was no judgment found in the record, and an inspection of it showed that while the judgment of the Supreme Court of the Territory merely in terms affirmed the judgment of the District Court, the judgment of the District Court was not in the record, and, in fact, no judgment was to be found in the record which we could either reverse or affirm.

Under these circumstances, as the defendants in error had made no objection, by motion to dismiss the writ, or otherwise, before the hearing, the court heard the argument, and of its own motion gave the plaintiffs time to perfect the record by certiorari, if it could be done. The proper judgment has since been certified to this court, and it is now

AFFIRMED.

BAILEY *v.* MAGWIRE, COLLECTOR.

1. A claim of exemption from county and municipal taxation cannot be supported, any more than a claim from State taxation, except upon language so strong as that, fairly interpreted, no room is left for controversy. No presumption can be made in favor of the exemption; and if there be reasonable doubt, the doubt is to be solved in favor of the State.
2. The fact that in an act amending the charter of a railroad corporation special provision is made for ascertaining the taxes to become due by the corporation to the State (nothing being said about the manner of ascertaining other taxes), is not of itself enough to work an exemption of the property of the corporation from all taxation not levied for State purposes. Silence, in regard to such other taxes, cannot be construed as a waiver of the right of the State to levy them. There must be something said affirmatively, and which is explicit enough to show clearly that the legislature intended to relieve the corporation from this part of the burdens borne by other real and personal property, before such an act shall amount to a contract not to levy them.
3. A provision in such an act, prescribing a mode for ascertaining the tax due the State, by which provision the president of the company is required to furnish to the auditor of the State a statement, under oath, of the actual cash value of the property to be taxed, on which the company is directed to pay the tax due the State, within a certain time, to the treasurer, under penalties, does not amount to a contract, that the State will not pass any law to assess the property of the company for taxation for State purposes in a different manner.

4. But if a particular mode has been prescribed for assessing the property of a particular company that mode should be followed, until, in some way, a different mode is prescribed.
5. Whether or not an act prescribing such particular mode has been impliedly repealed by a general revenue act, not in terms repealing it, is a matter peculiarly within the province of the highest courts of the State, whose acts are the subjects of the question, to decide. And when such courts have decided the question, their decision is controlling.

APPEAL from the Circuit Court for the Eastern District of Missouri.

Bailey and others, foreign stockholders, in the Pacific Railroad Company, a corporation existing and organized under different special acts of the State of Missouri, filed a bill in the court below against a certain Magwire, collector of State, county, school, and city taxes for the county and city of St. Louis, Missouri, to enjoin his collection of such taxes assessed for the year 1869, on the said railroad company under the general tax law of the State; the ground of the application being that by acts of the Missouri legislature governing the said railroad company, and which acts, as the company asserted, made a contract with it, the company—

1st. Was not liable for any county, school, or city taxes at all.

2d. Was not liable for State taxes under the act in virtue of which they had been assessed, but was liable for them only under another act; a special act relating to itself, and prescribing a manner for assessment, &c., different from the manner which had here been followed.

The case was thus:

The charter of the Pacific Railroad Company was granted in 1849, and counties, cities, and towns along its line were authorized to subscribe to it; but it contained no provision exempting its property from taxation.*

By an act of 1851, amendatory of the charter,† it was enacted that the capital stock, together with all their works

* Session Acts of 1849, p. 219.

† Id. 1851, p. 271.

and other property, and all profits which should arise from the same should be vested in the respective shareholders of the company forever, in proportion to their respective shares, and that the same should be deemed personal estate and be exempt from *all public charge or tax whatsoever*, for the term of five years from the passage of the act. This exemption, of course, would have expired in 1856.

At the time of the passage of this act, as before and since, there existed in Missouri, under its public statutes, a general scheme of taxation of all property in the State; this scheme embracing all property of corporations over and above their capital stock, as well as the property of citizens in the counties where it was situated.

In this state of things, the exemption given by the act of 1851 not having yet expired, the legislature of Missouri, on the 25th of December, 1852, passed another act amendatory of the charter. This act lent its credit to the company by issuing to it State bonds to the amount of $1,000,000, to be used after the expenditure of a like sum raised from other sources; and it gave to the company a large body of lands which Congress had given to the State.

By a twelfth section it made the following enactment as to taxation:

"SECTION 12. The said Pacific Railroad shall be exempt from taxation until the same shall be completed, opened, and in operation, and shall declare a dividend, when the road-bed, buildings, machinery, engines, cars, and other property of such completed road, at the actual cash value thereof, shall be *subject to taxation at the rate assessed by the State on other real and personal property of like value.*

"And for the purpose of ascertaining the value of the same, it shall be the duty of the president of said company, on the first day of February in each year, after such road is completed, opened, and put in operation, and declares a dividend, to furnish to the auditor of the State a statement under his oath, of the actual value of the road-bed, buildings, machinery, engines, cars, and other property appertaining to such completed road; and from said statement, the auditor shall charge said company with

the amount appearing to be due to the State, according to the statement furnished by the president of the company.

"And in case said company shall fail to pay into the State treasury, within thirty days after the first day of December in each year, the amount charged against said company as aforesaid, said company shall forfeit and pay to the State of Missouri, in addition to the sum with which said company may stand charged by the auditor, ten per cent. per month, after the expiration of said thirty days, on the amount charged to said company; which sum charged against said company, together with the ten per cent. per month hereinbefore specified, may be recovered in the name of the State of Missouri, by civil action, in any court of competent jurisdiction; and should the president of said company fail to make out and furnish to the auditor of the State a statement as herein required, said company shall forfeit and pay to the State $10,000 for such failure, which may be recovered in the name of the State of Missouri, in any court of competent jurisdiction.

"*Provided*, That if said company shall fail for the period of two years after said roads respectively shall be completed and put in operation to declare a dividend, then the said company shall no longer be exempt from the payment of the *said tax*, nor from the forfeitures and penalties in this section imposed."

This act of 1852 was accepted by the company, and the rights given by the act of 1851 were thus surrendered.

The road was completed in April, 1866; and after April, 1868, and in each year since that time—the company not having yet made any dividend—the president of the company made returns of its taxable property in the manner required by the twelfth section of the act of 1852; but not in any other manner.

At the time when the road was completed $3,614,500 of stock had been subscribed; of which $2,500,000 had been subscribed by the counties and towns along the line of it.

In 1866 the legislature of Missouri passed an act relating to the collection of revenue generally throughout the State. The mode prescribed for ascertaining the value of property of corporations generally, was different from that prescribed by the twelfth section of the act of 1852, for ascertaining

Statement of the case.

the value of the property of the Pacific Railroad. But the act of 1866 did not in terms nor by any *plain* implication repeal the twelfth section of the act of 1852. Whether it did so by any kind of implication was a question that came before the Supreme Court of Missouri, A.D. 1873, in *The Pacific Railroad Company* v. *Cass County*,* in which case the court decided that the act of 1866 did not repeal the said twelfth section in any way.

In August, 1871, this decision not then having been made by the said Supreme Court, the assessors for St. Louis County, *acting under the provisions of the act of* 1866, assessed a tax for *State*, county, school, and city purposes on the property of the Pacific Railroad Company, and seized upon its property, advertising it for sale. Thereupon the present bill was filed; by which various foreign stockholders in the company—the company itself declining to act, and remaining passive—sought to enjoin the collection of the tax.

Its positions, of course, were:

1st. That the twelfth section of the act of 1852, respecting the taxation of the road, was and remained a contract between the State of Missouri and the railroad company; that it specifically provided for the *whole subject* of the taxation of the road, and that in virtue of it the general revenue laws of the State were not intended to and did not apply to this particular company.

2d. That the said section accordingly exempted the company from taxation for county, school, and all other purposes except those mentioned in it.

3d. That if this were not all so, thus broadly stated, and if the section were not a contract as to all taxes, and did not, as such contract, furnish the only authority and rule by which this particular company was to be taxed, yet that until repealed it was the law governing the subject of taxation for State purposes; that, as was shown by the decision in the *Pacific Railroad Company* v. *Cass County*, it had never yet been repealed, and therefore that certainly, as

* 53 Missouri, 26.

to the taxes for State purposes, the collector was to be enjoined.

The positions of the collector, on the other hand, were—

1st. That after the time limited in the twelfth section—that is to say, as things turned out, after April, 1868—the property of the railroad company became subject to taxation, as any other property in the State, to State, county, municipal, and school taxation, and through any mode which the legislature of the State might see fit to prescribe.

2d. That the provisions of the said twelfth section constituted no contract in favor of the company as against the right of the State (after the time had elapsed during which the company was to be exempt from taxation) to provide by law for the taxation of the property of the company in any manner it should see fit, and for the general purposes for which any other property in the State was subjected to taxation; and finally,

3d. That in point of fact the said twelfth section had been repealed, impliedly, by the general purpose of the act of 1866, so that even as to taxation for State purposes, it no longer applied.

The court below sustained the defendant in everything excepting as to *city* taxes (which, for reasons not necessary here to be stated, it deemed illegally laid); decreeing, of course, that the defendant might lawfully collect not only the county and school taxes, as he proposed to do, but also, in the same way, the *State* taxes. The bill to enjoin him from so doing was accordingly dismissed, and from the decree dismissing it this appeal was taken.

It may be well enough to mention that in a case which was in effect one between these same parties, and lately before this court, it had been decided that the twelfth section of the act of 1852 created a *contract* between the parties, exempting the railroad from taxation until it was completed, and for two years afterwards, if it did not pay a dividend before the expiration of these two years.*

* Pacific Railroad *v.* Magwire, 20 Wallace, 36.

Argument against the right to tax generally.

Messrs. James Baker and G. F. Edmunds, for the stockholders, appellants:

I. It has been already decided by this court that the twelfth section, under consideration, makes a "contract" between the State of Missouri and the railroad company, that the company should be exempt by it from all taxation, until the road was completed and a dividend paid, or until two years after its completion. The two years having passed, the only question now to be considered, under the first of the points raised by the case, is as to the extent to which the road may be taxed, and the manner of taxation. What is the extent of that contract?

The language of the act, leaving out such words as do not affect the meaning, so far as this question is concerned, is:

"The Pacific Railroad shall be exempt from taxation until the same shall be completed and in operation, and shall declare a dividend, *when it shall be subject to taxation at the* RATE *assessed by the State on other property of like value.*"

The taxation to which the road is to be subject, after the happening of the events mentioned, is to be at a certain *rate*, that is, at the rate assessed by the State on other real and personal property of like value. No other or greater rate is authorized, nor is any other taxation than that provided by the act, contemplated. It is not a mere declaration, that after the payment of a dividend the property shall be subject to taxation in the manner and at the rate specified. The language employed is different. The property is first declared to be exempt from all taxation. This is to continue until the road is completed and declares a dividend, after which it is to be subject to a specified kind and amount of taxation. Does not this sentence, taken together, preclude the idea of any other or greater taxation? Is it not plain that the exemption is to continue as to all taxations except that particularly specified? It is not said that after these things take place it shall be no longer exempt. There are no negative words used. Were it not for the language which restores it, the total exemption would

still continue. The limitation of the time of the total exemption and of the amount of the subsequent taxation are obviously one sentence, and must be taken together. The clause should not be divided into separate and distinct subjects, so that it may be argued that the exemption granted is to cease when a dividend is declared, and by the process of division and argument, a new subject of the remainder of the sentence made, which shall provide what shall take place afterwards. The whole must be taken together, the latter part as limiting or qualifying the former. The extent and manner of subsequent taxation provided for is as much a limitation of the exempting words as is the completion of the road and the payment of a dividend.

That the whole subject of the future taxation of this road was intended to be provided for, appears by an examination of the whole section. The mode of assessing and collecting the tax mentioned is specifically provided with great particularity. A return of the property is to be made. The character of the return, the kinds of property to be returned, the person by whom, and the officer to whom, and the duties of the officer in charging the taxes, and of the officer who is to collect the same, and many other particulars are specifically set out. The tax is to be paid to the State treasurer. No mention is made anywhere in the act of any other taxation for county or other purposes. In the proviso, at the close of the section, it is declared "that if said company shall fail, for the period of two years after said roads respectively shall be completed and put in operation, to declare a dividend, that then said company shall no longer be exempt from the payment of *said tax*," &c. What tax? Clearly the tax specifically provided for after the total exemption ceased. It is not *taxes* but *tax*. The total exemption is from taxes for all purposes, while that authorized is a *tax* only, and is to be paid to the treasurer of the State, and that is plainly *the tax* from which the company is no longer to be exempt. Both the obvious meaning and the well-known rule, that the last antecedent should be referred to when the meaning is obscure, indicate that it is the tax pro-

Argument against the right to tax generally.

vided for. If it was the purpose of the act to leave the property subject to other taxation than that provided for, its authors would have employed language in this proviso that would embrace all taxation. The word "*said*," preceding and limiting the word "*tax*," points to the fact that the tax provided for is the one from which the company is no longer to be exempt.

The case of the *Raleigh and Gaston Railroad Company* v. *Reid*,* in this court—a case from North Carolina—is much in point. There an act had been passed by the legislature of North Carolina in these words:

"The said railroad, and all engines, cars, and machinery, and all the works of said company, together with all profits which shall accrue from the same, and all the property thereof, of every description, shall be exempt from any public charge or tax whatsoever, for the term of fifteen years, and thereafter the legislature may impose a tax not exceeding twenty-five cents per annum, on each share of the capital stock held by individuals, *whenever* the annual profits shall exceed eight per cent."

Subsequently to this act being passed—within the fifteen years, and the annual profits not yet exceeding eight per cent—the legislature of the State passed an act taxing the franchise of the road.

This court, in construing the first act, says:

"The only way in which the property of this company could be reached for taxation at all, was after the limitation of the fifteen years had expired. The legislature was then at liberty to tax the individual shares of the stockholders, whenever their annual profits exceeded eight per cent. When a statute limits a thing to be done in a particular mode, it includes a negative of any other mode. It was the manifest object of the legislature which incorporated this company to invite the investment of capital in the enterprise of building this road, and no means better adapted for the purpose could have been devised short of total immunity from taxation. As long as the capital was unproductive it contributed nothing to the support of the govern-

* 13 Wallace, 269.

ment, and even after it became remunerative its contribution was fixed by the terms of the charter, and could not, in any event, exceed twenty-five cents on the share of stock. The impolicy of this legislation is apparent, but there is no relief to the State, for the rights secured by the contract are protected from invasion by the Constitution of the United States."

The North Carolina act and the one we are considering are similar in principle. Neither in direct words negatives the right to impose a greater or different rate of taxation.

A similar doctrine is laid down in the *New York and Erie Railroad* v. *Sabine*,* in the Supreme Court of Pennsylvania.

These cases do but afford modern application of old law; law perfectly settled in the days of Hobart and Plowden. The former declares that affirmatives in statutes that introduce a new rule imply a negative of all else;† as the latter had declared before him,‡ that when a statute limits a thing to be done in a particular mode it includes a negative of any other mode.

II. The objection to which acts giving exemption from taxation by States are ordinarily and justly subject—the objection, namely, that by such exemptions the legislature of a State might render the State government powerless to carry on the affairs of the State, by taking away all power to raise funds for that purpose—does not apply here. The State is at liberty to tax the property in question at the same rate, and, consequently, to as great an extent as it does other property. The exemption contended for is from county and other local taxation. The State may appropriate all the tax it is at liberty to impose to its own uses. Counties, cities, and other municipalities, possess no power of taxation, except what is granted to them by the legislature of the State, and it may, if it sees fit, withhold such power to any extent. They are frequently not permitted to tax all the property the State does.

III. In the history of the Pacific Railroad, we find a sup-

* 26 Pennsylvania State, 244.

† Slade *v.* Drake, Hobart, 298.

‡ Stradling *v.* Morgan, Plowden, 206 *b*.

port to our interpretation of the twelfth section under consideration.

By the charter of the road counties, cities, and towns along the line of the road were authorized to subscribe to the capital stock of the company. The legislature was anxious to secure the construction of the road; a matter of plain importance to the State and to the public. By loans of its bonds, conditioned on subscription, by gifts of lands and otherwise, the State stimulated and encouraged subscriptions by counties and towns along the road. In view of this earnest desire to secure the construction of the road thus manifested by the State and by the municipalities, and the people along the line of the road; and of the fact that the counties and incorporated towns were themselves the principal stockholders, and consequently the proprietors of the road, and hence would have to pay the taxes themselves, who can question that an exemption from local taxation was proper, and was intended? The State might well claim and reserve to itself the right to tax the road after its completion, after it was able to pay dividends on its stock, and at the same time grant an immunity from municipal taxation.

IV. Finally. If the act in question is not a contract, and is subject to repeal, it has in fact not been repealed. This is adjudged in the case of *The Pacific Railroad Company* v. *Cass County*,* by the tribunal most to be respected in a decision on the meaning of the statute. The assessment, therefore, as to State taxes, at least, is made in a wrong way.

Messrs. B. A. Hill and H. A. Clover, contra.

Mr. Justice DAVIS delivered the opinion of the court.

It is contended on behalf of the appellants that the twelfth section of the act of 1852, provides for the whole subject of the taxation of the road, that it exempts the road from all taxes except State taxes, and furnishes the only rule and authority by which these taxes can be ascertained and collected.

* *Supra*, p. 219.

It was held by this court, in the case of *The Pacific Railroad* v. *Magwire*,* that this section created a contract between the State and the railroad company, exempting the road from taxation until it was completed, and for two years thereafter if it did not pay a dividend before the expiration of these two years.

The inquiry is whether this contract goes further and exempts the road, after it has been completed for two years, from all other than State taxation, and whether the State is precluded from providing another mode of valuation for State taxes.

It is manifest that legislation, which it is claimed relieves any species of property from its due proportion of the general burdens of government, should be so clear that there can be neither reasonable doubt nor controversy about its terms. The power to tax rests upon necessity, and is inherent in every sovereignty, and there can be no presumption in favor of its relinquishment. While it were better for the interest of the community that this power should on no occasion be surrendered, this court has always held that the legislature of a State, unrestrained by constitutional limitation, has full control over the subject, and can make a contract with a corporation to exempt its property from taxation, either in perpetuity or for a limited period of time. If, however, on any fair construction of the legislation, there is a reasonable doubt whether the contract is made out, this doubt must be solved in favor of the State. In other words, the language used must be of such a character as, fairly interpreted, leaves no room for controversy.

The present claim is of perpetual exemption from county and municipal taxation, quite as essential to the wants of the people as taxation for State purposes.

It is conceded that this exemption is not granted in express terms, but it is argued that, taking the whole section together, it arises by necessary implication. We do not think so. Immunity from all taxation was given until the

* 20 Wallace, 36.

road was built and in operation two years, but after this it is declared "that the road-bed, buildings, machinery, engines, cars, and other property of such completed road, at the actual cash value thereof, shall be subject to taxation at the rate assessed by the State on other real and personal property of like value." This is a declaration that the taxation imposed upon the property of this company shall not be different from the taxation imposed upon other similar property, which conforms to the constitutional requirement, "that all property subject to taxation shall be taxed in proportion to its value." If other property is charged with the payment of county, school, and municipal taxes, why not the property of this company? In no other way can the principle of equality in taxation, so essential to good government, be secured. If the legislature intended to apply a different rule in this case, it were easy to have said that the property of this company shall be subject to taxation "for State purposes." Instead of this it is declared to be "subject to taxation." This obviously means general taxation—such taxation as other property of like value is subjected to. No words of limitation are used, and none can be implied against the interests of the State. It is never for the interest of the State to surrender the power of taxation, and an intention to do so will not be imputed to it unless the language employed leaves no other alternative.

The motive for temporary exemption is apparent enough, because until the road was able to earn something taxation might bear heavily upon it. But with the completion of the road the reason for the exemption ceased, and it is difficult to see what inducement there was for the State to grant perpetual immunity from local taxation. In the original charter of the company, granted in 1849, there was no exemption from taxation. It is true the amendment of 1851 altered this so that the road was relieved of any public charge or tax for the period of five years, but this privilege expired in 1856, and the provisions of the act of 1852 on this subject were more favorable to the company. Besides receiving under this act a large body of lands, donated by

Congress to the State to aid in the construction of railroads, it was enabled to complete its entire road and run it for two years without paying any tax whatever. By this means it secured immunity from taxation until 1868, and any further immunity in this direction, if conceded by the State, would have been a mere gratuity. In view of all the legislation on this subject, it would seem quite clear that the General Assembly of Missouri, while recognizing in behalf of this road the propriety of temporary exemption from taxation, had no purpose to continue these exemptions indefinitely.

But it is said the section covers the whole subject of taxation, and as it provides for State taxes only it excludes any other. If in the declaratory part of it the road had been subject to "State taxation," there would have been plausibility in the argument, to say the least, that the legislature intended to waive other taxation. But the provision is that after the temporary exemption from all taxation ceases, by its own limitation, the property of the road shall be subject "to taxation" at the same rate as other property in the State. There is no restriction in this language, nor is there any rule of law by which a word can be imported to limit its meaning. It is true special provision is only made for the ascertainment and payment of a State tax, and nothing is said about the manner of ascertaining and paying other taxes. But this does not prove an intentional abandonment of all but State taxes. It proves nothing more than that the legislature thought proper, in the particular of State taxes, to modify the general revenue law so far as this corporation is concerned, leaving the provisions of this general law operative upon local taxation.

It would be a hard rule to apply to the legislation of a State to hold that the circumstance of making in the amendment to a charter of a railroad corporation special provision for ascertaining the tax due the State (nothing being said about the manner of ascertaining other taxes), works an exemption of the property of the corporation from all taxation not levied for State purposes. Silence on such a subject

cannot be construed as a waiver of the right of the State in this regard. There must be something said which is broad enough to show clearly that the legislature intended to relieve the corporation from a part of the burdens borne by other real and personal property. This was not done in this case, and the claim of exemption from local taxation cannot be sustained.

It is claimed, however, that even if this be so the State is inhibited from altering the special provision on the subject of State taxation. This provision prescribes a mode for ascertaining the tax due the State. The president of the company is required to furnish to the auditor a statement, under oath, of the actual cash value of the property to be taxed, on which the company is directed to pay the tax due the State, within a certain time, to the treasurer, under penalties. And the claim is that the State legislature is prohibited from passing any law to assess the property of the company for taxation for State purposes in a different manner. It is not so written in the statute, nor, indeed, can any proper inference be drawn from what is written that the legislature intended to contract with the corporation in this particular. It would be strange indeed if it were so, for the mode of assessment might not work well, and yet, if it formed the subject of a contract, it could not be changed. The principal thing in which the State and company were interested was the actual cash value of the property to be charged. This value was the basis of taxation, and it could not be a matter of moment how it was fixed, provided it were done correctly. In this result both the State and corporation had an equal interest. Both were interested in the means adopted only so far as they were efficient to secure the contemplated object. The exigency of the State required the revenue on the basis of actual value, and this, it is to be presumed, the corporation was willing to accord. At any rate it was the duty of the State, in justice to other property-owners, to use the appropriate means to ascertain this value. The ordinary method of doing this is by the instrumentality of officers appointed for

the purpose, but the State asked the railroad, through its president, to make the valuation, to which the corporation assented. This way of reaching the result was less expensive to the State, but more expensive to the corporation than the usual mode in which taxes are assessed. The president of the company could not make a true valuation without the expenditure of time and labor, and this repeated, year by year, as values of property constantly fluctuate. There is no presumption that he would not do it, conscientiously, according to his best judgment, but still it was a favor to the State for him to do it at all, and certainly no one can contend that a State cannot waive at any time a provision for its own benefit. Apart from this view of the subject, the provision in question was simply a mode for ascertaining the true value of the property to be taxed, and if, on trial, it should turn out not to be the best mode for the purpose, surely the legislature has a right to change it and adopt another. This no one will question, unless the legislature has surrendered its power over the subject by contract, which, in our opinion, has not been done in this case.

But, until the legislature appoints another mode for assessing and collecting the revenue due the State from this corporation, it must proceed in conformity with the provisions contained in the act of 1852.

The whole subject we have discussed recently came before the Supreme Court of Missouri in the case of *The Pacific Railroad Company* v. *Cass County*. The assessor of Cass County had levied taxes for both State and county purposes on the property of the company in the county, and the question was whether these levies were authorized. The court held that the taxes for county purposes were rightfully assessed, under the general revenue laws, but that the taxes for State purposes were unauthorized, because section twelve of the act of 1852 had not been repealed either by an express provision of a subsequent law or by necessary implication, and being in force, State taxes could only be collected in the way pointed out in that section.

Syllabus.

As it is the peculiar province of the highest court of a State to decide whether or not the method pursued in the assessment and collection of taxes is in conformity with the law of the State, this decision is controlling.

It was not made until after this suit was instituted, and, doubtless, not promulgated until the rendition of the decree. The assessors of St. Louis County, in this case, imposed taxes for State, county, school, and city purposes. The bill charged that the whole proceeding was illegal, and sought to restrain the entire levy. On demurrer the Circuit Court held that the city taxes were wrongfully levied, and issued the proper order restraining them, and dismissed the bill so far as it related to State, county, and school taxes. The court should have included State taxes in the restraining order. On this account the decree must be reversed and cause remanded, with directions to enter an order enjoining the collection of the State tax in the bill mentioned. In all other respects the decree is right.

DECREE REVERSED AND REMANDED.

FRENCH v. HAY.

In 1859 A. lent to B., who was largely interested in an embarrassed railroad, $5000 to buy certain judgments against the road, and B. having bought, in 1859 and the early part of 1860, judgments to the amount of $31,000, assigned the whole of them to A., absolutely. Subsequently, that is to say in August, 1860, A. made a transfer (so called) of them to B., "upon B.'s payment of $5000, with interest from this date;" and gave to B. a power of attorney of the same date, authorizing him "for me and in my name" to dispose of them as he might see proper. *Held*,

1st. That the so-called transfer was executory, amounting only to an offer that if B. would pay the $5000, B should become owner of the judgments; and that B. having, in May, 1861, gone South and joined the rebels there, and not come back till 1865, could not in 1868 file a bill, and on an allegation that A. had collected the judgments, claim the proceeds, less the $5000 and interest.

2d. That a bill making such an allegation and such a claim was demur-