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The Work of the Louisiana Supreme Court for the 1951-1952 Term
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Substantive Law - Public Law: State and Local Taxation

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court maintaining exceptions of no cause of action and dismissing plaintiff's suit on the ground that the allegations of the petition disclosed contributory negligence was reversed by the Supreme Court under a writ of review. Plaintiff had brought suit against the City of New Orleans and the owner of the property abutting the allegedly defective sidewalk to recover damages for personal injuries sustained by plaintiff's minor son who was thrown from a bicycle when its front wheel struck a hole in the sidewalk. The exceptions were overruled under a holding that the allegations of the petition did not exclude every reasonable hypothesis other than the contributory negligence of the boy. In passing, however, the Supreme Court restated the law with respect to the liability of a municipality for the defective condition of its sidewalks. While it was admitted that the city is not an insurer, and need not maintain its sidewalks in perfect condition, it is required to keep them reasonably safe. The municipality would be held responsible for injuries to a bicyclist incurred as a result of a dangerous and sizeable depression in the sidewalk, provided the depressions were not subject to easy detection by persons exercising ordinary care and prudence in using the walk.

Zoning Ordinances

The single case decided by the Supreme Court during the past term in which the constitutionality and validity of a municipal ordinance was presented will be discussed in some detail later.[15]

STATE AND LOCAL TAXATION

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Four cases touching upon state and local taxation were decided during the course of the term, and all four of them involved ad valorem property taxes. To students of taxation, aware of the fact that less than three per cent of the state's revenues are derived from this type of levy, this implies that the term was of no great significance to the taxpayer or his attorney.

In a case of first impression, *Lafayette Building Association v. Spofford*,[1] the court held that the term "taxes" appearing in the

15. State ex rel. Loraine v. Adjustment Board of City of Baton Rouge, 220 La. 708, 57 So. 2d 409 (1952), discussed infra p. 321.

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1. 221 La. 549, 59 So. 2d 880 (1952).

homestead exemption provision of Article XI of the State Constitution is to be restricted to property taxes on the homestead itself and does not extend to excise taxes owed by the homesteader. The constitutional provision confers immunity upon the homestead against any process to the extent of four thousand dollars, but negatives the exemption with respect to claims predicated upon vendors', mortgagees' and materialmen's liens as well as "taxes or assessments" (among others). In this case the Collector of Revenue sought to enforce judgments in favor of the state against the homesteader based upon unpaid public welfare revenue and chain store taxes and contended that the tax-debtor was not entitled to invoke the homestead exemption to defeat these claims.

Speaking for a unanimous court, Justice Moise wrote a brief opinion in which he concluded that: "It is clear that the word 'taxes' as used in the constitutional provision refers to *property taxes* and was intended to relate directly to the homestead property and did not embrace *excise taxes*."[2] Although there is little discussion and no citation of authority directly in point, the result probably accords with the purpose which the provision's framers had in mind. There is some force in the argument that the language of the exception clause of the exemption compels a contrary conclusion. That clause says "This exemption (of the homestead) shall not apply to the following debts, to-wit: . . . For taxes or assessments." A judgment for unpaid taxes is certainly a debt, and there is nothing in the language of the provision that expressly restricts the proviso to property taxes. At the same time, however, when one studies the other types of debts which are excluded from the operation of the homestead exemption—those relating to the vendor's, mortgagee's and materialmen's liens—he sees that the primary purpose[3] was to protect the homestead from all economic vicissitudes save those involving the

2. 59 So. 2d 880, 881 (1952).

3. There is one exception—Subsection 3 of Section 2 of Article XI removes from the protection of the homestead exemption all debts "For liabilities incurred by any public officer, or fiduciary, or attorney at law, for money collected or received on deposit." In the face of this one clearly different type of provision, it might be argued with some force that taxes, representing the taxpayer's public obligation, were also intended to be excepted regardless of the kind of tax involved. Certainly a fundamental doubt remains since the provision, as interpreted, now means that the state cannot be denied its claim for taxes on the property itself, but may at the same time be denied all other tax claims. This is particularly pertinent in view of the fact, noted at the outset of this section, that the property tax constitutes less than three per cent of total state revenues.

acquisition, repair and retention of the homestead itself. This type of exception must obviously be made if home ownership is to be stimulated and investment capital attracted to support it.

Two other cases were suits by the same taxpayer for a refund of property taxes paid under protest on a twenty-five mile length of gas pipe line lying in Lake Pontchartrain.[4] The pipe line enters the lake at the water's edge in St. Charles Parish and emerges therefrom in St. Tammany Parish. Each of the parishes involved had proceeded upon the theory that their boundaries extended to the middle of the lake bed, and had assessed and levied property taxes upon approximately twelve and one-half miles of the taxpayer's submerged pipeline. The property taxes involved were state, parish wide, and special road and levee district levies.

The plaintiff, asserting that the creation and description of parish boundaries is a legislative function, sought to establish that no such enactments had ever been adopted by the Louisiana Legislature fixing the boundary between St. Charles and St. Tammany Parishes as an imaginary line through the middle of the lake. Hence, the taxpayer contended, the boundaries of these parishes must be regarded as terminating at the lake's shores, thus depriving them of taxing jurisdiction. It was conceded that the lake was within the state.

Going back to the Treaty of Paris, and tracing developments through intervening events and grants, the court reached the conclusion that the boundary was at mid-lake, not along the line of the shore, despite the fact that no clear legislative enactment has ever spelled it out. This conclusion was supported by reference to prior jurisprudence in which the court has invoked the presumption that when the Legislature refers to a body of water in the course of describing a boundary, it will be taken to intend the middle or thread of the body. As the court itself remarked, "The basis for the presumption is that no legislative purpose or motive can be perceived for the exclusion of a part of the water course from the territory being bounded."[5]

As a consequence, the court denied the claim for a refund of taxes to the extent that state and parish wide (general alimony) taxes were involved, but affirmed the action of the trial courts in both cases in granting recovery for taxes paid under road and

4. United Gas Pipe Line Co. v. Moise, 220 La. 969, 58 So. 2d 197 (1952) and United Gas Pipe Line Co. v. Dubroca, 220 La. 991, 58 So. 2d 204 (1952).

5. United Gas Pipe Line Co. v. Moise, 220 La. 969, 983, 58 So. 2d 197, 202 (1952).

levee district levies. If there is any basis for criticism of the decision, it would seem to be on the latter point. In the case of one of the two road districts involved, the court concluded that it did not extend into the lake because the legislative act creating it "specifically limited (the boundary) to the shoreline by numerous and definite and well described calls."[6] In the case of the other road district, the legislative enactment referred to "all land" which the court concluded could not embrace the lake bed. After relying upon the presumption that legislative enactments fixing boundaries along water bodies will be presumed to extend to the mid point or thread of the body to sustain its opinion on the main point of the case, the conclusion with respect to the road districts, particularly the second one mentioned, seems to come as a non sequitur. As a practical matter, of course, the taxpayer received no road benefits with respect to its under water property, but a logical extension of the principle would lead every farmer to claim exemption from road district taxes with respect to that portion of his land covered by ponds, lakes, or streams.

In *Warren County, Mississippi v. Hester*[7] the court adopted as a rule of decision a dictum which has been a part of our jurisprudence for almost forty years, namely that the constitutional exemption from ad valorem taxation for "all public property"[8] does not extend to property situated within Louisiana which is owned by other states or their political subdivisions. Hence Warren County, Mississippi, owner of the bridge crossing the Mississippi River at Vicksburg, three-fourths of which lies within the State of Louisiana, was denied a refund of taxes paid to Louisiana taxing authorities.

The dictum is found in a 1914 case[9] involving a parcel of land in the City of New Orleans, alleged to have been owned by the City of Baltimore, Maryland. On first hearing, this land was held to be "public property" and exempt from taxation. On rehearing, however, the court restricted its decision to the narrow ground that municipally owned property is subject to prescription and concluded that the City of Baltimore had lost its title to the property in this manner. The opinion on rehearing made it clear that the court had changed its mind on the exemption point, for it

6. 220 La. 969, 990, 58 So. 2d 197, 204.
7. 219 La. 763, 54 So. 2d 12 (1951).
8. La. Const. of 1921, Art. X, § 4(1).
9. City of New Orleans v. Salmen Brick & Lumber Co., 135 La. 828, 66 So. 237 (1914).

plainly intimated that the "public property" exemption was inapplicable to property owned by the poltical subdivisions of other states, and cited a leading case from Kansas on the point.[10] The decision places our jurisprudence in accord with that of most other states whose courts have considered the question.

The taxpayer also sought to establish immunity from taxation on four other grounds (dedication to public use, the specific provisions of Article X, Section 4, Paragraph 13 of the Louisiana Constitution, the full faith and credit and the interstate commerce clauses of the Federal Constitution), all of which were fairly clearly unavailing in the light of the specific terms of the provisions invoked, or the jurisprudence interpreting them.

10. State of Kansas ex rel. Taggert v. Holcomb, 85 Kan. 178, 116 Pac. 251, 50 L.R.A. (N.S.) 243 (1911).