

Inheritance Tax--Intangibles--Determination of Situs--Constitutional Law (Burnet v. Brooks et al., 53 S. Ct. 457 (1933))

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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

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.

evolved a definite rule of taxation on the problems that have arisen; but these cases dealt with the right of states to levy upon intangibles. The principal case dealt with the right of the United States Government to tax intangible property, situated in this country, owned by a subject of a foreign country, and domiciled in Cuba. The sovereign, as such, has the power of taxing securities physically within its territorial limits;⁴ consequently the securities should be included in the gross estate of the decedent. The inclusion of the bank deposit will depend, under the statute, upon the findings to be made with respect to the nature of the business of the concern with which the deposit was made.

Chief Justice Hughes methodically delves into the situation, interpreting the intent of the legislature to give the United States Government the right to tax intangible personal property in this country, in that respect changing the rule ordinarily applicable to personal property, deciding that the maxim *mobilia sequuntur personam* does not apply in this instance, because of the wording of the statute.

M. A. M. E.

⁴ *Fong Yue Ting v. United States*, 149 U. S. 698 (1893); *Mackenzie v. Hare*, 239 U. S. 299, 36 Sup. Ct. 106 (1915); *Disconto-Gesellschaft v. U. S. Steel Corp.*, 267 U. S. 22, 45 Sup. Ct. 207 (1925).