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Constitutional Law--Decedents' Estates--Taxation of Non-Residents--Article 10-A of Tax Law Held Unconstituional (Smith v. Loughman, et al., 245 N.Y. 486 (1927))

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RECENT DECISIONS

CONSTITUTIONAL LAW—DECEDENTS' ESTATES—TAXATION OF NON-RESIDENTS—ARTICLE 10-A OF TAX LAW HELD UNCONSTITUTIONAL.—Mary J. Smith, a resident of Connecticut, died in November, 1925, leaving real and personal property which she devised and bequeathed to her four children. Included in the devise was a parcel of real estate in the City of New York, valued above encumbrances at $29,490.87, the value of the share of each child thus being $7,372.72. If the testatrix had been a resident of New York State, the transfer of these shares would be taxed at the rate of 1% after the statutory exemption of $5,000, to wit, $23.72 for each child or $94.90 for all. But since the decedent was a non-resident, the four shares were taxed at $589.58. From an order of the Appellate Division of the Supreme Court, Third Department, confirming a determination of the State Tax Commission assessing the tax as above, the executrix now appeals. *Held,* that Art. 10-A of the New York Tax Law, which provides for a higher rate upon transfers by will or intestacy succession of non-residents than residents, is unconstitutional and void as discriminatory and violative of Article IV, par. 2 of the United States Constitution, whereby "the citizens of each State" are declared to be "entitled to all the privileges and immunities of citizens in the several states." Smith *v.* Loughman, *et al.,* 245 N. Y. 486, 157 N. E. 753 (1927).

In view of what seems to be the well settled law that a state may not establish varying codes of law, one for its own citizens and another, governing the same situation, for the citizens of sister states, there appears to be no real justification for the enactment. While an apparent disregard for this rule exists in cases where non-residents are compelled to give security for costs when they resort to our courts,[1] and where travelers using our state highways for motor cars are required to submit to appropriate regulations for the service of process if accident results as an incident of travel[2] it should not be overlooked that these exceptions are made not to place a heavier burden on the non-resident than on the resident, but rather with a view to restoring the equilibrium by withdrawing an unfair advantage from the non-resident.

There has been judicial legislation to the effect that a state income tax was void in its application when it denied to non-residents an exemption of $2,000 accorded by the same state to residents.[3] It follows, therefore, that the legislation under consideration is objectionable where there is not only the discrimination with respect to exemption but the added discrimination in rates as well.

A taxing system has been upheld, it is true, even though inequality did result from its enforcement.[4] But such a result was

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[1] Canadian Northern Ry. *v.* Eggen, 252 U. S. 553 (1920); Robinson *v.* Oceanic S. N. Co., 112 N. Y. 315, 19 N. E. 625 (1889).

[2] Hess *v.* Pawlouski, U. S. Sup. Ct., May 16, 1927, 71 L. Ed. 698.

[3] Travis *v.* Yale & Towne Mfg. Co., 252 U. S. 60 (1920).

[4] Maxwell *v.* Bugbee, 250 U. S. 525 (1919).

unintentional and occurred occasionally and incidentally. Moreover, only a few suffered by reason of it. But here the inequalities are not so limited for a great class of persons are harmed purposely and pervasively, this fact being unqualifiedly true when the gift is moderate in amount and goes to a husband and wife.

There is evident injustice, too, in the provision which would put in force the taxing at a single rate the gift of an humble worker for the support of his wife and child and the gift of a banker or merchant prince to a distant relative or friend. The legislature that would not permit such a system for its own citizens, now attempts to place this burden upon non-residents.

While it may be proper for a state to forego taxes upon a transfer by a non-resident of a particular state, so that a reciprocity plan might be effectuated, any attempt to impose an excessive or unequal rate in those instances where such reciprocity is lacking, is to be strongly condemned.

The court, in ruling on the unconstitutionality of the statute, submitted the very persuasive conclusion that after all the principle of equal treatment for the citizens of all the states is a good more precious than the gain in revenue that may be incident to a high tax rate on transfers by non-residents.[5]

COURTS—CONTEMPT—CIRCULATION OF DEROGATORY PRINTED REPORT. —An information charging contempt of court was filed against the defendants herein, officers of the Anti-Saloon League who had attacked the views and decisions of the Supreme Court of Indiana with respect to the enforcement of prohibition laws. The attack was in the form of a widely-circulated, printed report which contained many belittling remarks, much caustic comment and a distinct falsehood as to the disposition of a recent case before the Court. Appeals were made for the election of a Judiciary that would be "dry" and not "wet" and for one possessing such a sense of honor and loyalty to the Constitution that it would render decisions carrying out both its letter and spirit. *Held,* that the defendants, excepting one, were guilty of contempt of court. State *v.* Shumaker, *et al.,* 157 N. E. 769 (Sup. Ct. Ind. 1927).

Contempts of court are generally classified as civil and criminal, under one classification, and as direct or constructive under another classification.[1] A direct contempt of court may occur by reason of an open insult to the person of the court, which is misconduct tending to obstruct or to interfere with the proper administration of justice.[2] A constructive contempt consists of an act which, although not done in the presence of the court, is nevertheless of such character as to belittle or degrade the court, or to obstruct, interrupt, prevent or embarrass the proper administration of justice.[3] This case can be

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[5] 245 N. Y. 486, 496; 157 N. E. 753, 757

[1] 13 C. J. 5.

[2] People *v.* Newburger, 98 App. Div. 92, 90 N. Y. Supp. 740 (1st Dept., 1904).

[3] Saal *v.* South B'klyn R. R., 122 App. Div. 364, 106 N. Y. Supp. 996 (2nd Dept., 1907); Stuart *v.* Reynolds, 204 Fed. 709 (C. C. A. 5th, 1913).