

# The St. Johns Herald.

VOLUME 4.

ST. JOHNS, APACHE COUNTY, ARIZONA TERRITORY, THURSDAY, DECEMBER 22, 1887.

NUMBER 4

## Albuquerque National Bank.

Albuquerque, New Mexico.

Capital - - - - \$100,000.

## Stockmen's Business a Specialty.

CORRESPONDENCE INVITED.

OFFICERS:

JOHN A. LEE, President.  
S. M. FOLSOM, Vice-President.  
W. S. STRICKLER, Cashier.

## St. JOHNS DRUG COMPANY,

DEALERS IN

Drugs, Medicines, Paints and Oils,

NOTIONS, STATIONERY,

Druggist's Sundries and Toilet Articles.

## Post Office Building,

ST. JOHNS, ARIZONA.

W. E. PLATT, Manager.

## NEW STORE

OF

## ALFRED RUIZ,

DEALER IN

GENERAL MERCHANDISE.

Commercial Street, St. Johns, Arizona.

HIGHEST MARKET PRICE PAID

FOR

WOOL, HIDES AND PELTS.

ARIZONA MERCANTILE CO.,

DEALERS IN

GENERAL MERCHANDISE

St. Johns, Arizona.

HIGHEST MARKET PRICE PAID FOR WOOL AND  
HIDES, IN TRADE OR CASH.

Salt delivered to cattle or sheepmen on their ranges, at prices lower than can be obtained anywhere else, and with promptness and dispatch. Stockmen can depend upon the salt being clean and in good condition. All orders promptly filled. Terms furnished on application. Correspondence solicited.

## McCormick House.

Lately Enlarged. Neatly fitted up. New Furniture.  
Comfortable Rooms. Terms Moderate.

## Stable and Corral.

The best of hay and grain always on hand. Parties who wish to feed their own horses

[From the Prescott Courier.]

### IMPORTANT OPINION.

ATLANTIC & PACIFIC RAILROAD  
vs. J. T. LESUEUR.

BY JAMES H. WRIGHT, CHIEF JUSTICE.  
In the District Court of the Third Judicial District of the Territory of Arizona, sitting at Prescott, in Yavapai County, to hear and determine causes arising under the Constitution and Laws of the United States; June term, 1887.

Atlantic and Pacific R. R. Co., plaintiff.  
vs.  
J. T. Lesueur, Treasurer and ex-Officio Tax Collector of Apache County, Territory of Arizona, Defendant.

In Equity.  
Mr. William C. Hazledine, Solicitor, and Messrs. Rush, Wells and Howard, Attorneys for Plaintiff.

Messrs. D. P. Baldwin and Harris Baldwin, Attorneys for Defendant.

(Continued.)

We cannot agree with the learned counsel for plaintiff that the same rule ought to apply as to domicile for railroads chartered by congress and doing business in several states, as is applied to steamships and vessels. This would imply that commerce and trade by land and sea are substantially similar—that the means employed to carry on the one are not materially dissimilar to the means employed to carry on the other—whereas, they differ widely. Each steamship or vessel has, in a certain sense, an individuality of its own. These vessels fret the seas and plough the deep at random, furnished by the Almighty with those great natural waterways, whose facilities swell the marts of trade. No federal legislation, bestowing upon them invaluable franchises and millions of acres of public domain is required. The United States Supreme Court does not regard them as similar. In *Railroad Company vs. Maryland*, 21 Wallace, 479, Mr. Justice Bradley says: "Maritime transportation requires no artificial roadway. Nature has prepared to hand that portion of the instrumentality employed. The navigable waters of the earth are recognized public highways of trade and commerce. No franchise is needed to enable the navigator to use them. Again, the vehicles of commerce by water being instruments of intercommunication with other nations, the regulation of them is assured by the national legislation; so that state interference by water is clearly marked and distinctly discernible. But it is different by land." Now, while the evidence and stipulations show that the headquarters of plaintiff's western division, its principal offices, etc., were and are at Albuquerque; it is also admitted that plaintiff had subdivisional headquarters at Winslow, in Apache county, Arizona, at which current and temporary repairs were made. Now, between these two points, plaintiff's railroad ran and runs directly through Apache county, the distance being about 112 miles, plaintiff's cars being constantly engaged in both a local and through business in said county. Now, it is plain from the evidence that only a small portion of plaintiff's rolling stock was assessed in Apache county—certainly not greater than the use of that rolling stock therein and the protection afforded would justify. The statute of Arizona required that "all property of every kind and nature whatsoever, within the territory, should be subject to taxation. Was this rolling stock within the territory, within Apache county, in contemplation of the law at the time of the assessment? We think it was. That personal property follows the person is a fiction of the law, which, very likely, should have no application in the taxation of tangible personal property—such as stocks, notes, etc. That tangible personal property has a situs wherever situated, when not passing through a district, merely temporarily, for purposes of taxation, irrespective of the domicile of its owner, is we think unquestionable.

S., 524, Mr. Justice Bradley says: "If the owner of personal property within a state resides in another state, which taxes him for that property as part of his general property attached to his person, this action of the latter state does not affect in the least the right of the state in which the property is situated, to tax it also. It is hardly necessary to cite authorities on a point so elementary." And in case of *State Tax on Foreign Held Bonds*, 15 Wallace, 305, Chief Justice Woodward, of Pennsylvania, said: "But where the property is in our jurisdiction and enjoys the protection of our state government it is justly taxable; and it is of no moment that the owner, who is required to pay the tax resides elsewhere." Protection and taxation are reciprocal rights. We think it will be found that these cases (like the Missouri cases) that require tangible personal property to be taxed at the domicile of the owner are mostly where the corporations are interstate in character, or where the citizen owns personal property in different counties of the same state. In cases of this kind, it has sometimes been held that the property would follow the residence of the owner. The tendency of adjudications, however, seems adverse to even this limit upon the power of taxation.

Great cities sometimes grow by inscrutable laws; but they usually lie at the confines of two or more different states. Chicago and Kansas City are great railroad centres, with the headquarters or principal offices of most of their railroads located in these cities. From these foci, these great trunk lines radiate like arteries in every direction, and permeate many of the surrounding states and territories. Now, in these great industrial regions, the earth yields bounteously to the hands of industry; and great rolling trains startle the prairies and wake the slumbering echoes of the night, as they hurl the commerce of the people on towards these great marts of trade. Now, would it be just, because Chicago and Kansas City are situated, the one in the state of Missouri, and the other in the state of Illinois, that these two states—or to make it still more palpable, only one county in each of these states—should have all the revenue arising from a rightful taxation of all the rolling stock—the tangible, personal property of all these railroads? And that, too, simply for the reason that the domiciles, or headquarters of these roads are situated at Chicago and Kansas City? The greatest use of much of this rolling stock is had in other states; has it not acquired a situs in those states and in the taxing districts where used in those states, for the purposes of taxation, although its owners may have their domiciles, or these railroads their chief offices, elsewhere? Would it be just that this vast property should receive its principal protection from the government of these other states and not bear its fair proportion of taxation to support the public burdens thereof? Would a court in making such an allowance be equitable? Should Bernalillo county, N. M., in which Albuquerque is situated have all the revenue arising from the taxation of all plaintiff's rolling stock used upon its western division? Says Judge Cooley, on page 598 of his great work on constitutional limitations: "The power to impose is one so unlimited in force and so searching in extent, that the courts scarcely venture to declare that it is subject to any restriction whatever, except such as rests in the discretion of the authority which exercises it. It reaches to every trade or occupation; to every object of industry, use or enjoyment; to every species of possession; and it imposes a burden which, in case of a failure to discharge it, marks

followed by seizure and sale or confiscation of property. No attribute of sovereignty is more pervading, and at no point does the power of the government affect more constantly and intimately all the relations of life, than through the exactions made under it." Every government to which has been granted general legislative power, has this sovereign authority over the subject of taxation. In fact, it is the grand test of the right of the government to live; for it is grounded upon the great law of self-preservation.

We take the position that a railroad corporation, for the purpose of taxing its personal, tangible property—its rolling stock—may be regarded as having a constructive residence or domicile, in whatever county or taxing district, in which it may have an agent, or its rolling stock may be used in local as well as through traffic. For many purposes, and rightly so, wherever a railroad is in esse, there is its residence. This is true in acquiring jurisdiction in civil suits. The corporation is regarded as residing wherever it has an agent; and by serving summons upon the agent, the court thereby acquires jurisdiction over the body of the corporation. The corpus is wherever the railroad is; and wherever its rolling stock is continuously used and is protected, there it should pay a ratable, reasonable proportion of tax—should bear its part of the public burdens. And therefore on this point, our conclusion is that, as it is admitted that plaintiff's rolling stock was used continually in Apache county, in both local and through traffic at the time of the assessment, it had acquired a situs in said county and was subject to the tax assessed and levied thereon. See *Welby* on assessments, pp. 93, 94, 95, 96 and 104, 105 and 108; *Cooley* on constitutional limitations, 4th edition, 598; *Coe vs. Erral*, 116 U. S., 52; *Story's Conflict of Laws*, 550; *St. Louis vs. The Ferry Co.*, 11 Wallace, 423; *Dubuque, etc., R. R. Co. vs. Pullman Palace Car Co. vs. Twombly*, U. S. circuit court, Southern District of Iowa, found in *Federal Reporter*, volume 29, No. 14, page 658; *Railroad Co. vs. Pennsylvania*, 15 Wallace, 300; *Tappan Collector vs. Merchant's National Bank*, 19 Wallace, 490; *State Treasurer vs. Auditor General*, 46 Mich. 224, and 53 Mich., page 77.

Something has been said about the right to tax a federal agency. It seems to us the law on this subject is too well settled to admit now of cavil. When the tax will impede the operations of the agency, or hinder it in accomplishing the purpose of its creation, it may not be imposed. This has been the settled law of this country ever since the famous decision of Chief Justice Marshall in *McCulloch vs. Maryland*, 4th Wheaton, 310. The only question to determine is whether the tax imposed will be an impediment upon the operations of the federal agency, or not; if it will be, it may not be imposed; if it will not, it may be. The assessment in this case, however, does not lay any tax upon plaintiff as a federal agency; the tax is upon plaintiff's franchise for carrying freight, passengers, etc., other than for the federal government. The exact language of the assessment in the tax list is: "Also the franchise of the Atlantic & Pacific R. R. Co., to do business and collect freights and fares in said county, except so far as it may affect any business of the United States Government." The plaintiff offered no evidence to show that the tax imposed interfered in any manner with its operations as a federal agency. Aside from section 11 of plaintiff's charter, by which the government reserves the right to use the road as a post and

ment service, there is no evidence that plaintiff performed any greater service in that line, than other railroads. It is a matter of common notoriety that all railroads carry the United States mail. Attached to every regular passenger train is at least one United States postal car. We apprehend that a very inconsiderable portion of the immense business done by the Atlantic & Pacific R. R. Co. is that which it does for the government. We cannot see why the property of a federal corporation is not as amenable to the laws of taxation as that of any other corporation, unless expressly and indubitably exempt. *People vs. C. P. R. R. Co.*, 43 Cal., 399; *C. P. R. R. Co. vs. State Board of Equalization*, 60 Cal. 35.

Plaintiff's counsel in the argument of this case claimed that it should be required to pay only one dollar per mile if anything at all, upon its telegraph line, and that that should be paid to the territorial treasury. By virtue of section 11 of plaintiff's charter of 1867, But it is admitted in the stipulation that plaintiff has never paid any telegraph tax at all. "They that seek equity should do equity." Plaintiff ought to pay this tax before it asks for an injunction; for injunction is a reluctant writ. The section of the statutes above referred to we think clearly means that the one dollar per mile tax is in lieu only of territorial tax, and was not intended to include local or county taxes. See *Dunleith & Dubuque Bridge Co. vs. Dubuque*, 32 Iowa 430.

Third, Finally, plaintiff claims that the assessment was illegal and void, for the reason that it gave, through its general manager, Mr. D. B. Robinson, to the assessor of Apache county, an itemized list of its property, sworn to as the law directs; and that the assessor added to that list, and increased the valuation of the property without plaintiff's knowledge or consent. This position is not altogether consistent with plaintiff's position in the 17th paragraph of its complaint, where it alleges and charges that it does not appear from the assessment that said tax is illegal and void; and that by the laws of the territory of Arizona said tax is made a lien upon the property assessed. Standing upon the broad plains of conscience, with all the presumptions, every reasonable intendment in favor of the tax, will a court of equity interfere with an assessment that is not illegal and void? Plaintiff is bound by its complaint.

Now, the question is, did the fact that the assessor, upon being satisfied that the list furnished by plaintiff was incorrect, added to said list and increased the valuation of the property therein, render that assessment illegal and void? No assessment ever made by human hands was perfect. These assessors are generally farmers—country people—and not supposed to be skilled in the intricacies of the law. Hence, courts of equity will not scrutinize their work with rigid, technical vision. Unless there is such a palpable failure to comply with the law, such grave irregularities as to render the assessment void, the tax will be upheld. Had the assessor the right to amend the list furnished him by plaintiff? If he had not then under our law (for the law in this respect has not been materially changed), every man in the territory can be his own assessor and judge of what part of the public burdens he will bear. Can this be true? Did the legislature intend to furnish this loop-hole, through which every dishonest taxpayer might escape paying his just share of taxation?

(Concluded in our next.)

The streets of Wilcox are being