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Taxation—Copyright Royalties as Immune From State Taxation.

In *Maxwell v. Chemical Construction Co.*,¹ decided in March 1931, the North Carolina Supreme Court held unconstitutional a tax on income derived from royalties on patents issued by the United States. Identically the same form of tax had been declared invalid by the United States Supreme Court three years earlier in *Long v. Rockwood*,² and the North Carolina court considered that decision controlling. On May 16, 1932, the United States Supreme Court decided *Fox Film Corporation v. Doyal*,³ upholding a Georgia privilege tax measured by gross receipts, which in the contested case were royalties from copyrights. Their decision in *Long v. Rockwood* having been urged upon the court, Mr. Chief Justice Hughes agreed that in this question copyrights and patents stood in the same position and remarked that, "the affirmance of the judgment in the instant case cannot be reconciled with the decision in *Long v. Rockwood*—and in view of the conclusions now reached upon a re-examination of the question, that case is definitely overruled."⁴ Thus comes to an early end a generally criticized⁵ extension of the doctrine, long established, that state and federal governmental instrumentalities are free from taxation by the other government. Mr. Justice Holmes' dissent in *Long v. Rockwood* contained the theory

¹ 200 N. C. 500, 157 S. E. 606 (1931). (1931) 9 N. C. L. Rev. 475. The income of the company for 1929 was assessed at $134,341.96, and upon this sum, received from royalties, was levied a tax amounting to $6,907.76. The tax was paid under protest and appeal taken from the ruling of the Commissioner of Revenue.


⁴ 52 Sup. Ct. 546, 548 (1932). The court might have distinguished this tax from *Long v. Rockwood* in the manner of the North Carolina court's distinction between the Chemical Construction case and Educational Films Corp. v. Ward, 282 U. S. 379, 51 Sup. Ct. 170, 75 L. ed. 400 (1931), i.e., the distinction between an income tax and a privilege tax measured by income. However, the distinction between franchise and income taxation might be offset in statute-healing properties by the difference between gross receipts and income as measures of the tax.

⁵ (1928) 77 U. OF PA. L. Rev. 115; (1928) 28 Col. L. Rev. 1100; (1929) 13 Marquette L. Rev. 117; (1931) 9 N. C. L. Rev. 475. In the latter note the opinion was expressed that inasmuch as *Long v. Rockwood* was a five to four decision, the changed personnel of the judiciary might result in a court which disapproved the authority the North Carolina court felt compelled to follow. Strangely enough, there was no dissent in the Fox Film case. Van Devanter, McReynolds, and Butler, JJ., who with Mr. Chief Justice Taft and Mr. Justice Sanford formed the *Long v. Rockwood* majority, acquiesced in the overturning of that case.
NOTES AND COMMENTS

of decision in the *Fox Film* case, that a nondiscriminatory tax on the income from copyrights is not a tax upon any governmental function. More important is the ascendency, though in a restricted measure, of the philosophy that powers and immunities, once thought to be absolute, must be considered with regard to their effect.

Of incidental interest here, is the provision in the North Carolina Revenue "Act which imposes a flat rate license tax on persons engaged in the business of selling patent rights." Assuming this to mean patent rights granted by the United States, what is the constitutional status of the tax? Both this tax and that involved in the *Fox Film* case are privilege taxes, but with the difference that the flat rate may be more burdensome than a gross receipts levy. Under the absolute immunity theory of *Long v. Rockwood* this tax should have been invalid. Though flat rate taxation often is inequitable, this license, since small in amount, would likely be countenanced under the Court's present view.

E. M. Perkins.

**Trusts—Distinction Between Dividend and Coupon Funds.**

The increasing burden imposed on the courts of adjudicating the various conflicting claims of creditors of insolvent corporations provokes serious inquiry as to the universally recognized distinction between a fund created to meet bond interest and a similar fund created to meet declared dividends. The repeated efforts of the

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6 N. C. Code Ann. (Michie, 1931) §7880 (94). "Every person, firm or corporation engaged in the business of selling or offering for sale any patent right or formula shall apply in advance and obtain from the Commissioner of Revenue a separate State license for each and every county in this State where such patent right or formula is to be sold or offered for sale, and shall pay for each separate license a tax of ten dollars ($10.00). Counties, cities, or towns may levy a license tax on the business taxed under this section not in excess of the taxes levied by the State."

7 A similar tax has been found in every Revenue Act since 1913, but so far as can be determined it has not been judicially construed in North Carolina. See, holding like statutes unconstitutional, Commonwealth v. Petty, 96 Ky. 452, 29 S. W. 291 (1895); *In re Sheffield*, 64 Fed. 833 (C. C. Ky. 1894).

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