

South Carolina Rail Road Company,
This company was incorporated in
1849, and the original charter provid-
ed for \$3,000,000 of capital stock,
\$2,000,000 of which was subscribed
by the state and \$1,000,000 by pri-
vate individuals. In this charter
there was no clause exempting any
part of the property of the company
from taxation, and by its acceptance
the company undertook to perform
every public duty at any time im-
posed upon it.

After the organization of the compa-
ny a by-law was adopted by the
stockholders which provided that
"At least one hundred individual
stockholders, represented either in
person or by proxy, and holding
not less than a majority of the
stock subscribed by individuals shall
be necessary to constitute a quorum
for the transaction of business".

In 1855 the original charter was a-
mended, by authorizing the issue
of additional stock to the amount
of \$1,000,000 to the state, which should
be preferred stock, and in this amend-
ment for the first time appears an
attempt at exemption from taxation.

Courts

No part of the Government is closer to the people than the judicial department and anything that will tend to increase its efficiency or to lessen the expenses of litigation is entitled to careful consideration. It is believed that these ends may be subserved by providing for the appointment of two or more Special Judges with authority to act in case of sickness or other temporary disability of one of the Judges of the Superior Court and with authority to hold Special Courts. It sometimes happens that a Judge is unable to hold his court, and the county has the expense of a great part of the term to pay, and no business is transacted, and in addition to the expense dissatisfaction with, and want of confidence, in the administration of the law are engendered which produce other evils.

Again at times crimes are committed which demand immediate investigation, and although under the present law there is authority to call a Special Term of the Superior Court, frequently no Judge can be found, unemployed, to hold it. The expenses of the additional Judges would be made

Courts

nominal by providing that receive no salary except for the time actually engaged in holding courts, and by allowing them in the snow time to practice law.

If the Legislature takes this matter under consideration care should be taken to avoid any constitutional objection. The Constitution provides that judges of the Superior Court shall be elected by the people, but it also provides that the Legislature may establish courts inferior to the Supreme Court. These provisions may be met by appointing special judges with the same jurisdiction in the courts, held by them, now exercised by the judges of the Superior Court, and with no power except when holding courts, and by creating the machinery for resolving a regular term into a special court, if the judge assigned by the law to the regular term is unable to attend.

that the bill was in the interest of a few counties along the line of the road and injurious to the State; and when all other reasons failed the Swozey such was held up as an insurmountable barrier. In reply, it could not be denied that all the private stock was subscribed under the original charter and before any exemption was claimed; that the entire property of the company, and upon which it would pay taxes if no exemption was claimed, was valued by the Rail Road Commissioners at \$2,074,000, and that the company was then paying taxes, State County and Municipal, on property valued at \$1,800,000, and that by a surrender of the exemption the company would be relieved of a tax upon its gross receipts, which it paid in addition to the taxes upon its property valued at \$1,800,000, amounting to \$6000 annually, this tax upon gross receipts being paid under a clause in the Revenue Act declaring that no company paying a tax upon its property should pay this tax; that counties were entitled to the usual and natural benefits arising from

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the location of property within their limits and as those along the line of the road had protected its property and contributed to its support it was not unjust for them to call upon the company to bear its proportion of the public burden; that the Swozey suit presented an obstacle to the proposed legislation. The bill was reported favorably by the committee on Railroads and Railroad Commission, and I think by an unanimous vote, but was defeated by a small vote in the House.

At the annual meeting of the stockholders next after the adjournment of the Legislature held in Greensboro on July 13th 1893 the President of the company in his report reviewed the condition of the road and recommended the surrender of all exemptions from taxation. This report of the President was submitted to the stockholders and without objection a resolution was adopted, "that the President's report be referred to the Board of Directors for their consideration, who shall report to the next annual meeting, or to a called meeting of the stockholders, if the directors should

think a called meeting ought to be held" thereafter at a regular meeting of the directors the report of the President was considered and a resolution was adopted directing the President to list all the property of the company for taxation, and requiring him to call a meeting of the stockholders to consider this resolution.

A meeting of the stockholders was called in accordance with said resolution and the Proxy for the State, representing three fourths of the entire stock of the company, attended, but no meeting could be held because many of the private stockholders, being opposed to the resolution, relied upon the by-law, requiring the presence of one hundred individual stockholders in person or by proxy, holding not less than a majority of the stock subscribed by individuals to constitute a quorum for the transaction of business, and absented themselves from the meeting.

At the next meeting of the directors the President reported the failure to organize a meeting of the stockholders and the directors then resolved the

resolution passed at the former meeting, and adopted another resolution, reciting that the dividends of profits of the company had exceeded 6% per annum and directing the entire property to be listed for taxation.

In June 1894 non-resident stockholders brought suit in the Circuit Court of the United States to restrain the company and its officers from listing the property, claimed to be exempt under the amendatory act of 1855, and this suit is now pending.

All the property of the company was in 1871 leased to the Richmond & Danville Railroad Company for a term of thirty years upon an agreement to pay a semi-annual rental of \$130,000, and \$10,000 taxes annually, and in addition to maintain the road and its equipments. The annual expenses of the company do not exceed \$10,000, and after payment of rental, taxes and all other expenses the reports of the Richmond and Danville company to the Railroad Commission show its net profits to exceed \$100,000.

The company has paid a semi-annual dividend of 3% to its stockholders

since 1871, and in addition thereto
has paid off an indebtedness of sev-
eral hundred thousand dollars, and
has made permanent investments
amounting to about \$100,000.

These are the facts, and upon them
I renewed the recommendation made
to the Legislature of 1893, that the 5th
section of the act of 1855 be repealed.
I believe that the interests of the State
and the company will not be injured
by doing so, and that common
honesty and justice require it.

The State owns two thirds of the stock
of the A & N. C. Co. and all of its prop-
erty pays its proportion of the taxes,
State County and Municipal.

The State has said to all other Rail-
roads within her bounds you must
pay taxes, and you will be shut off
from public favor and consideration
until you do so. This has been done
because the people demanded that
all property should bear its proportion
of the public burdens. The result is
that the W & M. R. R. Co. the S. A. T. Co.
the R & G. Co. and all other railroads
in the State, except the N. C. Co. have
surrendered their exemptions, and now

Sec 5 of said remedatory act reads as follows, "That all real estate held by said company for right of way, for station places of whatever kind, and for workshop location, shall be exempt from taxation until the dividends of profits of said company shall exceed six per centum per annum".

In my message to the Legislature two years ago I earnestly recommended the repeal of the section under which exemption from taxation was claimed, and soon thereafter a bill was introduced in the House of Representatives for that purpose.

Immediately a committee was appointed by the company from the private stockholders to defeat the bill. It was urged by the members of this committee that the proposed legislation was unjust to the private stockholders, because they had invested their money in the stock of the company upon the faith of this exemption; that the repeal of the exemption would prevent the payment of dividends and thus the State would lose upon its stock;

pay taxes upon all their property.

It would seem just for the state to follow the precepts and principles forced upon other companies, and demonstrate to her citizens that in her sovereign capacity she requires nothing of them that she will not conform to when she lays aside her sovereignty and engages in a private enterprise.

It is believed that the 5th. section of the Act of 1855, usually called the "exemption clause", has never amounted to a contract between the state and the company, on account of a failure of consideration, and that it is no more than a mere license which may be withdrawn at any time by the Legislature. At the time the act was passed the clause in our present Constitution declaring that "no man or set of men are entitled to exclusive or separate emoluments or privileges from the community but in consideration of public service" was in force. It cannot be doubted that an exemption from taxation is an "exclusive privilege" and to support such a grant as within the power of the Legislature a consideration of

a "public service" as distinguished from a "private service" must be shown. A private consideration might be shown in that the private stockholders agreed that the additional stock subscribed by the state should be preferred stock, but a consideration of a private nature cannot support the exemption as a contract, under the section of the Constitution referred to. If we turn to the act of 1855 we find that by its terms a public duty was imposed upon the company, and that every obligation of a public nature at any time agreed to be performed by the company originated in the charter of 1849. If the "exemption clause" were in the original charter the agreement to build a great work of internal improvement would furnish a sufficient consideration, but being in the amendatory act of 1855 which imposes no new duty it would seem clear that it is a mere matter of form which may be withdrawn by the Legislature at pleasure.

But if in its inception there was a sufficient consideration to support the clause as a contract, your attention is called to the language of the exemp-

tion and the undisputed facts connected therewith. The clause provides that certain property shall be exempt "until the dividends of profits shall exceed six per centum per annum". Since 1871 the company has declared and paid upon its stock a semi-annual dividend of three per centum. The capital stock is \$4,000,000. Six per cent. upon this is \$240,000 at the end of twelve months; while three per cent. semi-annually is \$120,000 at the end of each six months. So that by paying three per cent. semi-annually the stockholders have the use of \$120,000 for six months in excess of six per centum per annum, which, if invested at the legal rate of interest, would yield \$3,600. When compared with the total this appears insignificant, but a claim for exemption from taxation is closely scrutinized; Courts are astute to find reasons for declaring them invalid and the language under which it is claimed is construed strictissima jure. In our every day transactions we know that stock paying a semi-annual dividend of three per centum is worth more on the market and is more

valuable than stock paying an annual dividend of six per cent.

In addition to this the company has paid an indebtedness of several hundred thousand dollars since 1868, and within the last few years has invested \$20,000 in the Covdigh Mills Branch Road, about \$27,000 in the Union depot at Raleigh, about \$5,000 in the bonds of the University Branch Road, and about \$5,000 in a passenger depot at Bushington, and upon these investments is receiving a rental in addition to the amount stipulated to be paid in the loan to the Richmond & Danville Company.

The full scope of the Swaggy suit may be understood by reference to the opinion of Chief Justice White to be found in the appendix to the 71st North Carolina Reports. The case in brief is this. By the original act of incorporation of the company it was provided that the Public Treasurer of the State be authorized to borrow money to pay for the stock of the State and to issue certificates of indebtedness therefor; that the faith of the State be pledged to the holders of said certificates for the payment therefor and that all of the stock of the

State also be pledged for that purpose, and that all dividends declared upon the stock of the State be applied to the payment of the interest on said certificates. Swozey was the holder of certain of these certificates, upon which a large amount of interest was due and unpaid, and the Court held that upon failure to pay the interest he was entitled to a decree directing the sale of a part of the stock of the State to pay the interest.

If the Legislature thinks no action ought to be taken I recommend the consideration of some plan to enable the company to transact its business in stockholders meeting. Under the present by-laws a little more than one eighth of the stockholders of the company, by absenting themselves, can prevent a meeting, and recent events show that they will resort to this measure. No meeting has been held since July 1893 and none is likely to be held unless the subject of taxation is settled.