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Taxation--Constitutional Law--Right of State to Impose Personal Property Tax on Airplanes Engaged in Interstate Commerce (Northwest Airlines, Inc. v. State of Minnesota, 322 U.S. 292 (1944))

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TAXATION—CONSTITUTIONAL LAW—RIGHT OF STATE TO IMPOSE PERSONAL PROPERTY TAX ON AIRPLANES ENGAGED IN INTERSTATE COMMERCE.—The petitioner is a Minnesota corporation with its principal place of business at St. Paul, operating as a commercial airline carrying persons, property and mail on regular fixed routes, with due allowance for weather, predominantly throughout the Middle and Far Northwest. Its planes are rebuilt or overhauled in St. Paul. All of the Northwest planes were continuously flying from state to state during the year 1939 except for undetermined periods in St. Paul for repairs and overhauls. The Minnesota personal property tax is levied on property in the state on May 1, 1939. The question at issue here was the propriety of the levying of this tax upon all the Northwest planes as assessed by the State of Minnesota. The contention of Northwest Airlines was that the basis of the tax should be the number of planes actually in the state on May 1, 1939 as reported in its tax return. From a decision in favor of the state, the airline appealed contending that the right of the state to impose a tax on all its planes was a violation of the due process clause of the Federal Constitution.[1] The Supreme Court of Minnesota affirmed the right of the state to tax all planes.[2] Whereupon Northwest Airlines appealed to the United States Supreme Court. *Held,* five to four for affirmance. The tax is constitutional since the state of origin remains the permanent situs of the property notwithstanding its occasional excursion to foreign parts. *Northwest Airlines, Inc. v. State of Minnesota,* 322 U. S. 292, 64 Sup. Ct. 950 (1944).

The right to tax personal property by any one state where such property is not continuously within such state during the taxable period has been attacked anew by the operators of each new mode of transportation as the latter has arrived upon our historical scene. The siege began in 1851 with the onslaught by ship owners upon the right of a state to tax vessels which were only temporarily at the wharves of said state and had their home ports elsewhere, the Supreme Court ruling that only the home port state had the right to tax.[3] In 1870 the city of St. Louis attempted to tax ferries of an Illinois corporation and here the Supreme Court held that the situs was the port at which the boats were laid up and not the city of St. Louis, at whose wharves they were prohibited from staying longer than ten minutes at one time.[4] In 1905 the question again arose in connection with the taxation of the rolling stock of the New York Central Railroad, a New York corporation, by the State of New York.[5] This case is almost exactly the same as the instant case and here again the Supreme Court held that the tax was assessable by the State of New York as the situs of all the cars.

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[1] U. S. CONST. AMEND. XIV.
[2] 213 Minn. 395, 7 N. W. (2d) 691 (1942).
[3] Hays v. Pacific Mail S. S. Co., 17 How. 596 (U. S. 1854).
[4] St. Louis v. Ferry Co., 11 Wall. 423 (U. S. 1870).
[5] N. Y. Central R. R. v. Miller, 202 U. S. 584, 26 Sup. Ct. 714 (1906).

Mr. Justice Holmes states the answer strongly when he says, "But it has not been decided, and it could not be decided, that a state may not tax its own corporations for all their property within the state during the tax year, even if every item of that property should be taken successively into another state for a day, a week, or six months, and brought back. Using the language of domicil, which now so frequently is applied to inanimate things, the state of origin remains the permanent situs of the property, notwithstanding its occasional excursions to foreign ports." [6]

In all the cases there can be no question of unconstitutionality as depriving the owner of its property without due process of law [7] because the ships, cars, or airplanes are at times temporarily absent from the state since no tax was levied upon such vehicles which were permanently without the state.

J. F. S.

NEGLIGENCE—SCHOOLS—PERSONAL INJURIES RECEIVED BY PUPIL—LIABILITY OF TEACHER FOR NEGLIGENCE—LIABILITY OF BOARD OF EDUCATION.—Plaintiff was an infant eighteen years of age and a senior at Albany High School when on March 5, 1943 he suffered a broken leg as a result of a fall which occurred in the gymnasium of that school during physical training exercises conducted under the supervision of J. Emmett Dowling, the physical education teacher. The acrobatic feat in which plaintiff was injured, was a somersault over elevated parallel bars. The exercise was not one included in the syllabus prepared by the regents which describes numerous exercises and acrobatic feats, but was a combination of two or more exercises. It was not generally taught and should be attempted only by exceptionally skilled pupils. The floor on the far side was ordinarily covered by a mat; on this occasion it was not. Action was brought against the Board of Education and J. Emmett Dowling on behalf of the infant for damages for personal injuries, and by the infant's father for medical and hospital expenses. The jury returned verdicts against the Board of Education and Dowling in favor of the plaintiff and his father. The verdicts against the Board of Education were set aside by the trial justice, although they were not as against Dowling. Dowling appeals from the denial of his motion to set aside the judgment against him, and plaintiff and his father appeal from the portion of the order which set aside the verdicts as against the Board of Education.

On April 3, 1942 plaintiff was injured by gunshot wounds in both arms while working in the machine shop maintained by the

[6] N. Y. Central R. R. v. Miller, cited *supra* note 5.

[7] U. S. CONST. AMEND. XIV, § 1: "No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any state deprive any person of life, liberty, or property, without due process of law."