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# Taxation-Jurisdiction to Tax Trust Property-The Trust Device as an Instrumentality for Avoiding Taxation

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INDIANA UNIVERSITY  
Maurer School of Law  
Bloomington

TAXATION—JURISDICTION TO TAX TRUST PROPERTY—THE TRUST DEVICE AS AN INSTRUMENTALITY FOR AVOIDING TAXATION.—Appellant, a resident of Indiana, assigned, transferred, and delivered certain stocks to the First National Bank of Cincinnati, Ohio, on February 28, 1930, to be held in trust, naming herself, her husband, daughters, sons-in-law, or their survivors, as beneficiaries. The intangible subject matter of the trust was made the basis of an assessment against the appellant, and was listed on the tax duplicate in July, 1932, as omitted property for the years 1920 to 1932, inclusive.

Held: Since the title vested in the trustee, who was a resident of Ohio, the property cannot be made the subject of a tax by the state of Indiana. Since the appellant did, in fact, part with title to, and control of, the property, her object in so doing, although one of avoiding taxation, is of no importance.<sup>1</sup>

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<sup>12</sup> Persons contracting with a corporation are bound to know the law limiting the powers of its agents to contract. *Pine Civil Township v. Huber Manufacturing Co.* (1882), 83 Ind. 121.

<sup>13</sup> (1927), 87 Ind. App. 179, 161 N. E. 389.

<sup>14</sup> (1934), 99 Ind. App. 532, 189 N. E. 633.

<sup>1</sup> *Lewis R. Johnston v. State of Indiana* (Ind., 1937), 8 N. E. (2d) 590.

That intangible property held in trust is regarded as being subject to taxation by the jurisdiction in which the trustee is domiciled, there seems to be little doubt.<sup>2</sup>

Upon the question of whether or not the domicile of the beneficiary could likewise levy a property tax upon the corpus of the trust there was, until recently, a considerable split of authority. The courts of a number of states,<sup>3</sup> led by Massachusetts with *Hunt v. Perry*,<sup>4</sup> have upheld the right of the domicile of the cestui in this matter, while on the other hand, the courts of Florida,<sup>5</sup> California,<sup>6</sup> Arkansas,<sup>7</sup> and Rhode Island<sup>8</sup> have deemed the double taxation resulting from such a holding sufficiently undesirable to require a contrary declaration of law.

The necessity of weighing the merits of the two lines of decisions for the purpose of determining which represents the most nearly correct and desirable result to be reached in the present case is obviated by the decision of the United States Supreme Court in *Safe Deposit and Trust Co. v. Virginia*.<sup>9</sup> In this case the court held that where the possessor of the legal title held the securities in Maryland, the situs for purposes of taxation was there, and they could not be taxed by Virginia, the domicile of the cestui que trustent. The court was cautious to limit its decision to the exact problem before it, specifically stating that it was not deciding the right of the state to tax the cestui upon his equitable interest, but only its right to tax him upon the corpus of the trust. As the decision in its limited scope squarely covers the question involved in the principal case, however, there can be little doubt as to the correctness of the holding of the Indiana Supreme Court that *Safe Deposit and Trust Co. v. Virginia* was controlling, and that the property was therefore not taxable by Indiana.

Although there are in Indiana both legislative<sup>10</sup> and judicial<sup>11</sup> declarations of policy which render ineffective attempts to avoid taxation by the conversion of taxable property into non-taxable property, it is to be noted that

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<sup>2</sup> I Cooley on Taxation, 4th Edition, secs. 469-470; *State v. Bearsley* (1919), 77 Fla. 803, 82 So. 794; *Higgins v. Commonwealth* (1907), 126 Ky. 211, 103 S. W. 306; *Welch v. Boston* (1915), 221 Mass. 155, 109 N. E. 174; *Detroit v. Lewis* (1896), 109 Mich. 155, 66 N. W. 958; *State v. Clark* (1899), 77 Minn. 190, 79 N. W. 829; *People v. Wells* (1907), 188 App. Div. 881, 103 N. Y. S. 874; *West Chester School District v. Darlington* (1861), 38 Pa. 157. For a complete treatment of the problem of taxation of trust property, see Robert C. Brown, the Taxation of Trust Property, 23 Kentucky L. J. 403.

<sup>3</sup> Maryland, (*McCeney v. County Commissioners* (1927), 153 Md. 25, 137 A. 291); Maine, (*Augusta v. Kimball* (1898), 91 Me. 605, 40 A. 666); Kentucky, (*Lexington v. Fishback* (1901), 109 Ky. 770, 60 S. W. 727); Ohio, (*Tafel v. Lewis* (1906), 75 Ohio St. 182, 78 N. E. 1003); Pennsylvania, (*Lewis v. Chester* (1869), 60 Pa. 325); New Hampshire, (*Crossley v. Charleston* (1915), 78 N. H. 39, 95 A. 1043); Nebraska, (*In re Douglas County* (1909), 84 Neb. 506, 121 N. W. 593).

<sup>4</sup> (1896), 165 Mass. 287, 43 N. E. 103.

<sup>5</sup> *State v. Beardsley*, supra, note 2.

<sup>6</sup> *Lowery v. Los Angeles County*, 38 Cal. App. 158, 175 P. 702 (1918).

<sup>7</sup> *Greene County v. Smith* (1921), 148 Ark. 33, 228 S. W. 738.

<sup>8</sup> *Anthony v. Caswell* (1885), 15 R. I. 159, 1 A. 290.

<sup>9</sup> (1929), 280 U. S. 83, 50 S. Ct. 59.

<sup>10</sup> Burns 1933, Secs. 64-605 and 64-608.

<sup>11</sup> *Burham v. State* (1892), 6 Ind. App. 23, 32 N. E. 104.

neither the statutes nor the cases are concerned with a transfer of property to persons outside the taxing jurisdiction of the state. Perhaps the explanation of this failure to include transfers of the latter type is that the state could, until the decision in *Safe Deposit and Trust Co. v. Virginia*, tax the property so transferred, and it was therefore unnecessary to safeguard the revenue from such attempted evasions.

As an abstract statement of law, the holding of the court in the principal case on the question of transfers to avoid taxation leaves much to be desired. The holding, if strictly adhered to, would, except for the Intangibles Tax act of 1933,<sup>12</sup> the constitutionality of which was upheld by a divided Indiana Supreme Court,<sup>13</sup> subject the state revenue to tax evasion which would be seriously detrimental to state interests. Transfers of intangible property to trustees domiciled in states having favorable tax rates would limit Indiana to the taxation of the equitable interest retained,<sup>14</sup> if not preclude it from all property taxation whatsoever.<sup>15</sup>

Viewed, however, as it must be, in the light of the facts of the principal case, it seems much less onerous. The transfer was not, from all indications, one which was to be nullified by a return immediately after the tax day. While there might seem to be reasons for suspecting such a scheme, the actual facts indicate otherwise, and it thus becomes necessary to consider the transaction as being one in which the taxpayer, although possibly attempting to obtain a more favorable tax rate at the same time, made a perfectly legal and good-faith transfer to a non-resident trustee, and the fact that in so doing she obtained a more favorable tax rate, and placed the intangibles outside the right of Indiana, does not vitiate the transaction.

R. W. W.

**AGENCY—MASTER AND SERVANT—TERM OF CONTRACT WHEN NO DEFINITE TIME IS SPECIFIED.**—The defendant through its agent by telephone called the plaintiff offering the plaintiff a position in its legal department. During the conversation the defendant's agent informed the plaintiff that, "This job pays a salary of \$2,600 per annum, which figures out something like \$50 per week." The defendant's agent wished for the plaintiff to come to work immediately, but the plaintiff asked for time to consider. The next day, November 4, 1930, he telegraphed his acceptance and that he would be at work Monday, November 11th. The plaintiff left his position in Cleveland to enter the employment of the defendant in Indianapolis, but was discharged on July 14, 1931. The plaintiff contends that there was a contract of hiring for a year and that the defendant breached same when it discharged him before the end of the year. Held, there was a contract of employment from November 4,

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<sup>12</sup> Burns 1933, Secs. 64-901 ff.

<sup>13</sup> Lutz v. Arnold (1935), 208 Ind. 480, 193 N. E. 840.

<sup>14</sup> Safe Deposit and Trust Co. v. Virginia, supra, note 9.

<sup>15</sup> Baltimore v. Gibbs (1934), 166 Md. 364, 171 A. 37. This case is commented upon favorably by Robert C. Brown, supra, note 2, and adversely criticized in *Developments in the Law, Taxation—1933*, 47 Harvard L. Rev. 1224.