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the right of citizenship is not at the death of the ancestor but at the birth of the child, and it seems to us more natural to infer that the conditions of the descent contained in the limiting proviso, so far as the father is concerned, must be perfected and have been performed at that time.

CHARLES L. GOLDBERG

Constitutional Law: Federal Gift tax held unconstitutional in part.*

In case of John W. Blodgett v. Charles Holde, decided November 22, 1927, and reported in the United States Daily of that date, page 13, the United States Supreme Court held that the gift tax law (Revenue Act of 1924, Sec. 319-24) insofar as it undertook to impose a tax upon gifts made before the passage of the Act, was unconstitutional, as arbitrary and invalid under the due process clause of the Fifth Amendment. Thus a much litigated and difficult question is disposed of. See MARQUETTE LAW REVIEW, April, 1927, Vol. XI, No. 3, page 145.

This Act, commonly called the Gift Tax, was passed on June 2, 1924, and provided that for the calendar year of 1924 and each calendar year thereafter, a tax should be imposed upon the transfer by gift during such calendar year of any property, whether made directly or indirectly, etc. This act was in effect for only two years. In the Blodgett case the gifts were made during January, 1924. These were held taxable by the United States District Court for the Western District of Michigan, reported in 11 Fed. (2nd) 180. This was appealed to the Circuit Court of Appeals of the Sixth Circuit, which court without attempting to decide the questions involved, certified the matter to the United States Supreme Court. All the United States Supreme Court Justices concurred in the result, but on different grounds. The main opinion, which apparently was concurred in by five of the Justices, holds that the Act is unconstitutional as applied to gifts made before the passage of the Act. Four of the Justices joined in a separate opinion, which in effect holds that they do not consider it necessary to pass on the constitutionality phase of the case as they construe the Act to mean that it was not intended to be retroactive and was not designed to tax any gifts made before the passage of the Act on June 2.

There is another case pending in the United States Supreme Court involving the same question, i.e. McNeir v. Anderson, reported in 10 Fed. (2nd) 813, and 16 Fed. (2nd) 970. This involves the same facts as the Blodgett case and doubtless the judgment of the Circuit Court of Appeals of the Second Circuit, holding the tax constitutional, will be reversed.

It will be noted that the Blodgett case does not pass upon the constitutionality of the Act in so far as it affects gifts made after the passage of the Act. So far as we know there are no cases pending in United States Supreme Court at the present time involving that question.

JAMES T. GUY

* See article in April, 1927, issue of MARQUETTE LAW REVIEW on “Unconstitutionality of Federal Gift Tax,” by James T. Guy.