case of a failure of the company to make such a report or to pay the tax assessed upon its property, it is provided that it shall be immediately assessed, under the direction of the Auditor of Public Accounts, by some person appointed by him for that purpose, rating its real estate and rolling stock at \$20,000 per

Page 127 U. S. 125

mile, on which a tax shall be levied at the annual rate levied upon the value of other property for the year. None of these provisions are applicable to the case of the Baltimore and Ohio Railroad Company in respect to its ownership of the rolling

stock in question.

It follows from this that it was not liable for the payment of the taxes, the collection of which was enjoined by the decree of the circuit court. That decree is accordingly

Affirmed.

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