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Court : US Supreme Court

Decided On : Dec-24-1906

Appeal No. : 203 U.S. 543

Appellant : Cahen

Respondent : Brewster

Judgement :

Cahen v. Brewster - 203 U.S. 543 (1906)
U.S. Supreme Court Cahen v. Brewster, 203 U.S. 543 (1906)

Cahen v. Brewster

No. 91

Argued November 9, 1906

Decided December 24, 1906

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ERROR TO THE SUPREME COURT

OF THE STATE OF LOUISIANA

SYLLABUS

While, under former decisions of this Court, the nature of inheritance taxes has been defined, those decisions do not prescribe the time of their imposition. To have done so would have been to usurp a legislative power not possessed by this Court. A state may exercise its power to impose an inheritance tax at any time during which it holds the property from the legatee, and the Louisiana

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inheritance tax law is not void as a deprivation of property without use process of law within the meaning of the Fourteenth Amendment as to legatees of decedents dying prior to its enactment, but whose estate were still undistributed.

A statute imposing a succession tax is not void as against estates not closed, as denying equal protection of the laws, because it does not affect estates which had been actually closed at the time of its enactment.

When the state court which has delivered two decisions declares that the later does not overrule, but distinguishes, the earlier, which it states was decided on considerations having no application to the later one, both decisions must be considered as correct interpretations of the statute construed, and it is not the province of this Court to pronounce them contradictory or one to be more decisive than the other.

The facts are stated in the opinion.

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MR. JUSTICE Mc KENNA delivered the opinion of the Court.

The case involves the validity, under the Constitution of the United States, of a burden imposed under the inheritance tax law of the State of Louisiana, passed June 28, 1904.

Mathias Levy, a resident of New Orleans, died in that city May 26, 1904. He was unmarried, and left no ascendants, and was therefore without forced heirs. He left a last will and testament of the date of December 23, 1903, in which he named executors and made sundry particular bequests to charitable institutions. He bequeathed the balance of his estate, in equal shares, to his two nieces, Camille Cahen and

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Julie Kahn, constituting them thereby his universal legatees and instituted heirs.

The will was duly probated in the Civil District Court for the Parish of Orleans May 30, 1904. An inventory of his estate was taken June 9, 1904, and a supplementary inventory August 3, 1904. The inventories showed the total appraised value of the estate to be $64,676.05. Of this amount, after deducting the debts and charges of the estate and particular legacies, there was left, as the portion going to the universal legatees, $42,927.94.

The final accounting and tableau of distribution was filed August 3, 1904, and approved and homologated by judgment August 16, and the funds ordered to be distributed.

October 16, a motion was made for a rule on the executors to show cause why they should not pay over the legacies as ordered. In answer to which, the executors replied that they were willing to do so, but that it was announced to them by the president of the school board of the parish that he intended to claim in behalf of said board a tax under the inheritance tax law of the state on the funds in their hands "and the shares coming to said movers." The executors also alleged the unconstitutionality of the tax and prayed that the school board of the parish, through its president, Andrew H. Wilson, be made a party to the proceedings. Wilson appeared and averred that the taxes were due the state, and not to the school board, and were collectible by the state tax collector, and

"that this suit and the matters at issue herein should be litigated contradictorily with the state tax collector for the district in which the deceased resided when he

departed this life."

The tax collector appeared. The agents and attorneys in fact of the legatees answered the demand of the school board to be paid the tax that $10,000 of the estate was in United States bonds, and not subject to taxation by the state, and averred that an inheritance tax was not due

"to said board for the reason that said act has no application to the property

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under this succession or the legacies due to said movers in the motion aforesaid; that to give it such application would be to make said act retroactive and divest the vested rights of the said movers in said rule, which would be in violation of the Constitution of this state, and especially article 166 thereof, and in violation of the Constitution of the United States of America, and especially section 9 of article 1, and the Fifth and Fourteenth Amendments thereof, and in violation of the laws of the state and of the land; that it would be a deprivation of property without due process of law and a denial of the equal protection of the laws, in violation of the Fifth and Fourteenth Amendments of the Constitution of the United States of America."

Judgment was rendered in favor of the tax collector condemning the executors to pay the tax, less the amount of United States bonds, and less the charitable and religious bequests. The judgment was affirmed by the supreme court of the state.

The law imposes a tax of three percent "on direct inheritances and donations to ascendants or descendants," and ten percent upon donations or inheritances to collaterals or strangers. It is provided that the tax is "to be collected on all successions not finally closed and administered upon, and all successions hereafter opened." [Footnote 1]

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It will be observed that, when Levy died, May 26, 1904, and when the will was probated, May 30, 1904, there was no inheritance tax in Louisiana. The act in controversy was passed June 28, 1904.

In support of the attack made upon the law, it is contended that an inheritance tax is not a tax on property, but on the right or privilege of inheriting, and that the right in the case at bar had been exercised at the moment of the testator's death under the then-existing law, and

"to pass a law exacting such a tax and make it retroactive so as to divest a right previously acquired under then-existing laws is a deprivation of property already acquired, without due process of law, prohibited by the Fourteenth Amendment of the Constitution of the United States."

To sustain their propositions. the plaintiffs in error cite certain articles of the Louisiana Civil Code. [Footnote 2] And it is urged

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as indubitable that, under the law of Louisiana, a succession is acquired by the legal heir immediately after the death of the deceased, and, by the express terms of the Code, this rule applies to testamentary heirs, to instituted heirs, and universal legatees. In other words, that the acquisition of the succession by plaintiffs in error was at the very moment of Levy's death, and therefore necessarily before the act imposing inheritance taxes was passed. To sustain their view, plaintiffs in error cite a number of cases decided prior to the decision of the case at bar, and the case of *Tulane University v. Board of Assessors,* 115 La. 1026, decided since the decision in the case at bar. Having established, as it is contended, that, by operation of law, the property is transmitted immediately from the testator to the heirs, it is also contended that, from the very definition of an inheritance tax, none could be imposed on plaintiffs in error as legatees of Levy.

For definitions of an inheritance, tax plaintiffs in error adduce *United States v. Perkins,* 163 U. S. 625 ; *Magoun v. Illinois Trust & Savings Bank,* 170 U. S. 283 ; *Knowlton v. Moore,* 178 U. S. 41 . The tax was defined in the *Perkins* case to

be "not a tax upon the property itself, but upon its transmission by will or descent;" and in the *Magoun* case, "not one on property, but one on the succession." In *Knowlton v. Moore,* it was said that such taxes

"rest in their essence upon the principle that death is the generating source from which the particular taxing power takes its being, and that it is the power to transmit, or the transmission from the dead to the living, on which such taxes are more immediately rested."

But these definitions were intended only to distinguish the tax from one on property, and it was not intended to be decided that the tax must attach at the instant of the death of a testator or

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intestate. In other words, we defined the nature of the tax; we did not prescribe the time of its imposition. To have done the latter would have been to prescribe a rule of succession of estates, and usurp a power we did not and do not possess. There is nothing, therefore, in those cases which restrains the power of the state as to the time of the imposition of the tax. It may select the moment of death, or it may exercise its power during any of the time it holds the property from the legatee. "It is not," we said in the *Perkins* case, "until it has yielded its contribution to the state that it becomes the property of the legatee." *See also* *Carpenter v. Pennsylvania,* 17 How. 456.

We must turn back therefore to the law of Louisiana for the solution of the questions presented in the case at bar. But we are not required to reconcile the Louisiana decisions. We accept that in the case at bar as a correct interpretation of the Code of the state. Nor may we regard *Tulane University v. Board of Assessors* as irreconcilable with it. That case was brought to enjoin the collection of state and city taxes which had been assessed against the succession of A.C. Hutchinson. The plaintiff university was the universal legatee of Hutchinson, and its property was exempt from taxation under the Constitution of the state. It is true the court said that the Code of the state

"leaves no room whatever for doubt or surmises as to the fact of the property of a deceased person being transmitted directly and immediately to the legal heir, or, in the absence of forced heirs, to the universal legatee, without any intermediate stage, when it would be vested in the successive representative or in the legal abstract called 'succession.'"

But the decision in the case at bar was not overruled, but distinguished as follows:

"The case of *Succession of Levy* was decided from considerations peculiar to an inheritance tax, and which can have no application in the instant case. This inheritance tax was held to be due notwithstanding that, under the provisions of the Code, the ownership of the property

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passed to the heirs. The maxim *Le mort saisit le vif* was expressly recognized."

Both decisions therefore must be considered as correct interpretations of the code of the state. It is not our province to pronounce one more decisive than the other, or to pronounce a contradiction between them, which the court which delivered both of them has declared does not exist. We must assume that the *Tulane* case approved the view expressed in the case at bar of the rights of legatees, as follows:

"Furthermore, we have said, the legatees acquired no vested right to the property bequeathed which could enable them to successfully defend their inheritance against the demand of the state for the inheritance tax. It was property within the limits of the state, which the state could tax, for purposes mentioned, until it had passed out of the succession of the testator."

Plaintiffs in error also contended that the statute denied them the equal protection of the laws. This contention is based on the following provision of the statute: "This tax to be collected on all successions not finally closed and administered upon, and on all successions hereafter opened."

Successions which have been closed, it is said, are exempt from the tax, and a discrimination is made between heirs whose rights have become fixed and vested on the same day. Counsel say:

"The closing of the succession cannot affect the question as to when the right of the heirs vested, and cannot be cause for differentiation among the heirs, and such a classification is purely arbitrary. Besides, such a classification rests on the theory that the tax is one on property, when in fact it is one on the right of inheritance."

But, as we understand, the supreme court made the validity of the tax depend upon the very fact which counsel attack as an improper basis of classification. The court decided the property bequeathed was property the state could tax, "until it had passed out of the succession of the testator." It was certainly not improper classification to make the tax depend upon a fact without which it would have been invalid. In

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other words, those who are subject to be taxed cannot complain that they are denied the equal protection of the laws because those who cannot legally be taxed are not taxed.

Judgment affirmed.

[Footnote 1]

"SECTION 1. Be it enacted by the General Assembly of the State of Louisiana that there is now and shall hereafter be levied, solely for the support of the public schools, a tax upon all inheritances, legacies, and donations; provided no direct inheritance or donation to an ascendant or descendant below $10,000 in amount or value shall be so taxed; a special inheritance tax of three percent on direct inheritances or donations to ascendants or descendants, and ten percent for collateral inheritances and donations to collaterals or strangers; provided bequests to educational, religious, or charitable institutions shall be exempt from this tax,

and provided further that this tax shall not be enforced when the property donated or inherited shall have borne its just proportion of taxes prior to the time of such donation or inheritance; this tax to be collected on all successions not finally closed and administered upon, and all successions hereafter opened."

[Footnote 2]

"ARTICLE 940. A succession is acquired by the legal heir, who is called by law to the inheritance, immediately after the death of the deceased person to whom he succeeds."

"This rule applies also to testamentary heirs, to instituted heirs, and universal legatees, but not to particular legatees."

"ARTICLE 941. The right mentioned in the preceding article is acquired by the heir, by the operation of the law alone, before he has taken any step to put himself in possession, or has expressed any will to accept it."

"Thus, children, idiots, those who are ignorant of the death of the deceased, are not the less considered as being seised of the succession, though they may be merely seised of right, and not in fact."

"ARTICLE 942. The heir being considered seised of the succession from the moment of its being opened, the right of possession which the deceased had continues in the person of the heir as if there had been no interruption, and independent of the fact of possession."

"ARTICLE 944. The heir being considered as having succeeded to the deceased from the instant of his death, the first effect of this right is that the heir transmits the succession to his own heirs, with the right of accepting or renouncing, although he himself have not accepted it, even in case he was ignorant that the succession was opened in his favor."

"ARTICLE 945. The second effect of this right is to authorize the heir to institute all the actions, even possessory ones, which the deceased had a right to institute, and to prosecute those already commenced. For the heir, in everything,

represents the deceased, and is of full right in his place, as well for his rights as his obligations."

"ARTICLE 1609. When at the decease of the testator, there are no heirs to whom a proportion of his property is reserved by law, the universal legatee, by the death of the testator, is seised of right of the effects of the succession without being bound to demand the delivery thereof."

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