BOARD OF COUNTY COMM'RS V. ATCHISON, T. & S. F. RY., 1886-NMSC-023, 3 N.M. 677, 10 P. 294 (S. Ct. 1886)

Board of County Commissioners of Valencia County and others
vs.
Atchison, Topeka & Santa Fe Railroad Company

No. 245

SUPREME COURT OF NEW MEXICO

1886-NMSC-023, 3 N.M. 677, 10 P. 294

February 27, 1886, Filed

Error to District Court, Bernalillo County.

COUNSEL

E. A. Fiske and **H. L. Warren,** for plaintiff in error.

H. L. Waldo and **James Hagerman,** for defendants in error.

JUDGES

Henderson, J. Long, C. J., and Brinker, J., concurred.

AUTHOR: HENDERSON

OPINION

*{*682}* **{1}** The Atchison, Topeka & Santa Fe Railroad Company filed a bill in the district court of Valencia county against the board of commissioners of that county, Patrocino Luna, sheriff and collector of taxes, and C. C. McComas, district attorney of the Second district. The object of the bill was to enjoin the collection of certain alleged illegal taxes levied against it. The bill states that the Atchison, Topeka & Santa Fe Railroad Company is a Kansas railroad corporation, duly authorized to do business in this territory; that the New Mexico & *{*683}* Southern Pacific Railroad Company is a New Mexico company, organized and existing under its laws; that the New Mexico & Southern Pacific Railroad Company, under its charter, constructed a railroad, beginning at a point in the Raton Pass in the northern portion of the territory, extending south through Valencia county to San Marcial, in Socorro county, completing its line to San Marcial in the year 1880. The bill further avers that by reason of the construction of said line of road the company became and was, as to all its property, exempt from taxation for the period of six years from 1880, the year of its completion, under an act of the

legislature passed in 1878. It is further alleged that the complainant company, soon after the completion of this line of road, entered into a contract of lease with the New Mexico & Southern Pacific Company, by the terms and conditions of which all the property of the latter company was turned over to the possession of the former; and that the complainant had ever since been in the possession of said line of road, and all its property, operating it as a common carrier under the charter of the lessor company, and discharging fully and faithfully its obligations and duty to the public as a railroad corporation; that all the property embraced in the several pretended tax assessments belong to the New Mexico & Southern Pacific, and not to the Santa Fe Company, except articles mentioned in an exhibit attached to the bill, of the value of $ 183.12, of which the assessors had made no list or description whatever in their return to the county board. It is further alleged that the assessments for the years 1881, 1882, and 1883 are each and all void for two reasons: (1) because the property attempted to be assessed consisted of lands which were in no manner described, and personal property of various kinds, and different values, while the assessments contained no list or description of it whatever; (2) because the persons assuming to make them had no authority to do so. It averred exemption from taxation by the complainant under and *{*684}* by virtue of the same legislation asserted on behalf of the New Mexico & Southern Pacific Company.

{2} All of the defendants joined in a demurrer to the bill, which was overruled, and a decree entered as prayed, enjoining the collection of the taxes. Defendants brought error.

{3} It will be seen from the allegations of the bill that the equities relied upon as grounds for an injunction and relief as prayed rested upon three propositions: (1) that the property sought to be subjected to the tax was exempt, whether in the hands or possession of the Atchison, Topeka & Sante Fe, or in that of the New Mexico & Southern Pacific Company; (2) that even admitting the legal validity of the tax attempted to be imposed upon the property, it should have been listed by, and taxed to, the New Mexico & Southern Pacific Company, the owner and lessor, and not to the Atchison, Topeka & Santa Fe Company, the lessees in possession; (3) that the assessments were not only irregular, but void.

{4} In view of the fact that this court, in what appears to have been a well-considered opinion, has held that the exemption set up and relied upon here on behalf of the New Mexico & Southern Pacific Company was valid, (**Board of Co. Comm'rs of Santa Fe Co.** v. **New Mexico & S. P. R. Co.,** 3 N.M. 126, 2 P. 376,[1]) and the further fact that the New Mexico & Southern Pacific Company is not before us in this case, we are not disposed to enter into any discussion or consideration of the question of exemption, as applied to that company, until an issue shall be made on a regular assessment of the property claimed to be exempt.

{5} The second proposition, as indicated above, is apparently without serious difficulty in its determination. To avoid the force of the statute on the subject of the taxation of property under lease, counsel for plaintiff in error press upon our attention the fact that

*{*685}* the bill does not disclose the terms or conditions of the lease, and that, as a legal consequence, it must be construed most strongly against the pleader, and that thus construed the lease will be considered one for a long term, and the conditions favorable to the lessee; that the legal effect of it is and was to convey the unexpired term of the lessor's corporate existence under its charter, or at least the substantial beneficial estate in the leasehold property. In other words, they contend that the lease must be treated, for the purposes of this suit, as a deed, and that, in legal effect, the transfer was a sale, and as such the immunity from taxation, if any ever existed in the lessor company, did not pass to the lessee. There would be strong grounds for this position if the bill could be treated in other respects as silent on the subject of ownership of the property. It, however, in most distinct and emphatic terms, declares that the Atchison, Topeka & Santa Fe Company does not own any portion of the property against which the tax was levied, except the small amount stated. We cannot, by construction, impute title or beneficial estate in the sense for which counsel for plaintiff in error contend, in the face of admitted averments, such as are made here.

{6} Section 1812, Comp. Laws, defines in what way and to what persons property subject to taxation shall be listed and assessed, and concludes as follows: "Property under mortgage or lease is to be listed by and taxed to the mortgagor or lessor, unless listed by the mortgagee or lessee." There is no claim made that the Atchison, Topeka & Santa Fe Company listed this property for taxation, and then became subject to the tax.

{7} The demurrer admits the lease and the ownership of the property by the New Mexico & Southern Pacific Company. With these facts conceded, we cannot hold the complainant company bound by the assessments, *{*686}* unless the legislature clearly intended to impose a double tax, -- one to the lessor and one to the lessee. We find nothing in the statutes to warrant us in so declaring. The rule on this subject is well stated by Judge Cooley, as follows: "It has very properly and justly been held that a construction of the laws was not to be adopted that would subject the same property to be twice charged for the same tax, unless it was required by the express words of the statute, or by necessary implication. It is a fundamental maxim in taxation that the same property shall not be subject to a double tax, payable by the same party, either directly or indirectly, and where it is once decided that any kind or class of property is liable to be taxed under one provision of the statutes it has been held to follow as a legal conclusion that the legislature could not have intended the same property should be subject to another tax, though there may be general words in the law which would seem to imply that it may be taxed a second time. This is a sound and just rule of construction, and it has been applied in many cases where, at first reading of the law, a double taxation might seem to have been intended." Cooley, Tax'n, 165.

{8} The legislature having declared that property under lease should be "listed by and taxed to the lessor," it follows that it could not be "taxed to" any other person or corporation, within the meaning of the statute, unless voluntarily listed by the lessee.

Were the assessments void? They were returned as follows:

For 1881, A., T. & S. F. R. R. Co.
Valuation of property sworn to, $ 1,000,000 00
For 1882, A., T. & S. F. R. R. Co.
Assessed value of property, 500,000 00
Total value of real estate, 250,000 00
Total value of personal property, 250,000 00
For 1883, A., T. & S. F. R. R. Co.
Assessed value of property, 500,000 00
Total value of real estate, 250,000 00
Total value of personal property 250,000 00

*{*687}* **{9}** The bill charges that the persons making these assessments willfully, oppressively, and illegally attempted to assess, as against the complainant, property it did not own, to-wit, real estate in the county of Valencia; and did willfully, arbitrarily, illegally, and fraudulently attempt to assess personal property in said county, owned by complainant, greatly in excess of, and out of proportion to, the rate at which all other property was valued for the purposes of taxation in said county, to-wit, 500 per cent. above.

{10} Section 2822, Comp. Laws, requires the assessor of the county, between the first day in March and the first day in May, in each year, to ascertain the names of all taxable inhabitants, and all property in the county subject to taxation. To this end he is to visit each precinct in the county, and exact from each person a statement in writing, or list, showing separately: (1) All property belonging to, claimed by, or in the possession or under the control or management of, such person, or any firm of which such person is a member, or any corporation of which such person is president, secretary, cashier, or managing agent. (2) The county in which such property is situated, or in which it is liable to taxation. (3) A description of it by legal subdivisions, or otherwise, sufficient to identify it, of all real estate of such person, and a detailed statement of his personal property, including average value of merchandise for the year ending March 1, number of horses and mules, sheep, cattle, swine, and other animals, etc.

{11} Section 2823 provides that the list thus made must be sworn to.

{12} Section 2824 makes it the duty of the assessor to furnish the taxable inhabitant with a blank for such list, which is required to be filled out and delivered to the assessor on or before the last Monday in April.

{13} Then follows section 2825, in the following language: "If any person liable to taxation shall fail to *{*688}* render a true list of his property, as required by the three preceding sections, the assessor shall make out a list of the property of such person, and its value, according to the best information he can obtain. And such person shall be liable, in addition to the tax so assessed, to a penalty of twenty-five per cent. thereof, which shall be assessed and collected as a part of the tax of such person."

{14} While it is true that the courts will not be nicely or overscrupulously technical in passing upon questions of mere formality and regularity in the methods adopted by a class of subordinate officials in the performance of their duties, it is not, however, their duty to consider as done in the manner required by law that which should have been done in so important a matter as the assessment of property for taxation. The legislature is charged with the duty of raising revenue for the support of the government, and it is its peculiar function to lay taxes and provide the means for its collection. To that end it may and has prescribed the initial step in order to subject property to the burdens of taxation, and that step is assessment. A description or list of the property, with a valuation attached, is a necessary act, without which a levy cannot be made and enforced. On this subject Judge Cooley says: "Of the necessity of an assessment no question can be made. Taxes by valuation cannot be apportioned without it. Moreover, it is the first step in the proceedings against individual subjects of taxation, and is the foundation of all which follows it. Without an assessment they have no support, and are mere nullities. It is therefore not only indispensable, but in making it the provisions of the statute under which it is to be made must be observed with particularity. * * * As the course unquestionably is prescribed in order that it may be followed, as without it the citizen is substantially without any protection against unequal and unjust demands, the necessity for *{*689}* a strict compliance with all important requirements is manifest." Cooley, Tax'n, 259, 260.

{15} It does not follow, however, that in the assessments of the property of persons who fail to render or return a list that the description or lists made by the assessor, according to his best information, must be strictly accurate, or the valuations correct, but it is essential to the validity of the tax that **some** description or list be made. In this case the assessment for 1881 consisted of a single item, valued at $ 1,000,000. For 1882 and 1883 the assessor divides the gross sum into two classes, -- real and personal, -- giving to each a value of $ 250,000. Construing these assessments in the most favorable and liberal way, can they be treated as valid? The statute requires real estate to be listed by subdivisions, or some other way sufficient to identify it. It also requires, as we have seen, that a list or description of personal property, as well as its value, must be given. There can be no sort of doubt about the insufficiency of the attempted assessment of the real estate. No deed could be given if sold at delinquent tax sale. No possession could be taken under such a description. There is a value attached to the personal property for the years 1882 and 1883, but there is no effort at description. It is possible to conceive a single piece of railroad property to be worth $ 250,000, but the owner is certainly entitled to know what piece it is, so that he might, if valued too high, seek his remedy for relief before some proper tribunal or body.

{16} Again, the statute makes it the duty of the assessor to ascertain the names of all taxable inhabitants of his county, and **all the property in his county subject to taxation.** This is not an impossibility, so far as taxable inhabitants and tangible property are concerned. This assessment does not purport to be founded upon mere credit. It is founded, as we understand it, upon tangible *{*690}* estate. From no point of view can these assessments be treated as legal and binding upon either railroad company.

{17} It is urged that in any event the judgment below is erroneous because complainant admitted the ownership of property of the value of $ 183.12, and did not tender any sum before the institution of the suit, nor in its bill. This is not the rule where assessments are void. In a suit to enjoin the collection of taxes, where the original assessment was void, there is no necessity for a tender of such sum as might be equitably due on account of such taxes. The cases in which a tender has been required were those where there was an excessive, as distinguished from a void, assessment. **Albany Nat. Bank** v. **Maher,** 20 Blatchf. 341 at 341-343, 9 F. 884.

{18} The judgment is affirmed.

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1 Same case, **ante,** 116.