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## Taxation--The Taxing Situs of Intangibles

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the legislature was so careful, is only applicable when the character of the work at the time of injury is clearly *interstate*.<sup>18</sup> Why not, then, amend the state law to cover expressly all situations beyond the purview of the federal law so as to carry out thoroughly and harmoniously the admitted social policy of placing the risk of industrial accidents upon industry?<sup>19</sup>

—A. BERNARD SCLOVE.

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TAXATION—THE TAXING SITUS OF INTANGIBLES.—A resident of Illinois dying there, possessed bonds, promissory notes, and certificates for money on deposit all physically within the state of Missouri. Illinois collected an inheritance tax on all his intangibles including those above-mentioned in Missouri. Missouri also asserts a right to tax the intangibles within her boundaries. *Held*, said bonds, notes, and certificates of deposit were not within the jurisdiction of Missouri for taxation purposes. The Court said the bonds, notes and certificates of deposit were merely evidence of the debts and like all intangibles their *situs* for taxation was the domicile of the creditor; to allow Missouri to collect the tax would violate the "due process" clause of the Fourteenth Amendment. *Baldwin v. State of Missouri*.<sup>2</sup>

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<sup>18</sup> "Under the Employers' Liability Act a right of recovery exists only where the injury is suffered while the carrier is engaged in interstate commerce and while the employee is employed in such commerce." *Pedersen v. Delaware L. & W. R. Co.*, 229 U. S. 146, 33 Sup. Ct. 648, Ann. Cas. 1914 C, 153 (1913). "The true test of employment in such commerce (interstate) in the sense intended is, was the employee, at the time of injury, engaged in interstate transportation, or in work so closely related to it as to be practically a part of it?" 2 ROBERTS, *op. cit. supra* n. 2, § § 723 724, 727.

<sup>19</sup> "The Workmen's Compensation Law was passed pursuant to a widespread belief in its value as a means of protecting workmen and their dependents from want in case of injury when engaged in certain specified hazardous employments." *Post v. Burger*, 216 N. Y. 544, 111 N. E. 351 (1916), *aff'g* 168 App. Div. 403, 153 N. Y. Supp. 505.

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<sup>1</sup> 281 U. S. 586, 50 Sup. Ct. 436 (1930), Mr. Justice Holmes, Brandeis and Stone dissent. Holmes in his opinion laments the reversal of *Blackstone v. Miller*, *supra*. He says, "I have not yet adequately expressed the more than anxiety that I feel at the ever increasing scope given to the Fourteenth Amendment in cutting down what I believe to be constitutional rights of the States. As the decisions now stand, I see hardly any limit but the sky to the invalidating of those rights if they happen to strike a majority of this Court as for any reason undesirable".

This decision should not come as a surprise, but should be seen rather as a natural outgrowth of prior cases which clearly show a desire on the part of the Supreme Court to prevent double taxation.

In *Union Transit Company v. Kentucky*<sup>2</sup> it was decided that the state of the owner's domicile could not levy a property tax upon tangible personalty permanently situated in another state.<sup>3</sup> In *Frick v. Pennsylvania*<sup>4</sup> the principle of single taxation was applied in the collection of an inheritance tax upon tangible personalty, the court holding that only the state where the property was actually situated could collect the tax.<sup>5</sup>

Was this theory of single taxation to be extended to intangibles? While *State Tax on Foreign - Held Bonds*<sup>6</sup> had held, that only the state of the owner's domicile could correctly tax intangibles the case of *Blackstone v. Miller*,<sup>7</sup> a later decision, took the opposite view, holding that in case of an inheritance the succession could be twice taxed, once by the state of the creditor upon the fiction, that all debts have their *situs* at the creditor's domicile and again by the state of the debtor on the theory that since the laws of that state protected the debt and made possible its collection that state was entitled to tax as a reward for its services. That decision was definitely overruled, however, by *Farmers' Loan and Trust Company v. Minnesota*,<sup>8</sup> which held, that where a creditor had the bonds, the evidence of the debt, in his possession only the "creditor" state had power to tax the succession. The recent case of *Baldwin v. Missouri*, *supra*, clearly was but an extension of the doctrine of this case, showing how firmly the court is wedded to the doctrine that there should be but one tax upon a single economic interest, be it tangible or intangible, and definitely holding that even when the bonds, the evidence of the debt, are in

<sup>2</sup> 199 U. S. 194, 26 Sup. Ct. 36 (1905).

<sup>3</sup> *New York Central R. Co. v. Miller*, 202 U. S. 584, 26 Sup. Ct. 714 (1906). (Qualifying the above rule, the case held that if the property was not permanently within another state so as to acquire a taxing *situs* there that it might be taxed at the owner's domicile.)

<sup>4</sup> 268 U. S. 473, 45 Sup. Ct. 603 (1925).

<sup>5</sup> The phrase, single tax, is only used in the sense of an antonym for double tax.

<sup>6</sup> 82 U. S. 179 (1873).

<sup>7</sup> 188 U. S. 189, 23 Sup. Ct. 272 (1903).

<sup>8</sup> 280 U. S. 204, 50 Sup. Ct. 98 (1930).

the hands of the debtor only the state of the creditor's domicile could levy an inheritance tax.<sup>o</sup>

Query: Will stocks which are now taxed at both the domicile of the corporation and at the domicile of the owner, like bonds be given a single taxing *situs*? May a debtor's state collect an inheritance tax on intangibles if the laws of the creditor's state do not permit it to collect such a tax?

—J. D. JENNINGS.

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<sup>o</sup> Cf. *Met. Life Ins. Co. v. New Orleans*, 205 U. S. 395, 27 Sup. Ct. 499 (1907). If credits have a business *situs* within a state they may be taxed there regardless of the location of the creditor's domicile. Powell, *The Business of Situs of Credits* (1922) 28 W. VA. L. Q. 89.

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## BENCH AND BAR

APPLICANTS FOR ADMISSION TO THE BAR.—The following fifteen applicants successfully passed the State Bar Examination, held in Charleston, September 10-11, 1930.

Charles N. Bland, Weston  
John E. Brown, Huntington  
Herbert Wilson Bryan, St. Albans  
Charles J. Coniff, Wheeling  
Carl L. Davis, Charleston  
Maxwell W. Flesher, Huntington  
Peyton Randolph Harrison, Jr., Martinsburg  
John A. Howard, Jr., Wheeling  
William Ervin Miller, Clarksburg  
Cullous W. Mitchell, Huntington  
W. H. Pettry, Charleston  
Charles A. Prince, Follansbee  
William W. Roberts, Huntington  
Taylor Vinson, Huntington  
Charles W. Warfield, Buckhannon