

Copy

Richmond.

July 15th 1876.

Col. A. S. Buford.

President.

My Dear Sir.

You have shown me Mr Andrews' remarks and Mr Tourgee's letter in regard to the Greensboro tax upon the N. C. R. R. Co. on account of its doing business & having an office at Greensboro.

I gave you my opinion hastily & without much consideration as you know. And having the opinion of Mr Tourgee that the Company are not bound to pay the tax of \$25⁰⁰ imposed upon it, the Company will be justified in resisting its payment, if it can do so without expending more than the tax itself.

Nevertheless after due consideration notwithstanding Mr Tourgee's opinion and that of Mr Andrews, I still think that the tax is legal.

The argument of Mr Andrews that if the city could impose a tax of \$25⁰⁰ it could impose one of \$20,000⁰⁰ amounts to nothing - This argument would apply to any tax levied

by the City upon any business or property in the City, and the City would be precluded from levying any tax whatever - There is a constitutional restriction that protects the citizen from all such arbitrary and exorbitant exactions.

My opinion is - that the franchise granted by the State of N. C. to the N. C. R. R. Co. empowers that Company to carry on its business in the State of N. C., and to condemn property when necessary to do so to carry out the purposes of its charter - and that it has the right to establish depots & offices along the line of its road & convenient thereto, for the purpose of carrying on its business -

This is I think undoubtedly so, as Mr Justice states - and I don't think the Legislature of N. C. can deprive the Company of these rights or franchise. But the franchise of this Company is a subject that may lawfully be taxed, as has been expressly declared by the Supreme Court of the U. States in the case of Read vs the N. C. R. R. Co. reported in the 13th of Wallace, page 269.

In that case the Legislature had agreed to exempt the R. R. Co. from taxation - and the Court said that therefore the Legislature could not tax the franchise of the Company - but it distinctly declared that the franchise was property and like other property was the subject of taxation - Under the Charter of the N. E. R. R. Co. the real estate, and the real estate only of that Co. is exempt from taxation until the Company shall declare a dividend greater than 6 per cent per annum upon the Capital stock - but the personal property of the Company, including all its rolling stock &c and its franchise is taxed by law, and the Company pays it every year without objection -

If in taxing this franchise the value fixed by the persons deputed to assess it should be so great as to show that the purpose was to obviate the provision of the Charter exempting the real estate from taxation, by putting this excessive estimate upon the franchise, the Company would have the right to be relieved from this unjust valuation - but

so long as the tax upon the franchise is fair and reasonable, and according to the Constitutional provisions in respect to uniformity and equality of taxation, so that if the Legislature has the right to tax this franchise (what it is I have stated) then it can give the City of Greensboro the power to do so also -

I have never seen the Charter of the City of Greensboro, but have taken for granted the fact that it is such as is usually granted to municipal corporations and that it confers the right to levy a tax upon such subjects as the Legislature itself can and does tax.

I think the keeping an office for the transaction of its business is a part of the privileges granted by the charter to the R. R. Co., and that all the privileges granted constitute the franchise of the Company conferred by the Legislature upon the Company. If however the Company can escape the tax so well & so good -

My habit is to give my best opinion upon these questions and to advise the

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Company what I think the law is after
due examination - In doing so - I cannot
expect to give opinions that will always meet
with the concurrence of all other lawyers
or even of the officials of the Company -
My opinion is that the tax is constitution-
al and legal - unless as already stated the
Charter of the City of Greensboro should be
different from what I take it for granted
it is. If there were anything in that Char-
ter that would militate against my view,
it is reasonable to suppose that Mr. Dourge
would have cited it -

Very Resply

Yours &c.

A. H. Marshall.

Gen'l Counsel.

Letter of Marshall
to Buford July 15/1816
on Fremont
Harp on N.C.-R.R. Co.

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