

## Statement of the case.

WILMINGTON RAILROAD *v.* REID, SHERIFF.

1. A statute exempting all the property of a railroad corporation from taxation, exempts not only the rolling stock and real estate owned by it and required by the company for the successful prosecution of its business, but its franchise also.
2. A charter to a railroad company containing such an exemption, is a contract; and a law subsequently passed, laying a tax on the company's franchise, rolling stock, or real property, violates the obligation of the contract, and is void.

ERROR to the Supreme Court of North Carolina; the case being thus:

In 1853 the legislature of North Carolina chartered the Wilmington and Raleigh Railroad Company. One section of the charter ran thus:

"It shall be lawful for the president and directors to purchase with the funds of the company, and place on the said railroad, all machines, wagons, vehicles, carriages, and teams of any description whatsoever which may be deemed necessary for the purposes of transportation; and all the property purchased by the said president and directors, and that which may be given to the company, and the works constructed under the authority of this act, and all profits accruing on the said works and the said property shall be vested in the respective shareholders of the company and their successors and assigns forever, in proportion to their respective shares; and the shares shall be deemed personal property; and the property of said company and the shares therein shall be exempt from any public charge or tax whatsoever."

With this charter in force, the franchise and rolling stock of the company were assessed, under a subsequent law and pursuant to it, for taxation by the State of North Carolina and the county of Halifax, in two parts—one, the apportioned share for the county of Halifax, assessed in each case upon the entire franchise and rolling stock jointly, and the other a tax assessed upon certain lots of land in Halifax County, appurtenant to and forming a part of the property of the company, and necessary to its business.

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Argument in favor of the right to tax.

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On application for injunction against one Reid, sheriff, who was going to seize the company's property for non-payment of the tax—the application for the injunction being made on the ground that the subsequent law impaired the obligation of a contract—the Supreme Court of the State adjudged that the law did not do this, and that the tax was valid. The case was accordingly now brought here by the company to review that judgment.

It may be here added that provisions exempting the property of companies chartered by it, exist in the cases of numerous companies incorporated by the legislature of North Carolina; beginning with the charter to the Dismal Swamp Canal Company, A. D. 1790. In some cases the provision exempted the company from all taxes forever; in others but for a limited time. In some, all dividends were exempted; in others, dividends when not exceeding a certain rate per cent. Such exemptions are more observable in earlier times than in later ones.

*Mr. W. H. Battle, in support of the ruling below:*

In the *Binghamton Bridge Case*,\* it is said by this court "that all rights which are asserted against the State must be clearly defined, and not raised by inference or presumption; and if the charter is silent about a power, it does not exist." The reason for such a doctrine is obvious. It is that the taxing power is one of the highest and most important attributes of sovereignty; essential to the establishment and continued existence of the government. No government can divest itself altogether of such a power. Concede, that it may, by a contract for an adequate consideration, bind itself for a longer or a shorter period, not to exercise its taxing power at all, or not beyond a certain extent, upon certain persons or things. Still this is a dangerous restriction upon its power, because the necessities of the government cannot always be foreseen. In the changes and chances of things, those who have charge of the administration may

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\* 3 Wallace, 75.

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have need of all the possible resources of the country to save it from great disaster, if not from ruin.\*

Now the *franchise* of the corporation is something distinct from its *property*, and the distinction is recognized in adjudged cases.† In this case the tax is upon the *franchise*. The exemption of the charter extends only to the property, leaving the franchise or body politic itself liable to be taxed; just as an individual might have his property exempt while the State might tax his poll *ad libitum*.‡ In view of the great explicitness of language required to divest a State of so necessary an attribute of sovereignty, we think that nothing less than the exemption in terms of the franchise as well as of the property of a corporation from taxation, can or ought to relieve it from the burden of contributing its just proportion towards the support of the government §

*Messrs. Carlisle, McPherson, and B. F. Moore, contra.*

Mr. Justice DAVIS delivered the opinion of the court.

It has been so often decided by this court that a charter of incorporation granted by a State creates a contract between the State and the corporators, which the State cannot violate, that it would be a work of supererogation to repeat the reasons on which the argument is founded. It is true that when a corporation claims an exemption from taxation, it must show that the power to tax has been clearly relinquished by the State, and if there be a reasonable doubt about this having been done, that doubt must be solved in

\* *State v. Petway*, 2 Jones's N. C. Equity, 396; *Bank of Pennsylvania v. Commonwealth*, 19 Pennsylvania State, 144; *Lord Middleton v. Lambert*, 1 *Adolphus & Ellis*, 401; *Christ Church v. County of Philadelphia*, 24 *Howard*, 300.

† *State v. Rives*, 5 Iredell, 297—Revised Code of 1856, ch. 26, §§ 5 to 10; *State v. Petway*, 2 Jones's N. C. Equity, 396; *Attorney-General v. Bank of Charlotte*, 4 Id. 287.

‡ *Union Bank of Tennessee v. State*, 9 *Yerger*, 490.

§ *Home of the Friendless v. Rouse*, 8 *Wallace*, 430; *The Washington University v. Rouse*, 1b. 439.

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favor of the State. If, however, the contract is plain and unambiguous, and the meaning of the parties to it can be clearly ascertained, it is the duty of the court to give effect to it, the same as if it were a contract between private persons, without regard to its supposed injurious effects upon the public interests.

It may be conceded that it were better for the interest of the State, that the taxing power, which is one of the highest and most important attributes of sovereignty, should on no occasion be surrendered. In the nature of things the necessities of the government cannot always be foreseen, and in the changes of time, the ability to raise revenue from every species of property may be of vital importance to the State, but the courts of the country are not the proper tribunals to apply the corrective to improvident legislation of this character. If there be no constitutional restraint on the action of the legislature on this subject, there is no remedy, except through the influence of a wise public sentiment, reaching and controlling the conduct of the law-making power.

There is no difficulty whatever in this case. The General Assembly of North Carolina told the Wilmington and Weldon Railroad Company, in language which no one can misunderstand, that if they would complete the work of internal improvement for which they were incorporated, their property and the shares of their stockholders should be forever exempt from taxation. This is not denied, but it is contended that the subsequent legislation does not impair the obligation of the contract, and this presents the only question in the case. The taxes imposed are upon the franchise and rolling stock of the company, and upon lots of land appurtenant to and forming part of the property of the company, and necessary to be used in the successful operation of its business. It certainly requires no argument to show that a railroad corporation cannot perform the functions for which it was created without owning rolling stock, and a limited quantity of real estate, and that these are embraced in the general term property. Property is a word of large

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import, and in its application to this company included all the real and personal estate required by it for the successful prosecution of its business. If it had appeared that the company had acquired either real or personal estate beyond its legitimate wants, it is very clear that such acquisitions would not be within the protection of the contract. But no such case has arisen, and we are only called upon to decide upon the case made by the record, which shows plainly enough that the company has not undertaken to abuse the favor of the legislature.

It is insisted, however, that the tax on the franchise is something entirely distinct from the property of the corporation, and that the legislature, therefore, was not inhibited from taxing it. This position is equally unsound with the others taken in this case. Nothing is better settled than that the franchise of a private corporation—which in its application to a railroad is the privilege of running it and taking fare and freight—is property, and of the most valuable kind, as it cannot be taken for public use even without compensation.\* It is true it is not the same sort of property as the rolling stock, road-bed, and depot grounds, but it is equally with them covered by the general term “the property of the company,” and, therefore, equally within the protection of the charter.

It is needless to argue the point further. It is clear that the legislation in controversy did impair the obligation of the contract, which the General Assembly of North Carolina made with the plaintiff in error, and it follows that the judgment of the Supreme Court must be REVERSED, and the cause remanded for further proceedings

IN CONFORMITY WITH THIS OPINION.

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\* Redfield on Railways, 129, § 70.

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Statement and arguments.

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NOTE.

At the same time with the preceding case was adjudged another, from the same court, the two cases being of kindred character, and alike in their essential features, the difference between the two consisting chiefly in the extent of the exemption. It was the case of

THE RALEIGH AND GASTON RAILROAD CO. v. REID, SHERIFF.

The principle of the preceding case affirmed in a case where the exemption from taxation was limited to a term of years, and where the dividends did not exceed a certain sum.

In the case just above adjudged and reported, the property of the railroad company could not by its charter be taxed under any circumstances. In the case of the charter of the railroad company now under consideration the exemption was limited to a term of fifteen years. After this limitation expired the legislature was at liberty to tax the individual shares of the stockholders whenever their annual profits exceeded 8 per cent., provided that the tax did not exceed twenty-five cents a share per annum. The pleadings in the case showed that the annual profits on the shares never reached 8 per cent.

*Messrs. Carlisle, McPherson, and B. F. Moore, for the plaintiff in error:*

It is laid down in Lord Hobart's Reports\* that affirmatives in statutes that introduce a new rule imply a negative of all else. Father Plowden† equally declares that when a statute limits a thing to be done in a particular mode, it includes a negative of any other mode.

The tax is in violation of rules thus anciently and authoritatively laid down; rules conformed to obvious sense and justice.

*Mr. W. H. Battle, contra,* argued that such exemptions were so grossly impolitic that they could not be considered as legitimate exercise of legislative power.

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\* *Slade v. Drake*, 298.

† *Stradling v. Morgan*, 206 b.