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Inheritance--Transfer Tax--Constitutional Law--Conflicts (City Bank Farmers' Trust Co. v. New York Central Co., 253 N.Y. 49 (1930))

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in actual need regardless of his expectation or opinion.[1] In a similar case it was held that a widow was limited to what was requisite for her comfortable maintenance and support, and that so long as she acted reasonably and in good faith, the amount to be appropriated from the principal must be left to her own discretion, but if wasteful or unreasonable, she might be restrained by a court of equity upon the complaint of any of the remaindermen.[2] Subsequently in a case in which the widow had the use and income of the property for life with the privilege of expending "so much of the principal as she may find necessary for her comfortable maintenance and support," the Court held that the widow was the sole judge of what was necessary, and so long as she exercised her opinion in that respect in good faith, she could not be questioned by a remainderman or by a court; for mere extravagance or wastefulness in expenditure of principal for her own support did not amount to bad faith.[3] The Court recognized as law, the principle laid down in the prior cases, but thought that the attendant circumstances in the case before them created a distinction. No such circumstances were present in this case to necessitate such a departure.

B. E. D.

INHERITANCE—TRANSFER TAX—CONSTITUTIONAL LAW—CONFLICTS.—Plaintiff's testator, a resident of New York, died August 4, 1927. Included in his estate was a certificate of stock of the defendant, a domestic corporation which is also incorporated under the laws of Pennsylvania and other states. Plaintiff presented the certificate to the defendant at a transfer office in New York and requested that it be transferred on the corporate books. Defendant believing the certificate to be subject to the payment of a tax under the laws of Pennsylvania, declined to make the transfer without proof of payment or waiver thereof by the Commonwealth. A declaratory judgment was obtained by the plaintiff subjecting the defendant to a duty to transfer the certificate without exacting proof of payment of the tax or waiver thereof. Defendant appealed. *Held*, judgment reversed. Inasmuch as the Supreme Court of Pennsylvania has already declared that the Commonwealth should continue to exact transfer taxes from estates of New York decedents who died between July 1, 1925 and March 12, 1928, our reciprocity statute being of no effect in that jurisdiction during the period specified, defendant was justified in demanding proof of payment of the tax or waiver thereof. City Bank Farmers' Trust Co. v. New York Central Co., 253 N. Y. 49 (1930).

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[1] Hull v. Culver, 34 Conn. 403 (1867).
[2] Little v. Geer, 69 Conn. 411 (1897).
[3] Reed v. Reed, 80 Conn. 401 (1908).

In an effort to avoid growing evils in the inheritance tax laws of New York, the Legislature in 1925 enacted an article entitled 10A of the Tax Law. Article 10, then on the statute books, was to govern transfers of property of resident decedents. The new enactment provided for a method of taxing estates of non-resident decedents. New York's reciprocity statute,[1] providing for exemption from a transfer tax where the state of the non-resident exempted our residents from a transfer tax on property located in that state, was included as a part of Article 10A. In 1927 other sections of Article 10A providing for various rates of taxation on estates of non-residents, were declared unconstitutional in that they were in conflict with the limitations of the Federal Constitution.[2] The State Tax Commission was promply advised that transfers were thereafter to be taxed under the rates existing prior to the enactment of Article 10A. The Commission, interpreting this to mean that the reciprocity statute had fallen with the other provisions of Article 10A, proceeded to collect transfer taxes from non-resident decedents of *all* states. This in turn was followed by the extinguishment of reciprocal provisions on the part of Pennsylvania and other states. No court of this state had declared that the reciprocity statute was no longer in force. It was an assumption without judicial sanction. This condition existed until 1928 when the Legislature came to the rescue with a statute designed to bridge the gap from July 1, 1925 to March 12, 1928.[3] Provision was made for a new reciprocity statute (without extinguishing the old). Another section[4] provided that no refunds were to be made for payments made during the three-year period (to those who had made payment of taxes under the belief that the old reciprocity statute had fallen with the other sections of Article 10A) unless a similar proviso was enacted by the other state as to payments made by our residents in that state. The old reciprocity statute still in effect, the subsequent statute, operating retroactively to take away a right which in law existed, was a denial of due process[5] and consequently of no effect. At this juncture the Court conceded that everything thus far considered was in accord with plaintiff's contention. A consideration of one more factor was necessary. What was the law of Pennsylvania with respect to reciprocity? That state had ceased to extend the exemption privilege to our residents concurrently without similar action with respect to its residents. The Supreme Court of Pennsyl-

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[1] Sec. 248, p. .

[2] Smith v. Loughman, 245 N. Y. 486, 157 N. E. 753 (1927), *certiorari* denied 275 U. S. 560 (1927).

[3] Laws of 1928, Ch. 330.

[4] *Ibid.* Sec. 11.

[5] Untermyer v. Anderson, 276 U. S. 440, 48 Sup. Ct. Rep. 353 (1928); Matter of Pell, 171 N. Y. 48, 63 N. E. 789 (1902); Matter of Lansing, 182 N. Y. 238, 74 N. E. 882 (1905); Matter of Pettit, 65 App. Div. 30, 72 N. Y. Supp. 469 (1st Dept. 1901); Matter of Craig, 97 App. Div. 289, 89 N. Y. Supp. 971 (2nd Dept. 1904).

vania declared that since reciprocal relations were at an end, transfer taxes were to be imposed on our residents, at least during the period between July 1, 1925 and March 12, 1928.[6] No statute was passed in that jurisdiction allowing retroactive reciprocal exemptions or refunds. Reciprocity having failed during this period, it was proper for the defendant to insist on proof of payment of the tax or waiver thereof. The fact that the Court in the instant case found that our reciprocity statute had not been affected by the failure of other sections of the same article had no effect on its decision because of the fact that the Court in Pennsylvania construing its laws had determined that so far as that state was concerned no reciprocal relations existed. No question arose as to the legitimacy of a Pennsylvania tax on stock held by a person domiciled in this state. It has been held recently that *debts* are subject to a transfer tax at but one place, the domicile of the creditor.[7] To avoid multiple taxation, reciprocal exemption statutes are contained on the statute books of thirty-seven states.

A. K. B.

INHERITANCE—TRANSFER TAX—INTANGIBLES—DOMICILE OF OWNER.—Henry R. Taylor, while domiciled and residing in New York, died testate. Included in his estate were negotiable bonds and certificates of indebtedness issued by the state of Minnesota and its subdivisions. All passed under his will which was probated in New York where his estate was administered and a tax exacted upon the entire testamentary transfer. The state of Minnesota assessed an inheritance tax upon that portion of the estate consisting of obligations arising in that state. Deceased's executor contested the validity of the latter imposition. From a decision of the Supreme Court of Minnesota affirming the validity of the assessment, plaintiff appeals. *Held,* that the right asserted by the state is in conflict with the Fourteenth Amendment and that the bonds and certificates may be validly taxed at but one place—the domicile of the owner at his death. Farmers Loan and Trust Co. v. State of Minnesota, 280 U. S. 204, 50 Sup. Ct. Rep. 98 (1930).

It does not appear that difficulty of any serious account was met with in determining the right to impose taxes, whether direct or indirect, upon real property. The right to so tax was and is accorded only to a state wherein the realty is situated. Perhaps the strongest argument in support of the right lies in the universally recognized characteristic of land—its immovability. No such right is time-honored with respect to personalty. Under early common law it was

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[6] Commonwealth of Pennsylvania v. Farmers Loan & Trust Company, etc., 147 Atl. 71 (May, 1929).

[7] Farmers Loan & Trust Company v. State of Minnesota, 280 U. S. 204, 50 Sup. Ct. Rep. 98 (1930). See *infra* below.