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TAXATION—STATE TAXATION OF CAPITAL STOCK OF CORPORATIONS OWNING UNITED STATES SECURITIES—A Pennsylvania statute¹ imposed a tax on the shares of trust companies, the companies to be primarily liable therefor and the value of the shares to be ascertained by adding together so much of the amount of capital stock paid in, surplus, and undivided profits as was not invested in the stock of corporations liable to pay to the Commonwealth a capital stock tax or tax on shares, or relieved from the payment of capital stock tax or tax on shares, and dividing the sum by the number of outstanding shares. The corporations so relieved were those exclusively engaged in laundering, curing meats and manufacturing, except breweries and ones with the right of eminent domain.² On appeal by a trust company from so much of an assessment under this statute as was based on United States bonds and national bank stock among its assets, the Supreme Court of Pennsylvania affirmed a decision³ sustaining the assessment in toto.⁴ The Supreme Court of the United States, in an opinion by Justice Roberts, reversed the decision as a whole on the ground the exemption of certain stock holdings from the calculation of the value of the shares indicated that the tax, despite the words of the statute, was on corporate assets rather than on the shares as such and, also because of the exemption, operated to discriminate against United States bonds and national bank stock. Justice Cardozo, in an opinion concurred in by Justices Brandeis and Stone, dissented as to that part of the decision relating to United States bonds on the ground the tax was truly one on shares and the exemption of stock in a narrow class of domestic corporations relieved of taxation for reasons of public policy was not discriminatory. *Schuylkill Trust Co. v. Pennsylvania*, 296 U. S. 113, 56 S. Ct. 31. (1935).

It was decided in *Bank of California v. Richardson*⁵ that, where a state had exercised its right under Section 5219 of the Revised Statutes to tax the shares of national banking associations to the shareholders, it could not also tax the shares of a corporate owner of national bank stock as to that part of the value of the shares represented by the value of the national bank stock. The Court was unanimous in sustaining the reasoning of the Richardson case, so it stands unimpeached. As to the United States bonds, it was early held that a true tax on corporate shares in the hands of the shareholders at the market value was not a tax upon United States bonds although they composed the whole of the corporate assets.⁶ On the other hand, a state tax on the assets of a corporation which operates more heavily because of the presence of United States bonds among the

¹ Pa. Laws (1929), 673.

² 72 Pa. Stat. (Purdon 1931), § 1892.

³ *Commonwealth v. Schuylkill Trust Co.*, 38 Dauphin County Reports 22 (1933).

⁴ *Commonwealth v. Schuylkill Trust Co.*, 315 Pa. 429, 173 A. 309 (1934).

⁵ 248 U. S. 476, 39 S. Ct. 165 (1918).

⁶ *Van Allen v. The Assessors*, 3 Wall. (70 U. S.) 573, 18 L. Ed. 229 (1865). Accord: *Cleveland Trust Co. v. Lander*, 184 U. S. 111, 22 S. Ct. 394 (1901); *Des Moines Nat. Bank v. Fairweather*, 263 U. S. 103, 44 S. Ct. 23 (1923).

assets is unconstitutional.⁷ It seems clear that the tax in the instant case was heavier because the Schuylkill Trust Company owned United States bonds rather than stock in a Pennsylvania laundering or meat curing corporation, so that the whole question appears to be whether or not the tax was in reality on shares or on corporate assets. If the latter, the majority opinion is undoubtedly in accord with the trend of previous cases. Justice Cardozo relied on *Home Savings Bank v. Des Moines*⁸ and *Merchants' & Manufacturers' Nat. Bank v. Pennsylvania*⁹ to support his contention that the tax was truly on shares. The *Home Savings Bank* case held an Iowa tax, in terms imposed on shares of state banks as such, invalid because assessed against the banks themselves and not exempting United States bonds owned by them. The *Merchants' Bank* case involved a Pennsylvania statute permitting national banks to exempt their stockholders from the general personal property tax on their shares by themselves paying it. The citations would not seem to be very persuasive and, so long as it is the policy of the United States to exempt its securities from taxation, the majority of the Court appear to be more clearly in accord with the principle that that which may not be done directly may not be done indirectly.

W. F. F.

⁷ *Missouri v. Gehner*, 281 U. S. 313, 50 S. Ct. 326 (1929).

⁸ 205 U. S. 503, 27 S. Ct. 571 (1906).

⁹ 167 U. S. 461, 17 S. Ct. 829 (1896).