THE TAXATION OF RAILROADS

Able Argument of Col. John W. Hinsdale Before the Corporation Commission Yesterday.

In his argument before the Corporation Commission yesterday, touching the collection of back taxes on the rolling stock of certain railroads in North Carolina, Col. John W. Hinsdale, counsel for the State, said:

Mr. Chairman and Gentlemen of the Corporation Commission:

I appear before you, representing the State of North Carolina, for the purpose of aiding in the performance of the duty imposed upon you by the act of the last Legislature entitled an act to authorize the Railroad Commission, the North Carolina Corporation Commission, or such board as shall succeed to their duties to assess property which has escaped taxation.

If there be any such property, I do not doubt but that the owners thereof, upon being satisfied of its existence and their duty, will cheerfully acquiesce in your action. My desire is that the railroad companies shall be required to bear only their just proportion of the burden of taxation under which the people are struggling. I maintain:

I. THE NORTH CAROLINA CORPORATION COMMISSION HAS THE POWER TO ASSESS FOR TAXATION ROLLING STOCK WHICH HAS ESCAPED TAXATION, AS WELL AS OTHER RAILROAD PROPERTIES.

Chapter 678, Laws of 1899, page 874, expressly authorizes it. It provides that "it shall be the duty of the Board of Railroad Commissioners, the North Carolina Corporation Commission, or such board as shall succeed to their duties to value and assess such property as has escaped taxation for five years prior to the current year at the time when they value and assess other railroad property for taxation." This act was ratified March 8th, 1899.

The Railroad Commission was abolished by chapter 506, Public Laws of 1899, page 558, ratified March 6th, 1899.

The Corporation Commission was established by chapter 164, Public Laws of 1899, page 291, ratified March 6th, 1899, and by section 2, it was empowered and directed, among other things, which had been previously committed to the Railroad Commission, "to perform all the duties and exercise all the powers imposed or conferred by chapter 320, Public Laws of 1891, page 275, ratified March 5th, 1891, and the acts amendatory thereto."

The question arises what are the acts amendatory thereto? I insist that any statute extending the duties and powers of the Railroad Commissioners was such an act.

On the 9th day of March, 1891, the General Assembly by chapter 325, Public Laws of 1891, pages 305, 321, known as the Machinery Act, constituted the Railroad Commission, a board of appraisers for railroad and other transportation companies, and extended their duties to embrace everything to be done in connection with the assessment of all kinds of railroad properties, including rolling stock. Substantially the same provision has been incorporated in each of the Machinery acts since that date.

On February 14, 1893, an act was ratified by the Legislature, entitled "An act to amend the act constituting the Railroad Commission as a board of appraisers for railroads, ratified the ninth day of March, one thousand, eight hundred and ninety-one, in respect to the manner of assessing property, and giving the Commission authority to assess steamboat property."

Section 29 of the Machinery act of 1899, provides that the Railroad Commission shall have like powers (as the Board of County Commissioners) to list unlisted railroad property. This act contains, in section 120, a clause repealing "All acts and parts of acts inconsistent with the provisions of this act."

These acts, relating to the duties of the Railroad Commissioners, being in pari materia, must be construed together. It is manifest that the law enlarging the duties of the Railroad Commissioners was amendatory of the act which created them and defined their duties. It was not necessary that the acts should be entitled "amendatory" if, in fact they were so. This proposition is settled by State vs. Jordan, 33 S. E. Rep. 139, 141, where it was held that the act of March 3, 1899, which established the Western District Criminal court, and which made no reference to the act of 1895, chapter 75, establishing criminal courts in certain counties, was nevertheless amendatory thereof, being in pari materia. Therefore, each of the Machinery acts, in so far as they related to the duties of such commission, was amendatory of chapter 320, of the Public Laws of 1891. The title of chapter 121, of the Laws of 1893, which enlarges their duties and extends them to the assessment of railroad property, is entitled an act to amend the act constituting the Railroad Commission. Thus showing that the legislative construction was, that the act, although amendatory of the part of the Machinery act of 1891, which relates to the assessment for taxation of railroad properties by the Railroad Commissioners, was amendatory of the act constituting the Railroad Commission and prescribing their duties.

Therefore, the act establishing the Corporation Commission and defining its duties, laws of 1899, chapter 164, in conferring upon the Corporation Commission all the powers conferred upon the Railroad Commission by chapter 320, of the Laws of 1891, and the acts amendatory thereto, expressly commits to the Corporation Commission the right and duty to assess railroad properties for taxation. In order to maintain this proposition it is not necessary to contend that the Railroad Commission is still in existence for the purpose of assessing railroad property. The Commission was expressly abolished for all purposes by chapter 506, laws of 1899. But if the court shall hold that the Legislature has simply changed the name of the Railroad Commission to that of the Corporation Commission, and that Dr. Abbott either together with, or to the exclusion of, Mr. Beddingfield is a member of the Commission, the legislative purpose to invest the said Commission with the duties and powers of assessing railroad property is not affected. The personnel of the Commission is entirely distinct from its duties and powers.

The intention of the Legislature was to give to the Corporation Commission the powers which heretofore were vested in the Railroad Commission to assess railroad properties, because:

1. It is unreasonable to suppose that it was its purpose to make no provision for the assessment of such properties.

If the contention of the railroad companies is correct, the Legislature have omitted to make such provision for the year 1899.

2. Section 60, of chapter 11, of the Laws of 1899, page 58, which is in pari materia, and enacted on the same day as the Machinery act of 1899, provides:

"That for the purpose of raising revenue, and equalizing taxation, the railroad commission, or any body succeeding to their powers, are hereby required and directed to revise the assessments for taxation of the entire railroad property in the State."

This clearly indicates that the Corporation Commission, which by express terms of the act creating it succeeds to this power, is authorized to assess the railroad properties of the State for taxation.

3. The language of chapter 667, of the Laws of 1899, page 874, ratified on March 8th, 1899 (the same day), inferentially declares that the Corporation Commission has succeeded to the duties of the Railroad Commission. It takes it for granted that the Corporation Commission is required to value, assess and certify railroad property for taxes, in as much as it provides that when they do this, they must assess the escaped property.

It is contended by the railroad companies, that because the Machinery Act of 1899 which requires the Railroad Commissioners to assess railroad property and repeals all laws inconsistent therewith, necessarily takes from the Corporation Commission the power in question. But a reasonable construction must be given to the repealing clause. Reading all the acts upon this subject together, this could not have been intended, because, otherwise the Legislature is conferring important powers upon a board which it had three days before utterly abolished. Besides, the act in regard to escaped property, and the Revenue Act from which I have quoted, were passed on the same day, and they both recognize the transfer of the assessing power as to railroad property from the Railroad Commission to the Corporation Commission.

The Legislature having provided in effect that the Corporation Commission should succeed to the powers of the Railroad Commission in respect to the assessment of the railroad property, may reasonably be supposed to have intended that the former should perform the duties prescribed for the latter. The Machinery Act of 1899 prescribes the thing to be done, and the other acts prescribe by whom.

There is another view of this question. The act abolishing the Railroad Commission, by its terms, did not go into effect until April 4th, 1899, and the act creating the Corporation Commission did not go into effect until April 5th, 1899. The Railroad Commission was therefore in existence on March 8th when the Machinery Act, with its repealing clause, was ratified. This statute, not improperly, directed the Railroad Commissioners to assess railroad property, and gave them the power to assess unlisted property. This was entirely consistent with the act, which was passed on the same day, giving to the Railroad Commissioners and to the Corporation Commission or any such board as might succeed to their duties, the same power. There was, likewise, no repeal by implication of the Railroad Commission act by reason of the powers which this Commission were to exercise after April 5, being in the meantime, intrusted to the Railroad Commissioners, who would not be succeeded by the Corporation Commission until April 5th.

"It has been said that laws are presumed to be passed with a full knowledge of existing ones on the same subject, and it is, therefore, but reasonable to conclude, that the Legislature did not intend to interfere with or abrogate any prior law relating to the same matter unless the repugnancy between the two is irreconcilable, and hence a repeal by implication is not favored; on the contrary courts are bound to uphold the prior law if the two acts may well subsist together." Sedwick on Stat. & Cons. Law 106.

"Where, upon the repeal of a statute creating the office of city marshal, a law was passed changing the number of jurors which the marshal was required to summon in certain cases, it was held that this reference to the office as still existing did not operate to continue it, (but the marshal was in fact still in office for the abolition of the office had not yet taken effect, so that the language of the law statute had somebody to act upon.) People vs. Mahoney, 13 Mich., 481. Sedgwick on Stat. and Cons. Law, 102.

If it shall be held that after April 5, both commissions continued to exist, that is, the Railroad Commissioners, represented by one member, Dr. Abbott, and the Corporation Commission, composed of three members, there is no inconsistency in committing the powers to assess railroad properties to both of them, as they might act together.

If, on the other hand, under the authority of State vs. Jordan, supra, the machinery act of 1899, recognizing the existence of the Railroad Commission, calls it again into being, it does so under a changed name, composed of such of the Railroad Commisioners as still have a property in their office, together with the Corporation Commissioners, two or three as may be decided by the court. It may be that the Corporation Commission is now and will be composed of four members, instead of three, until the term of Dr. Abbott shall expire. And it may be that this construction will reconcile all of the difficulties which are now presented to the courts. But however this question may be decided, reading all the acts together, the conclusion is irresistable that there was no purpose by the repealing clause of the machinery act of 1899 to repeal other statutes ratified on the same day with the supposed repealing act.

It is contended by the railroad companies that because the machinery act of 1899, section 29, page 74, gives to the Railroad Commissioners the power to list unlisted railroad property, and repeals "all acts and parts of acts inconsistent with this act," therefore the act expressly authorizing the "Railroad Commission or the Corporation Commission or any body succeeding to their powers to assess unlisted property, which was ratified on the same day, is repealed. But the two acts are of equal force and dignity. They are upon the same subject and must be considered as one act. Neither repeals the other. The construction put upon them by the railrod companies would render both acts nugatory, as there is no Railroad Commission in existence. There is, therefore, nothing in this contention.

But if the Railroad Commission is in existence, it is under a changed name, and the repealing clause was or could not have been intended to abolish the Corporation Commission, or to take from it one of its most important duties.

In State vs. Jordan, supra, Furches, J., in speaking for the court, says:

"All acts of the same session of the Legislature upon the same subject-matter are considered as one act, and must be construed together under the doctrine of "in pari materia." State vs. Bell, 25 N. C., 506; Black Interp. Laws, sec. 86; End. Interp. St. sec. 45; Cain vs State, 20 Tex., 355. They should be considered in pari materia whether passed at the same session or not. Simonton vs. Lanier, 71 N. C., 498; Rhodes vs. Lewis, 80 N. C., 136. Where a former act has been repealed or has expired by its limitation, when it is in pari materia, it must be considered in connection with the last act, and, if necessary, as a part of it. Potter, Dwar. St. p. 190. "It certainly appears strange," says Williams, J., in a late case, "that, when an act of parliament is per se abolished, it shall virtually have effect through another act. But in that case the former act was substantially re-enacted. Reg. vs. Merionetshire, 6 Adol. and E., 343. It does, indeed, seem to be the prevailing doctrine, (and it is more rational in itself than consistent with coeval maxims), that where one statute refers to another, which is repealed, the words of the former act must still be considered as if introduced into the latter statute. Potter, Dwar. St. p. 192."

In Rex. vs. Loxdale, 1 Burrows, 447, it is held, Lord Mansfield delivering the judgment of the court: "That where there are different statutes in pari materia though made at different times, or even where they have expired, and not referring to each other, they shall be taken and considered together as one system, and as explanatory of each other." The same doctrine is held in New York. Smith vs. People, 47 N. Y. 330, which is very much in point."

"Several statutes that are in pari materia are to be construed as one statute in explaining their meaning and import. Patterson vs. Winn, 11 Wheat. 385; The Harriet, 1 Story, R. 251; U. S. vs. Hearves, Crabbe's R. 307; Dubois vs. McLean, 4 McLean R. 489, 3 Blatchf. C. R. R. 325, and contemporaneous, antecedent and subsequent statutes on the same subject matter may be examined and considered in construing the said act. Rogers vs. Bradshaw, 20 John. 744, McCartee vs. Orphan Asylum, 9 Cow. 507, Roxford vs. Knight, 15 Barb, 642, 1 Kent. Com. 468; Waterford Western Turnpike Company, vs. People, 9 Barb, 161."

Dwarris on Statutes, page 189, note.

"It is a rule of construction universally recognized that such interpretation must be given to a law as will contain, rather than destroy it. 'ut res magis valeat quam pereat.' Dwarris on Statutes, 203. If the contention of th erailroad company shall prevail there is no body existent by whom the most important duties of assessing railroad properties can be performed.

"Statutes that are apparently in conflict should be construed that both may stand if possible. They are to be reconciled as far as they may be on any fair hypothesis and validity given to each of them if it can be." Johnson vs. Byrd, Hempstead Rep. 434, Beals vs. Hale, 4 How. (U. S.) 37.

"In order to arrive at the true legislative intent in construing a doubtful statute, that construction should be adopted which is best conformable to reason and justice, the Legislature will not be presumed to have intended that which is against reason."

Commonwealth vs. Kimball, 24 Pic. 370.

23 A. & E. Enc. Law, page 358.

There is a strong presumption against absurdity in a statutory provision; it being unreasonable to suppose that the Legislature intended their own stultification. So, when the language of an act is susceptible of two senses, that sense will be adopted which will not lead to absurd consequences."

23 A. & E. Enc. Law, page 362.

"If, by the words of a statute, the intention of the Legislature be improbable, the court must give it construction." The Hunter, 1 Peters, C. C. R. 10.

"That construction is favored which gives effect to every clause and every part of the statute, thus producing a consistent and harmonious whole. A construction which would leave without effect any part of the language used, should be rejected if an interpretation can be found which will give it effect."

23 A. & E. Enc. Law, page 309.

"And it is always to be presumed that the Legislature has intended the most reasonable and beneficial construction of their acts, if the words of the act are not precise and clear, Pearce vs. Atwood, 13 Mass. 343(and such construction will be adopted as appears most reasonable, and best suited to accomplish the objects of the statute; and where any particular construction would lead to an absurd consequence, it will be presumed that some exception or qualification was intended by the Legislature to avoid such conclusion. Commonwealth vs. Kimball, 24 Pick, 37."

Dwarris on statutes, page 202.

"But taking the most unfavorable view of the question, namely, that by oversight the Legislature in the machinery act of 1899 have used the words 'Railroad Commissioners' where they intended to use the words 'Corporation Commissioners,' I submit, that from the context of the three statutes which were ratified on March 8th, 1899, to-wit, the revenue act, the machinery act and the escaped taxation act, read in connection with the act repealing the Railroad Commission act, and the act establishing the Corporation Commission, enough appears to justify the courts in correcting the error. The several acts were ratified on or near the last days of the session. In the hurry and confusion of the closing hours, if the intention, which may be gathered from the several acts and the surroundings and circumstances was not well expressed, the obvious error may be corrected by the courts in their interpretation of the law.

"Where it is manifest upon the face of an act that an error has been made in the use of words, the court may correct the error and read the statute as corrected in order to give effect to the obvious intention of the Legislature. The power to make such correction is well established, but it is exercised only where the error is so manifest as to leave no doubt in the judicial mind as to the actual intent of the Legislature."

23 A. & E. Enc. Law, page 421. Lancashire vs. Fry, 128 Pa. St. 593, Ludsley vs. Williams, 20 N. J. Eq. 93.

II. THE STATE OF NORTH CAROLINA HAS THE POWER TO TAX ROLLING STOCK OWNED BY A FOREIGN CORPORATION AND USED ON A RAILROAD IN THE STATE, OWNED, LEASED OR OPERATED BY IT, NOR IS IT NECESSARY THAT THE SAME CARS SHOULD REMAIN IN THE STATE ALL THE TIME, PROVIDED AN EQUIVALENT NUMBER ARE OPERATED CONTINUOUSLY IN THE STATE.

The case of Bain vs. R. & D. R. R. Co., 105 N. C. 363, is cited in opposition to our proposition, and deserves consideration. This case was decided at the February term, 1890. It holds, that the rolling stock of a non-resident railroad corporation, passing through the State for purposes of inter-State commerce, is not liable to taxation in this State.

It appeared in this case that "on June 1, 1885, there was in use on the North Carolina Railroad, leased by the Richmond and Danville Railroad in North Carolina, rolling stock passing through the State to the value of $175,000. Such rolling stock was owned by the R. & D. R. R. Co, and the trains in which said rolling stock was used were made up outside of North Carolina and went on through to the State of South Carolina." It did not appear that this quantity of rolling stock was thus operated in North Carolina continuously. The court said: "It is settled that a State cannot tax commerce, trade, travel, transportation or the privilege to carry on and conduct the same, or the vehicles, means and appliances employed and used in connection therewith, coming into that State from another temporarily, however frequently and returning to such other State," citing Hayes vs. Steamship Co., 17 Howard, 596; Morgan vs. Parham, 16 Wall. 471; Ferry Co. vs. Pennsylvania, 114 U. S. Rep. 196 and cases cited; Pickard vs. Pullman Co. 117 U. S. Rep. 34, Leloup vs. Port of Mobile, 127 U. S. Rep. 649. Strange to say, not one of these cases support the proposition.

The court in Bain's case say the statute was intended to "tax the property of corporations, foreign and domestic, whose property had no situs in this State. That the mere fact that property of the defendant of the value mentioned was continuously within the State did not give it a situs here, it was continuously changing, and in transitu in the course of inter-State commerce."

The doctrine that taxation of rolling stock is an interference with interstate commerce, was exploded by the Supreme Court of the United States in the case of Pullman Co. v. Pennsylvania, 141 U. S., 18, decided a year after the Bain case. If the Pullman case had been decided before the Bain case was presented, it would have been disposed of very differently. In this case, the cars of a foreign corporation engaged in inter-state commerce were taxed by the State of Pennsylvania, their value being assessed by taking as a basis of assessment such proportion of its capital stock as the number of miles of the railroad over which its cars were run within the State, bore to the whole number of miles in this and other States in which its cars were run. The court held that this did not mitigate against the inter-state commerce clause of the constitution. The court said:

"It is equally well settled that there is nothing in the constitution or laws of the United States which prevents a State from taxing personal property employed in inter-state or foreign commerce like other personal proprerey within its jurisdiction. Delaware Railroad Tax, 18 Wall, 206, 232; Telegraph Co. v. Texas, 105 U. S., 460, 464; Gloucester Ferry Co. v. Pennsylvania, 114 U. S., 196, 211; Western Union Telegraph Company v. Attorney General of Massachusetts, 125 U. S., 530, 549; Marye v. Baltimore and Ohio Railroad, 127 U. S., 117, 124; Leloup v. Mobile, 127 U. S., 640, 649."

This case has been affirmed in R. R. Company v. Backus, 154 U. S., 439, 445; Cable Co. v. Adams, 155 U. S., 688; Adams Express Co v. Ohio, 165 U. S., 194, and the same case, 166 U. S., 604, as well as in many other cases in the same court. See also Pullman Car Co. v. Twembly, 29 Fed. Rep., 658.

Upon all questions arising under the constitution of the United States the final decision rests with the Supreme Court of the United States, and its arbitrament is conclusive. Cooley Cons. Lim., 18.

The position of the North Carolina court in Bain's case that the foreign corporation's cars had no situs in North Carolina for the purpose of taxation is also met by the Supreme Court in Pullman Car Co. v. Pennsylvania, supra. The court said:

"The company has at all times substantially the same number of cars within the State and continuously and constantly uses them as a part of its property and so it is valued at the average number of cars operated in the State, although the cars were continuously changing."

"Another objection to the system of taxation by the State is that the rolling stock, capital stock and franchise are personal property, and that this, with all other personal property, has a local situs at the principal place of business of the corporation, and can be taxed by no other county, city or town, but the one where it is so situated. This objection is based upon the general rule of law that personal property, as to its situs, follows the domicile of the owner. It may be doubted very reasonably whether such a rule can be applied to a railroad corporation as between the different localities embraced by its line of road. But, after all, this rule is merely the law of the State which recognizes it; and when it is called into operation as to property located in one State, and owned by a resident of another, it is a rule of comity in the former State rather than an absolute principle in all cases. Green v. Van Buskirk, 5 Wall., 312."

In Marye v. B & D R. R. Co., 127 U. S., 117, the court held that a State may tax rolling stock owned by a foreign corporation which is used within the State although the specific and individual class of property so used was not continuously the same, but were continually changing according to the exigency of the business.

See Denver and R. G. R. Co. v. Church, 17 Am. and Eng. R. Cas. 627; Atlantic & P. R. Co. v. Lesuer, 37 A. & E. R. Cas. 368; Atlantic R. R. Co. v. Yavapai Co. 39 A. & E. R. Cas. 543.

Under Illinois Act of April 9, 1869, entitled "An Act for the collection of railroad taxes in certain counties, cities and towns," the persons or company operating a railroad are liable for the taxes upon the rolling stock used upon such road, without reference to the ownership of the road or the rolling stock so used. Kennedy v. St. Louis V. & T. H. R. Co. 62 Ill. 395, 7 Am. Ry. Rep. 346.

"The actual situs and control of the property within this State, and the fact that its owner may enjoy the protection of the laws here are conditions which subject it to taxation here; and the legal fiction, which is sometimes for other purposes indulged, that it is deemed to follow the person of the owner, and to be present at the place of his domicil, has no application. In such cases the maxim 'mobilia personam sequuntur' gives way to the other maxim 'juris semper aequitas existat.'"

Redmond v. Commissioners, 87 N. C. 123.

Bain's case has never been cited with approval in North Carolina, nor, according to Mr. Rapale, in any other State. It is plainly repugnant to later decisions of the Supreme Court of the United States which must be followed upon Federal questions. The Supreme Court of North Carolina must repudiate it, when the occasion offers. Otherwise the taxation of cars of the Pullman Company must be abandoned as unconstitutional, and the taxation of the rolling stock of the Southern Railway must cease."

"Bain's case has been expressly overruled in Union Refrigerator Transit Co. v. Lynch, 55 Pacific Rep. 642 decided in 1899.

III. THE SOUTHERN RAILWAY COMPANY SHOULD BE ASSESSED UPON THE AVERAGE AMOUNT OF ROLLING STOCK USED ON THE PIEDMONT RAILROAD FOR THE YEARS 1895 AND 1896.

This road has been, since July 1st, 1894, an integral part of the Southern Railway and has been operated by it. It has never owned any rolling stock, but its equipment has been supplied by the Southern Railway Company. This company has listed such rolling stock at $118,300 for the years 1897, 1898 and 1899. Approximately the same amount was necessary to be used on this road and was used in 1895 and 1896. For these years no return was made. If the Southern was bound to pay taxes on this rolling stock in 1897, the same obligation rested upon it in 1895 and 1896. The Bain case, if it had not been overruled by the Supreme Court of the United States, would not apply, because the Southern Railway is operating with its own rolling stock, using every day the same average amount. It makes no difference that the same cars are not always on the road and within the State, for while they are on such roads, the other cars are on other roads, supplying their places. If the Piedmont road were an independent organization, and owned its own equipment of $118,300 worth of rolling stock, it would be taxable on the whole thereof, although the greater part were in many cases interchangeably with other lines in the country, which in turn supplied with their own cars the Piedmont's necessities while its cars were absent.

IV. THE SOUTHERN RAILROAD SHOULD BE ASSESSED UPON THE DEFICIENCY OF ROLLING STOCK ON THE NORTH CAROLINA RAILROAD WHICH HAS BEEN SUPPLIED BY IT.

Section 48 of the Machinery Act of 1893 provides:

"If the property of any railroad company be leased or operated by any other corporation, foreign or domestic, ... and if the lessee or operating company, being a foreign corporation, shall be owner or possessor of any property in this State other than that which it derives from the lessor or company whose property is operated, it shall be assessed in respect of such property in like manner as any domestic railroad company."

This road has been leased and operated by the Southern since July 1, 1894. It is admitted that it must have $399,292 worth of rolling stock, in addition to the $114,708 worth which it owns. This deficiency has been supplied by the Southern since 1894. The Southern, by listing it for taxation in the years 1897, 1898, 1899, admits its obligation to pay taxes on this amount. There is no reason why it should not pay on the same amount for the years 1895 and 1896, when the same amount of rolling stock was used. Besides, even if the Bain case had not been overruled, there is no evidence as to what portion of the rolling stock thus supplied by the Southern is used in the inter-State business. This was incumbent upon the company.

V. THE SEABOARD AND ROANOKE RAILROAD COMPANY SHOULD PAY TAXES ON THE ROLLING STOCK WITH WHICH IT HAS OPERATED THE ROANOKE AND TAR RIVER FOR THE YEARS 1894 TO 1899 INCLUSIVE.

It has never returned a dollar's worth of this stock. The Roanoke and Tar River Railroad Company has been leased by the Seaboard and Roanoke ever since it was built. The Roanoke and Tar River Railroad Company has never owned a locomotive or a car. This road has never made any return of its business or of the amount of rolling stock used upon it.

All of the railroads in the State, except those operated by the Seaboard Air Line System in 1897, were assessed upon $19,613,717 total value of their road. They returned $2,594,140 of rolling stock. The proportion of stock to track was 13.2 per cent. Adopting this as the only feasible basis, the rolling stock used on the R. & T. R. R. should be assessed at 13.2 per cent. of the value of its track for the years 1894 to 1899, inclusive.

Its track was valued for each of these years as follows:

Year	Value	Rate	Amount
1894	$138,760,	13.2 pr. ct.,	$18,316.32
1895	142,840,	13.2 pr. ct.,	18,854.88
1896	138,680,	13.2 pr. ct.,	18,305.76
1897	138,560,	13.2 pr. ct.,	18,290.92
1898	162,100,	13.2 pr. ct.,	21,397.20
1899	258,400,	13.2 pr. ct.,	33,108.80
Total	....		$128,273.88

The Bain case has no application here because:

1. It has been overruled by the Supreme court of the United States.

2. The S. & R. is a domestic corporation for the purposes of this assessment, being incorporated in North Carolina, as well as in Virginia.

VI. THE MERCANTILE TRUST AND DEPOSIT COMPANY, TRUSTEE, OR THE SEABOARD AND ROANOKE, RALEIGH AND GASTON, AND RALEIGH AND AUGUSTA, TRUSTORS, ARE LIABLE FOR TAXES ON THE ROLLING STOCK INCLUDED IN THE CAR TRUSTS, WHICH THESE RAILROADS HAVE FROM TIME TO TIME EXECUTED TO THE TRUST COMPANY, FOR THE YEARS 1894, 1895, 1896 AND 1897.

It seems to be immaterial whether the trustors or the trustee return this property for taxation, as the railroad companies, trustors, pay the taxes.

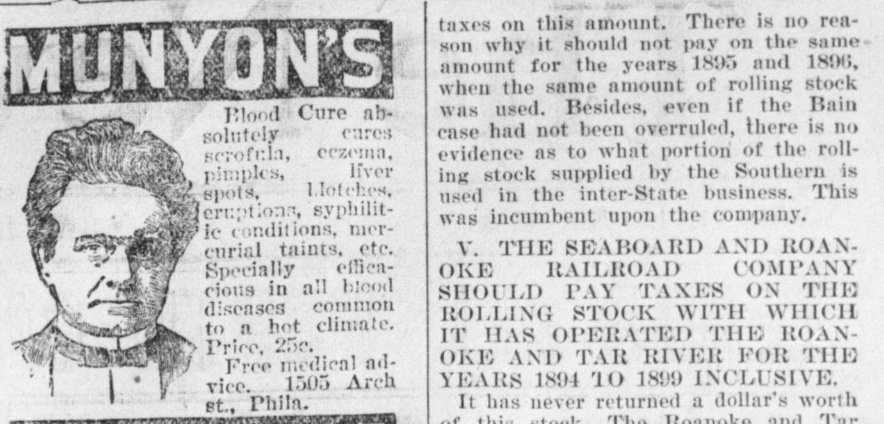
These railroad companies are the owners of certain rolling stock purchased from the Seaboard Air Line Car Trust Association in the years 1890, 1891, 1893, 1895 and 1897, at the aggregate price of $1,410,000, payable for the one lot in twenty, and for the others in ten annual instalments, with interest at 5 per cent, payable semi-annually. To secure the purchase money, they executed bonds, and deeds of trust upon the said rolling stock to the Mercantile Trust and Deposit Company as trustees. The deeds of trust would be inoperative unless the railroad companies had the title to convey. They are therefore now the equitable owners thereof. They have always held and used the rolling stock as their property, in the same manner as similar property owned by them, upon which they respectively pay taxes in this State. All the locomotives of the Raleigh and Gaston and Raleigh and Augusta are used exclusively in North Carolina and all of the Seaboard and Roanoke locomotives are used exclusively in North Carolina and Virginia. The cars are sometimes absent from the State on other lines, as is the case with the cars of every North Carolina railroad company which does a through business, but which is nevertheless taxable in North Carolina upon all of its cars.

These locomotives and cars were never listed until 1898, when the Mercantile Trust and Deposit Company and the railroad companies were, upon my motion, called upon by the Railroad Commission to return them for taxation. The Trust Company had refused to return them for taxation. They have never been listed for taxation in Maryland otherwise the Trust Company would have made it known, and would have protected itself against double taxation on them. The Trust Company is not in law liable to pay taxes in Maryland on property which has its situs in North Carolina simply because the Trust Company hold a deed of trust upon it. Besides, if it had the power, the Trust Company would not voluntarily have listed and paid taxes there, when presumably the taxing officers knew nothing of the existence of this property which never was in Maryland except on its outward trip from the manufacturers.

They were not listed in North Carolina, because there is no pretence that the Trust Company listed it for taxation before it was compelled to do so in 1898, or that the railroad companies ever did so at all. If they had, the Trust Company would have given it as a valid reason why it should not list the same property in 1898. Furthermore, the records of the Corporation Commissioner's office show that this rolling stock was never listed for taxation before 1898, when property which cost $1,410,000, as shown by the Railroad Commissioner's Reports on file, $750,000, of which was purchased in 1890, 1891 and 1893, and $660,000 in 1895, 1896 and 1897, was listed and assessed at the ridiculously low value of $331,854.22, not one-fourth of actual cost!

VII. THE ROLLING STOCK IN ALL FAIRNESS SHOULD PAY A TAX FOR THE YEARS WHICH IT HAS ESCAPED TAXATION.

The fact, that the Seaboard and Roanoke, and Raleigh and Augusta, and the Raleigh and Gaston, which for 1898 who will of course pay the back taxes on this rolling stock, and the future taxes on the same, although the Mercantile Trust and Deposit Company has elected to list it for taxation, three of the companies, have paid in the aggregate more than $785,866 of the purchase money with interest, and still owe $624,134 thereon, does not affect the question. Under the circumstances it is immaterial whether the property shall be assessed against the railroads or the Trust Company. If any



Headache

Is often a warning that the liver is torpid or inactive. More serious troubles may follow. For a prompt, efficient cure of Headache and all liver troubles, take

Hood's Pills

While they rouse the liver, restore full, regular action of the bowels, they do not gripe or pain, do not irritate or inflame the internal organs, but have a positive tonic effect. 25c. at all druggists or by mail of C. I. Hood & Co., Lowell, Mass.