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Editorial Comment

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EDITORIAL COMMENT

The Schlesinger Case and Its Effect
The Michigan-Wisconsin Boundary Dispute

Once again the fourteenth amendment to the United States Constitution has been invoked to declare unconstitutional a legislative enactment which contravened the "due process of law" and "equal protection of laws" clauses. The United States Supreme Court, in an opinion rendered by Mr. Justice McReynolds on March 1, in the case of *Schlesinger v. The State of Wisconsin and County of Milwaukee,* held unconstitutional section 1087—1, Ch. 64 ff. of the Wisconsin Statutes of 1919 (section 72.01—3, 1925 statutes), which provides in effect that all gifts made within six years of death are conclusively presumed to have been made in contemplation of death and, consequently, are subject to the graduated state inheritance tax whether actually made in contemplation of death or not.*

This decision overturns a statutory provision, the validity of which has been repeatedly affirmed by the Supreme Court of Wisconsin and which has been a fruitful source of revenue to the state treasury. The

*An elaborate discussion on taxing gifts *inter vivos* may be found in 9 MARQUETTE LAW REVIEW 1, in an article by Edmund B. Shea entitled, "The Validity of an Inheritance Tax on Gifts *Inter Vivos* Within Six Years of Death."

primary basis for declaring the statute unconstitutional was that it was arbitrary because of an improper classification. The fact that the statutory presumption was conclusive and not merely a *prima facie* presumption of fact also guided the court in its decision. Because of the large number of transactions to which the statute has been applied during the period since its enactment in 1913, the decision is likely to form the basis for a large number of claims for refund of taxes which have been collected in the past. The method and measure of relief for such cases remain to be determined and it is not unlikely that the legislature may provide an appropriate remedy.

Two fatal objections to the statute are mentioned in the opinion of the Supreme Court. In the first place the classification of all gifts made within six years of death in the same class with transfers actually in contemplation of death, for inheritance tax purposes, is held improper and arbitrary as subjecting to equal treatment things essentially dissimilar. In other words, the Wisconsin Supreme Court erred in its assumption that there is some tangible connection between the period of time separating a gift from the point of death and the intent of the donor with respect to such gift, from which one can say that gifts within six years of death are usually in actual contemplation of death.

Secondly, the Court observes that viewed as a tax on transfers *inter vivos,* the statute is invalid because of its graduated character. This conclusion is based on the ground that the tax is a property tax rather than an excise. ". . . . graduated taxes . . . . cannot be laid . . . . upon any gift without testamentary character." In other words, the right to transfer property *inter vivos* is a property right which can be taxed only in accordance with the rules respecting direct property taxes.

The latter conclusion makes it appear inevitable that the Federal Gift Tax included in the 1924 Revenue Act will be held invalid because of its graduated arrangement, when the question reaches the Supreme Court. By the same token, states which have adopted or consider adopting gift taxes are warned that such taxes on a graduated basis cannot be sustained under the fourteenth amendment to the Constitution.

At the same sitting, the Supreme Court conclusively settled the long drawn out boundary dispute between the states of Michigan and Wisconsin. Here, the State of Michigan had contended that through a mistake in the original survey made over sixty years ago, the disputed districts were erroneously placed within the boundaries of Wisconsin. The Court declined to place much credence in this contention but affirmed the present boundary line, basing its decision primarily on the doctrine of laches.

The districts involved not only represent several progressive communities but are in the central region of a wealth of iron ore mines, thirty million dollars being a conservative estimate of their value. Little wonder that the citizens of Wisconsin are satisfied and even elated with the Court's decision. On the other hand, residents of the State of Michigan will be accorded eternal rest from the battle cry of office seekers who have hitherto seized upon this boundary dispute as the proverbial political football.

The Editorial Staff regrets that it is unable to publish the concluding installment of "Elementary Principles of Chattel Mortgages" by John McD. Fox, the first installment of which appeared in the February issue of the REVIEW. The article will be concluded in the June issue of the REVIEW.