

Syllabus.

change its *situs*) must be taken in connection with the provisions of the constitution existing at the time, and that while the incorporators might take all the other rights, powers and privileges granted by the charter, so far as to give them the franchise to be a corporation and exercise the powers therein granted, the immunity of exemption would not pass under the grant. It might possibly have been held, in a direct attack of the State upon the charter, that there had been an unreasonable delay in accepting it, and that consequently there was in law no corporation under the charter. That course was not taken, and the legislature, after the assumed organization under the charter in 1884, passed an act changing the name of the corporation and permitting it to change its *situs*. It might, therefore, be claimed that it thereby recognized the existence of the corporation under the charter, but in subordination to the constitution and laws existing at the time when the charter was accepted.

We think upon these facts the exemption from taxation did not pass to the corporation, and the assessments were in consequence legal and valid.

The judgment is, therefore,

Affirmed.

PLANTERS' INSURANCE COMPANY *v.* TENNESSEE AND SHELBY COUNTY, No. 679, by stipulation, is to abide the event of this cause.

HOME INSURANCE AND TRUST COMPANY *v.* TENNESSEE FOR THE USE OF MEMPHIS.

ERROR TO THE SUPREME COURT OF THE STATE OF TENNESSEE.

No. 672. Argued and submitted January 20, 21, 22, 1896. — Decided March 2, 1896.

The charter of the Memphis Life and General Insurance Company contained a provision "that there shall be a state tax of one half of one per cent upon the amount of the capital actually paid in." The charter of the Home Insurance and Trust Company authorized that company to "or-

Statement of the Case.

ganize with all the forms, officers, terms, powers, rights, reservations, restrictions and liabilities given to and imposed upon the Memphis Life and General Insurance Company." *Held*, that the Home Company was not subject to the provision respecting taxation in the charter of the Memphis Life Company.

THE plaintiffs below sought by this bill to recover certain taxes against the Home Insurance Company, or its shareholders, under the general revenue laws of the State, at a greater rate than the plaintiffs in error claimed they are liable to pay. This case was also tried on an agreed statement of facts, by which it appears that on the 29th day of February, 1856, the legislature of Tennessee passed an act incorporating the Home Insurance Company. On March 20, 1858, the legislature passed an act, the fourteenth section of which provides: "That the name of the Home Insurance Company of Memphis be changed to that of the Home Insurance and Trust Company, and said company may organize with all the forms, officers, terms, powers, rights, reservations, restrictions and liabilities given to and imposed upon the Memphis Life and General Insurance Company, provided nothing herein contained shall in anywise be construed to release said company from any existing liability."

The present company organized under this charter. The Memphis Life and General Insurance Company, referred to in the above section, was chartered March 2, 1854, the thirtieth section of which reads: "That there shall be a state tax of one half of one per cent upon the amount of the capital actually paid in." It is conceded that the Home Insurance Company has regularly paid this tax. The Supreme Court of Tennessee held that the shares of stock, the capital stock, the surplus and franchises of the company were subject to taxation, and that the exemption from taxation claimed by it and its shareholders was not well founded. The court rendered a decree against the company under the stipulation, by which the company assumed the liability of its shareholders for taxes against them, from which decree plaintiffs in error have prosecuted this writ of error.

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Mr. Frank P. Poston, for plaintiffs in error, submitted on his brief.

Mr. S. P. Walker, (with whom was *Mr. C. W. Metcalf* and *Mr. F. T. Edmondson* on the brief,) for defendants in error.

MR. JUSTICE PECKHAM, after stating the case, delivered the opinion of the court.

It is quite questionable whether section 30 of the act incorporating the Memphis Life and General Insurance Company grants to that company any immunity from taxation. Without discussing or deciding that question, however, we think that, assuming the exemption to exist in favor of that company, it did not pass to the Home Insurance Company by virtue of the fourteenth section of the act of 1858, above quoted. We think the words contained in that section, referring to the Memphis Life and General Insurance Company, are of no broader significance than those referred to in the case of *Memphis v. The Phœnix Insurance Company*, just decided. Upon authority of that case, therefore, this judgment must be

Affirmed.

HOME INSURANCE AND TRUST COMPANY *v.* TENNESSEE AND SHELBY COUNTY, No. 673. Error to the Supreme Court of the State of Tennessee. MR. JUSTICE PECKHAM. This case is precisely similar to the last preceding one, and must be governed by our decision in that. Judgment is therefore

Affirmed.

DISTRICT OF COLUMBIA *v.* LYON.

ERROR TO THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

No. 135. Argued and submitted December 20, 1895. — Decided March 2, 1896.

Land in the city of Washington was sold for non-payment of certificates issued by the city government for the cost of local improvements, and was bought in by the holder of the certificates for the sum which they