Equality and Uniformity in Property Taxes

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STUDENT NOTE

EQUALITY AND UNIFORMITY IN PROPERTY TAXES

The West Virginia constitution provides that

"... taxation shall be equal and uniform throughout the State, and all property, both real and personal, shall be taxed in proportion to its value to be ascertained as directed by law. No one species of property from which a tax may be collected shall be taxed higher than any other species of property of equal value . . ."\[1\]

This provision of article X, section 1 of the constitution in so far as it relates to property taxation was first formulated in article VIII, section 1 of the constitution of 1863. In its application to ad valorem property tax valuation it remains unchanged to this day. The language of this section appears to be clear and certain, and on its face would not seem to admit of reasonable doubt as to its meaning. There are contained in this section three general requirements applicable to property taxation: (1) that all taxes be

\[1\] W. VA. CONST. art. X, § 1.
“equal and uniform;” (2) that property shall be “taxed in proportion to its value;” and (3) that “no one species of property . . . shall be taxed higher than any other species of property of equal value . . . .”

The property tax in West Virginia, being formulated on value, is consequently an ad valorem tax. The tax itself will be the product of not only such value, but of the rate applied as well. Thus, to be an “equal and uniform” tax there must not only be a uniform rate of taxation, but a uniform mode of assessment as well, for “uniformity in taxing implies equality in the burden of taxation, and this equality of burden cannot exist without uniformity of the assessment, as well as in the rate of taxation. . . .” Clearly, if two species of property were both valued at one hundred dollars by whatever means the value was to be determined, the application of a tax rate of one hundred per cent to one class and of forty per cent to the other would result in a contravention of the requirement that “no one species of property . . . shall be taxed higher than any other species of property of equal value . . . .”

Moreover, should any question arise concerning the true meaning and import of this section, it would seem that it could be easily resolved by application of the rule that, where possible, effect shall be given to every part of a constitutional provision. Further support for the above construction of this section would seem evident in recourse to the debates and proceedings of the First Constitutional Convention of West Virginia. For just as the cause which moves a legislature to enact certain legislation should always be considered in construing such legislation, it follows that the same principle should apply to interpretation of a constitutional provision.

The debate of the Constitutional Convention of 1863 on ad valorem property taxation centered particularly on the provisions of the Virginia constitution in effect at that time which specifically exempted slaves from the “equal and uniform” clause of the Virginia constitution. J. W. Paxton, the chairman of the Committee on Taxation and Finance, stated that there was probably no feature of the Virginia constitution that was so objectionable or odious to the people

5 Va. Const. art. IV, §§ 22-3 (1851). These provisions exempted all slaves under 13 years of age from any tax assessment, and set a fixed taxable value of $300.00 on all other slaves, although it appeared that this was considerably below their true market value at this time.
of western Virginia as "that feature which discriminates in taxation in relieving one species of property from taxation, necessarily to increase the burden on all others . . . ."8 This discrimination was objected to specifically in that it was in respect to valuations on property and not in regard to the tax rates imposed (a distinction which will later be essential). At this point Judge J. H. Brown moved to strike the "no one species" provision as being repetitive, contending that the "equal and uniform" clause was sufficient for the purpose at hand, fully embracing the principle urged by Chairman Paxton.7 In reply, Mr. Van Winkle stated:

"If the convention strikes out what they are asked to strike out . . . this principle of ad valorem taxation, so far as it means anything is lost, killed and destroyed. Now, merely to say that when you tax a species of property you shall tax it so much on its value is saying very little. To say that it shall be equal and uniform is saying very little . . . . the question proposed for this convention to decide is whether they do want taxes that are really alike or . . . . be treated as we have been under the present constitution, by which an unjust proportion of taxes as everybody knows, has been paid by the western section of the Commonwealth . . . ."8

The Brown amendment was subsequently defeated by a substantial majority,9 and the language proposed by Mr. Paxton was incorporated verbatim into the constitution of West Virginia.10 In valuation of property for ad valorem property taxation these provisions adopted in our first constitution have continued in this same form to the present time.

The language of this section is so perspicuous that it would seem that no one could disagree with Mr. Van Winkle when he said that "there can be no mistake about it if these words are left in."11 Certainly the history of this section as briefly outlined above should

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7 Id. at 56.
8 Id. at 53.
9 Id. at 80.
10 It should be noted that at the time of the constitutional debates, the 14th Amendment to the U.S. Constitution with its "equal protection" provision was not in effect, since the constitution of West Virginia became effective on June 30, 1863, while the 14th Amendment was not operative until 1868. Moreover the "equal protection" clause of the 14th Amendment is restricted in its application only to unequal taxation of property within classes of property, permitting divergences in valuations between different classes of property. In re Nat'l Bank, 137 W. Va. 673, 73 S.E.2d 655 (1952) (following Sioux City Bridge v. Dakota County, 260 U.S. 441 (1923)).
11 Ambler, op. cit. supra note 7, at 59.
resolve all doubts as to the validity of any deviation from uniformity in property valuations. However, in a recent West Virginia case, the Supreme Court of Appeals was called upon to decide whether the imposition of an ad valorem property tax of one hundred per cent of the true and actual value of bank stock, while other property in the same county was systematically taxed at only approximately forty per cent of its true and actual value, was in violation of article X, section 1. In view of the clear and mandatory language of the "no one species" provision, and of the entire section and its historical formulation, the majority of the court held that the systematic and deliberate assessment of one species of property at a higher valuation than other species of property within the taxing unit was in violation of such section. The taxpayer was thus held to be entitled to have the assessment reduced to the approximate level of valuation of other species of property generally.

Two members of the court, however, dissented on the basis that the majority opinion was a "logically inconsistent and legally unsound" decision going "in the face of a heretofore unbroken line of well considered cases in which this Court reached an opposite and entirely different conclusion" and would become finally a "chaotic and utterly impractical innovation" in the orderly functions of tax collection. In spite of such an incisive and strident dissent, it is submitted that this decision was not a turning point in the establishment of an innovation in the law, but was at least a return to the law from a spurious course which the court had been inadvertently and unconsciously pursuing, if not in fact the first instance in which the court has been called upon to consider and squarely apply the "no one species" clause of article X, section 1.

A clear distinction must be made in a discussion of property tax valuations between the coverage and effect of article X, section 1, and the fourteenth amendment provision concerning "equal protection of the laws." Under the fourteenth amendment, classifications for the purposes of property taxation may be devised to any

13 Ibid.
14 Id. at 688. The court noted in In re Charleston Fed. Sav. & Loan Ass'n., 125 W. Va. 500, 30 S.E.2d 513 (1944) that while the constitution required uniformity and equality in taxation "... no one has ever believed that either could be attained as a practical matter." The court however pointed out that "the constitutional provision is a statement of an ideal, and is implemented by numerous statutes, all seeking to put into practice such ideal so far as is humanly possible. Id. at 515.
15 U.S. Const. amend. XIV, § 1.

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extent within which they retain a factual basis for different treatment of various types of property.\textsuperscript{16} Thus, a West Virginia case considered under the pale of the fourteenth amendment, allowed reduction of an assessment of utility property assessed at one hundred per cent of its true and actual value, while property in the same county of that same class was generally taxed at only eighty per cent of value.\textsuperscript{17} The relief there was granted in that the disproportionate assessments were considered purely in the same class of property. And, while at one time there may have been the opinion that the fourteenth amendment would permit reductions in valuations between classes of property,\textsuperscript{18} there is no question today but that the relief under that amendment is limited purely to tax discrimination within the particular classes of property that states have devised.\textsuperscript{19} The opinion by Justice Frankfurter in the Nashville case clearly points out that the "equal protection" clause of the fourteenth amendment by such construction is not nearly so restrictive as the "narrow and sometimes cramping" provisions of state uniformity clauses.\textsuperscript{20} That article X, section 1 would satisfy this description will be later developed.

The 1932 West Virginia "Tax Limitation" amendment is in like manner without effect on this discussion.\textsuperscript{21} The amendment did not introduce the broad type of classifications permissible under the Nashville case construction of the fourteenth amendment "equal protection" provision. While prior to this 1932 amendment of article X, section 1, there could be neither classifications of value or of rate, the amendment established only the restrictive type of classification of the rate of taxation. The principle of invalidity of classifications of taxable valuations as under the "no one species" clause is in no way adulterated. During the consideration of taxation amendments

\textsuperscript{16} Nashville C. & St. L. Ry. v. Browning, 310 U.S. 362 (1939). The variance between types of property was upheld here, although the court noted that it was being sustained on the basis of a fiction that the Tennessee courts had adopted to sustain over 40 years of local assessment customs and habit.

\textsuperscript{17} West Penn Power Co. v. Bd. of Review, 112 W. Va. 442, 164 S.E. 862 (1932). This case was cited by the dissenting opinion in the principal case in support of such discrimination under art. X, § 1. However, this section of the West Virginia Constitution was not considered in the opinion. A syllabus point in the decision referring to valuations at which the "properties of the same class . . . are taxed" recited in later cases therefore would not have laid a foundation for broadening the scope of valuations under art. X, § 1.

\textsuperscript{18} Sioux City Bridge v. Dakota County, 260 U.S. 441 (1923).


\textsuperscript{20} Id. at 368.

\textsuperscript{21} W. Va. CONST. art. X, § 1.
and revision, the legislature had the opportunity to pass upon a proposal for broad and unlimited classification of property valuation that would have retained only uniformity as to the rate of tax to be applied to the various classes of valuations. This proposal, providing only for uniform rates of taxations, allowing then for the right to classify property into types for purposes of valuation, was rejected. The "Tax Limitation" amendment, as subsequently adopted, preserved the basic concepts that property was to be taxed "in proportion to value" without variance in the manner of valuation in different species of property, as dictated by the "no one species" clause. In respect to valuations for ad valorem property tax assessment, the amendment allowed no deviation from the principles pertaining to discrimination between the so-called classes of property. The amendment and subsequent implementing legislation simply provide that, within the various rate classes thereby established, there shall be only certain maximum rates applied upon each one hundred dollars of assessed values of property. The only standards or prohibitions contained therein are to preclude the taxing of properties above the fixed maximum rates. Between two different types of property within one class of rates there can still be no discrimination, as would occur by taxing bank stocks within Class 1 at the maximum rate of fifty per cent, and in turn taxing livestock within that same class at only thirty per cent of its true and actual value. Nor could two properties of the same true and actual value be taxed with the same rate, one at its full value and the other at only one-half of its value. Under the maximum rates set by the amendment, the constitution and the law are both satisfied if both properties are valued at the same percentage of their value and if the same rate is applied to such value. While different maximum rates are provided for the four classes established by the amendment, the particular rate applied within the set maximums cannot then be varied, now, as well as before the amendment was adopted. Neither a variation in rates, or value determinations between different types of properties will be permitted even today. The amendment will not open the door to systematic departure in the form of treatment of the conversion from actual value to assessed values, as was the problem in the principal case.

The central issue in the Kanawha Valley Bank case was not then concerned with any variations in tax rates that might be applied under the 1932 amendment, but rather with the problem of a delib-

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erate and systematic variation of the rates of valuation. The uncontradicted facts of the case established that shares of bank stock were assessed at one hundred per cent of their true and actual value, whereas assessments on other classes of property within the county were being assessed at only approximately forty per cent of their true and actual value.\(^{23}\) Within the time and manner specified,\(^{24}\) the taxpayer appealed a County Court ruling sustaining this assessment to the Circuit Court. There the County Court ruling was sustained on the grounds that the assessment of the bank stock could not be reduced to conform with the local practices of assessment of other types of property at materially lower percentages of their value, and on review, two of the five members of the Supreme Court of Appeals, as noted, would have accepted and enforced this construction of article X, section 1.\(^{25}\)

The available remedies to a taxpayer contesting an allegedly unconstitutional assessment, as in the principal case, are well established. In every case it is first incumbent upon the taxpayer to demonstrate clearly and positively: (1) that his property has been designedly and systematically assessed at a substantially higher proportion of its true and actual value than other property generally;\(^{26}\) (2) that these deviations in assessment are systematic and amount to more than mere sporadic variances;\(^{27}\) (3) that the lower court's judgment was plainly wrong; \(^{28}\) (4) and that the error be so plain as to be equivalent to a fraud upon the taxpayer's right.\(^{29}\) The complainant must further submit a high degree of proof to support these contentions, as the courts are reluctant to disturb an assessor's valuations in that he is presumed to have acted correctly, since the

\(^{22}\) In re Kanawha Valley Bank, 109 S.E.2d 649, 653-4 (W. Va. 1959). While the shares of bank stock were regularly and systematically assessed at 100% of their true and actual value, it was developed through the testimony of the assessor of Kanawha County that cash on hand and money in the bank were also taxed at 100% of their true and actual value, accounts receivable at 60% (dependent on how they were secured), livestock at a "very low" percentage of its value, inventories at 50% of value, machinery and equipment at 20% of the original cost, and real estate at anywhere from 9% to 130% of its value, not considering an approximate increase of 25% in general land values since 1950 (p. 653). The adoption by the majority opinion of 40% as standard approximate assessment on true and actual value was based on the assessor's stated objective of attempting to assess all other property aside from bank stock at 40% of true and actual value in accordance with W. Va. CODE ch. 18, art 9A, § 15 (Michie 1955).

\(^{23}\) W. Va. CODE ch. 11, art. 3, § 25 (Michie 1955).


\(^{25}\) Roanoke v. Williams, 161 Va. 351, 170 S.E. 726 (1933).

\(^{26}\) Roanoke v. Gibson, 161 Va. 942, 170 S.E. 723 (1933).


true and actual facts are more within the scope of his peculiar knowledge.\textsuperscript{30}

Upon satisfactory establishment of the foregoing, the general means of relief available to the aggrieved taxpayer, where state laws so provide, will be a reduction of the excessive portion of the assessment to the level of valuations generally prevailing in the particular governmental unit.\textsuperscript{31} In some states provision for relief has not been allowed until the tax has actually been levied, whereupon the taxpayer may then seek an injunction against the collection of its discriminatory excess.\textsuperscript{32} In West Virginia, the proper means of relief, as demonstrated by the principal case, is clearly the former.\textsuperscript{33}

Considering once again the facts of the principal case, it would seem that a situation was thus presented to give the taxpayer access to the above outlined remedies under West Virginia's "narrow and restrictive" "no one species" clause. The dissent in this case contended that the issue presented was "manifestly not one of first impression in this state" in that the court on seven prior occasions in considering the "equal and uniform" and "no one species" provisions of article X, section 1, had succeeded in "harmonizing" them so as "to avoid the apparently irreconcilable conflict between them."\textsuperscript{34} The very admission by the dissenting members of the court that there is an obvious conflict between these provisions of the constitution and the results previously obtained thereunder on classifications of tax values indicates at least a marked degree of judicial conservatism in sustaining a rule of law in the face of obvious constitutional contrariety. There appears, moreover, to be no authority directly in point in West Virginia on the subject of taxable valuations under the "no one species" clause. Past decisions bearing on unequal valuations have been decided upon application of the "equal and uniform" provisions of either the fourteenth

\textsuperscript{31} West Penn Power Co. v. Bd. of Review, 112 W.Va. 442, 164 S.E. 862 (1932). The case states the general rule that as to property taxation, uniformity is required only within each taxing unit, and for the purposes of county taxes, the county will be the governmental unit.
\textsuperscript{32} Town of Wytheville v. Johnson, 108 Va. 589, 62 S.E. 328 (1908). At one time it was held that equity would never enjoin the collection of taxes. Wagner v. Leenhouts, 203 Wis. 292, 242 N.W. 144 (1932). Today, most courts including Virginia have restricted injunctive relief to cases where it involves assessments on a tax unauthorized by law, or upon property legally exempt from taxation, or where property has been fraudulently assessed at a high amount. Commonwealth v. Tredegar Co., 122 Va. 506, 95 S.E. 279 (1918). Bristor v. Bd. of Assessors, 346 Ill. 362, 179 N.E. 120 (1931).
\textsuperscript{33} \textit{In re} Kanawha Valley Bank, 109 S.E.2d 659 (W. Va. 1959).
\textsuperscript{34} \textit{Id.} at 688.
amendment of the United States constitution, or of this particular clause of the West Virginia constitution, exclusive of the "no one species" provision.

In the first West Virginia case involving an appeal of an allegedly excessive tax valuation, the court held that a code provision\(^{36}\) prescribing the manner for ascertaining the value of toll bridges by multiplying their annual value by ten was constitutional under the "equal and uniform" clause of article X, section 1, exclusive of the "no one species" proviso.\(^{38}\) The reason for the omission of this important qualification of the "equal and uniform" section was the limitation of the litigation issue to the validity of the method of ascertaining the value of the particular realty in question, without comparison to assessments of any other property within the county.\(^{37}\) Without recognizing the narrow scope of the problem immediately before the court, a syllabus point broadly declared that "a tax upon all business of the same class which is uniform as to that kind of business, is not unconstitutional."\(^{38}\) (Emphasis added). In 1940 the court was again called upon to apply article X, section 1 in regard to the then operative state income tax law's classifications of personal and corporate income,\(^{39}\) which, under the purview of the "equal and uniform" clause alone, the court held valid citing the above noted syllabus point of the Charleston & South Bridge Co. case. The statement was enlarged at this time by replacing the word "business" and substituting the more inclusive phrase of all "... property, business or incomes of the same class ...".\(^{40}\) The error of over-simplification by generalization was thus compounded, although the chimerical barrier to relief against discrimination in property tax valuation only recently failed, by a one vote margin of the court, to achieve full legitimation.

In 1943 the court, while upholding code provisions prescribing the methods for valuing the property of building and loan associations,\(^{41}\) again followed the two prior cases stating that "... the contention that we should reduce the assessment of the association's property because, as contended, certain property of other classes,

\(^{37}\) Id. at 660.
\(^{38}\) Id. at 658, syllabus point 4.
\(^{40}\) Christopher v. James, 122 W. Va. 665, 12 S.E.2d 813 (1940).
particularly real estate, is assessed at something less than its true and actual value is without merit.”\(^\text{42}\) While the “no one species” clause was mentioned in the opinion on this occasion, its inapplicability to the prior decisions theoretically approved in the Hancock County case has been noted, and it further appears that there was no showing in this case that different classes of property within Hancock County were deliberately and systematically assessed at varying levels of their true and actual value—ann established contention that became the essence of an appeal for the first time in the Kanawha Valley Bank case.

In a 1944 decision, limited once more solely to the “equal and uniform” clause of article X, section 1, the court continued the rule of the Charleston & South Bridge Co. case, holding that there must be a clear showing of discrimination against a taxpayer in the assessment of the same type of property to entitle him to a reduction of his own assessment.\(^\text{43}\) Such discrimination was held not to be established merely by showing that other property of different types is assessed at less than its apparent face value by estimations and discounts made in good faith in an effort to arrive at true and actual values.\(^\text{44}\) The alleged discriminations were thus attempted not in the treatment of different levels of value for various classes of property, but in the manner in which the true and actual values of property of different types were determined initially. The restriction of the “equal and uniform” clause to individual species of property was continued in a 1950 decision concerning alleged disproportionate valuations of the taxpayer’s land and lands similar thereto, although relief was denied simply because the complainant had not satisfactorily proven one of the essential elements requisite to an assessment appeal—a systematic and deliberate plan of variance in the valuation of different properties.\(^\text{45}\) A 1952 appeal of discrimination in the assessment of bank stocks was decided primarily under the “due process” clause of the fourteenth amendment.\(^\text{46}\) Although the only part of article X, section 1, considered was the provision providing that the value of property should be ascertained as directed by law, this opinion again contained language indicating that the entire sec-

\(^{42}\) *In re* Hancock Sav. & Loan Ass’n., 125 W. Va. 426, 25 S.E.2d 543 (1943).

\(^{43}\) *In re* Charleston Fed. Sav. & Loan Ass’n., 126 W. Va. 506, 30 S.E.2d 518 (1944).

\(^{44}\) *Id.* at 516-8.


\(^{46}\) *In re* Nat’l Bank, 137 W. Va. 673, 73 S.E.2d 655 (1952).
tion was so broad that "... it is not required that property ... of different classes be taxed equally and uniformly." In its most recent decision prior to the principal case, the court repeated its previous interpretations of article X, section 1, citing with approval the foregoing cases, when actually the problem again, as in the Bankers Pocahontas Coal case, was but the evidentiary satisfaction of the Roanoke case requirement, that a general plan of deviation in assessment must be shown. These seven cases compose, to the date of the decision in the principal case, the judicial history surrounding and touching upon the problem of discriminatory assessment and property tax valuation in West Virginia.

In none of these decisions was the "no one species" clause specifically cited or construed in spite of the apparently clear relief available therein. Therefore it appears that the Kanawha Valley Bank case is the first taxpayer appeal to be presented directly under the "no one species" clause, accompanied by positive and direct proof of discrimination. Though it must be conceded that this clause was included within the body of the opinion of several of the prior cases the rule of stare decisis could not be considered to be applicable. For this principle to govern, the precise question determined in the prior decision must be presented. A question of law not brought to the court's attention, or one that has not been passed upon by the court, cannot be considered as involving the same question. As noted above, the prior West Virginia cases were decided only upon application of the "equal and uniform" clause of the West Virginia constitution, and were not meant to include the "no one species" provision. But even if it were to be supposed that stare decisis was to apply, in that the court had necessarily been cognizant of the "no one species" clause while it was deciding these cases on the basis of the immediately preceding parts of the same section,

47 Id. at 680.
49 In re Hancock Sav. & Loan Ass'n., 125 W. Va. 426, 25 S.E.2d 548 (1948); In re Charleston Fed. Sav. & Loan Ass'n., 126 W. Va. 506, 30 S.E.2d 513 (1944). While it was earlier pointed out that these decisions were not directly in point, it would be well to note a further quotation of the "no one species" provision in a more recent decision involving the matter of assessments wherein the opinion it was clearly stated that "... equality and uniformity of taxation as set forth in Article X, Section 1 of the West Virginia Constitution, means that as to all classes of property, business or incomes there shall be uniformity of taxation." In re Southern Land Co., 100 S.E.2d 561 (W. Va. 1959).
51 Southern Ry. v. Childrey, 119 Va. 376, 74 S.E. 221 (1912).
a cardinal limitation of *stare decisis* has been stated by our court in
this manner:

“Whenever a decision of this court is found, on careful consider-
eration, to be illogical, opposed to public policy, and subversive
of the supreme law of the land, the public welfare, and the sove-
reignty of the people . . . it is the solemn duty of this court to
dissapprove it and end its evil influences . . . . [N]o legal prin-
iple is ever settled until it is settled right . . . .”

Had the court thus indirectly concluded that the “no one
species” clause was without meaning, or were *stare decisis* to be
tortured to the extent of considering the omission of this clause
a conscious emasculization thereof, ample authority of other states
is available to establish the inherent force and efficacy of the pro-
vision. This authority is best summarized by a statement of Judge
Taft (later Chief Justice of the U. S. Supreme Court) in a circuit
court opinion construing the “no one species” clause of the Ten-
nessee constitution identical in every respect to our own:

“The sole and manifest purpose of the constitution was to secure
uniformity and equality of burden upon all property in the state.
As a means of doing so . . . it provided that the assessment
should be according to its true and actual value. It emphasized
the object of the section by expressly providing that no species
of property should be taxed higher than any other species. We
have before us a case in which the complaining taxpayer, and other taxpayers owning the same species of property,
are taxed at a higher rate [of values used in fixing as-
sessed values] than the owners of other species of property.
This does not come about by legislative discrimination, but
by the intentional and systematic disregard of the law by
those charged with the duty of assessing all other species of
property than that owned by complainant and fellows of the
same class. This is a flagrant violation of the clause of the
constitution forbidding discrimination in taxation between dif-
ferent species of property. That clause is self executing . . . .”

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53 Ralston v. Weston, 48 W. Va. 170, 38 S.E. 446 (1900).
54 White River Lumber Co. v. State, 175 Ark. 956, 2 S.E.2d 25 (1928);
*Ex parte* Fort Smith v. Van Buren Bridge Co., 62 Ark. 461, 36 S.E. 1060
(1896); Taylor v. Louisville & N. Ry., 88 Fed. 350 (6th Cir. 1898). The
majority opinion in the principal case stated herein that no cases had been cited
or found in other jurisdictions that would permit discriminatory assessment of
property for ad valorem property tax purposes under a constitutional provision
which contained a "no one species" clause. *In re* Kanawha Valley Bank, 109
This same principle has also been enunciated by courts in states whose constitutions do not contain the "no one species" clause. The Texas constitution is similar to the West Virginia constitution in that it contains provisions for uniformity and equality in property taxation and provides that property shall be taxed in proportion to its value.66 In the absence of a "no one species" clause, the Texas court has held that the "in proportion to value" clause by itself was sufficient to require a reduction in the tax imposed upon shares of bank stock where they were assessed at one hundred per cent of their true and actual value while realty was generally assessed at only approximately fifty per cent of its true and actual value.67 The Kentucky court adopts this same view and has reduced the assessment of the property of a taxpayer which was assessed at seventy-five per cent of its actual value while other taxable property was generally taxed at only fifty-two per cent of its value, solely under the purview of the "in proportion to value" clause of the Kentucky constitution.68 The language of the Illinois constitution is similarly restricted in that it provides only that the legislature might obtain revenue by "levying a tax, by valuation, so that every person and corporation shall pay a tax in proportion to the value of his, her, or its property . . . ."69 In a case wherein bank stock and other personal property was taxed at a value level of thirty-two per cent above the level of valuation for real estate, this provision was held to ". . . preclude (s) discrimination . . . against any class of property . . ." and that were the legislature to provide that different classes of property were to be valued differently or at different proportions of their full value " . . . the Constitution and the law are both violated."70

It seems clear then that, under the limited scope of the "in proportion to its value" clause as contained in the West Virginia constitution, there is substantial and impelling opinion preventing discrimination in assessment valuation of different classes of property. The same result has been more directly achieved in courts of other states under the "equal and uniform" provision as it is contained in our own constitution. Moreover, the constructions of the "no one species" clauses as exemplified by the Taylor case have been so clear and forceful that its apparent meaning is indeed beyond reasonable doubt. As Judge Taft said, it is "self executing." The inclusion of

66 Tex. Const. art. VIII, § 1.
69 Ill. Const. art. IX, § 1.
this clause in our own constitution by the members of the Constitutional Convention of 1868 was specifically designed to achieve this same end. In view of these considerations, it is submitted that the West Virginia court has correctly stated the principles embodied in this section in its decision in the Kanawha Valley Bank case. The overstated generalizations of prior West Virginia cases do not dictate or require a contrary result. The debates and proceedings of our constitution convention would militate most formidably against any other conclusion. The unquestionable weight of authority and the clear and specific language of this section as it has been interpreted by our sister states plainly support the West Virginia court's decision. If the interpretation and application proposed by the dissenting opinion were to represent a more efficient and workable mechanical system of taxation, or beyond this were to embrace the will and disposition of the people of this state for the adoption of unlimited classifications of property valuations, as have been twice presented to constitutional committees and there rejected, this could only be achieved by amendment to the constitution itself. Until this be done, it is submitted that the court has enunciated the only result that the section will permit — a rule of law and a principle of equality in taxation well founded in reason, logic, and theory.

L. B. S.