tee from any obligation or liability imposed by the terms of such grant or renewal. It is questionable whether the right reserved to the city council to thereafter increase or diminish fare can fairly be said to be either an obligation or a liability of the railroad company within the meaning of this prohibition of the statutes; but, expressing no opinion on that subject, it is not true that the provisions of the section prohibit the city, after making an agreement or grant or renewal of a grant containing sundry provisions as to the rates of fare, from thereafter, upon sufficient consideration, modifying such contract. This has been expressly held in the case of Clement v. City of Cincinnati, 16 Wkly. Law Bul. 355, and affirmed by the supreme court of the state in 19 Wkly. Law Bul. 74. The court there held:

"The modification of a contract between the city and the owner of a street-railroad route, made in good faith for the better accommodation of the public, is not void by virtue of section 2502 of the Revised Statutes, and the release of the grantee of such route from an obligation, although in consideration of more rapid transit, involving greater expense and higher rate of fare, is permitted."

See, also, Woodson v. Murdock, 22 Wall. 351; City of Cincinnati v. Cincinnati St. Ry. Co., 31 Wkly. Law Bul. 308; Id., 2 Ohio N. P. 298; also State v. East Cleveland R. Co., 6 Ohio Cir. Ct. R. 318, affirmed by supreme court in 27 Wkly. Law Bul. 64. For nearly 20 years, as the result of municipal legislation, sometimes hostile, sometimes friendly, the rights and privileges of the public and the different street-railroad companies of this city have been gradually molded into a well-defined code of street-railway laws, every step of which has been stubbornly contended for by the respective parties to these suits. Conceding to each party all the rights and privileges won by this agitation, the court is convinced, after a thorough and painstaking investigation of all the ordinances, grants, and evidence, that the complainants are entitled to the relief for which they pray in their bills of complaint, granting them a temporary injunction. The court thinks it must be clear to every fair-minded person, from the findings of fact filed with this opinion, that to permit the ordinances of October, 1898, to be put into operation by the municipal authorities would clearly impair the present contract rights of the complainants, for which no adequate remedy exists at law.

The second contention of the complainants is that the ordinances in question prescribe a rate of fare so unreasonably low as to deprive the complainants of their property without due process of law. In support of this contention, a large volume of testimony in the shape of affidavits has been filed by the defendant and the complainants. On the part of the complainants these affidavits are offered to establish their contention that, taking into consideration the value of their railway systems, cost of construction, maintenance, and operation, they could not carry passengers at the reduced rate proposed without loss, and that this loss would be so great as that, in time, it would deprive them of their property without due process of law. The court has examined these affidavits sufficiently to see that it would involve a laborious and expert accounting to decide this contention; and, having reached a conclusion on the first contention of the complainants, that the ordinances are invalid for the

reasons hereinbefore stated, it is not necessary, for the purposes of this motion, to make any further examination of that claim.

It is, however, due the complainants to say that their testimony makes out a prima facie case, within the ruling announced in Smyth v. Ames, where the supreme court held:

"A state enactment or regulation made under the authority of a state enactment, establishing a rate for the transportation of persons or property by a railroad, that will not admit of the carrier earning such compensation as, under all the circumstances, is just to it and to the public, would deprive such carrier of its property without due process of law, and deny to it the equal protection of the laws, and would therefore be repugnant to the fourteenth amendment to the constitution of the United States."

A preliminary injunction will issue, to remain in force until the final hearing of the cause, or until the further order of the court. Counsel will proceed to take their testimony for the final hearing, and the 90 days allowed by equity rule 69 will be apportioned between the parties.

FAY et al. v. CITY OF SPRINGFIELD et al.

(Circuit Court, S. D. Missouri, W. D. May 9, 1899.)

1. CONSTITUTIONAL LAW—PUBLIC IMPROVEMENTS—ASSESSMENTS—FRONT-FOOT RULE.
   The statute of Missouri (sections 1495, 1496, Rev. St. 1889) authorizing the apportionment of the costs of repaving a street in cities of the third class on blocks and lots abutting thereon according to the front foot, without regard to the question of fact whether or not the given parcel of land is benefited thereby to the extent of the assessment, and without affording the property owner an opportunity to question the existence of such benefit, is in contravention of the fourteenth amendment to the federal constitution, and is therefore void.
2. SAME—PECULIAR BENEFITS—HEARING.
   The only theory of law under which the cost of such street improvements can be imposed as a special tax on the abutting property rather than as a burden upon the entire municipal community, being the fact that the local property is peculiarly benefited thereby, statutes or ordinances which arbitrarily assume that such local property is benefited in the proportion of the frontage thereof are invalid, unless the opportunity is afforded, at some period in the progress of assessment and the enforcement thereof, to be heard upon the question of fact as to whether or not the benefit is equal to the burden imposed, and as the supreme court of the state holds that, notwithstanding no notice or hearing is provided therefor when the tax is imposed by the city council, the owner when sued for the enforcement of the special tax cannot be heard to defend upon the ground that his property was not in fact benefited, nor upon the question as to whether the apportionment of the costs is equal among the several lot owners, the statute is violative of the fourteenth amendment of the federal constitution, and the whole tax may be enjoined. Following Village of Norwood v. Baker, 19 Sup. Ct. 187, 172 U. S. 269.

(Syllabus by the Court.)

James Baker, for complainants.

R. S. Goode, Barbour & Daniels, and A. A. Johnson, for defendants.

PHILIPS, District Judge. This is a bill in equity to enjoin the enforcement and collection of special tax bills assessed against lots fronting on Commercial street in the city of Springfield, Mo. The