Paige (N. Y.), 126; Whipple *v.* Whitman, 13 R. I. 512; S. C., 43 Am. Rep. 42. If one of several payments to the attorney in specific articles is received by the principal, and no objection is made, such payments will go in discharge of the debt in the same way as if made in money: Patten *v.* Fullerton, 27 Me. 58.

The remedies of the client are many and various. He may proceed against the attorney, if he choose, so ratifying his action and discharging the debtor: Chapman *v.* Cowles, 41 Ala. 103; Lord *v.* Burbank, 18 Me. 178; Fitch *v.* Scott, 3 How. (Miss.) 314. If judgment has been entered on the compromise, he may have it vacated: Dalton *v.* West End St. Ry. Co. (the principal case) (Mass.), 34 N. E. Rep. 261. If that has not been done, he may ignore the compromise, and proceed with the original action: Jones *v.* Inness, 32 Kan. 177; Davis *v.* Severance (Minn.), 52 N. W. Rep. 140; Dooley *v.* Dooley, 9 Lea. (Tenn.) 306. Or if the compromise be made on a judgment, after issuing execution, he may reissue execution: Wright *v.* Daily, 26 Tex. 730.

The rules laid down in the preceding discussion apply to proctors in admiralty, equally with attorneys: Bates *v.* Seabury, 1 Sprague, 433.

ARDEMUS STEWART.

DEPARTMENT OF CONSTITUTIONAL LAW.

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LUMBERVILLE, DELAWARE, BRIDGE CO., *v.* STATE BOARD OF ASSESSORS. SUPREME COURT OF NEW JERSEY.

Constitutional Law. Taxation of Corporate Stock. Interstate Commerce.

STATEMENT OF CASE.

The corporation plaintiff was incorporated by the concurrent legislation of New Jersey and Pennsylvania. Some of the officials were resident in one State, others in the other. Toll gates were erected on the Pennsylvania bank and tolls collected there. Taxes on one-half of the bridge (considered as a *structure*, without reference to the extent of travel upon it, or the profits derived from it) were paid annually to New Jersey, and on the same basis with regard to the other half taxes were paid to Pennsylvania.

The Legislature of New Jersey

passed a further Act (April 18th, 1884), entitled "An Act to provide for the imposition of State taxes upon certain corporations, etc.," which required from the corporation plaintiff, the payment of "a yearly license fee or tax of one-tenth of one per cent. on the amount of the capital stock."

The payment of the latter tax was made under protest, and was resisted on these grounds (the above statement of facts being agreed upon): 1st, that this was a tax upon interstate commerce, and so in violation of the Constitution of the United States; 2d, that upon the principles of public law, the power of erecting a bridge or taking tolls thereon, over a navigable river, which forms the co-terminous boundary between two States, can only be conferred by the concurrent legislation of both States, and such charters are subject to alteration and repeal in a like manner only; 3d, that the corporation being a foreign corporation, collecting tolls at its gates, within the jurisdiction of Pennsylvania, the State of New Jersey could not impose a tax by way of a license fee upon it or upon its franchises; and 4th, that even if the tax were valid, the assessment should have been made upon one-half the amount of the capital stock instead of upon the whole amount.

Opinion of the Court.

The Court (Garrison, J., delivering the opinion) upheld the constitutionality of the tax, saying that the Federal Constitution will not invalidate a State tax imposed upon domestic corporations, *generally* because it *incidentally* affects one that, under State authority, is engaging in interstate commerce. "This yearly license fee, continued the Court, is, in short, a poll tax levied upon domestic corporations for the right to be, without regard to the powers that under such form they may exercise. Such a fee may be exacted by the State from which the right is derived without reference to the nature of the business the corporation may be authorized to carry on, and is constitutional, even as against a domestic corporation created for the purpose of engaging in commerce with an adjoining State." The fourth ground of objection the Court answered by saying that the right of corporate existence is, in its nature, indivisible, and the fee, therefore, must be necessarily an entirety, no matter where the property of the company is situated, or how its capital is invested or employed.

State Taxation of Corporate Franchise.

That the power to regulate commerce between the States is committed exclusively to Congress, and that, unless it choses to exercise its power in that direction, such commerce shall be free from statutory regulations of any kind, is a well-established principal of constitutional law: Robbins *v.* Taxing District, 120 U. S., and the long list of cases there cited by Mr. Justice Bradley.

The word *regulation* has grown to have a more or less technical, or rather special meaning as employed by the federal Supreme Court. In State Tax on gross Receipts, 15 Wallace, 284, the fol-

lowing words are used: "It is not everything that *affects* commerce that amounts to a *regulation* of it, within the meaning of the constitution." (See also Robbins *v.* Taxing District, *supra.*)

The police power of the States authorize the passage of Acts which may affect interstate commerce by virtue of the right and duty to provide for the "security of the lives, limbs, health and comfort of persons." Legislation which deals distinctly with the physical welfare and happiness of the citizen falls naturally within this class. The exception is even extended, and, under this same police power, the States may secure the protection of property, although business which reaches beyond the State limit may be incidentally *affected* thereby.

But wherever such purely police regulations are made by a State, or wherever a State enacts laws, less distinctly recognizable as falling within that class, such as the establishment and supervision of highways, canals, ferries, railroads, bridges and other commercial agencies, and facilities the operation of the law must not *directly* affect interstate commerce. This, then, would seem to be the test: Does a State law whose constitutionality is impeached on these grounds, operate directly against an interstate business, whatever may be its character, or does it merely reach in a casual way one or more of the agencies of that business. The law must, of course, be in other respects legitimate.

In considering the long line of cases decided by the United States Supreme Court, involving the constitutionality of State laws alleged to be in conflict with the commerce clause of the constitution, the subject of taxation is the important one. The daming of a navigable stream is a rare occurrence as compared with the tolls charged for transportation over its ferries or on its bridges. The general subject of taxation cannot be considered here, but the cases in which the Supreme Court has passed upon State legislation extending through various forms of taxation to the commerce which claimed exemption from its operation under the federal law sufficiently indicate the line of argument by which the New Jersey Court reached its conclusion in this case. The case may be divided into two general groups: first, those in which the State law has been set aside as an unwarrantable regulation of commerce; and second, those which upheld the legislation, notwithstanding that it may have had an incidental affect or influence upon that commerce.

Within the first group may be first considered the instances in which the State law imposes a burden upon the citizens of other States doing business within its territory, from which its own citizens are exempt. In Guy *v.* Baltimore, 100 U. S. 434, the city of Baltimore passed an ordinance requiring the payment of fees for the use of the city's wharves by all vessels laden with the products of other States, but exempting those landing with Maryland products. The court said that "these fees must be looked upon, not as a compensation for the use of the city's property, but as a mere expedient or device to foster the domestic commerce of Maryland by means of unequal and oppressive burdens upon the industry and business of other States." This was a case of dis-

crimination pure and simple. In Webber *v.* Virginia, 103 U. S. 344, a Virginia statute required the agent of manufacturers without the State to obtain county license fees and pay a specific license tax in Virginia before selling his goods, but excepted the agents of Virginia manufacturers from the operation of the law. "Commerce among the States is not free," said the court, "whenever a commodity is, by reason of its foreign growth or manufacture, subjected by State legislation to discriminating regulations or burdens, the statute is in conflict with the commerce clause of the constitution and void:" (Mr. Justice FIELD.)

In Walling *v.* Michigan, 116 U. S. 446, practically the same state of facts existed as in the above case. The license lax in question was, however, levied upon the sale of intoxicating liquors manufactured in other States, a subject which would seem to fall more clearly within the police power of the State. The case illustrates the force of the constitutional protection over interstate commerce in the face of the highest power claimed by the States.

Asher *v.* Texas, 128 U. S. 129, and Stoutenburgh *v.* Hennick, 129 U. S. 141, are further examples of discrimination.

But it is not on the ground of discrimination only that a state tax may be declared void. The nature of the subject, upon which the tax is levied, is sometimes sufficient to cover it with the cloak of federal authority and protection. In case of State Freight Tax, 15 Wallace, 232, the State of Pennsylvania passed an Act taxing freight transported over the railway, etc., without regard to whether it was carried beyond the State limits or not. The court held that "the transportation of freight, or of the subjects of commerce, is a constituent part of commerce itself, and that, whenever the subject in regard to which a power to regulate commerce is asserted are in their nature national, or admit of one uniform system of regulation, they are exclusively within the regulating control of Congress. Transportation of passengers or merchandise through a State, or from one State to another is of this nature."

Cook *v.* Pennsylvania, 97 U. S. 566, is an example of a State tax levied nominally vpon an occupation, but really upon the subject of the business. The tax in question was upon the amount of sales of goods made by auctioneers. The Court held that it amounted to a tax on the goods themselves, and consequently as applying to imported goods in the original packages was unconstitutional.

See also Brown *v.* Houston, 114 U. S. 622, and Lyng *v.* Michigan, 135 U. S. 161.

The State tax may be void, not only as discriminating against citizens of other States, or as burdening directly the goods transported but also as being a tax upon the business engaged in intestate commerce, because imposed upon the business itself directly or upon its earning, methods or agencies.

The following cases declared State Acts void as affecting directly intestate business: Pensacola Tel. Co. *v.* W. U. Tel. Co., 96 U. S. 1; W. U. Tel. Co. *v.* Texas, 105 U. S. 460; Wabash St. L. & P. R. Ry. Co. *v.* Illinois, 118 U. S. 557; Telegraph Co. *v.* Ratterman, 127 U. S. 411; Leloup *v.* Mobile, 127 U. S. 640.

In these the tax was or amounted to a tax on earnings: Fargo *v.* Michigan, 121 U. S. 230; Phil. & Southern S. S. Co. *v.* Penna., 122 U. S. 326. While the following are examples of taxes operating against the agencies of commerce: Robbins *v.* Taxing Dist., 120 U. S. 489: McCall *v.* California, 136, U. S. 104; Railroad Co. *v.* Penna., 136 U. S. 114; Crutcher *v.* Kentucky, 141 U. S. 47.

The cases which comprise the second general group, or those in which State legislation has been upheld, were where interstate commerce was incidentally affected may now be considered.

The levying of a tax on the ferry boats owned by ferry keepers living within the State, was held, in Wiggin's Ferry Co. *v.* East St. Louis, 107 U. S. 365, a valid regulation imposed under the State police power. The Court said that "the power to license is a police power, although it may also be exercised for the purpose of raising revenue." See also Maine *v.* Grand Trunk Ry. Co., 142 U. S. 217.

The right to impose fees for wharfage is upheld, although the wharf owner may be a municipal corporation and the steamboats mooring thereat enrolled and licensed: Packet Co. *v.* Keokuk, 95 U. S. 80. See also Packet Co. *v.* East St. Louis, 100 U. S. 428; Parkersburg Transportation Co. *v.* Parkersburg, 107 U. S. 698; Packet Co. *v.* Aiker, 121 U. S. 444.

It remains to note the instance in which the capital stock and similar property of corporations have been taxed and, finally, the question to what extent the less tangible corporate franchises and privileges are liable.

In W. U. Tel. Co. *v.* Att'y-General, 125 U. S. 530, the State of Massachusetts had imposed a tax upon the W. U. Telegraph Co. upon its property owned and used within the State, the value of which was ascertained by comparing the length of its lines in that State with the length of its entire lines. The Court declared the tax to be distinctly an excise tax. The tax was levied upon the capital stock of the company. It was upheld by the Court.

In Pullman's Palace Car Co. *v.* Penna., 141 U. S. 18, it was held that "a State statute imposing a tax on the capital stock of all corporations engaged in the transportation of freight and passengers within the State, under which a corporation of another State engaged in running railroad cars into, through and out of the State, is taxed by taking as the basis of assessment such proportion of its capital stock as the number of miles of railroad over which its cars are run within the State, bears to the whole number of miles in this and other States over which its cars are run, does not violate the commerce clause of the constitution."

Thus, the capital stock of a foreign corporation doing business within another State is the proper subject of taxation in the latter State, provided that the basis of assessment is not the whole of the stock, but only that which stands for the amount of property owned or operated in the taxing State.

Does the same rate apply in the taxing of franchises and privileges? In Delaware R. R. Tax, 18 Wallace, 206, the Court said, "the State may impose taxes upon the corporation as an *entity* existing under its laws, as well as upon its capital

stock or its separate corporate property." (See also Maine *v.* Grand Trunk Ry. Co., 142 U. S. 217.)

In Horn Silver Mining Co. *v.* New York, 143 U. S. 305, a statute of New York imposed a tax upon the corporate franchise or business of every corporation, etc., incorporated or organized by the law of that State or of any other State, but doing business in New York, the tax to be computed by a percentage upon its whole capital stock. The corporation in question was incorporated in Utah, but di a small part of its business in New York. The tax was upheld. The Court said, that "the right and privilege, or the *franchise*, as it may be termed, of being a corporation is of great value to its members, and is considered as property, separate and distinct from the property the corporation itself may acquire." Continuing, the Court declared that the tax being valid in other ways did not operate as a burden upon or interference with interstate commerce, as it was neither directed against any of the subjects of that commerce nor descriminated against the citizens of other States.

It is upon this latter case that the New Jersey Court appears to have principally based its decision, although the Court makes the following distinction as to the use of the word "franchise" in the two instances, saying, "The franchise that is taxed as property is the privilege enjoyed by a corporation of exercising certain powers derived from the State, whereas the franchise with which we have to do, is the right to exist in corporate form without reference to the powers that, made that form, the company may exercise. In this State (New Jersey) we tax each of these so called franchises. The latter tax is, in short, a poll tax levied upon a domestic corporation for the right to be. Such a tax is not upon property or assets, and does not in any way concern the nature of the business the company may be authorized to carry on."

The doctrine of this case may be said to be this: That a State tax levied upon a corporation engaged in a business of an exclusively interstate character, although based upon the whole amount of the capital stock, whether it be held within the State or not, does not conflict with the federal power over interstate commerce, provided that the corporation is incorporated within the State, and falls within the operation of a law in other respects valid. The fact that the corporation was also chartered in the neighboring State, does not alter the question.

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