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Shaffer Vs. Carter

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Court : US Supreme Court

Decided On : Mar-01-1920

Appeal No. : 252 U.S. 37

Appellant : Shaffer

Respondent : Carter

Judgement :

Shaffer v. Carter - 252 U.S. 37 (1920)
U.S. Supreme Court Shaffer v. Carter, 252 U.S. 37 (1920)

Shaffer v. Carter

Nos. 531, 580

Argued December 11, 12, 1919

Decided March 1, 1920

252 U.S. 37

APPEALS FROM THE DISTRICT COURT OF THE UNITED STATES

FOR THE EASTERN DISTRICT OF OKLAHOMA

SYLLABUS

When, upon application for a preliminary injunction, the district court not only refuses the injunction but dismisses the bill, appeal to this Court should be under Jud.Code, 238, from the final decree, and not under 266. P. 252 U. S. 44 .

Equity may be resorted to for relief against an unconstitutional tax lien, clouding the title to real property, if there be no complete remedy at law. P. 252 U. S. 46 .

Quaere whether the Oklahoma laws afford an adequate legal remedy in a case where the constitutionality of the state income tax law is in question. *Id.*

The Oklahoma taxing laws afford no legal remedy for removing a cloud caused by an invalid lien for an income tax. P. 252 U. S. 48 .

Having acquired jurisdiction, equity affords complete relief. *Id.*

Governmental jurisdiction in matters of taxation depends upon the power to enforce the mandate of the state by action taken within its borders either *in personam* or *in rem.* P. 252 U. S. 49 .

A state may tax income derived from local property and business owned and managed from without by a citizen and resident of another state (pp. 252 U. S. 49 -55); such power is consistent with Const., Art. IV, 2, guaranteeing privileges and immunities and the equal protection Clause of the Fourteenth Amendment. Pp. 252 U. S. 53 -56.

The constitutionality of such a tax depends on its practical operation and effect, and not on mere definitions or theoretical distinctions respecting its nature and quality. P. 252 U. S. 54 .

The fact that the Oklahoma income tax law permits residents to deduct from their gross income losses sustained without as well as those sustained within the state,

while nonresidents may deduct only those occurring within it, does not make the law obnoxious to the privileges and immunities clause, *supra,* or the equal protection clause of the Fourteenth Amendment. P. 252 U. S. 56 .

Net income derived from interstate commerce is taxable under a state law providing for a general income tax. P. 252 U. S. 57 .

The Oklahoma gross production tax, imposed on oil and gas producing companies, was intended as a substitute for the *ad valorem* property tax, and payment of it does not relieve the producer from taxation under the state income tax law. *Id.*

The Constitution, including the Fourteenth Amendment, does not forbid double taxation by the states. P. 252 U. S. 58 .

Without deciding whether it would be consistent with due process to enforce a tax on the income derived by a nonresident from part of his property within a state by imposing a lien on all his property, real and personal, there situate, *held* that, in this case, the state was justified in treating the various properties and business of a producer of oil and natural gas, who went on with their operation after the income tax law was enacted, as an entity, producing the income and subject to the lien. *Id.*

No. 531, appeal dismissed.

No. 580, decree affirmed.

The case is stated in the opinion.

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MR. JUSTICE PITNEY delivered the opinion of the Court.

These are two appeals, taken under circumstances that will be explained, from a single decree in a suit in equity brought by appellant to restrain the enforcement of a tax assessed against him for the year 1916 under the Income Tax Law of the

State of Oklahoma on the ground of the unconstitutionality of the statute.

A previous suit having the same object was brought by him in the same court against the officials then in office, in which an application for an interlocutory injunction heard before three judges pursuant to 266, Judicial Code, was denied, one Judge dissenting. *Shaffer v. Howard,* 250 F. 873. An appeal was taken to this Court, but, pending its determination, the terms of office of the defendants expired, and, there being no law of the

state authorizing a revival or continuance of the action against their successors, we reversed the decree and remanded the cause with directions to dismiss the bill for want of proper parties. 249 U. S. 249 U.S. 200.

After such dismissal, the present defendant Carter, as State Auditor, issued another tax warrant and delivered it to defendant Bruce, Sheriff of Creek County, with instructions to levy upon and sell plaintiff's property in that county in order to collect the tax in question, and, the sheriff having threatened to proceed, this suit was commenced. An application for an interlocutory injunction, heard before three judges, was denied upon the authority of the decision in 250 F. and of certain recent decisions of this Court. The decree as entered not only disposed of the application, but dismissed the action. Plaintiff, apparently unaware of this, appealed to this Court under 266, Judicial Code, from the refusal of the temporary injunction. Shortly afterwards, he took an appeal under 238, Judicial Code from the same decree as a final decree dismissing the action. The latter appeal is in accord with correct practice, since the denial of the interlocutory application was merged in the final decree. The first appeal (No. 531) will be dismissed.

The Constitution of Oklahoma, besides providing for the annual taxation of all property in the state upon an *ad valorem* basis, authorizes (Article 10, 12) the employment of a variety of other means for raising revenue, among them income taxes.

The act in question is c. 164 of the Laws of 1915. Its first section reads as follows:

"Each and every person in this state shall be liable to an annual tax upon the entire net income of such person arising or accruing from all sources during the preceding calendar year, and a like tax shall be levied, assessed, collected, and paid annually upon the entire net income from all property owned, and of every business, trade, or profession carried on in this

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state by persons residing elsewhere."

Subsequent sections define what the term "income" shall include; prescribe how net income shall be computed; provide for certain deductions; prescribe varying rates of tax for all taxable incomes in excess of $3,000, this amount being deducted (by way of exemption) from the income of each individual, and for one living with spouse an additional $1,000, with further deductions where there are children or dependents, exemptions being the same for residents and nonresidents; require (2) a return on or before March first from each person liable for an income tax under the provisions of the act for the preceding calendar year; provide (9) that the State Auditor shall revise returns and hear and determine complaints, with power to correct and adjust the assessment of income; that (10) taxes shall become delinquent if not paid on or before the first day of July, and the State Auditor shall have power to issue to any sheriff of the state a warrant commanding him to levy the amount upon the personal property of the delinquent party, and (by 11):

"If any of the taxes herein levied become delinquent, they shall become a lien on all the property, personal and real, of the delinquent person, and shall be subject to the same penalties and provisions are are all *ad valorem* taxes."

Plaintiff, a nonresident of Oklahoma, being a citizen of Illinois and a resident of Chicago in that state, was at the time of the commencement of the suit and for several years theretofore (including the years 1915 and 1916) engaged in the oil business in Oklahoma, having purchased, owned, developed and operated a number of oil and gas mining leases, and being the owner in fee of certain oil-

producing land in that state. From properties thus owned and operated during the year 1916, he received a net income exceeding $1,500,000, and of this he made, under protest, a return which showed that,

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at the rates fixed by the act, there was due to the state an income tax in excess of $76,000. The then State Auditor overruled the protest and assessed a tax in accordance with the return; the present auditor has put it in due course of collection, and plaintiff resists its enforcement upon the ground that the act, insofar as it subjects the incomes of nonresidents to the payment of such a tax, takes their property without due process of law and denies to them the equal protection of the laws in contravention of 1 of the Fourteenth Amendment, burdens interstate commerce, in contravention of the commerce clause of 8 of Article I of the Constitution, and discriminates against nonresidents in favor of residents, and thus deprives plaintiff and other nonresidents of the privileges and immunities of citizens and residents of the State of Oklahoma, in violation of 2 of Article IV. He also insists that the lien attempted to be imposed upon his property pursuant to 11 for taxes assessed upon income not arising out of the same property would deprive him of property without due process of law.

As ground for resorting to equity, the bill alleges that plaintiff is the owner of various oil and gas mining leases covering lands in Creek County, Oklahoma, and that the lien asserted thereon by virtue of the levy and tax warrant creates a cloud upon his title. This entitles him to bring suit in equity (*Union Pacific Ry. Co. v. Cheyenne,* 113 U. S. 516 , 113 U. S. 525 ; *Pacific Express Co. v. Seibert,* 142 U. S. 339 , 142 U. S. 348 ; *Ogden City v. Armstrong,* 168 U. S. 224 , 168 U. S. 237 ; *Ohio Tax Cases,* 232 U. S. 576 , 232 U. S. 587 ; *Greene v. Louisville & Interurban R. Co.,* 244 U. S. 499 , 244 U. S. 506), unless the contention that he has a plain, adequate, and complete remedy at law be well founded.

This contention is based, first, upon the provision of 9 of c. 164, giving to the State Auditor the same power to correct and adjust an assessment of income that is given to the county board of equalization in cases of *ad*

valorem assessments, taken in connection with c. 107 of the Laws of 1915, which provides (Article 1, Subd. B, 2) for an appeal from that board to the district court of the county. In a recent decision (*Berryhill v. Carter,* 185 P. 93), the supreme court of the state held that an aggrieved income taxpayer may have an appeal under this section, and that thus "all matters complained of may be reviewed and adjusted to the extent that justice may demand." But the case related to "correcting and adjusting an income tax return," and the decision merely established the appeal to the district court as the appropriate remedy, rather than an application to the Supreme Court for a writ of certiorari. It falls short of indicating -- to say nothing of plainly showing -- that this procedure would afford an adequate remedy to a party contending that the income tax law itself was repugnant to the Constitution of the United States.

Secondly, reference is made to 7 of Subd., Art. 1, c. 107, Laws Okl. 1915, wherein it is provided that, where illegality of a tax is alleged to arise by reason of some action from which the laws provide no appeal, the aggrieved person, on paying the tax, may give notice to the officer collecting it, stating the grounds of complaint and that suit will be brought against him, whereupon it is made the duty of such officer to hold the tax until the final determination of such suit, if brought within 30 days, and if it be determined that the tax was illegally collected, the officer is to repay the amount found to be in excess of the legal and correct amount. But this section is one of several that have particular reference to the procedure for collecting *ad valorem* taxes, and they are prefaced by this statement (p. 147): "Subdivision B. To the existing provisions of law relating to the *ad valorem* or direct system of taxation the following provisions are added." Upon this ground, in *Gipsy*

Oil Co. v. Howard and companion suits brought by certain oil-producing companies to restrain enforcement of taxes authorized by the gross production tax law (Sess.Laws 1916, p. 102), upon the ground that they were an unlawful imposition upon federal instrumentalities, the United States District Court for the

Western District of Oklahoma held that the legal remedy provided in 7 of c. 107 applied only to *ad valorem* taxes, and did not constitute a bar to equitable relief against the production taxes. Defendants appealed to this Court and assigned this ruling for error, *inter alia,* but they did not press the point, and the decrees were affirmed upon the merits of the federal question. *Howard v. Gipsy Oil Co.,* 247 U.S. 503.

We deem it unnecessary to pursue further the question whether either of the statutory provisions referred to furnishes an adequate legal remedy against income taxes assessed under an unconstitutional law, since one of the grounds of complaint in the present case is that, even if the tax itself be valid, the procedure prescribed by 11 of the Income Tax Law for enforcing such a tax by imposing a lien upon the taxpayer's entire property, as threatened to be put into effect against plaintiff's property for taxes not assessed against the property itself and not confined to the income that proceeded from the same property, is not "due process of law," within the requirement of the Fourteenth Amendment. For removal of a cloud upon title caused by an invalid lien imposed for a tax valid in itself, there appears to be no legal remedy. Hence, on this ground, at least, resort was properly had to equity for relief, and since a court of equity does not "do justice by halves," and will prevent, if possible, a multiplicity of suits, the jurisdiction extends to the disposition of all questions raised by the bill. *Camp v. Boyd,* 229 U. S. 530, 229 U. S. 551-552; *McGowan v. Parish,* 237 U. S. 285, 237 U. S. 296.

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This brings us to the merits.

Under the "due process of law" provision, appellant makes two contentions: first, that the state is without jurisdiction to levy a tax upon the income of nonresidents, and secondly that the lien is invalid because imposed upon all his property real and personal, without regard to its relation to the production of his income.

These are separate questions, and will be so treated. The tax might be valid although the measures adopted for enforcing it were not. Governmental

jurisdiction in matters of taxation, as in the exercise of the judicial function, depends upon the power to enforce the mandate of the state by action taken within its borders, either *in personam* or *in rem,* according to the circumstances of the case, as by arrest of the person, seizure of goods or lands, garnishment of credits, sequestration of rents and profits, forfeiture of franchise, or the like, and the jurisdiction to act remains even though all permissible measures be not resorted to. *Michigan Trust Co. v. Ferry,* 228 U. S. 346 , 228 U. S. 353 ; *Ex parte Indiana Transportation Co.,* 244 U. S. 456 , 244 U. S. 457 .

It will be convenient to postpone the question of the lien until all questions as to the validity of the tax have been disposed of.

The contention that a state is without jurisdiction to impose a tax upon the income of nonresidents, while raised in the present case, was more emphasized in *Travis v. Yale & Towne Mfg. Co., ante,* 252 U. S. 60 , involving the Income Tax Law of the State of New York (Laws 1919, c. 627). There it was contended, in substance, that, while a state may tax the property of a nonresident situate within its borders, or may tax the incomes of its own citizens and residents because of the privileges they enjoy under its Constitution and laws and the protection they receive from the state, yet a nonresident, although conducting a business or carrying on an occupation there, cannot

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be required through income taxation to contribute to the governmental expenses of the state whence his income is derived; that an income tax, as against nonresidents, is not only not a property tax, but is not an excise or privilege tax, since no privilege is granted, the right of the noncitizen to carry on his business or occupation in the taxing state being derived, it is said, from the provisions of the federal Constitution.

This radical contention is easily answered by reference to fundamental principles. In our system of government, the states have general dominion, and, saving as restricted by particular provisions of the federal Constitution, complete dominion

over all persons, property, and business transaction within their borders; they assume and perform the duty of preserving and protecting all such persons, property, and business, and, in consequence, have the power normally pertaining to governments to resort to all reasonable forms of taxation in order to defray the governmental expenses. Certainly they are not restricted to property taxation, nor to any particular form of excises. In well ordered society, property has value chiefly for what it is capable of producing, and the activities of mankind are devoted largely to making recurrent gains from the use and development of property, from tillage, mining, manufacture, from the employment of human skill and labor, or from a combination of some of these, gains capable of being devoted to their own support, and the surplus accumulated as an increase of capital. That the state, from whose laws property and business and industry derive the protection and security without which production and gainful occupation would be impossible, is debarred from exacting a share of those gains in the form of income taxes for the support of the government is a proposition so wholly inconsistent with fundamental principles as to be refuted by its mere statement. That it may tax the land but not the crop, the tree but not the

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fruit, the mine or well but not the product, the business but not the profit derived from it, is wholly inadmissible.

Income taxes are a recognized method of distributing the burdens of government, favored because requiring contributions from those who realize current pecuniary benefits under the protection of the government, and because the tax may be readily proportioned to their ability to pay. Taxes of this character were imposed by several of the states at or shortly after the adoption of the federal Constitution. Laws N.Y. 1778, c. 17; Report of Oliver Wolcott, Jr., Secretary of the Treasury, to 4th Cong.2d Sess. (1796), concerning Direct Taxes; American state Papers, 1 Finance, 423, 427, 429, 437, 439.

The rights of the several states to exercise the widest liberty with respect to the imposition of internal taxes always has been recognized in the decisions of this

Court. In *McCulloch v. Maryland,* 4 Wheat. 316, while denying their power to impose a tax upon any of the operations of the federal government, Mr. Chief Justice Marshall, speaking for the Court, conceded (pp. 17 U. S. 428 -429) that the states have full power to tax their own people and their own property, and also that the power is not confined to the people and property of a state, but may be exercised upon every object brought within its jurisdiction, saying:

"It is obvious that it is an incident of sovereignty, and is coextensive with that to which it is an incident. All subjects over which the sovereign power of a state extends are objects of taxation,"

etc. In *Michigan Central Railroad v. Powers,* 201 U. S. 245 , 201 U. S. 292 -293, the Court, by Mr. Justice Brewer, said:

"We have had frequent occasion to consider questions of state taxation in the light of the federal Constitution, and the scope and limits of national interference are well settled. There is no general supervision on the part of the nation over state taxation, and in respect to the latter the state has, speaking generally, the freedom of a sovereign both as to objects

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and methods. That a state may tax callings and occupations as well as persons and property has long been recognized."

"The power of taxation, however vast in its character and searching in its extent, is necessarily limited to subjects within the jurisdiction of the state. These subjects are persons, property, and business. . . . It [taxation] may touch business in the almost infinite forms in which it is conducted, in professions, in commerce, in manufactures, and in transportation. Unless restrained by provisions of the federal Constitution, the power of the state as to the mode, form, and extent of taxation is unlimited where the subjects to which it applies are within her jurisdiction."

State Tax on Foreign-Held Bonds, 15 Wall. 300, 82 U. S. 319 . *See also Welton v. Missouri,* 91 U. S. 275 , 91 U. S. 278 ; *Armour & Co. v. Virginia,* 246 U. S. 1

, 246 U. S. 6 ; *American Mfg. Co. v. St. Louis,* 250 U. S. 459 , 250 U. S. 463 .

And we deem it clear, upon principle as well as authority, that just as a state may impose general income taxes upon its own citizens and residents whose persons are subject to its control, it may, as a necessary consequence, levy a duty of like character, and not more onerous in its effect, upon incomes accruing to nonresidents from their property or business within the state, or their occupations carried on therein, enforcing payment, so far as it can, by the exercise of a just control over persons and property within its borders. This is consonant with numerous decisions of this Court sustaining state taxation of credits due to nonresidents, *New Orleans v. Stempel,* 175 U. S. 309 , 175 U. S. 320 *et seq.; Bristol v. Washington County,* 177 U. S. 133 , 177 U. S. 145 ; *Liverpool, etc., Ins. Co. v. Orleans Assessors,* 221 U. S. 346 , 221 U. S. 354 , and sustaining federal taxation of the income of an alien nonresident derived from securities held in this country, *De Ganay v. Lederer,* 250 U. S. 376 .

That a state, consistently with the federal Constitution, may not prohibit the citizens of other states from carrying on legitimate business within its borders like its own

citizens, of course, is granted, but it does not follow that the business of nonresidents may not be required to make a ratable contribution in taxes for the support of the government. On the contrary, the very fact that a citizen of one state has the right to hold property or carry on an occupation or business in another is a very reasonable ground for subjecting such nonresident, although not personally, yet to the extent of his property held, or his occupation or business carried on therein, to a duty to pay taxes not more onerous in effect than those imposed under like circumstances upon citizens of the latter state. Section 2 of Art. IV of the Constitution entitles him to the privilege and immunities of a citizen, but no more -- not to an entire immunity from taxation, nor to any preferential treatment as compared with resident citizens. It protects him against discriminatory taxation, but gives him no right to be favored by discrimination or exemption. *See* *Ward v.*

Maryland, 12 Wall. 418, 79 U. S. 430 .

Oklahoma has assumed no power to tax nonresidents with respect to income derived from property or business beyond the borders of the state. The first section of the act, while imposing a tax upon inhabitants with respect to their entire net income arising from all sources, confines the tax upon nonresidents to their net income from property owned and business, etc., carried on within the state. A similar distinction has been observed in our federal income tax laws from one of the earliest down to the present. * The acts of 1861 (12 Stat. 309) and 1864 (13 Stat.

281, 417) confined the tax to persons residing in the United States and citizens residing abroad. But, in 1866 (14 Stat. 137, 138), there was inserted by amendment the following:

"And a like tax shall be levied, collected, and paid annually upon the gains, profits, and income of every business, trade, or profession carried on in the United States by persons residing without the United States, not citizens thereof."

Similar provisions were embodied in the acts of 1870 (16 Stat. 257) and 1894 (28 Stat. 553), and in the Act of 1913 (38 Stat. 166), after a clause imposing a tax upon the entire net income arising or accruing from all sources (with exceptions not material here) to every citizen of the United States, whether residing at home or abroad, and to every person residing in the United States though not a citizen thereof, the following appears:

"And a like tax shall be assessed, levied, collected, and paid annually upon the entire net income from all property owned and of every business, trade, or profession carried on in the United States by persons residing elsewhere."

Evidently this furnished the model for 1 of the Oklahoma statute.

No doubt is suggested (the former requirement of apportionment having been removed by constitutional amendment) as to the power of Congress thus to

impose taxes upon incomes produced within the borders of the United States or arising from sources located therein, even though the income accrues to a nonresident alien. And, so far as the question of jurisdiction is concerned, the due process clause of the Fourteenth Amendment imposes no greater restriction in this regard upon the several states than the corresponding clause of the Fifth Amendment imposes upon the United States.

It is insisted, however, both by appellant in this case and by the opponents of the New York law in *Travis v. Yale & Towne Mfg. Co.,* that an income tax is in its nature a personal tax, or a "subjective tax imposing personal liability upon the recipient of the income," and that, as to a

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nonresident, the state has no jurisdiction to impose such a liability. This argument, upon analysis, resolves itself into a mere question of definitions, and has no legitimate bearing upon any question raised under the federal Constitution. For where the question is whether a state taxing law contravenes rights secured by that instrument, the decision must depend not upon any mere question of form, construction, or definition, but upon the practical operation and effect of the tax imposed. *St. Louis S.W. Ry. v. Arkansas,* 235 U. S. 350, 235 U. S. 362; *Mountain Timber Co. v. Washington,* 243 U. S. 219, 243 U. S. 237; *Crew Levick Co. v. Pennsylvania,* 245 U. S. 292, 245 U. S. 294; *American Mfg. Co. v. St. Louis,* 250 U. S. 459, 250 U. S. 463. The practical burden of a tax imposed upon the net income derived by a nonresident from a business carried on within the state certainly is no greater than that of a tax upon the conduct of the business, and this the state has the lawful power to impose, as we have seen.

The fact that it required the personal skill and management of appellant to bring his income from producing property in Oklahoma to fruition, and that his management was exerted from his place of business in another state, did not deprive Oklahoma of jurisdiction to tax the income which arose within its own borders. The personal element cannot, by any fiction, oust the jurisdiction of the state within which the income actually arises and whose authority over it operates

in rem. At most, there might be a question whether the value of the service of management rendered from without the state ought not to be allowed as an expense incurred in producing the income, but no such question is raised in the present case, hence we express no opinion upon it.

The contention that the act deprives appellant and others similarly circumstanced of the privileges and immunities enjoyed by residents and citizens of the State of Oklahoma, in violation of 2 of Art. IV of the Constitution,

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is based upon two grounds, which are relied upon as showing also a violation of the "equal protection" clause of the Fourteenth Amendment.

One of the rights intended to be secured by the former provision is that a citizen of one state may remove to and carry on business in another without being subjected in property or person to taxes more onerous than the citizens of the latter state are subjected to. *Paul v. Virginia,* 8 Wall. 168, 75 U. S. 180 ; *Ward v. Maryland,* 12 Wall. 418, 79 U. S. 430 ; *Maxwell v. Bugbee,* 250 U. S. 525 , 250 U. S. 537 . The judge who dissented in *Shaffer v. Howard,* 250 F. 873, 883, concluded that the Oklahoma Income Tax Law offended in this regard, upon the ground (p. 888) that, since the tax is as to citizens of Oklahoma a purely personal tax measured by their incomes, while, as applied to a nonresident, it is "essentially a tax upon his property and business within the state, to which the property and business of citizens and residents of the state are not subjected," there was a discrimination against the nonresident. We are unable to accept this reasoning. It errs in paying too much regard to theoretical distinctions and too little to the practical effect and operation of the respective taxes as levied; in failing to observe that, in effect, citizens and residents of the state are subjected at least to the same burden as nonresidents, and perhaps to a greater, since the tax imposed upon the former includes all income derived from their property and business within the state and, in addition, any income they may derive from outside sources.

Appellant contends that there is a denial to noncitizens of the privileges and immunities to which they are entitled, and also a denial of the equal protection of the laws, in that the act permits residents to deduct from their gross income not only losses incurred within the State of Oklahoma, but also those sustained outside of that state, while nonresidents may deduct only those incurred within the

state. The difference, however, is only such as arises naturally from the extent of the jurisdiction of the state in the two classes of cases, and cannot be regarded as an unfriendly or unreasonable discrimination. As to residents, it may, and does, exert its taxing power over their income from all sources, whether within or without the state, and it accords to them a corresponding privilege of deducting their losses, wherever these accrue. As to nonresidents, the jurisdiction extends only to their property owned within the state and their business, trade, or profession carried on therein, and the tax is only on such income as is derived from those sources. Hence, there is no obligation to accord to them a deduction by reason of losses elsewhere incurred. It may be remarked, in passing, that there is no showing that appellant has sustained such losses, and so he is not entitled to raise this question.

It is urged that, regarding the tax as imposed upon the business conducted within the state, it amounts in the case of appellant's business to a burden upon interstate commerce, because the products of his oil operations are shipped out of the state. Assuming that it fairly appears that his method of business constitutes interstate commerce, it is sufficient to say that the tax is imposed not upon the gross receipts, as in *Crew Levick Co. v. Pennsylvania,* 245 U. S. 292, but only upon the net proceeds, and is plainly sustainable even if it includes net gains from interstate commerce. *U.S. Glue C. v. Oak Creek,* 247 U. S. 321. *Compare Peck & Co. v. Lowe,* 247 U. S. 165.

Reference is made to the gross production tax law of 1915 (c. 107, Art. 2, subd. A, 1, Sess.Laws 1915, p. 151), as amended by c. 39 of Sess.Laws 1916 (p. 104), under which every person or corporation engaged in producing oil or natural gas

within the state is required to pay a tax equal to 3 percentum of the gross value of such product in lieu of all taxes imposed by the state, counties, or municipalities upon the land or the leases, mining rights,

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and privileges, and the machinery, appliances, and equipment, pertaining to such production. It is contended that payment of the gross production tax relieves the producer from the payment of the income tax. This is a question of state law, upon which no controlling decision by the supreme court of the state is cited. We overrule the contention, deeming it clear, as a matter of construction, that the gross production tax was intended as a substitute for the *ad valorem* property tax, but not for the income tax, and that there is no such repugnance between it and the income tax as to produce a repeal by implication. Nor, even if the effect of this is akin to double taxation, can it be regarded as obnoxious to the federal Constitution for that reason, since it is settled that nothing in that instrument or in the Fourteenth Amendment prevents the states from imposing double taxation, or any other form of unequal taxation, so long as the inequality is not based up on arbitrary distinctions. *St. Louis S.W. Railway v. Arkansas,* 235 U. S. 350 , 235 U. S. 367 -368.

The contention that there is a want of due process in the proceedings for enforcement of the tax, especially in the lien imposed by 11 upon all of the delinquent's property, real and personal, reduces itself to this: that the state is without power to create a lien upon any property of a nonresident for income taxes except the very property from which the income proceeded; or, putting it in another way, that a lien for an income tax may not be imposed upon a nonresident's unproductive property, nor upon any particular productive property beyond the amount of the tax upon the income that has proceeded from it.

But the facts of the case do not raise this question. It clearly appears from the averments of the bill that the whole of plaintiff's property in the State of Oklahoma consists of oil-producing land, oil and gas mining leaseholds, and other property used in the production of oil and gas, and that, beginning at least as early as the

year 1915,

when the act was passed, and continuing without interruption until the time of the commencement of the suit (April 16, 1919), he was engaged in the business of developing and operating these properties for the production of oil, his entire business in that and other states was managed as one business, and his entire net income in the state for the year 1916 was derived from that business. Laying aside the probability that from time to time there may have been changes arising from purchases, new leases, sales, and expirations (none of which, however, is set forth in the bill), it is evident that the lien will rest upon the same property interests which were the source of the income upon which the tax was imposed. The entire jurisdiction of the state over appellant's property and business and the income that he derived from them -- the only jurisdiction that it has sought to assert -- is a jurisdiction *in rem,* and we are clear that the state acted within its lawful power in treating his property interests and business as having both unity and continuity. Its purpose to impose income taxes was declared in its own Constitution, and the precise nature of the tax and the measures to be taken for enforcing it were plainly set forth in the Act of 1915, and plaintiff having thereafter proceeded, with notice of this law, to manage the property and conduct the business out of which proceeded the income now taxed, the state did not exceed its power or authority in treating his property interests and his business as a single entity, and enforcing payment of the tax by the imposition of a lien, to be followed by execution or other appropriate process, upon all property employed in the business.

No. 531: Appeal dismissed.

No. 580: Decree affirmed.

* Acts of August 5, 1861, c. 45, 49, 12 Stat. 292, 309; June 30, 1864, c. 173, 116, 13 Stat. 223, 281; July 4, 1864, Joint Res. 77, 13 Stat. 417; July 13, 1866, c. 184, 9, 14 Stat. 98, 137, 138; March 2, 1867, c. 169, 13, 14 Stat. 471, 477, 478; July

14, 1870, c. 255, 6, 16 Stat. 256, 257; August 27, 1894, c. 349, 27, 28 Stat. 509, 553; October 3, 1913, c. 16, II, A. Subd. 1, 38 Stat. 114, 166; September 8, 1916, c. 463, Title I, Part. I, 1a, 39 Stat. 756; October 3, 1917, c. 63, Title I, 1 and 2, 40 Stat. 300; February 24, 1919, c. 18, 210, 213, c. 40 Stat. 1057, 1062, 1066.

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