CASES ADJUDGED

IN THE

SUPREME COURT OF THE UNITED STATES

AT

OCTOBER TERM, 1930.

BEIDLER ET AL., EXECUTORS, *v.* SOUTH CAROLINA TAX COMMISSION.

ERROR TO THE SUPREME COURT OF SOUTH CAROLINA.

No. 2. Argued October 22, 1928. Reargued October 23, 24, 1930.—Decided November 24, 1930.

1. A resident of Illinois died in that State owning a majority of the shares of a South Carolina corporation and also debts owed him by the corporation on unsecured open account partly for advances made by him to the corporation and partly for dividends previously declared on his shares. South Carolina, besides taxing the transfer of the shares, undertook to tax the transfer of the indebtedness, claiming this jurisdiction because of the local domicile of the debtor corporation and upon the ground that the indebtedness had acquired a "business situs" in South Carolina. *Held* that the South Carolina tax on the transfer of the indebtedness was void under the due process clause of the Fourteenth Amendment. Pp. 7 *et seq.*
2. It is now established that the mere fact that the debtor is domiciled within the State gives it no jurisdiction to impose an inheritance or succession tax upon the transfer of the debt from a decedent who is domiciled in another State. P. 7.
3. Open accounts fall within this principle. P. 8.
4. A conclusion that debts have acquired a situs for taxation other than at the domicile of their owner must have evidence to support

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it, and it is the province of the Court to inquire whether there is such evidence when the inquiry is essential to the enforcement of a right suitably asserted under the Federal Constitution. P. 8.

5. The evidence in this case affords no adequate basis for a finding that the indebtedness had a business situs in South Carolina. It proves the existence of the debts and the facts that the decedent creditor was largely interested in the affairs of the corporation, but it shows nothing which derogates from the existence of the corporation as such, transacting its business as such, with corresponding rights and liabilities. P. 9.

6. The interests of a corporation in its property and of a shareholder of the corporation in his shares are distinct property interests. *Id.*

Reversed.

ERROR to a judgment of the Supreme Court of South Carolina, which sustained on appeal a transfer tax levied by the South Carolina Tax Commission on the transfer of credits belonging to a decedent's estate. The plaintiffs in error were the executors of the will.

Mr. P. F. Henderson, with whom *Mr. Arthur B. Schaffner* was on the brief, for plaintiffs in error.

The Supreme Court of South Carolina relied implicitly upon *Blackstone* v. *Miller,* 188 U. S. 189. But, since the date of the decision below, this Court, in a series of notable cases, has overruled *Blackstone* v. *Miller,* and established a new general rule. *Blodgett* v. *Silberman,* 277 U. S. 1; *Farmers Loan & Trust Co.* v. *Minnesota,* 280 U. S. 204; *Baldwin* v. *Missouri,* 281 U. S. 586.

Under the rule of *Blackstone* v. *Miller,* double inheritance taxation upon an intangible was possible in certain circumstances. Under the new rule, but one inheritance tax may be levied upon an intangible, and that only at the domicile of its owner.

We have here a mere open book account—the plainest type of intangible. There is not even a note, or a bond, or a security deed or mortgage, which might be kept in a third State to complicate the matter. Mr. Beidler kept

a complete set of books in Chicago, which alone were the controlling evidence of the debt.

The only taxable situs of the debt was in Illinois, in which State, the record shows, a large inheritance tax was levied and paid. To allow South Carolina now to levy a tax would be to visit another tax upon the same transfer, which, as we understand it, is contrary to the new rule.

It may be that intangibles may acquire a business situs justifying taxation away from the domicile of their owner. See Cooley on Taxation (4th ed.) § 466; *Adams* v. *Colonial Mortgage Co.,* 82 Miss. 263; *Reat* v. *People,* 201 Ill. 469; *Jamison* v. *Commonwealth,* 120 Va. 137; *Liverpool & L. & G. Ins. Co.* v. *Board of Assessors,* 221 U. S. 346; *New Orleans* v. *Stempel,* 175 U. S. 309. But here there can be no such pretense. No business of lending existed. Mr. Beidler owned a controlling interest in the corporation and advanced it money from time to time, which it repaid in part from time to time. At most, there was a series of separate credits,—not a business. *Liverpool & L. & G. Ins. Co.* v. *Board of Assessors,* 221 U. S. 346.

Further, it is a fact that these advances had practically ceased in 1920, more than three years before Beidler's death. If lending to a single debtor, and that one a company which he controlled, could in any event constitute the doing of business by him in South Carolina, that business had ceased long before his death.

The debt was really a liability of the company (to be deducted in considering the value of its stock) and not an asset; but if, as the court below seemed to think, the fact that Beidler's money was allowed to remain with the company increased the company's efficiency, and hence the value of Beidler's stock in some indefinite and unascertained manner and amount, then this fact would be reflected in the value of the stock in his hands when he died, and in the property tax assessed by South Carolina against the company.

Mr. J. Fraser Lyon, with whom *Mr. John M. Daniel,* Attorney General of South Carolina, was on the brief, for defendant in error.

The defendant in error resubmits for consideration the brief used on the first argument and asks the Court to reaffirm the rule laid down in *Blackstone* v. *Miller,* 188 U. S. 189, for the reasons found in the dissenting opinions in *Baldwin* v. *Missouri,* 281 U. S. 586. See also, *Liverpool & L. & G. Ins. Co.* v. *Board of Assessors,* 221 U. S. 346; *Maguire* v. *Trefry,* 253 U. S. 12; *Maxwell* v. *Bugbee,* 250 U. S. 525; *Bullen* v. *Wisconsin,* 240 U. S. 625; *Metropolitan L. Ins. Co.* v. *New Orleans,* 205 U. S. 395; *Baker* v. *Baker-Eccles Co.,* 242 U. S. 394.

Remedies for the collection of the debt in other States do not affect the right of South Carolina to tax. The executors do not have title to the debts until they have complied with the laws of South Carolina. *Dial* v. *Gary,* 14 S. C. 573; *Merchants Nat. Bank* v. *Tax Commission,* 121 S. E. 142.

The debt and the dividend owed by the company to the deceased were sufficient to give this State jurisdiction to appoint an administrator, who could lawfully have taken charge of the stock upon which the tax has been paid and enforced payment of the debt and the dividend in the courts of this State.

The coming into this State of the executors appointed by the Illinois court, exercising the rights and privileges accorded them by § 20 of the South Carolina Inheritance Tax Act, was tantamount to taking out ancillary letters in this State.

It is very serious to the State to have its power to tax diminished, especially when new and greater demands are being made by the public upon its treasury. The best minds are exercised to find sources from which revenues may be raised for schools, good roads, the care of the insane and the sick, and the innumerable other demands

upon a civilized State. Standing alone, such considerations should, perhaps, have no weight in interpreting the Constitution. But when such matters are very seriously pressing and there is a substantial doubt as to the State not having power in this respect, the doubt should be resolved in favor of the State to tax. Unless there is a clear and positive inhibition to exact this tax, it is urged that such a necessary and fundamental need of the State should not be denied.

It is said in *Baldwin* v. *Missouri,* 281 U. S. 586, that the succession takes place in the State of domicile. We suggest that no succession takes place until the property is reduced to possession in the State where located,—in the State the laws of which give vitality to the contract and will compel payment of the debt—the domicile of the debtor. *Wyman* v. *United States,* 109 U. S. 654; *Frick* v. *Pennsylvania,* 268 U. S. 473, 493.

The business situs of the debt and dividends is in South Carolina. The tax may be enforced in this State, the debtor may be compelled to pay here, and the proceeds of the debt may not be distributed until local creditors are satisfied in preference to others. The statute creates a lien upon this property to secure the payment of the tax. Illinois has no jurisdiction of the thing—the debt and the dividend—until the laws of South Carolina shall have been satisfied and the debt and dividend delivered to the executors for distribution under the will, which is given force and effect in South Carolina in accordance with the law of the State. Cf. *Frick* v. *Pennsylvania,* 268 U. S. 473, 497.

It is assumed that, if a business situs had been shown in Missouri, the decision in *Baldwin* v. *Missouri* would have been in favor of the State. Assuming this, the Court is requested to scrutinize the statement of the account appearing in the record.

If either South Carolina or Illinois should be denied the right to tax in this case, we urge that it is but fair and in

accordance with natural justice that this debt and dividend held, managed and controlled, and in part earned, in South Carolina, and given vitality and the power to enforce payment by her laws, should be required to contribute to the support of the government of this State, regardless of the domicile of the owner. Cf. *Safe Deposit & Trust Co.* v. *Virginia,* 280 U. S. 83, 92.

In assailing the constitutionality of a state statute, the burden rests upon the assailant to establish that it infringes the constitutional guarantee which he invokes. *Toombs* v. *Citizens Bank,* 281 U. S. 643; *Corporation Commission* v. *Lowe,* 281 U. S. 431.

Messrs. Seth T. Cole and *William Dale O'Brien,* by special leave of Court, filed a brief on behalf of the Tax Commission of the State of New York, as *amicus curiae.*

MR. CHIEF JUSTICE HUGHES delivered the opinion of the Court.

On March 4, 1924, Francis Beidler, a resident of Chicago, Ill., died in that State, leaving a will by which he bequeathed a portion of his personal property to his wife and children directly, and gave the residue in trust for their benefit and for charitable uses. The will was probated in Illinois, and Francis Beidler, II, and George Engelking, the appellants, qualified as executors.

At the time of the death of the testator, he owned 8,000 shares of the capital stock of Santee River Cypress Lumber Company, a corporation organized under the laws of South Carolina and doing business in that State. The remainder, 7,000 shares, were owned by the testator's wife and children. In addition, the Santee River Cypress Lumber Company was indebted to the testator in the sum of $556,864.22, for advances made by him to the company, and in the sum of $64,672 for dividends previously declared on his shares. The indebtedness was an open un-

secured account which was entered upon the books of the company kept in South Carolina. The testator also kept a complete set of personal books in Chicago upon which appear entries of the amounts due him by the company except the item of dividends.

The total amount of the indebtedness for advances and dividends, $621,536.22, was included by the Attorney General of Illinois in the computation of the value of the decedent's estate for the purpose of fixing the inheritance tax payable to that State.

The executors filed with the South Carolina Tax Commission, as required by the Inheritance Tax Law of South Carolina, an affidavit setting forth all the above-mentioned assets. The payment of the succession tax to the State of South Carolina with respect to the shares of stock owned by the testator in the Santee River Cypress Lumber Company was not contested by the executors, and by agreement the value of these shares was fixed at $204 per share, or $1,632,000. The South Carolina Tax Commission also levied a tax upon the transfer of the indebtedness, overruling the claim of the executors that the State of South Carolina had no jurisdiction to impose such a tax and that the levy of it would constitute a deprivation of property without due process of law in violation of the Fourteenth Amendment of the Federal Constitution. This contention was renewed upon the appeal of the executors to the Supreme Court of the State of South Carolina. That court sustained the action of the Tax Commission with respect to the taxability of the transfer of the indebtedness, and the executors bring this appeal to review that part of the judgment.

In reaching its conclusion as to the validity of the tax, the state court relied chiefly upon the decision of this Court in *Blackstone* v. *Miller,* 188 U. S. 189. That decision has been overruled, and it is now established that the mere fact that the debtor is domiciled within the State

does not give it jurisdiction to impose an inheritance or succession tax upon the transfer of the debt by a decedent who is domiciled in another State. *Farmers Loan & Trust Company* v. *Minnesota,* 280 U. S. 204; *Baldwin* v. *Missouri,* 281 U. S. 586. The transfer is taxable by the State of the domicile of the deceased owner. *Blodgett* v. *Silberman,* 277 U. S. 1. Open accounts, including credits for cash deposited in bank, fall within this principle, and its application is not defeated by the mere presence of bonds or notes, or other evidences of debt, within a State other than that of the domicile of the owner. *Baldwin* v. *Missouri, supra.*

It is sought to sustain the tax by South Carolina upon the ground that the indebtedness had what is called a " business situs " in that State, and the state court adverted to this basis for the tax. In *Farmers Loan & Trust Company* v. *Minnesota, supra,* this Court reserved the question of business situs, saying: "*New Orleans* v. *Stempel,* 175 U. S. 309, *Bristol* v. *Washington County,* 177 U. S. 133, *Liverpool & L. & G. Ins. Co.* v. *Orleans Assessors,* 221 U. S. 346, recognize the principle that choses in action may acquire a situs for taxation other than at the domicile of their owner if they have become integral parts of some local business. The present record gives no occasion for us to inquire whether such securities can be taxed a second time at the owner's domicile." But a conclusion that debts have thus acquired a business situs must have evidence to support it, and it is our province to inquire whether there is such evidence when the inquiry is essential to the enforcement of a right suitably asserted under the Federal Constitution.[1]

[1] *Kansas City Southern Railway Co.* v. *Albers Commission Co.,* 223 U. S. 573, 591–593; *Creswill* v. *Knights of Pythias,* 225 U. S. 246, 261; *Northern Pacific Railway Co.* v. *North Dakota,* 236 U. S. 585, 593; *Ward* v. *Love County,* 253 U. S. 17, 22; *Davis* v. *Wechsler,* 263 U. S. 22, 24; *Railroad Commission* v. *Eastern Texas R. R. Co.,* 264 U. S. 79,

In the present case, beyond the mere fact of stock ownership and the existence of the indebtedness, there is no evidence whatever, having any bearing upon the question, save a copy of the decedent's account with the corporation, taken from his books which were kept by him in his office at Chicago. The various items of debit and credit in this account, in the absence of any further evidence, add nothing of substance to the fact of the indebtedness as set forth in the agreed statement and afford no adequate basis for a finding that the indebtedness had a business situs in South Carolina.

That the decedent was largely interested in the affairs of the corporation is apparent; he owned a majority of its stock, but nothing is shown which derogates from its existence as a corporation, transacting its business as such, with corresponding corporate rights and liabilities. The interest of the decedent as a stockholder was a distinct interest,[2] and the estate of the decedent has been taxed by South Carolina upon the transfer of his stock according to its agreed value. With respect to the items of indebtedness of the corporation to the decedent, the latter appears upon the record simply as a creditor, with his domicile in Illinois.

For these reasons, the judgment of the state court, so far as it relates to the taxation of the transfer of the debts in question, must be reversed and the cause remanded for further proceedings not inconsistent with this opinion.

Reversed.

86; *New York Central R. R. Co.* v. *New York & Pennsylvania Co.* 271 U. S. 124, 126; *Ancient Egyptian Order* v. *Michaux,* 279 U. S. 737, 745.

[2] *Van Allen* v. *Assessors,* 3 Wall. 573, 584; *Hawley* v. *Malden,* 232 U. S. 1, 12; *Eisner* v. *Macomber,* 252 U. S. 189, 214; *Rhode Island Trust Co.* v. *Doughton,* 270 U. S. 69, 83.

MR. JUSTICE HOLMES: The decisions of last term cited by the CHIEF JUSTICE seem to sustain the conclusion reached by him. Therefore MR. JUSTICE BRANDEIS and I acquiesce, without repeating reasoning that did not prevail with the Court.

STRATTON, SECRETARY OF STATE OF ILLINOIS, *v.* ST. LOUIS SOUTHWESTERN RAILWAY COMPANY.

APPEAL FROM THE CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

No. 6. Argued January 16, 1930. Reargued October 28, 1930.—Decided November 24, 1930.

1. A question of jurisdiction necessarily presented by the record must be decided, although not raised by the parties. P. 13.
2. Decisions of the Court require the following conclusions as to the purpose and effect of Jud. Code, § 266, as amended:

   (*a*) In its original form, the statute sought to make interference by interlocutory injunction with the enforcement of state legislation, upon the ground of unconstitutionality, a matter for the adequate hearing and full deliberation which the presence of a court of three judges, as therein provided, was likely to secure; and to minimize the delay incident to review upon appeal of orders granting or denying interlocutory injunctions in this grave class of cases. P. 14.

   (*b*) These purposes were not altered by the amendment of February 13, 1925, (43 Stat. 938), by which the provision for the presence of three judges was made to apply also to the final hearing in the District Court, and by which final decrees, granting or denying permanent injunctions in such cases, were also made appealable directly to this Court. *Id.*

   (*c*) The statute applies only where there is a substantial claim of invalidity under the Federal Constitution and where an application for an interlocutory injunction, for the purposes contemplated by the statute, is made and pressed. P. 15.

   (*d*) If an interlocutory injunction is not sought by the plaintiff, a single judge may hear and determine the case, and an appeal from the final decree will lie to the Circuit Court of Appeals under Jud. Code, § 128. *Id.*