

## Opinion of the Court.

among his children? Can there be a doubt that such inequality of legislation would vitiate it? But whatever may be the power of the legislature, Illinois had regulated the matter of descents and distributions and had granted the right of testamentary disposition. And now by this statute upon property passing in accordance with its statutes a tax is imposed; a tax unequal because not proportioned to the amount of the estate; unequal because based upon a classification purely arbitrary, to wit, that of wealth—a tax directly and intentionally made unequal. I think the Constitution of the United States forbids such inequality.

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DRAKE v. KOCHERSPERGER. Error to the Supreme Court of the State of Illinois. No. 425.

MR. JUSTICE MCKENNA: The judgment of the Supreme Court of the State was not final, and the writ of error must be

*Dismissed.*

SAWYER v. KOCHERSPERGER. Error to the Circuit Court of the United States for the District of Illinois. No. 463.

MR. JUSTICE MCKENNA: This was a petition by Kochersperger, as county treasurer and collector of Cook County, Illinois, filed in the County Court of that county, against Elizabeth E. Sawyer and others seeking the collection of certain taxes. The case was removed into the Circuit Court of the United States, but improvidently, as it falls within the rule laid down in *Tennessee v. Banks*, 152 U. S. 454, notwithstanding the petition stated that defendants declined to pay on the ground that the law imposing the taxes was in violation of the Constitution of the United States.

*Decree reversed, and cause remanded to the Circuit Court with a direction to remand the case to the County Court of Cook County, the costs of this court and of the Circuit Court to be paid by plaintiffs in error.*

These two cases were argued with No. 464.