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))

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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. 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. 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. The Supreme Court, by a divided vote—6 to 3—decided in favor of the plaintiff. Quaker City Cab Co. v. Common-

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1 Act Pa. June 1, 1889, P. L. 431, Sec. 23 (Pa. St. 1920 Sec. 20388).
2 287 Penn. 161, 34 A. 404 (1926).
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
taxicabs into two classes, that is, into corporate and natural per-
sons, 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 incor-
poration sufficient distinction.5 But in the present case the effect of
the act rather than its name or form must be taken into judicial con-
sideration. 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. As-
suming 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 immedi-
ately 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.

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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.