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Inheritance--Transfer Tax--Intangibles--Domicile of Owner (Farmers Loan and Trust Co. v. State of Minnesota, 280 U.S. 204 (1930))

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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.

usual and customary for an individual to have in his possession all his personalty. And, if he changed his abode from one land to another, his stock of horses, cattle and other chattels would go with him. Out of this early custom sprang a fiction, *mobilia sequuntur personam,* which persisted in the light of logic and fact. Applying the fiction it was only possible to tax tangible property at the domicile of its owner wherever in fact the property was situated. As time passed and the importance of tangible personal property increased, fiction gave way to fact and the dictates of sense led the courts to declare that tangible personal property might be taxed only by the state wherein the property was permanently situated.[1] "The argument against the taxability of land within the jurisdiction of another state applies with equal cogency to tangible personal property beyond the jurisdiction." [2] Of equal moment because of its prominence is the subject of taxation of intangible personal property. The Court in the instant case states the presently approved doctrine that no state may tax anything not in her jurisdiction.[3] Thus stated the doctrine appears elementary. As applied, however, no little difficulty is encountered. For instance, it had been decided in Blackstone v. Miller [4] that the state of the debtor had jurisdiction to impose a testamentary transfer tax on a debt or other chosen action held by a deceased non-resident creditor. The Court stated:

> "What gives the debt validity? Nothing but the fact that the law of the place where the debtor is will make him pay. It does not matter that the law would not need to be invoked in the particular case. Most of us do not commit crimes, yet we nevertheless are subject to the criminal law, and it affords one of the motives for our conduct. So again, what enables any other than the very creditor in proper person to collect the debt? The law of the same place. To test it, suppose that New York should turn back the current of legislation and extend to debts the rule applied to slander that *actio personalis moritur cum persona,* and should provide that all debts hereafter contracted in New York and payable there should be extinguished by the death of either party. Leaving constitutional considerations on one side, it is plain that the right of the foreign creditor would be gone." [5]

In this statement lay the justification for the imposition of the tax in the state of the debtor's domicile. However, the Court in the instant

[1] Union Transit Co. v. Kentucky, 199 U. S. 194, 26 Sup. Ct. Rep. 36 (1905); Buck v. Beach, 206 U. S. 392, 27 Sup. Ct. Rep. 712 (1906); Frick v. Pennsylvania, 268 U. S. 473, 45 Sup. Ct. Rep. 603 (1925); Wachovia Bank & Trust Co. v. Doughton, 272 U. S. 567, 47 Sup. Ct. Rep. 202 (1926).

[2] Frick v. Pennsylvania, *supra* Note 1 at 490.

[3] Foreign-Held Bonds, 15 Wall. 300 (U. S. 1872).

[4] 188 U. S. 189, 23 Sup. Ct. Rep. 277 (1903).

[5] *Supra* Note 4 at 205, 206.

case seeks to place taxation of intangibles on a practicable basis and like unto tangible personal property to accord it immunity from taxation at more than one place. The maxim *mobilia sequuntur personam* finds convenient application in that the situs of the debt is to be found at the domicile of the owner. The doctrine that two states may tax the same debt or other chose in action (at the domicile of the creditor and at the domicile of the debtor), on more or less inconsistent principles, without conflicting with the Fourteenth Amendment, is no longer to be followed, and, "to prevent misunderstanding it is definitely overruled." [6] The Court was not called upon to consider whether intangibles other than debts were to be accorded immunity from multiple taxation. The tenor of the opinion suggests that that is the desired end.

A. K. B.

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[6] Quoted from the instant case.