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Comments

CORPORATE STOCK AND THE LOUISIANA GENERAL PROPERTY TAX

LOUISIANA CONSTITUTION OF 1921:

Article X, Section 4. The following property, *and no other* shall be exempt from taxation. . . . (Italics supplied.)

X owns land worth \$5,000.00. Y owns a stock of goods worth \$5,000.00. Z owns corporate stock worth \$5,000.00. Both X and Y pay state, parish, and municipal property taxes. Z, on the other hand, pays no property taxes.¹ Does the constitution require that Z be taxed? What weight should be given the fact that the corporation owns or does not own taxable property located in the state?

The language of the initial sentence of Section 4 of Article X indicates that the legislature may create no tax exemptions—that the constitution contains an exclusive list. This has long been the general rule in Louisiana. The constitutions of 1864 and 1868 provided that:

“Taxation shall be equal and uniform throughout the State. All property shall be taxed in proportion to its value, to be ascertained as directed by law. The general assembly shall have power to exempt from taxation property actually used for church, school, or charitable purposes.”²

This provision was held to prevent legislative exemption of any property not of the types specified.³ After the adoption of

1. The writer is, of course, aware that not only the suppositious Z but also most persons whose property consists of movables or intangibles escape taxation. Such property is simply not listed in most cases unless connected with an established business. This fact emphasizes the need for a thorough reconsideration of our tax structure. See p. 117, *infra*.

2. La. Const. (1864) Art 124; La. Const. (1868) Art. 118.

3. In *New Orleans v. Salamander*, 25 La. Ann. 650 (1873) and *New Orleans v. Louisiana Mutual Ins. Co.*, 26 La. Ann. 499 (1874), a statute imposing a license tax and exempting defendant from payment of all other taxes was interpreted to apply only to all other *license* taxes because “when a law is susceptible of two constructions, we will adopt the one which will give effect to the law, rather than the one which would render the law unconstitutional.” The same result was reached in *New Orleans v. Lafayette Ins. Co.*, 28 La. Ann. 756 (1876), on the ground that Article 118 “precludes the exercise of the taxing power, except in the manner indicated.” Accord: *New Orleans v. Bank of Lafayette*, 27 La. Ann. 376 (1875); *New Orleans v.*

the constitution of 1898, which provided that "The following property shall be exempt from taxation, and no other,"⁴ it was held that the legislature could create no tax exemptions.⁵ The same clause appeared in the 1913 constitution.⁶ The wording was only slightly altered in the 1921 constitution; the rule that the legislature could not create tax exemptions remained unchanged.⁷

People's Bank, 27 La. Ann. 646 (1875); *New Orleans v. Metropolitan Loan, Savings and Pledge Bank*, 27 La. Ann. 648 (1875). See *Morrison v. Larkin*, 26 La. Ann. 699, 702 (1874); *LeFranc v. New Orleans*, 27 La. Ann. 188, 189 (1875); *New Orleans v. The People's Ins. Co.*, 27 La. Ann. 519, 520 (1875).

In *New Orleans v. St. Patrick's Hall Ass'n*, 28 La. Ann. 512 (1876) it was held that the legislature had no power to exempt property not actually used for the purposes enumerated in the constitution. But in *New Orleans v. Fourchy*, 30 La. Ann. 910 (1878), a municipal property tax, levied pursuant to legislative authorization, was held constitutional although it exempted \$500 worth of household furniture. The court stated that "the uniform practice of the legislature in this State has been to exempt many classes of property not embraced within the exception of 'church, school and charitable purposes.' . . . [T]he question . . . is, of necessity, largely one of legislative discretion. . . . We are not prepared to say that . . . the Legislature has transcended its authority." 30 La. Ann. at 913. Two justices dissented from this conclusion. In *New Orleans v. Davidson and Hill*, 30 La. Ann. 554 (1878), the same decision was reached. In *Louisiana Cotton Mfg. Co. v. New Orleans*, 31 La. Ann. 440 (1879), the earlier cases were followed and a law exempting a manufacturer from property taxes upon payment of a license tax was held unconstitutional, one justice dissenting. The court attempted to distinguish the exemption of property within a class from the classification of property for taxation. It spoke of the *Fourchy* and *Davidson* cases as involving "an exclusion . . . to be looked upon rather as being in the nature of limitations of the general rule [that the power of the legislature to exempt property is limited to the types of property named in the constitution] than as exceptions from it." 31 La. Ann. at 445.

"Be this, however, as it may, our opinion in the instant case is not predicated on the postulate that all property must be taxed, but that when property is taxed and comes within the general limit of the objects of taxation the only power delegated to the General Assembly to exclude either persons or classes from the general rule by it adopted is found in the constitution. . . . [T]he power to define the objects of taxation would be one thing, and that of exempting from the limits as defined and fixed another." 31 La. Ann. at 446.

Cf. *Louisiana State Lottery Co. v. New Orleans*, 24 La. Ann. 86 (1872), involving exemption from license taxation and distinguished on that basis, despite its broad dicta, in *New Orleans v. Lafayette Ins. Co.*, 28 La. Ann. 756, 758 (1876). And see *Reynolds & Henry Constr. Co. v. Police Jury of Ouachita Parish*, 44 La. Ann. 863, 11 So. 236 (1892), holding an ordinance remitting taxes in favor of a railroad, if the latter should comply with certain conditions, constitutional because it was "not properly a tax exemption," since the parish received consideration. Cf. *New Orleans v. St. Charles-Street R.R.*, 28 La. Ann. 497 (1876).

4. La. Const. (1898) Art. 230.

5. The statute incorporating defendant and exempting it from the payment of taxes on assets other than realty was held unconstitutional in *New Orleans v. Louisiana Savings Bank and Safe Deposit Co.*, 31 La. Ann. 826 (1879). Accord: *State v. Louisiana Savings Bank and Safe Deposit Co.*, 32 La. Ann. 1136 (1880). Cf. *State ex rel. DaPonte v. Board of Assessors*, 35 La. Ann. 651 (1883), holding (two judges dissenting) that municipal bonds were not taxable because such bonds were not "property" within the meaning of the constitution as historically interpreted.

6. La. Const. (1913) Art. 230.

7. See *Hibernia Nat. Bank v. Louisiana Tax Commission*, 195 La. 43,

The Louisiana rule is in accord with the almost unanimous conclusion in other states having analogous constitutional provisions. The legislature is held to be deprived of power to create tax exemptions by a constitutional provision which declares that mentioned types of property and no other shall be exempt,⁸ or simply specifies the types of exempt property,⁹ or forbids the passage of exemption laws,¹⁰ or commands that all or certain named classes of persons or property shall be taxed.¹¹

The problems that arise in connection with the taxation of corporate stock reflect the questions involved in the taxation of intangibles generally. Stock is property, separate and distinct from the property of the corporation which issues it.¹² It may be

196 So. 15 (1940), discussed in *The Work of the Louisiana Supreme Court for the 1939-1940 Term* (1941) 3 LOUISIANA LAW REVIEW 267, 332, and discussed *infra* at p. ...

"No principle of law is better settled in this State than that the Legislature is powerless, directly or indirectly, to grant exemptions from taxation." 195 La. at 57, 196 So. at 19. See *First Nat. Bank of Shreveport v. Board of Reviewers of Assessments*, 41 La. Ann. 181, 188, 5 So. 408, 411 (1889); *Southland Investment Co. v. Jeter*, 171 La. 106, 109, 129 So. 722, 723 (1930); *First Nat. Bank v. Louisiana Tax Commission*, 175 La. 119, 139, 143 So. 23, 29 (1932).

8. *Little Rock & Ft. Smith Ry. v. Worthen*, 120 U.S. 97, 7 S.Ct. 469, 30 L.Ed. 588 (1887); *Forshaw v. Layman*, 104 C.C.A. 559, 182 Fed. 193 (1910); *Daly Bank and Trust Co. v. Board of Commissioners*, 33 Mont. 101, 81 Pac. 950 (1905); *State v. Carson City Savings Bank*, 17 Nev. 146, 30 Pac. 703 (1882); *Germania Savings Bank v. Town of Darlington*, 50 S.C. 337, 27 S.E. 846 (1897); *Cumberland University v. Golladay*, 152 Tenn. 181, 274 S.W. 536 (1925); *State ex rel. Richards v. Armstrong*, 17 Utah 166, 53 Pac. 981 (1898); *Hollywood Cemetery Co. v. Commonwealth*, 123 Va. 106, 96 S.E. 207 (1918); *Pacific Cold Storage Co. v. Pierce County*, 85 Wash. 626, 149 Pac. 34 (1915). See *L. Maxcy, Inc. v. Federal Land Bank of Columbia*, 111 Fla. 116, 120, 150 So. 243, 250 (1933).

9. *Cook County v. Fairbank*, 222 Ill. 578, 78 N.E. 895 (1906); *People ex rel. McCullough v. Deutsche Evangelisch Lutherische, etc., Confession*, 249 Ill. 132, 94 N.E. 162 (1911). See also *In re Assessment of Chickasha Cotton Oil Co.*, 80 Okla. 101, 103, 194 Pac. 215, 216 (1921). Compare *Wheeler v. Weightman*, 96 Kan. 50, 149 Pac. 977 (1915).

10. *Files v. State ex rel. Pocahontas & H. R.R.*, 48 Ark. 529, 3 S.W. 817 (1887); *Board of County Commissioners v. Owen*, 7 Colo. 467, 4 Pac. 795 (1884); *Campbell County v. Newport & Cincinnati Bridge Co.*, 112 Ky. 659, 66 S.W. 526 (1902); *State ex rel. St. Louis County v. Gorden*, 268 Mo. 713, 188 S.W. 160 (1916); *Wenner v. Mothersead*, 129 Okla. 273, 264 Pac. 816 (1928).

11. *Louisville & Nashville R.R. v. Palmes*, 109 U.S. 244, 3 S.Ct. 193, 27 L.Ed. 922 (1883); *State v. Guaranty Savings Building & Loan Ass'n*, 225 Ala. 481, 144 So. 104 (1932); *Minturn v. Hays*, 2 Cal. 590 (1852); *Imperial Fire Ins. Co. v. Board of County Commissioners*, 51 Colo. 436, 118 Pac. 970 (1911); *Atlanta National Building & Loan Ass'n v. Stewart*, 109 Ga. 80, 35 S.E. 73 (1900); *Mayor and City Council of Baltimore v. Minister and Trustees of Starr Methodist Church*, 106 Md. 281, 67 Atl. 261 (1907); *State v. Pioneer Savings & Loan Co.*, 63 Minn. 80, 65 N.W. 138 (1895); *State v. Insurance Co. of North America*, 71 Neb. 320, 99 N.W. 36 (1904); *Pocomoke Guano Co. v. Biddle*, 158 N.C. 212, 73 S.E. 995 (1912); *Ellis and Morton v. Linck and Thomas*, 3 Ohio St. 66 (1853).

12. See *Van Allen v. The Assessors*, 70 U.S. 573, 584, 18 L.Ed. 229, 234

separately taxed without violation of the Fourteenth Amendment to the United States Constitution or the equality and uniformity clauses of state constitutions, even though the capital stock¹³ or property¹⁴ of the corporation is also taxed.

Yet, despite their agreement on the rules that stock is property and that all property must be taxed, the majority of courts have succeeded in reaching the conclusion that failure of the legislature to tax the stockholders' interest or an express exemption of that property does not violate the state constitution.¹⁵ The reasoning of the California Supreme Court¹⁶ is typical:

(1866); *New Orleans v. Houston*, 119 U.S. 265, 277, 7 S.Ct. 198, 205, 30 L.Ed. 411, 415 (1886); and the cases cited in notes 13 and 14, *infra*.

13. See *Board of Commerce v. Tennessee*, for the use of Memphis, 161 U.S. 134, 146, 16 S.Ct. 456, 460, 40 L.Ed. 645, 649 (1896); *Commonwealth v. Charlottesville Perpetual Bldg. & Loan Co.*, 90 Va. 790, 20 S.E. 364 (1894). Notes (1903) 58 L.R.A. 513, 589; (1903) 60 *id.* 321, 367.

14. *Cook v. City of Burlington*, 59 Iowa 251, 13 N.W. 113 (1882); *William S. Wilkens Co. v. Baltimore*, 103 Md. 293, 63 Atl. 562 (1906); *Belo v. Commissioners of Forsyth County*, 82 N.C. 415 (1880); *In re First Nat. Bank of Hillsboro*, 25 N.D. 635, 146 N.W. 1064 (1898); *Lee v. Sturges*, 46 Ohio St. 153, 19 N.E. 560 (1889); *South Nashville St. R.R. v. Morrow*, 87 Tenn. 406, 11 S.W. 348 (1889). See Note (1906) 7 *Ann. Cas.* 1195.

The stock owned by a resident shareholder in a foreign corporation is a *fortiori* taxable without regard to the taxation of the corporation in other states. *In re Greenleaf*, 184 Ill. 226, 56 N.E. 295 (1900); *Dwight v. Mayor*, 94 Mass. 149 (1886); *Dupuy v. Johns*, 261 Pa. 40, 104 Atl. 565 (1918). See Note (1910) 15 *Ann. Cas.* 895. And see *Kidd v. Alabama*, 188 U.S. 730, 23 S.Ct. 401, 47 L.Ed. 669 (1903); *Wright v. Louisville & Nashville R.R.*, 195 U.S. 219, 25 S.Ct. 16, 49 L.Ed. 167 (1904).

15. *Crocker v. Scott*, 149 Cal. 575, 87 Pac. 102 (1906); *City and County of Denver v. Hobbs' Estate*, 58 Colo. 220, 144 Pac. 874 (1914); *Georgia R.R. & Banking Co. v. Wright*, 125 Ga. 589, 54 S.E. 52 (1906); *People's Loan & Homestead Ass'n v. Keith*, 153 Ill. 609, 39 N.E. 1072 (1895); *Commonwealth v. Walsh's Trustee*, 133 Ky. 103, 117 S.W. 398 (1909); *State ex rel. Wolfe v. Parmenter*, 50 Wash. 164, 96 Pac. 1047 (1908). *Contra*: *State, to Use of City of Memphis v. Memphis City Bank*, 91 Tenn. 574, 19 S.W. 1045 (1892). See also *Wright v. Louisville & Nashville R.R.*, 195 U.S. 219, 221, 25 S.Ct. 16, 17, 49 L.Ed. 167, 168 (1904); *Deniston v. Terry*, 141 Ind. 677, 681, 41 N.E. 143, 145 (1895); *Kansas City v. Mercantile Mutual Building and Loan Ass'n*, 145 Mo. 50, 46 S.W. 624 (1898).

Compare *City of Moultrie v. Moultrie Banking Co.*, 177 Ga. 714, 171 S.E. 131 (1933), holding that the legislature could authorize the deduction of the value of real estate taxed to a bank from the market value of the bank shares in taxing such shares; *In re St. Louis Loan & Investment Co.*, 194 Ill. 609, 62 N.E. 810 (1902), upholding the constitutionality of a statute authorizing the deduction of the value of a building association's realty, taxed to the association, from the value of the stock in assessing the stock for taxation. But see *Louisville & Nashville R.R. v. Palmes*, 109 U.S. 244, 3 S.Ct. 193, 27 L.Ed. 922 (1883), holding unconstitutional a legislative exemption of railroad capital stock; *People v. Eddy*, 43 Ga. 331 (1872), denying the power of the legislature to exempt a solvent debt; *Consolidated Coal Co. of St. Louis v. Miller*, 236 Ill. 149, 86 N.E. 205 (1908), refusing to permit legislative exemption of corporate capital stock; *City of Chattanooga v. Nashville, Chattanooga & St. Louis R.R.*, 75 Tenn. 561 (1881), holding unconstitutional an act authorizing the deduction of the value of shares of corporate stock taxed to the shareholders from the value of the corporate property in assessing the latter for taxation.

16. *People ex rel. Burke v. Bedlam*, 57 Cal. 594 (1881).

"[W]hat is the stock of a corporation but its property? . . . When . . . all of the property of the corporation is assessed . . . then all of the stock of the corporation is assessed, and the mandate of the Constitution is complied with. . . . When the property of the corporation is assessed to it, and the tax thereon paid, who but the stockholders pay it? . . . To assess all of the corporate property . . . and also to assess to each of the stockholders the number of shares held by him, would, it is manifest, be assessing the same property twice. . . . [T]he Legislature . . . has not attempted to exempt any property from taxation. . . . It has only said that the property shall be assessed to the corporation, and shall not be again assessed. . . ."¹⁷

The Louisiana Supreme Court, while insisting upon the full taxation of other intangibles, not expressly exempted, has nevertheless refused to permit the assessment of stock in the absence of a statute expressly taxing it. In *Southland Investment Company v. Jeter*¹⁸ the court spoke of any exemption of credits (in this case, loans due the taxpayer) as unconstitutional.¹⁹ In *First*

17. 57 Cal. at 601-602. "The Constitution simply requires that all property shall be taxed, but the method of doing it is left to the legislature. If the method devised by the legislature reaches all property in fact, then there is no violation of the constitution. . . . [T]he total wealth of the state can be once taxed without the taxation of credits in any form. . . . The multiplicity of credits does not add to the wealth of the state." *State ex rel. Wolfe v. Parmenter*, 50 Wash. 164, 173, 175, 96 Pac. 1047, 1048, 1049 (1908).

"While it may be conceded that the interest of a corporation in the corporate property and the interest of the shareholder in the corporation are separate interests, yet in reality they both represent one thing,—the money invested in the corporation by those who organized and created it'. . . . [T]axing the property of the association or corporation and taxing the shares of capital stock in the hands of the stockholders would be double taxation." *In re St. Louis Loan & Investment Co.*, 194 Ill. 609, 614, 62 N.E. 810, 812, 813 (1902).

"[S]hares of stock. . . . are inconsequential property . . . merely tokens or evidence of ownership of an interest in corporate property." Regulation of the situs of stock by legislation is in no sense an exemption within the meaning of the constitution. *City and County of Denver v. Hobbs' Estate*, 58 Colo. 220, 223, 144 Pac. 874, 875 (1914). "[T]he legislature . . . has provided, by general law, that the whole assessment should be made against the corporation. In doing this the legislature did not intend to exempt any property from taxation, and no property was exempted. . . . The legislature, in order to avoid confusion and complication in the assessment, determined . . . that the whole tax should be collected from the corporation itself." *People's Loan & Homestead Ass'n v. Keith*, 153 Ill. 609, 621, 39 N.E. 1072, 1075 (1895).

18. 171 La. 106, 129 So. 722 (1930).

19. 171 La. at 109, 129 So. at 723-724: "[C]redits are intangible property of value. The Constitution does not exempt such property, but specifically provides that all property of every kind and description in the state, shall be assessed at its actual value, and, except such property as the Constitution exempts from taxation, shall be subject to taxation."

*National Bank v. Louisiana Tax Commission*²⁰ taxation of securities at ten per cent of their market value was held violative of the constitutional requirement that all property subject to taxation be assessed at actual cash value. The decision in *Hibernia National Bank v. Louisiana Tax Commission*²¹ declared unconstitutional, as a partial exemption, a statutory provision concerning the taxation of shares of stock of banking corporations at the corporate domicile; the act provided, in effect, that in establishing the value of the stock only part of the corporation's net worth was to be considered.²² But the court did not mention the section of the statute²³ which provided that the net worth of the corporation should not be taxed by direct assessment to the bank, but only in the manner provided. Among the authorities quoted in the *Hibernia Bank* case was a South Dakota decision²⁴ which held unconstitutional a statute permitting deduction of debts from the listing of credits for taxation; the constitutionality of a similar provision had previously been upheld in Louisiana.²⁵

The first case considering the assessment of stock was *State ex rel. Mechanics' & Traders' Insurance Company v. Board of Assessors*²⁶ in which Act 106 of 1890²⁷ was held to tax the stock of a corporation whose property was constitutionally exempt from taxation. But in *Chassaniol v. Board of Assessors of the Parish of Orleans*²⁸ it was held that corporate shares were not taxed by the revenue laws then in force, although Section 1 of Act 170 of 1898 was identical, in regard to the matter under consideration, with the 1890 act. By chronological consideration of the several previous tax acts, the court found manifested, despite

20. 175 La. 119, 143 So. 23 (1932).

21. 195 La. 43, 196 So. 15 (1940), discussed in *The Work of the Louisiana Supreme Court for the 1939-1940 Term* (1941) 3 LOUISIANA LAW REVIEW 267, 332. The decision has just been followed in *Flournoy v. First Nat. Bank of Shreveport*, 3 So. (2d) 244 (La. 1941).

22. A proposed constitutional amendment designed to avoid the effect of this decision in regard to taxation of banking corporations, La. Act 389 of 1940, failed to receive ratification by the electorate.

23. La. Act 14 of 1917 [E.S.], as last amended by La. Act 172 of 1933.

24. *In re Construction of Revenue Law*, 2 S.D. 53, 48 N.W. 813 (1891).

25. *New Orleans Securities Co. v. New Orleans*, 173 La. 1097, 139 So. 635 (1932). See *First Nat. Bank v. Louisiana Tax Commission*, 175 La. 119, 139, 143 So. 23, 29 (1932).

26. 47 La. Ann. 1498, 18 So. 462 (1895).

27. The act amended La. Act 85 of 1888. Section 1 provides: "[T]here are hereby levied annual taxes. . . on . . . all property situated within the State of Louisiana, except such as is expressly exempted from taxation by law, and the term property as herein used means and includes. . . all rights, credits, bonds, and securities of all kinds."

28. 120 La. 777, 45 So. 604 (1908).

the specific wording of the section, a legislative intention not to tax both the corporate property and the shares of stock in the hands of the shareholders. Without mentioning the *Mechanics' & Traders' Insurance Company* case, the court said:

"It may be conceded, for the purposes of argument, that it was the duty of the Legislature . . . to enact laws taxing both the capital stock and the shares of corporations. But the Legislature has not done so, and the assessors have no jurisdiction to supply the omission. 'Taxation is exclusively a legislative power, and however clear the power, or even the duty, of the Legislature to levy taxes on any particular species of property, until that power has been extended [*sic*] the burden cannot be imposed.' . . . If the shares . . . [here involved] are taxable, then the shares in every mercantile business and transportation corporation in the state are also taxable. The result would be a doubling of taxation on all corporations. . . ."²⁹

This reasoning was approved and followed in *Allgeyer v. Board of Assessors*.³⁰ And the same decision was reached in regard to stock of foreign corporations in *Ficklen v. New Orleans*.³¹

Insofar as these cases interpret statutes whose words apparently indicate a clear intention to tax stock owned by corporate shareholders to mean exactly the contrary, they are patently vulnerable to criticism. In addition, so far as they support the conclusion that the constitutional deprivation of legislative power to create tax exemptions is effectual only in the case of an express statutory exemption, they are open to criticism. If the constitution may be evaded and exemptions created simply by legislative failure to tax, then it means little to say that the legislature may not create tax exemptions; the words "and no other" might as well have been omitted from Section 4 of Article X, for they are, in fact, ineffectual as legislative limitations.³² Even the double taxation argument may be criticized as applied to the taxation of the securities of corporations without assets in the state. In

29. 120 La. at 782, 45 So. at 606. See *Forman v. Board of Assessors*, 35 La. Ann. 825 (1883); *State ex rel. Louisiana Improvement Co. v. Board of Assessors*, 111 La. 982, 1004, 36 So. 91, 99 (1902).

30. 121 La. 149, 46 So. 134 (1908). "There is nothing in the language of the Constitution which requires double taxation on the same values." 121 La. at 151, 46 So. at 134.

31. 147 La. 567, 85 So. 330 (1920).

32. If such were the rule, any statute might evade the constitutional prohibition by a clever failure to mention the types of property whose exemption is desired.

such a case it is clear that there would not be double taxation.³³ If stock is property, and if the corporation itself has no property within the state, failure to tax the stock results in a complete escape from taxation by this jurisdiction. Legislative power to exempt the stock of corporations owning property taxed by the state is more easily justified.³⁴ In such a case, it may be argued, the legislature may look to substance instead of form and tax only the property in which stock represents a mere ownership equity.

That an attempt at the general exemption of intangibles would fail is indicated by the cases dealing with intangible interests other than stock and with the general question of tax exemption.³⁵ If this be so, then the question remains: Would a statute expressly exempting stock be constitutional? An affirmative answer might be justified on much the same basis as that used in declaring that stock is not subject to taxation in the absence of express statutory provisions. It is arguable that if the legislature can exempt property by failing to mention it, then it should also be able to create exemptions by express enactment, for the constitution makes no distinction between exemption *sub silentio* and an express declaration to the same effect. Failure to tax the stock of corporations with assets in the state might be distinguished from exemption of the stock of those without taxable assets in the jurisdiction, and a different result reached if the statute applied only to the former.

This leads to the questions: Should all intangibles be taxed? Should a distinction be made between stock and other intangibles? In the absence of reliable factual information concerning the value of property escaping taxation, untouched revenue potentialities in the taxation of intangibles, and other operative facts, it is obviously impossible to offer a sound suggestion as to the policy which should be adopted in regard to taxation of intangible interests. The subject plainly demands thorough reconsideration, with regard to both facts and policy, from the

33. In a case already mentioned, *Ficklen v. New Orleans*, 147 La. 567, 85 So. 330 (1920), the stock of a foreign corporation owned by a Louisiana resident was held not taxable.

34. In *Klein v. Board of Tax Sup'rs of Jefferson County*, 282 U.S. 19, 51 S.Ct. 15, 75 L.Ed. 140 (1930), a classification of stockholders for taxation on the basis of percentage of corporate property taxable within the state was held not a violation of the Fourteenth Amendment to the Federal Constitution. Cf. the cases in note 25, *supra*, upholding statutes permitting deduction of debts in the taxation of credits.

35. See pp. 110-111, and notes 3, 5, 7, *supra*.

standpoints of tax justice, production of revenue, and tax administration.³⁶ Pending such a study, judgment concerning the best manner of dealing with the matter should be reserved.³⁷

ALVIN B. RUBIN

THE PROTECTION OF IDEAS

Although legal means have long been available to protect the form in which many ideas are embodied, the ideas themselves have remained unprotected almost until the present. Formerly, however, there was scant need for protection. In addition, the difficulties of administration of such protection made the courts reluctant to assume the task.

During a period when the majority of ideas for business use were those relating to mechanical improvements in the method of production and usually were supplied by the master or his servants for use in the business, patent¹ and trade secret² law

36. In this connection see the arguments for the taxation of certain intangible interests made in Welch, *The Exemption of Intangibles from Property Taxes, Tax Exemptions* (1939) 155. And see Hughes, *Tax Exemptions* (1935) 13 *Tenn. L. Rev.* 79, 87; Stimson, *Exemption of Property from Taxation in California* (1932) 21 *Calif. L. Rev.* 193, 218.

37. Consideration of the problem elsewhere has led to various conclusions. Some states have classified intangibles separately from other property and tax them at a lower rate. See, for example, *Ind. Stat. Ann.* (Burns, 1933) § 64-901 et seq.; *N.C. Code Ann.* (Michie, 1939) § 7880(156)₀₀ et seq. It has been suggested that they should be completely exempted, the loss of revenue and injustice to the payers of property taxes to be offset by adequate provisions in the general income tax law. See *Twentieth Century Fund, Committee on Taxation, Facing the Tax Problem* (1937) 432; *Michigan Tax Study Commission, Report of the Tax Study Commission* (1939) 37. Four states have levied a special income tax, measured only by income from intangibles. *Ibid.*

1. *Rev. Stat.* § 4886 (1874), as last amended by 53 *Stat.* 1212 (1939), 35 *U.S.C.A.* § 31 (1940) allows issuance of a patent for a new and useful machine, process, art or improvement thereof.

2. Former employees were enjoined from revealing trade secrets in *Peabody v. Norfolk*, 98 *Mass.* 452, 96 *Am. Dec.* 664 (1868); *O. & W. Thum Co. v. Tlocznski*, 114 *Mich.* 149, 72 *N.W.* 140, 38 *L.R.A.* 200 (1897); *Stone v. Goss*, 65 *N.J. Eq.* 756, 55 *Atl.* 736, 63 *L.R.A.* 344 (1903). See *Vulcan Detinning Co. v. Assman*, 185 *App. Div.* 399, 173 *N.Y. Supp.* 334 (1918). Compare *Silver Spring Bleaching & Dyeing Co. v. Woolworth*, 16 *R.I.* 729, 19 *Atl.* 528 (1890) where a formerly employed inventor was compelled to reveal to his former employer a trade secret discovered while he was in plaintiff's service.

Use of a trade secret by one who knew of the employee's breach of confidence will be enjoined. *Westervelt v. National Paper & Supply Co.*, 154 *Ind.* 673, 57 *N.E.* 552 (1900); *Aronson v. Orlov*, 228 *Mass.* 1, 116 *N.E.* 951 (1917); *Tabor v. Hoffman*, 118 *N.Y.* 30, 23 *N.E.* 12 (1889); *Eastman Co. v. Reichenbach*, 65 *Hun* 620, 20 *N.Y. Supp.* 110 (1892); *Macbeth-Evans Glass Co. v. Schnellbach*, 239 *Pa.* 76, 86 *Atl.* 688 (1913). Accounting of profits from use of