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Cardozo: *The Nature of the Judicial Process.*

Holmes: *Collected Papers.*

Each member of the faculty will have charge of a group of first-year men in the Reading Course.

NOTES

INHERITANCE TAXATION OF BONDS AND NOTES

In a recent Virginia case an inheritance tax was levied on bonds of a Virginia corporation owned by a decedent resident in California. The bonds were actually located in a safe deposit box in New York City. A similar tax was levied on the transfer of stocks of the same corporation. The bonds were secured by a mortgage on assets, of the corporation, in Virginia, which mortgage was held by trustees in New York. Held—that the state of Virginia had no taxable interest in the bonds and that the Virginia statute did not authorize the collection of such a tax.¹ The transfer tax levied on the stock was not contested by the administrators.

The case raises several questions of vital interest:

First; the validity of the transfer tax levied on the stock of a domestic corporation which stock is held by a non-resident decedent outside of the state. It is generally conceded that, on the transfer of shares of stock, taxes are valid if levied at the domicile of the corporation, or of the owner.² The laws of the state which created the corporation protect the transfer of the stock.

Second; the validity of an inheritance tax levied on tangible personal property, owned by a resident, actually located outside of the state. Under the old rule *mobilia sequuntur personam* the state in

¹ *Com. v. Huntington*, 138 S. E. 650 (Va., 1927).

² *Rhode Island Hospital v. Doughton*, 270 U. S. 69; 46 Sup. Ct. 256 (1926), reversing 187 N. C. 263 (1924), held that stock of a foreign corporation actually located outside of the state was not taxable in N. C. even though 66 2/3 per cent of the corporation's property was in North Carolina; *In re Bronson*, 150 N. Y. 1, 44 N. E. 707 (1896); *Matter of Fearing*, 200 N. Y. 340, 93 N. E. 956 (1911); *Fuller v. South Carolina Tax Com.*, 128 S. C. 14, 121 S. E. 478 (1924).

For discussion of Rhode Island Hospital case see 3 N. C. L. Rev. 107 (1924), 4 N. C. L. Rev. 92 (1925); cf. *Wachovia Bank v. Doughton*, 270 U. S. 69, 47 Sup. Ct. 202 (1925), reversing 189 N. C. 50 (1925), where a tax on a power of appointment of a trust res vested in a resident of North Carolina, was held invalid, because this state had no taxable interest in the res which was located in Mass.; see *Frick v. Pa.*, 268 U. S. 473, 45 Sup. Ct. 603 (1924). A deduction must be allowed at the domicile of the owner of stock in a foreign corporation, for an inheritance tax already paid at the domicile of the corporation.

which the owner was domiciled when he died taxed the personal property of the estate because it was this state's laws which protected the devolution of the estate.³ But this rule was abrogated as to tangible personal property outside of the state in the Frick case⁴ which held that such property could be taxed only by the state in which it was actually located.

Third; the validity of inheritance taxes levied on bonds and negotiable notes, sometimes secured by mortgages, owned by a resident but deposited by him outside the state. It is this phase of the question of inheritance taxation which has raised a difficult problem and which the courts are reluctant in settling. The question involves a great deal more than mere logic and law. It is truly an economic problem. Intangible personal property is floating capital which moves from place to place, and which is moved from state to state to avoid taxation. By laying down arbitrary rules of law this type of capital may be driven from one state to another, or hedged in by artificial barriers, the effects of which would be a burden on commerce.⁵

Under the present system inheritance taxes may be levied on intangible personal property at the domicile of the decedent.⁶ Tangible property, as we have seen, must be taxed, if at all, at its situs.⁷ These classification, however, do not help us in determining whether such property as corporate bonds or negotiable notes are tangible or intangible. According to one view the obligation which the paper security represents is so closely incorporated in the instrument itself that it may be regarded as tangible personal property for the purpose of taxation. The Supreme Court of the United States, on several occasions has said this.⁸ "Bonds and negotiable instruments

³ *McCulloch v. Maryland*, 4 Wheat. (U. S.) 316, 429 (1819); *State Tax on Foreign Held Bonds*, 15 Wall. (U. S.) 300 (1877); *Hoinihall v. Burwall*, 109 N. C. 10, 13 S. E. 721 (1891).

⁴ *Frick v. Pa.*, *supra*, note 2, where it was held that tangible personal property must be taxed at situs and not at the domicile of the decedent; see *State Tax on Foreign-Held Bonds or Notes Secured by a Mortgage on Land Within the State*, 12 Corn. L. Q. 172 (1926).

⁵ *Proceedings of the National Tax Ass'n.*, 1922, p. 398.

⁶ *Supra*, note 2.

⁷ *Supra*, note 4.

⁸ *Wheeler v. Shomer*, 233 U. S. 434, 439, 34 Sup. Ct. 607 (1913). "It is well settled that bank bills and municipal bonds are in such concrete tangible form that they are subject to taxation where found, irrespective of the domicile of the owner. Notes and mortgages are of the same nature" (majority view); but see p. 445: "We cannot assent to the doctrine that mere presence of the evidence of debt, such as these notes . . . amounts to the presence of property within the state" (minority view).

are more than merely evidences of debt. The debt is inseparable from the paper which declares and constitutes it. . . . 'It is clear from the statutes referred to and the authorities cited and from the understanding of business men as well as jurists and legislators, that mortgages, bills and notes have for many purposes been regarded as property and not as mere evidences of debt and that they may thus have a situs at the place where they are found, like other visible, tangible chattels.'⁹ It is submitted that with this authority, bonds, bills and notes and other similar instruments may be considered as tangible personal property, and so come within the rule of the Frick case. But the Supreme Court has not yet decided squarely that bonds and negotiable notes may be taxed at situs only, and there is reason to believe that the Frick case will not be followed as to bonds and negotiable notes.

Fourth; may a state tax the bond-holder's interest represented by a mortgage on property within the state? Under the present rule, of which the principal case is an example, such an interest is not taxable but there is considerable argument on the other side, the essence of which is that the laws of the state in which the property is located must be invoked for the protection of the bond-holder's interest.¹⁰

Several plans for relieving the situation have been formulated by the National Tax association, the most promising of which seems to be the plan for reciprocity among the states.¹¹ It seems that this is the path to the solution rather than by court decision.

G. M. SHAW.

LANDLORD'S DUTY TO RE-RENT PREMISES

In *Walsh et al. v. E. G. Shinner & Co.*,¹ a tenant abandoned premises two years before the expiration of his lease. Before vaca-

⁹ Italics ours. *DeGanay v. Lederer, etc.*, 250 U. S. 376 (1918) at 381, but see *State Tax on Foreign-Held Bonds*, 15 Wallace 300 (1872) at page 323: "It is undoubtedly true that actual *situs* of personal property which has a visible and tangible existence, and not the domicile of the owner, will, in many cases, determine the state in which it may be taxed. The same is true of public securities consisting of municipal bonds, and circulating notes of banking institutions; the former by general use, have acquired the character of, and are treated as, property in the place where they are found, though removed from the domicile of the owner; the latter are treated and pass as money wherever they are. But other personal property, consisting of bonds, mortgages and debts generally, have no situs independent of the domicile of the owner. . . ."

¹⁰ *State Tax on Foreign-Held Bonds or Notes Secured by a Mortgage on Land in the State*, *supra*, note 4.

¹¹ *Proceedings of the National Tax Ass'n.*, 1926, at page 325.

¹ 20 Fed. (2d) 586 (C. C. A. 3, 1927).