St. John's Law Review

Volume 3
Number 1 *Volume 3, December 1928, Number 1*

Article 17

June 2014

Constitutional Law--Equal Protection--Effect of Taxing Power--Right of Foreign Corporation (Quaker City Cab Co. v. Commonwealth of Penna., 72 L.Ed. 607 (1928))

St. John's Law Review

this statute as requiring such service as was held to be necessary to make it constitutional.

It is difficult to see how such interpretation could be made in the light of the Massachusetts case. There the statute specifically directs the Secretary of State to notify the defendant by registered mail. Here no such direction is incorporated, and it seems too conjectural to say that the New Jersey court might have read it in by implication.

CONSTITUTIONAL LAW—EQUAL PROTECTION—EFFECT OF TAXING POWER—RIGHT OF FOREIGN CORPORATION.—The defendant in this action sought to impose upon the plaintiff, a New Jersey corporation authorized to do business in Pennsylvania, a tax on gross receipts according to the terms of a statute of that State.[1] This law provides "that every * * * transportation company * * * now or hereafter incorporated or organized by or under any law of this commonwealth or now or hereafter organized or incorporated by any other State or by the United States or any foreign government and doing business in this commonwealth and owning (or) operating * * * any railroad * * * or other device for the transportation of freight or passengers or oil * * * shall pay to the State Treasurer a tax of 8 mills upon the dollar upon the gross receipts of said corporation * * * received from passengers and freight traffic transported wholly within this State * * *."

The plaintiff carried on a general hacking business in and about Philadelphia.

The highest court of Pennsylvania held the tax valid and affirmed a judgment in favor of the commonwealth.[2] Plaintiff obtained a writ of error contending that the statute imposing this assessment violates the equal protection clause of the 14th Amendment to the Constitution.

The United States Supreme Court held that a foreign corporation by obtaining permission to do business within a State is not estopped from objecting to the enforcement of that State's enactments which may conflict with the Federal Constitution, and further, that the United States Supreme Court is not bound by a State court's characterization of attacks but may be guided rather by the practical operation of the law and may deal with it according to its effect. The equality clause on which this appeal is grounded does not forbid a State to classify for purposes of taxation, but it does require that the classification be not arbitrary but based upon a real and substantial difference, having a reasonable relation to the subject of the particular legislation.[3] The Supreme Court, by a divided vote—6 to 3—decided in favor of the plaintiff. Quaker City Cab Co. v. Common-

[1] Act Pa. June 1, 1889, P. L. 431, Sec. 23 (Pa. St. 1920 Sec. 20388).
[2] 287 Penn. 161, ..34 A. 404 (1926).
[3] Power Co. v. Saunders, 274 U. S. 490, 493, 47 S. Ct. 678, 679 (1927).

wealth of Penna., 72 L. Ed. 607 (1928). The prevailing opinion as delivered by Mr. Justice Butler, held that the taxing by a State of a corporation on gross income and not imposing a similar tax on an individual, or group of individuals not corporate, engaged in a similar line of business, was unconstitutional. The court held that there was no real or substantial difference having a reasonable relation to the subject of the legislation which would enable the State to levy on a corporation and refrain from taxing a non-corporate body engaged in a similar business. It was pointed out in the prevailing opinion that plaintiff was subject in its business to keen competition from individuals and partnerships whose capital enabled them to operate on as large a scale as the appellant. Corporations operating taxicabs are not exempt from any of the usual taxes imposed on natural persons engaged in the same line of business and in addition to this they are compelled to pay a capital stock and other taxes.[4]

This tax apparently is one that could be levied on receipts belonging to an individual quite as conveniently as upon those of a corporation. It is not peculiarly applicable to corporations as are the taxes on capital stock or franchises. It is not taken in lieu of any other tax but is laid upon and is to be considered as a tax upon gross receipts and nothing else. The tax in its effect divides the operators of taxicabs into two classes, that is, into corporate and natural persons, and the character of the owner is the sole fact on which the distinction and discrimination rest. It follows, then, that the only difference is incorporation, and this fails to meet the requirement of the 14th Amendment that a classification must be based on a real and substantial difference having a reasonable relation to the subject of the legislation.

Mr. Justice Brandeis, in his dissenting opinion, considers incorporation sufficient distinction.[5] But in the present case the effect of the act rather than its name or form must be taken into judicial consideration. Here we have a corporation taxed on its gross income obviously for the privilege of doing business as a body corporate, while an individual or combination of individuals is excused. Assuming that there is a real and substantial difference, is that difference reasonable in its relation to the object of the legislation? Is a taxing statute the proper method of equalizing the difference? Does not such a tax partake of the nature of a penalty, which by virtue of the wide latitude permitted a State, allows it to create and then to immediately penalize because its creature shows signs of life?

Unquestionably it appears that the statute is one of arbitrary taxation and clearly beyond the power of the commonwealth to enact.

---

[4] Act of July 22, 1913, P. L. 903 (Pa. St. 1920, Sec. 20366-20368); Sec. 1, Act of May 3, 1899, P. L. 189 (Pa. St. 1920, Sec. 5686); Sec. 1, Act of May 8, 1901, P. L. 150 (Pa. St. 1920, Sec. 5691).

[5] *Supra* at p. 609.