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Contempt - Juror's Privilege - Non-Application of the Privilege

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is taxable only by the state in which it has so acquired a situs, *Union Refrigerator Transit Co.* v. *Kentucky,* supra. A more difficult question arises in the case of intangible property, for strictly speaking such property can never acquire a permanent situs, and the term "situs" is not applicable to it, *Farmer's Loan & Trust Co.* v. *Minnesota,* supra, unless it has become an integral part of some localized business, so as to acquire a "business situs." *New Orleans* v. *Stempel,* 175 U.S. 309 (1899). Where then can a succession or inheritance tax on intangible property be levied? From the recent cases it seems that only the state of the domicile of the owner may tax the transfer. *Farmer's Loan & Trust Co.* v. *Minnesota,* supra (municipal and state bonds); *First National Bank of Boston* v. *Maine,* supra (shares of stock); *Beidler* v. *South Carolina Tax Commission,* supra (open account); *Baldwin* v. *Missouri,* supra (negotiable instruments). It has been held that the state of the domicile of the cestui que trust could not tax the transfer of the trust fund from the donor to the trustee in another state, where the fund was to be kept. *Safe Deposit Co.* v. *Virginia,* 280 U.S. 83 (1930).

The limiting of a state's jurisdiction to tax by means of the "due process" clause of the Fourteenth Amendment is criticized as reading into the Fourteenth Amendment what is not there. Mr. Justice Holmes is a leader in the opposition and wrote strong dissenting opinions in *Farmer's Loan & Trust Co.* v. *Minnesota,* supra, and *Baldwin* v. *Missouri,* supra. The objection to the limitation seems valid, for the providing of a remedy against taxation of the same subject by more than one state is a question for the legislature rather than for the courts, and therefore the remedy should come by reciprocal legislation by the states. 30 Col. Law Rev. 405 (1930); 43 Harv. Law Rev. 792 (1930); see also 28 Col. Law Rev. 806 (1928). But the Federal Constitution is a compact between the United States to maintain peace and harmony among them; it is not a compact between the United States and foreign countries. Therefore there is a basis for holding that the jurisdiction of a state's taxing powers is limited by the Constitution, and that there is no similar Constitutional Limitation of the Federal Government's jurisdiction to tax. Taxation is one form of taking property; and therefore should be considered in view of the "due process" clause of the Fifth and Fourteenth Amendments. So it is not difficult to see that in defining the Constitutional limitation on the states' power to tax the court applied the "due process" clause of the Fourteenth Amendment. It has been held that the Federal Government may tax merely on the ground of citizenship, *Cook* v. *Tait,* supra; but this latter ground could not be applied in the instant case, for the deceased was not a citizen. Nor does the jurisdiction of the Federal Government to tax depend on the nature of the tax. *Cook* v. *Tait,* supra. The court in the instant case recognized that the evils of taxation of the same subject by more than one sovereignty should be dealt with by international treaties, and very properly finds it impossible to read a limitation out of the Fifth Amendment which would prevent double taxation, i.e., taxation of the same subject by the United States and a foreign nation.

JOHN F. SAVAGE.

CONTEMPT—JURORS PRIVILEGE—NON-APPLICATION OF PRIVILEGE.—The defendant was charged with contempt of court for giving answers which she knew to be false and misleading in response to questions affecting her qualifications as a juror. One Foshay and others were to be tried on the charge of using the mails to defraud. The defendant was summoned as one of the panel of jurors. Evidence disclosed that she was opposed to serving on the jury until informed that

Foshay was involved, for whom she had done office work for several years. She had knowledge that if her employment with Foshay were discovered she would not be accepted. In answer to the question of whether she had ever been in any business of any kind, the defendant named all of her former employments, except the one with Foshay. She answered in response to another question that her mind was free from bias. In the defendant's trial for contempt, testimony was admitted alleging that she had told other jurors Foshay was a victim of circumstances, stating the details, and giving the source of her information as being a newspaper she had read before the trial. Other testimony was admitted showing that in the jury room she refused to listen to the arguments presented by the evidence in the case. The jury was dismissed because unable to agree. The defendant was the only one who held out for acquittal. Judgment of conviction; writ of certiorari. *Held,* judgment affirmed. *Clark* v. *United States,* 53 Sup. Ct. 465, 77 L.Ed. 515 (1933).

Concealment of material facts by a juror upon a voir dire examination is punishable as a contempt if its tendency and design is to obstruct justice. Likewise, a misstatement such as the one in the instant case relating to bias, is punishable as contempt. The test applied to determine the existence of contempt is whether or not there has been an obstruction of the workings of justice from acts done in the presence of the court. Ex parte Hudgings, 249 U.S. 378, 39 Sup. Ct. 337, 63 L.Ed. 656 (1919). Perjury may be one of the elements of contempt. In re Ulmer, 208 Fed. 461 (D.C. Oh., 1913); *United States* v. *Appel,* 211 Fed. 495 (D.C. N.Y., 1913); *United States* v. *Karns,* 27 F. (2) 453 (D.C. Okl., 1928); *United States* v. *Dachis,* 36 F. (2) 601 (D.C. N.Y., 1929); *Lang* v. *United States,* 55 F. (2) 922 (C.C.A. 2d, 1932; *United States* v. *McGovern,* 60 F. (2) 880 (C.C.A. 2d, 1932). Deceit may be an element of contempt in certain cases. *Bowles* v. *United States,* 50 F. (2) 848 (C.C.A. 4th, 1931); *United States* v. *Ford,* 9 F. (2) (D.C. Mont., 1925). The combination of acts which results in a trifling with the court and an obstruction of the processes of justice is contempt. *Sinclair* v. *United States,* 279 U.S. 749, 49 Sup. Ct. 471, 73 L.Ed. 938 (1929).

The question arises as to whether there was a violation of the juror's privilege. This privilege provides that the conduct of a juror during the deliberations of the jury is secret and protected from disclosure, unless the privilege is waived. *Woodward* v. *Leavitt,* 107 Mass. 453 (1871); *Nunns* v. *County Court,* 188 App. Div. 424, 176 N.Y.S. 858 (1919); *In re Cochran,* 237 N.Y. 336, 143 N.E. 212 (1924). The basis for the privilege is public policy. Jurors might not feel free to express their thoughts if they knew that the things they said might later be made public. The privilege, however, will not apply where the juror has been chosen through fraud. He must have acted in good faith before and after becoming a juror before he can claim the protection of the privilege. Analogous to this, is the situation of the client who consults his attorney for advice to further a fradulent scheme. The attorney-client privilege will not protect the client in such case. However, there must be something in addition to the charge of fraud to do away with the privilege. *O'Rourke* v. *Darishire, A.C.,* 581 (1920). There must be some prima facie evidence to satisfy the judge that "the light should be let in." When that evidence is supplied, the seal of secrecy is broken. *Regina* v. *Cox,* 14 Q.B.D. 153 (1884). The juror's privilege will not exist therefore, until the talesman validly becomes a juror and a part of the court. The principal case therefore concludes, without precedent, that inasmuch as the talesman never became a valid juror because of his fraudulent answers in the voir dire examination, he cannot avail himself of the juror's privilege.

HERMAN HURWITZ.