

Case No. 4,253. EASTERN KY. R. CO. v. SLACK.  
[22 Int. Rev. Rec. 247.]

Circuit Court, D. Massachusetts.

Jan., 1876.

INTERNAL REVENUE—TAX ON RAILROAD BOND COUPONS.

[A railroad company, which purchases from an improvement company a railroad, subject to an existing mortgage thereon, is liable for taxes subsequently assessed upon the coupons of the mortgage bonds, under the act of July 14, 1870 (16 Stat. 260).]

This suit was brought, June 17, 1873, in the state court, after appeal duly made to the commissioner of internal revenue, to recover the amount of certain internal revenue taxes, paid to the defendant [Charles W. Slack] as collector of internal revenue for the third Massachusetts internal revenue district. The action was duly removed to this court by certiorari, and was here heard upon agreed facts. The taxes, the amount of which was sought to be recovered, were taxes on coupons of the Kentucky Improvement Company. The circumstances under which the bonds bearing these coupons were issued are shown in the statement of the facts of the case of the Kentucky Improvement Co. v. Slack [Case No. 7,718], to which reference is to be had. The coupons upon which the tax was assessed fell due February 15 and August 15, 1871, and February 15, 1872. The tax assessed upon the coupons falling due February 15, 1871, was \$93.75, and it was paid by the plaintiff corporation July 31, 1871; the tax assessed upon the coupons falling due August 15, 1871, was \$371, and upon those falling due February 15, 1872, was \$281.25, and both these sums were paid by the plaintiff May 29, 1872. There was no dispute as to the amount of the tax that the plaintiff corporation should pay upon these coupons if it was legally liable to pay any tax thereon.

The plaintiff company was duly organized under an act of the general assembly of the commonwealth of Kentucky, approved January 18, 1870, which provided as follows:

“Section 1. Be it enacted, etc., that Nathaniel Thayer ... or any five of them who may act, are hereby appointed commissioners, and they, their associates and successors, are created a body politic and corporate for the purpose of constructing a railway with a single or double track, etc., etc.”

“Sec. 2. The name and style of the corporation hereby created shall be ‘The Eastern Kentucky Railway Company.’ Said company through its board of directors shall have, and may exercise, all the powers, and shall have all the privileges and rights usual and incident to such corporations.”

“Sec. 7. The said company shall have power to purchase, acquire and hold, any line of railway finished or unfinished, lying on or near its line, or crossing the same, or between its termini, with all the chartered privileges held or properly exercised by the company from whom such railway may be bought or acquired, and all the property, real and per-

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sonal, rights of way, etc., of such company, and may make payment for any railway and other property so bought or acquired, on such terms and conditions as may be agreed between the parties.”

Other provisions of the charter recognized the right of the company to engage in the general business of common carriers upon their line or lines of railway.

By deed dated February 28, 1870, the Kentucky Improvement Company conveyed to the plaintiff company “all the property of the party of the first part (i.e. the Kentucky Improvement Company), real, personal and mixed, including its franchise, subject, however, to a certain mortgage made by the party of the first part bearing date August 15, 1866, to Nathaniel Thayer and others, of the landed property and improvements of said party of the first part at that date, in trust to secure a certain issue of bonds bearing even date therewith, to the extent of \$500,000, as therein more particularly set forth, and which mortgage is still in force, so far as the same is applicable to and covers the property proposed to be hereby conveyed”—that is to say the issue of bonds bearing the coupons, the tax on which is in controversy.

F. W. Palfrey, for plaintiff.

George P. Sauger, U. S. Atty., for defendant.

CLARK, District Judge, took the case under advisement and in July, 1876, filed in writing the following opinion of the court:

In the case of the Kentucky Improvement Company v. Slack [supra], I held that the plaintiff company was a railroad company, and liable to the tax assessed upon the coupons of the bonds issued for building its road, and secured by a mortgage of its property and improvements, for reasons there stated. The Eastern Kentucky Railway Company in pursuance of authority in its charter, purchased “all the property” of the Kentucky Improvement Company “real, personal, and mixed, including its franchise, subject, however, to a certain mortgage made” by said Kentucky Improvement Company, August 15, 1866, to secure a certain issue of bonds by said improvement company to the amount of \$500,000. The statute of July 14, 1870, § 15 (16 Stat. 260), provided “that there shall be levied and collected for and during the year 1871, a tax of two and a half per centum on the amount of all interest or coupons paid on bonds,” etc., issued and payable in one or more years, etc., by any of the corporations mentioned in the section among which were railroads. The Eastern Kentucky Railway Company having purchased the property of

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the Kentucky Improvement Company, including its railroad, subject to the mortgage to secure the bonds and coupons in question, the inference is that they were to pay said bonds and coupons, and were liable to the tax assessed. Judgment for the defendant and for his costs.