

the purpose of measuring the tax, the value of property, no part of which originally belonged to one spouse, but which came to the tenancy, mediately or immediately, as a pure gift from the other, and which, as a consequence of the latter's death, was relieved from restrictions imposed by the law in respect of tenancy by the entirety so as to produce in the survivor the right of sole proprietorship, is obviously neither arbitrary nor capricious. The evident and legitimate aim of Congress was to prevent an avoidance, in whole or in part, of the estate tax by this method of disposition during the lifetime of the spouse who owned the property, or whose separate funds had been used to procure it; and the provision under review is an adjunct of the general scheme of taxation of which it is a part, entirely appropriate as a means to that end. *Taft v. Bowers*, 278 U. S. 470, 482.

*No. 428, judgment affirmed.*

*No. 546, judgment reversed.*

*No. 547, judgment reversed.*

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GEORGIA POWER COMPANY v. CITY OF  
DECATUR.

CERTIORARI TO THE SUPREME COURT OF GEORGIA.

No. 363. Argued April 16, 17, 1930.—Decided May 19, 1930.

1. Upon review of a decree of a state court requiring a street railway company to continue operating for a non-compensatory rate upon the ground that it is bound to operate for that rate by contract with a municipality, this Court must pass upon the company's claim that the contract has expired and that the decree deprives it of its property without due process of law. P. 508.
2. A street railway company in Georgia, which, pursuant to a town ordinance, made a contract with the town prescribing a maximum fare with respect to one of its lines situate partly within the town

limits, afterwards claimed that the only franchise for the operation of the line within the town was an earlier ordinance of the town under which the line had been constructed by the company's predecessor in title, and that the obligation to operate the line and maintain the contract fare ended with the expiration of the predecessor's charter some time after the date of the contract. *Held*, (accepting the state court's construction of the state law and its decision as to the effect of the contract), that the new company's franchise to operate was granted by the State; that all that the town could give was its consent to use the streets, which was given by the contract, and that the franchise of the new company and the contract are still in force. P. 509.

3. There is nothing in the ordinance or contract here in question to indicate a purpose to terminate the obligation of the carrier in respect of the fare limited while it continues to operate the line as part of its system under its present franchise. P. 510.
4. The contract will continue to bind the carrier during the period intended by the parties unless earlier altered by them or relaxed by state authority, and losses attributable to the stretch of track in question and the fares fixed by the contract are immaterial while the contract continues. P. 511.

168 Ga. 705, affirmed.

CERTIORARI, 280 U. S. 544, to review a decree which affirmed a decree permanently enjoining the present petitioner from ceasing to operate a street railway line within the City of Decatur, Georgia, and from violating a contract fixing rates of fare and transfer privileges.

*Mr. Walter T. Colquitt*, with whom *Mr. Ben J. Conyers* was on the brief, for petitioner.

*Mr. Hooper Alexander* for respondent.

MR. JUSTICE BUTLER delivered the opinion of the Court.

The city of Decatur brought this suit in the superior court of DeKalb county against the Georgia Railway and Electric Company and the Georgia Railway and Power Company. The former was the owner and the latter was the lessee and operator of a system of street



and suburban railway lines of more than 200 miles serving Atlanta, Decatur and other places in that part of Georgia. Before trial, they consolidated and became the Georgia Power Company, and it was made the defendant. The city prayed, and the court granted, a decree permanently enjoining petitioner from violating an ordinance passed by the city March 3, 1903, from violating a contract of April 1, 1903, based upon the ordinance, and from ceasing to operate about a mile of its line in Decatur. The decree was affirmed by the state supreme court. 168 Ga. 705.

Prior to the commencement of this suit it had been finally adjudged in litigation between the city and petitioner's predecessors that the ordinance and contract bound the carrier not to charge more than five cents per passenger between points on that stretch of track in Decatur and the terminus of the line in Atlanta and required it upon the payment of each full fare to give to the passenger a transfer ticket that would entitle him for one fare to ride between points on such track and points on any of the carrier's lines in Atlanta. It was also held that the state railroad commission was without authority to change rates that are established by contract. *Georgia Ry. & Power Co. v. Railroad Comm.*, 149 Ga. 1. *Georgia Ry. & Power Co. v. Town of Decatur*, 152 Ga. 143. *Georgia Ry. & Power Co. v. Decatur*, 153 Ga. 329; 262 U. S. 432. The duration of the defendant's obligation to operate that line or to serve for such contract fare was not determined.

August 14, 1919, the commission fixed the carrier's fares other than those covered by the contract at six cents; September 22, 1920, it raised them to seven cents, and December 15, 1927, it made them ten cents per passenger but required the carrier to sell four tickets for thirty cents. The cost of the transportation covered by the contract fare, exclusive of any compensation for the use of prop-

erty employed to furnish the service, exceeds the revenue derived therefrom and is substantially higher per passenger than the cost of service covered by the fares fixed by the commission. An ordinance of the city of Decatur passed May 15, 1925, directed paving of the streets occupied by the line in question and the assessment of a substantial portion of the cost against the lessee. Thereupon lessor and lessee offered to surrender to the city the permit for the operation of the line and the lessee notified the city that at a time specified it would discontinue the service. The city refused to accept the surrender and promptly brought this suit.

Petitioner maintained below and here insists that the franchise and the rate contract expired August 16, 1919, and that its obligation to operate the line or keep the five cent fare in force was terminated by such offer and notice. See *Denver v. Denver Union Water Co.*, 246 U. S. 178, 184. It contends that the rate is confiscatory, that the decree requires it to operate the line and to serve for the five cent fare and that, if compelled so to do, it will be deprived of its property without due process of law in violation of the Fourteenth Amendment.

This court has recently held that the usual permissive charter of a railroad company does not oblige the company to operate its railroad at a loss; that, where it is reasonably certain that future operation will be at a loss, the company, in the absence of contract obligation to continue, may cease, and if in such circumstances the company were compelled by the State to continue to operate at a loss, it would be deprived of its property without due process of law. *Railroad Commission v. Eastern Texas R. R.*, 264 U. S. 79. The State may not by any of its agencies disregard the prohibitions of the Fourteenth Amendment. *Chicago, Burlington, &c. R'd v. Chicago*, 166 U. S. 226, 234. *Raymond v. Chicago Traction Company*, 207 U. S. 20, 36. We are therefore required to



pass upon the merits of petitioner's claim. *Stearns v. Minnesota*, 179 U. S. 223, 232. *Ward v. Love County*, 253 U. S. 17, 22.

By an Act of the Georgia legislature passed August 16, 1889 (Acts 1888-89, p. 211) the Collins Park and Belt Railroad Company was incorporated and empowered to construct and operate street railways in Atlanta, in other parts of Fulton county and in DeKalb and other counties. Subsequently its name was changed to the Atlanta Rapid Transit Company. It applied for and the town of Decatur by ordinance passed September 4, 1899, granted to it a "franchise" to construct and operate the line in question. The Act does not specify the term of the company's charter and there is nothing in it or in the ordinance to fix the duration of the carrier's obligation to operate the line. January 1, 1902, the Georgia Railway and Electric Company was incorporated for the term of 101 years and was empowered by the Act under which it was organized to acquire and operate street and suburban railways. Acts 1892, p. 37. On March 28, 1902, the Atlanta Rapid Transit Company conveyed all its property to the last mentioned company. March 3, 1903, the town of Decatur by ordinance granted the latter permission to discontinue operation and remove one of its Decatur lines upon the condition that it should continue to operate the stretch of track here involved and "never charge more than five cents for one fare" for the transportation above described. And April 1, 1903, the town and the company made a contract by which each agreed to do all the things required to be by it performed under the terms of the ordinance. October 16, 1911, the Georgia Railway and Power Company was incorporated as an interurban and street railroad company for the term of 101 years, and January 1, 1912, the Railway and Electric Company leased all its lines of railway and other property to the latter for a term of 999 years.

It may be assumed, as contended by petitioner, that under the state law (Code, § 2215) the charter of the Collins Park Company expired August 16, 1919, thirty years after passage of the special Act, and that it was not bound by its franchise to continue to operate the line after that date. See *Turnpike Co. v. Illinois*, 96 U. S. 63, 68. The petitioner contends that the ordinance of September 4, 1899, was the only franchise for the operation of the line in question, and that the obligation to operate the line and maintain the contract fare ended with the expiration of the charter of the Collins Park Company.

But franchises for the construction and operation of street railway lines are granted by the State. And January 1, 1902, the State chartered the Georgia Railway and Electric Company. In this case the supreme court held (p. 709) that under the state constitution (Code, § 6448) "all that towns and cities have to give to the construction of passenger street-railways within the limits of the same is the consent of the corporate authorities." And it held that by the contract of April 1, 1903, the city of Decatur gave its consent for the use of its streets by the Electric Company. We accept that court's construction of the Acts of the legislature and the ordinance and its decision as to the effect of the contract of April 1, 1903. Upon the conveyance by the Atlanta Rapid Transit Company the system, including the Decatur line in question, passed to the Georgia Railway and Electric Company, to be operated under the franchise granted to that company by the Act of the legislature under which it was incorporated. It is clear that this franchise and the rate contract of April 1, 1903, are still in force.

There is nothing in the ordinance or contract to indicate a purpose to terminate the obligation of the carrier in respect of the five cent fare while it continues to operate the line as part of its system under its present franchise (*Fort Smith Traction Co. v. Bourland*, 267 U. S. 330),



and the contract will continue to bind petitioner during the period intended by the parties unless earlier altered by them or relaxed by state authority. *Georgia Ry. Co. v. Decatur*, 262 U. S. 432, 438. The losses attributable to the stretch of track in question and the five cent fare are immaterial while the rate contract continues. *Public Service Co. v. St. Cloud*, 265 U. S. 352, 355. *R. R. Commission v. Los Angeles R. Co.*, 280 U. S. 145, 152.

*Decree affirmed.*

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WESTERN CARTRIDGE COMPANY v. EMMERSON,  
SECRETARY OF STATE OF ILLINOIS.

CERTIORARI TO THE SUPREME COURT OF ILLINOIS.

No. 375. Argued April 21, 1930. Decided May 19, 1930.

A state franchise tax or license fee imposed on a manufacturing corporation at the rate of five cents per hundred shares of that portion of its issued capital stock which bore the same ratio to all its issued capital stock as the amount of its property and business within the State bore to its total business and property, *held* not violative of the commerce clause although much of the business included in the computation as transacted in the State consisted of sales of goods upon orders received from outside and accepted by mail, the goods being shipped by the corporation f. o. b. at its factories to the destinations designated by the purchasers. *Air Way Corp. v. Day*, 266 U. S. 71, distinguished.

335 Ill. 150, affirmed.

CERTIORARI, 280 U. S. 545, to review a judgment sustaining the dismissal of the bill in a suit to enjoin payment to the Treasurer of Illinois of the amount of a tax collected from the petitioner by the respondent Secretary of State.

*Mr. Colin C. H. Fyffe* for petitioner.

*Mr. Bayard Lacey Catron*, Assistant Attorney General of Illinois, with whom *Mr. Oscar E. Carlstrom*, Attorney General, was on the brief, for respondent.