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for foreclosure which seeks a money decree against the mortgagor for a balance of the mortgage debt, and one in which his liability for the debt is to be saved, and the value of the mortgaged property applied in payment to be conclusively settled against him.

The order remanding the suit is affirmed.



SOUTHWESTERN RAILROAD COMPANY v. WRIGHT.

SAME v. GEORGIA.

ERROR TO THE SUPREME COURT OF THE STATE OF GEORGIA.

Argued December 16, 1885.—Decided January 4, 1886.

The Southwestern Railroad Company of Georgia as to those parts of its road which extend from Americus to Albany ; from Albany to Arlington ; and from Cuthbert to Eufaula, is subject to the general laws of the State for the taxation of railroads, without regard to the exemption in its original charter.

It is again decided that the surrender of the power to tax, when claimed, must be shown by clear and unambiguous language, admitting of no reasonable construction consistent with the reservation of the power.

These were suits in equity to restrain the collection of taxes. The facts are stated in the opinion of the court.

Mr. Richard F. Lyon and *Mr. A. R. Lawton* for plaintiff in error.

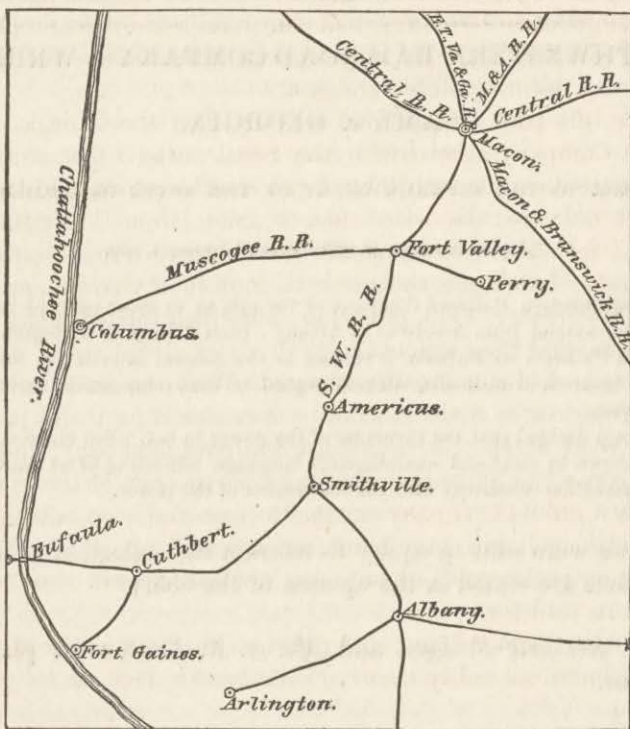
Mr. Samuel Barnett and *Mr. Clifford Anderson* for defendants in error.

MR. CHIEF JUSTICE WAITE delivered the opinion of the court.

These suits relate to the liability of the Southwestern Railroad Company, a Georgia corporation, for taxes on different parts of its railroad, and the Federal question involved arises

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under a claim of a charter contract of exemption from all taxation beyond "a tax of one-half of one per cent. upon its annual net income." The company owns and operates, 1, a road from Macon through Fort Valley, Americus, Smithville, and Cuthbert to Fort Gaines; 2, a road from Smithville to Albany; 3, a road from Albany to Arlington; 4, a road from Cuthbert to Eufaula; and, 5, a road from Fort Valley to Columbus. The line of all these roads is shown on the following plat:



The road from Macon to Americus and from Smithville to Fort Gaines was built under the original charter of the company granted December 14, 1845. Section 14 of this charter is as follows:

"§ 14. That the said railway and its appurtenances, and all property therewith connected, shall not be subject to be taxed

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higher than one-half of one per cent. upon its annual net income."

From Americus through Smithville to Albany the building was done by the Georgia and Florida Railroad Company, under a charter granted January 22, 1852. Section 2 of this charter is as follows:

"That the Georgia and Florida Railroad Company may, at any time, incorporate their stock with the stock of any other company, on such terms as may be mutually agreed upon by such companies: *Provided*, that the road and other property of this company shall be subject to such taxation as the legislature may deem equitable and just."

After this part of the road was finished the Georgia and Florida Company agreed with the Southwestern Company to consolidate its stock with that of the Southwestern, and thereupon it delivered its road, then running from Americus to Albany, into the possession of the Southwestern Company. This having been done, the general assembly of Georgia, on the 19th of December, 1859, passed an act which recited what had been done, and then enacted:

"Section 2. Be it further enacted, That the said railroad from Americus to Albany, shall be considered part and parcel of the road of the Southwestern Railroad Company, and be liable to pay the State the same tax that the rest of the Southwestern Railroad Company is liable to pay, and such additional tax as the legislature may hereafter impose."

The Southwestern Company now holds this part of its road under this transfer.

The road from Albany to Arlington was built under an act of the general assembly passed December 18, 1860, as follows:

"AN ACT to amend the several acts of the general assembly relating to the Southwestern Railroad Company, and to authorize the said company to construct a branch railroad, and for other purposes."

"Section 1. Be it enacted, etc., That the Southwestern Railroad Company, of this State, are hereby authorized to construct a branch railroad from Albany, or Dawson, or any point west

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of Dawson, on their line of road, to such place on the Chattahoochee River, or on the Florida line, as the said company may select, and that said company shall have for these purposes all the rights, privileges, and powers conferred by their charter of incorporation and the act amendatory thereof.

"Section 2. Be it further enacted, etc., That said company are hereby empowered and authorized to increase their capital stock \$1,000,000.00, and said additional stock shall be subject and liable to pay the same rates of tax to the State of Georgia that is now required of the said Southwestern Railroad Company, and such additional tax as the legislature may hereafter impose."

The road from Cuthbert to Eufaula was built under the following act, passed February 23, 1850 :

"AN ACT to amend an act entitled 'An act to incorporate the Southwestern Railroad Company, with power to extend branches to Albany, in the county of Baker, and Fort Gaines, in the county of Early, and to points below those places on the Chattahoochee and Flint Rivers, and to punish those who may wilfully injure the same, assented to December 27th, 1845, and for other purposes.'

"Section 1. Be it enacted by the Senate and House of Representatives of the State of Georgia, in general assembly met, and it is hereby enacted by the authority of the same, That from and after the passage of this act said railroad company shall have power and authority to construct a branch of said road from some point on said road to any point on the Chattahoochee River, below the town of Florence, in the county of Stewart, which said company may deem most advisable and proper, under the rules and restrictions as they are now authorized to construct said Southwestern Railroad : *Provided*, That if said company do not build the main trunk of said road to or below Fort Gaines within two years from the time that the same is completed to the point at which the said branch road, if commenced, may intersect, then said company shall be liable to refund to the stockholders, now residing in Early and Ran-

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dolph Counties, or their assigns, the amount of stock held by them, with interest from the time the same was paid."

The road from Fort Valley to Columbus was built by the Muscogee Railroad Company, under a charter granted December 27, 1845, which contained a clause upon the subject of taxation, substantially like § 14 of the charter of the Southwestern Company. The two companies were afterwards consolidated, and, when the case in which the State of Georgia appears as defendant in error was before this court on a former writ of error, it was decided that this road and that part of the road of the Southwestern Company which was built under the original charter, were exempt from taxation beyond one-half of one per cent. upon their annual net income. *Southwestern Railroad Co. v. Georgia*, 92 U. S. 676.

The Supreme Court of the State has decided in both these cases that the roads from Americus to Albany, from Albany to Arlington, and from Cuthbert to Eufaula were subject to the general laws of the State for the taxation of railroads, without regard to the exemption in the original charter of the company. To reverse judgments to this effect these writs of error were brought.

There is no question now as to the exemption from general taxation of that part of the road built under the original charter. That we have already decided, and there is no dispute about it now. The language of the exempting clause is somewhat unusual. It is not that the company or its stock shall be taxed in a certain way and otherwise exempt, but that the "said railway and its appurtenances, and all property therewith connected, shall not be subject to be taxed higher," &c. This clearly means the railroad specified in the charter, and none other. Possibly, if the company had acquired the road between Americus and Smithville from the Florida & Georgia Company without any special limitation by the State upon the exemption of its own charter, that part of the Florida & Georgia road might have been brought under the exemption. But this was not done, for the State, while recognizing the transfer of the Florida and Georgia road, was careful to provide that the road should be liable to pay not only the

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same tax as the rest of the road of the Southwestern Railroad Company, "but such additional tax as the legislature may hereafter impose." This is nothing less than an express reservation of power by the State to tax the part of the Southwestern Company's road between Americus and Albany as other railroads in the State are taxed when there is no charter exemption.

The same is true of the road between Albany and Arlington, for the power to build that line is coupled with a reservation of the right to tax. Such is evidently the meaning of § 2 of the act authorizing its construction.

The language of the authority to build the road from Cuthbert to Eufaula is somewhat different. There nothing is said about taxation; but that the original charter of the company did not give the right to build this part of the road is shown by the fact that this amendment was deemed necessary. In building this extension or branch the company was placed "under the rules and restrictions" they were subjected to in building the original road; but that did not necessarily imply an exemption of this line from taxation to the same extent the old road was exempted. That exemption was only for that road, and as the amending act does not in terms or by fair implication apply the exemption to the additional road which was to be built under it, we must presume that nothing of the kind was intended, and that the State was left free to tax that road like other property. No rule is better settled than that a contract of exemption from taxation is never to be presumed. A surrender of the power to tax when claimed "must be shown by clear and unambiguous language which will admit of no reasonable construction consistent with the reservation of the power." *The Delaware Railroad Tax Case*, 18 Wall. 206.

This disposes of all the Federal questions in the two cases, and as they were rightly decided in the court below, it follows that the judgments must be affirmed without an examination of the other errors assigned, which involve questions of State law only. *Murdock v. City of Memphis*, 20 Wall. 590. If the roads are not exempt under their charters from the operation of the general laws of the State for the taxation of railroads, the errors, if any, of the court below in fixing the value

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and ascertaining the amount of tax under the law are not reviewable here. No complaint is made of the law itself, if it applies to this company, so far as the disputed portions of its road are concerned. The administration of the law by the officers or the courts of the State involves no questions of which we can take jurisdiction. The law being valid, the courts of the State have exclusive jurisdiction, appellate or otherwise, of all cases brought before them involving proceedings for its enforcement.

The judgment in each of the cases is affirmed.

BROWN & Others v. DAVIS & Others.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR
THE NORTHERN DISTRICT OF NEW YORK.

Argued December 17, 1885.—Decided January 11, 1886.

Claim 2 of reissued letters patent No. 8589, granted to Charles F. Davis and William Allen, February 18, 1879, for an "improvement in grain drills" (the original patent, No 74,515, having been granted to said Davis as inventor, February 18, 1868), namely: "The shoes or hoes of a seed planter, attached to the main frame, substantially as described, in combination with a lever, or its equivalent, whereby they can be shifted at the pleasure of the operator, from a straight to a zigzag line, or *vice versa*," makes the lever, or its equivalent, an essential element of the combination; and the claim is not infringed, where the lever is dispensed with and the human hand is substituted, although in the patent the hand is applied to work the lever.

In view of a prior invention, claims 1 and 3 of the reissue, which were not made in the original patent, were held to be limited to the special shifting apparatus of the patent, because, if extended to cover shifting arrangements not substantially using a rotating crank-shaft, they became claims which could not lawfully have been granted in the original patent, and, as claims in a reissue, were invalid, because the application for the reissue was made nearly eleven years after the original patent was granted, and after machines effecting the shifting by other means than a rotating crank-shaft had gone into use subsequently to the date of the original, and no sufficient excuse was given for the laches and delay.

It appeared as a fact, that new matter was introduced into the specification of the reissue for the purpose of reaching machines which the claims of the