See, also, *Dostal* v. *McCaddon*, 35 Ia. 318; *Pierce* v. *George*, 108 Mass. 78; *Bratton* v. *Clawson*, 2 Strob. Laws 478; s. c. 3 Id. 127; *Thropp's Appeal*, 70 Penn. St. 395.

A study of these cases convinces us of the correctness of the decision in the principal case, of which, as it seems to us, there can be no reasonable doubt.

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LEGAL NOTES.

THE Court of Errors and Appeals of New Jersey, by their recent decision in *State Board of Assessors* v. *State*, 4 Atl. Rep. 578, have added one more to the leading cases on the constitutionality of laws creating classes of property for taxation, viewed in connection with the requirements of both state and federal constitutions. The case was argued by counsel of acknowledged ability, and in addition to the opinion of the court five others were filed, two concurring, one dissenting and two partially concurring, partially dissenting. The judgment of the Supreme Court, which was brought up for review, declared the Act of April 10th 1884 to be in contravention of the requirement of the state constitution that "property shall be assessed for taxes, under general laws and by uniform rules, according to its true value." The act referred to directed that all the property of railroad and canal companies used for railroad or canal purposes, including their franchises, should be assessed for taxation by a special state board appointed for the purpose, in the manner therein described, which differed materially, both in ascertaining values and in the rate of tax, from the assessment of other similar property not used for railroad or canal purposes. The view taken by the majority of the court is thus stated by Chancellor RUNYON: "The power of taxation is in the legislative branch of the government alone. It is unbounded except as it may be limited by constitutional restraint. A law which taxes a class of property separately is not unconstitutional if it embraces all property of that class and applies to it uniform rules, and taxes it according to its true value. The constitutionality of such a law is to be determined in the same way in which it would be determined if the property taxed were the only property taxed in the state;" and is also fairly summarized in the following extract from the dissenting opinion of Judge DEPUE: "As I understand the views of the majority of the court, it is not claimed that the Act of 1884 provides for taxation either for state or local purposes on a rule uniform with that on which taxes, state or local, are laid under the general tax act of 1866. The position taken is this: that the constitutional provision allows a classification of property for taxation under general laws, and that, upon such a classification the rule of uniformity prescribed by the constitution is complied with if the tax be laid upon property within the classification of an equal percentage, without regard to the rate of taxation upon other taxable property in the state; that local taxes may be laid on property in the classification at one rate, and upon other property at a different rate, and state taxes be levied with the same diversity in rates, provided only that a uniform rate be observed in the tax upon property within each class;

and that property used for railroad and canal purposes may be segregated into a class, and subjected to taxation at any rate that may be prescribed by the legislature." On support of these views the court relied upon the fact that substantially the same method of taxation had existed in New Jersey since 1873, and had received their sanction in *Van Riper* v. *Parsons*, 40 N. J. Law 123, and in *N. J. S. Rd. Co.* v. *Board Rd. Com's.*, 41 Id. 235; upon the decision of the Supreme Court of the United States in *State Railroad Tax Cases*, 92 U. S. 575; and finally upon their own interpretation of the constitutional restriction, which was, to quote from the opinion of DIXON, J., who concurred on this point that the "expression 'uniform rules' is not of wider import than the expression 'general laws,' and if the latter may be confined to a class, with equal propriety may the former. * * * Its collocation with the words 'general laws' indicates that it was to have a corresponding meaning, and the whole sentence becomes harmonious by holding that it requires the same regulations to be applied to every member of each class which the general laws recognise or establish."

The court carefully distinguishes the case from the *San Mateo Case*, 13 Fed. Rep. 722 and the *Santa Clara Case*, 18 Id. 385, and holds that the act in no way conflicts with the 14th amendment to the federal constitution. It further takes occasion to declare that franchises are property and as such taxable.

Judge DEPUE, in his dissenting opinion, claims that the constitutional question not having been directly raised in *State* v. *Rd. Com's.*, *supra*, that case cannot be regarded as an authority, and that the *State Ry. Tax Cases* depended upon the peculiar language of the constitution of Illinois and do not cover the case in hand. He then interprets the constitutional restriction thus: "the constituent parts of the sentence, 'general laws' and 'uniform rules' are made essential to a valid act of taxation," and continues: "Under an organic law for taxing property at its true value there can be no classification except as a means of ascertaining true values. Different kinds of property have different grades of value; but true value is a characteristic of all kinds of property, and peculiar to no one species so as to make it a class by itself. The classification adopted in this act is upon the use to which the property is devoted; but the use to which property is applied does not alter its true value. An engine is of the same market value in the shop of a manufacturer as when placed upon a railroad track. * * * But it is said that the property of these companies possesses peculiar qualities distinguishing it from the property of private individuals or other corporations, in the fact that it is associated with and is necessary for the exercise of the corporate franchises, or of the business of operating railroads or canals, and therefore may be disassociated from other property intrinsically of the same nature, for a different sort of taxation, or for taxation at a different rate. Such a mode of taxation is not taxation on property at its true value. It is that method of taxation which can lawfully be resorted to only in the exercise of the power of indirect taxation, by taxation upon franchises, trades or occupations, and this act has none of the features of such a mode of taxation. It is what its title imports, taxation of property. As such, I think the mode in which it is exercised is not in conformity with the constitutional provision."

DIXON, J., and REED, J., while concurring with the majority of the court on the general question, thought certain features of the act relating to the taxation for local purposes of a part of the property owned by these companies and used by them for the purposes of their business unconstitutional. On this point the opinion of the court reads: "The objection is made that under the act only the property mentioned in subdivision 2 of section 3 (real estate used for railroad or canal purposes, not including main stem or water way) is subjected to assessment for taxation for county and municipal purposes, whereby it is argued the companies escape their share of county and municipal taxation in respect of the main stems or the water ways, and the tangible personal property in the taxing districts. But if the taxes be but one tax, and the legislature has the right to fix the amount of that tax by the means adopted, it follows that the objection is without actual foundation: for the legislature has a right to say what tax the companies, in view of the peculiar character of their property, shall pay, and in what way it shall be assessed, provided it makes the assessment under general laws and by uniform rules according to the true value of the property." The foregoing extracts will serve to indicate the three different views of the question presented in the several opinions filed.

Henry Bill Publishing Company v. *Arthur H. Smythe*, 27 Fed. Rep. 914, recently decided in United States Circuit Court for the Southern District of Ohio, is worthy of note as a case of first impression upon a question of more than usual interest.

The plaintiff was the owner of the copyright of a book, written by James G. Blaine, called "Twenty years of Congress," and sold it by subscription only to individual buyers of single copies. The book had never otherwise been placed upon the market by the plaintiff, or with its consent. It employed agents to solicit subscriptions and deliver the copies ordered, assigning to each a certain territory. An agent so employed in New York, to whom plaintiff had sent a number of copies for delivery to certain subscribers, procured by him, sold the copies to a book-dealer in Troy, contrary to plaintiff's instructions and in violation of an express agreement and his bond, that he would not sell or deliver in any other mode than that directed by the plaintiff, applying the money to his own use. It did not appear whether the Troy dealer was aware of this breach of trust, or a party to it by collusion with the agent, but it did appear that it was generally known to the trade, and especially to the defendant, that the plaintiff professed to sell the books only by subscription, and had announced by public advertisement and otherwise that in no other way could it be procured from the publishers. The defendant had expressed the belief that the trade could procure the work notwithstanding this announcement, and that he would soon have it for sale. He ordered the book from the Troy merchant, procured six copies of those purchased from the plaintiff's agent in the manner above stated, and sold five of them at a profit of $5 86. The defendant testified that he was not aware of the facts connected with the Troy dealer's purchase, and there was no proof that he was. He ordered the books without any inquiry upon the subject, and in the usual way of making such orders. The plaintiff's agent at Columbus, Ohio, where defendant did business, notified him that he was the only

authorized agent for that section; that the book sold only by subscription, and warned him not to sell the copies he was offering, but the agent did not himself know how the books had been procured. This bill was filed to enjoin the defendant from selling these copies, for an account, if sold; and from selling the book at all in the future without plaintiff's authority.

Judge HAMMOND, at the outset of his opinion, frankly admits that to him "it was a startling proposition that in the immense trade that goes on in copyright books, the dealer must deraign his title from the copyright holder to each copy, with all the particularity of real estate, if not more inexorably: and that no right to use or sell a copy could be acquired without his consent." He adds: "And I did not see how the argument and the case of the plaintiff could stop short of that claim. And yet I am unable now to see how that monopoly of sale granted by the statute can be secured without a principle almost as broadly stated as that; qualified, of course, by such limitations as properly and justly should be imposed to estop him by his own conduct, in any given case, from relying on the principle just stated. How can his right of sale be exclusive without that principle in its widest scope?"

He then reviews at some length the English Copyright Acts, pointing out that they seem to omit the words used in our acts in reference to the "sole liberty of * * * vending," and calls attention to the definition given by Congress to the word "copyright" as the sole right "of printing, publishing and *selling* his literary composition or book." The necessity for this peculiarity of our statute is then considered, and the conclusion reached that "protection in the monopoly of sale for the lawfully printed copies is just as essential to the value of the right of property created by the statute as protection against piratical printing, publication and sale of the book." "Or, if this be not so, Congress has chosen, at least, to grant that right of monopoly, and it may grant what it pleases. It does the same thing for mechanical inventions, and why not for literary products? I think it has." The precise ruling he makes, to quote his own words, is this: "If the owner of a subsisting copyright seeks to enjoy his exclusive right of selling the published work by making sales directly and only to individual subscribers, the statute protects his monopoly from interference, by other dealers offering surreptitiously obtained copies of the genuine work, without his consent, unless there be something in the circumstances of the particular case to estop him from relying on the privileges of his monopoly." He finds that the circumstances of the case were sufficient to put the defendant on inquiry as to his vendor's authority to sell, and that Mr. Blaine's conduct in the premises was not such as to estop him from asserting his monopoly of the privilege.

The remainder of the opinion is taken up with a review of the cases bearing upon the subject from which support for the ruling is derived, in the course of which the case in hand is carefully distinguished from *Clemens* v. *Estes*, 22 Fed. Rep. 899, where agents had *purchased* copies of the book and bound themselves not to sell except by subscription. A decree was entered enjoining defendant from selling the only copy of the book in his possession, and directing him to pay over the profits on those sold; but the court declined to enjoin him from dealing in the book for the future.