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Taxation--Succession Tax--Life Interest Retained by Settlor Guaranty Trust Co. of New York v. Blodgett, 53 S. Ct. 244 (1932))

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TAXATION—SUCCESSION TAX—LIFE INTEREST RETAINED BY SETTLOR.—The settlor, domiciled in Connecticut, died January 26, 1930, having executed in New York on December 28, 1926, an irrevocable deed of trust to a New York Trust Company of certain securities, providing income to settlor for life, upon her death income to settlor's husband during his life, upon his death trustee to pay and transfer principal to daughter, if living, if not, to her issue. The State Court [1] sought to tax under the Public Acts of Connecticut.[2] The trustees appealed, contending that it infringed the contract impairment clause and the 14th Amendment of Federal Constitution. *Held,* No violation of Federal Constitution. *Guaranty Trust Co. of New York* v. *Blodgett,* 286 U. S. ——, 53 Sup. Ct. 244 (1932).

The Court, disregarding *Nickel* v. *Cole* [3] which declared a retroactive estate tax unconstitutional on the same facts, for the first time expressly validated a succession tax where decedent retained only a life interest in the property taxed.[4] A succession tax, however, has been upheld where the settlor retained a power of appointment in conjunction with a trustee.[5] The Court construed the Act of 1923, without regard to the Act of 1929,[6] as embracing the event sought to be taxed, and since in that view the question of contract impairment does not arise, it was bound by the decision of the state court [7] as though the meaning as fixed by the court had been expressed in the statute itself in specific words,[8] and held that the imposition of the tax did not offend the 14th Amendment nor any provision of the Federal Constitution.[9]

If the trust had been revocable as in the *Reinecke* case,[10] we would be entirely in accord with the decision, since the Public Acts of 1923 [11] was revived practically in its entirety so far as applicable to the question here involved. However, the irrevocability created in the donees a vested right in 1926, and the intention of the settlor in creating the instrument must be considered by the court. Four years elapsed between the time the instrument was executed and settlor's death. Inferentially it was not a gift *in extremis.*[12] Con-

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[1] 114 Conn. 207, 158 Atl. 245 (1932).
[2] PUB. ACTS CONN., 1929, c. 299, §§1, 2; PUB. ACTS CONN., 1923, c. 190, §1.
[3] Nickel v. Cole, 256 U. S. 222, 41 Sup. Ct. 467 (1921); see also Milliken v. United States, 283 U. S. 15, 20, 23, 51, Sup. Ct. 324, 327 (1931).
[4] Moffit v. Kelley, 218 U. S. 400, 31 Sup. Ct. 79 (1910); Keeney v. New York, 222 U. S. 525, 32 Sup. Ct. 105 (1912); Nickel v. Cole, *supra* note 2.
[5] Saltonstall v. Saltonstall, 276 U. S. 260, 48 Sup. Ct. 225 (1928).
[6] *Supra* note 2.
[7] *Supra* note 2.
[8] Tidal Oil Co. v. Flanagan, 263 U. S. 444, 44 Sup. Ct. 197 (1924); Fleming v. Fleming, 264 U. S. 30, 44 Sup. Ct. 246 (1924); Great Northern Ry. Co. v. Sunburst Oil & Refining Co., 287 U. S. —, 53 Sup. Ct. 145 (1932).
[9] See Coolidge v. Long, 282 U. S. 582, 586, 51 Sup. Ct. 306, 309 (1931).
[10] See Reinecke v. Northern Trust Company, 278 U. S. 339, 49 Sup. Ct. 353 (1929).
[11] *Supra* note 2.
[12] See Note (1932) 7 ST. JOHN'S L. REV. 138, 140.

fusion may result when this decision is placed beside *Coolidge* v. *Long*.[13]

H. B. B.

INHERITANCE TAX—INTANGIBLES—DETERMINATION OF SITUS —CONSTITUTIONAL LAW.—Decedent, at the time of his death, was a British subject, domiciled in Cuba. At the time of his death he was not engaged in business in the United States, but owned bonds of foreign corporations, bonds of foreign governments, and stock in a foreign corporation, which were in the possession of either his son or a brokerage firm for care. All of the stocks and bonds were physically in New York City. These securities were not used in any business, nor held as a pledge for the security of a debt. The son collected the income on such securities as he held, and deposited it in a New York bank on his father's account. The brokerage firm deposited its collections in an account of the decedent with that firm, against which the decedent drew checks. The Board of Tax Appeals and the Circuit Court of Appeals held such property not taxable, recognizing them as not situated in the United States, *held* reversed. *Burnet* v. *Brooks et al.*, 286 U. S. ——, 53 Sup. Ct. 457 (1933).

In the determination of whether the property in question is covered by the Revenue Act of 1924,[1] the court found it necessary to ascertain the intention of the legislature.[2] This problem as to who retains the right to collect an inheritance tax, has been a well litigated one.[3] In a long line of decisions, the Supreme Court has

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[13] *Supra* note 9.

[1] REV. ACT OF 1924, c. 234, 43 Stat. 253, 303-307.

[2] The statute made no distinction between tangible and intangible property. As to tangibles and intangibles, alike, it made the test simply one of situs. Eidman v. Mantez, 184 U. S. 578, 22 Sup. Ct. 515 (1902). Congress retains the right to impose an inheritance tax on property in this country no matter where owned or transmitted. The regulations promulgated by the treasury department, interpreting the words "situated in the United States," bear out this view. Reg. #37, Art. 60, T. D. 2378, 2910, 3145: "The 'situs of the property,' both real and personal, for the purpose of tax, is its actual situs. Stock in a domestic corporation, and insurance payable by a domestic insurance company, constitute property situated in the United States, although owned by and payable to a non-resident. Bonds actually situated in the United States, monies on deposit with domestic banks and monies due on open accounts by domestic debtors constitute property subject to tax." See Sen. Rep. #275, 67 Cong. 1st Sess., p. 25.

[3] Safe Deposit and Trust Co. v. Virginia, 280 U. S. 83, 50 Sup. Ct. 59 (1929); Farmers Loan and Trust Co. v. Minnesota, 280 U. S. 204, 50 Sup. Ct. 98 (1930); (1930) 4 ST. JOHN'S L. REV. 322; Baldwin v. Missouri, 281 U. S. 586, 50 Sup. Ct. 436 (1930); (1930) 5 ST. JOHN'S L. REV. 136; Beidler v. So. Carolina Tax Comm., 282 U. S. 1, 51 Sup. Ct. 54 (1930); Note (1930) 5 ST. JOHN'S L. REV. 288; Susquehanna Power Co. v. State Tax Comm., 283 U. S. 297, 51 Sup. Ct. 436 (1931); Note (1931) 6 ST. JOHN'S L. REV. 173, 175; First National Bank of Boston v. State of Maine, 52 Sup. Ct. 174 (1932); Note (1932) 6 ST. JOHN'S L. REV. 408.