KLEIN *v.* BOARD OF TAX SUPERVISORS OF JEFFERSON COUNTY, KENTUCKY.

APPEAL FROM THE COURT OF APPEALS OF KENTUCKY.

No. 11. Argued October 29, 30, 1930.—Decided November 24, 1930.

1. In Kentucky, corporate shares are not taxed to their owner if at least 75% of the total property of the corporation is taxable in Kentucky and the corporation pays the taxes thereon; but if less than 75% of the corporation's property is taxable in Kentucky, the shareholder is taxed upon the full value of his shares. *Held* that this classification is not unreasonable and does not deny the equal protection of the laws to shareholders who are taxed. P. 22.
2. The property of shareholders in their shares, and the property of the corporation, are distinct property interests. A State may tax the coporation and also tax the shareholders, but is under no constitutional obligation, taxing the one, to tax the other also. P. 23.
3. To tax a shareholder upon the full value of his shares when a part only of the corporation's property is within the State, is not to tax property outside of the jurisdiction of the State. P. 24.
4. If a corporation is a fiction, it is a fiction created by law with intent that it shall be acted on as if true. The corporation is a person, and its ownership is a nonconductor that makes it impossible to attribute an interest in its property to its members. *Id.*
5. The Fourteenth Amendment does not require that land and stock in corporations be taxed at the same rate or by the same tests of value. *Id.*

230 Ky. 182, affirmed.

APPEAL from a judgment of the Court of Appeals of Kentucky which affirmed a judgment sustaining on appeal an assessment made by a county board of tax supervisors.

Mr. Edmund F. Trabue, with whom *Messrs. Junius C. Klein, John P. Haswell, Blakey Helm,* and *John S. Milliken* were on the brief, for appellant.

The State of the shareholder's domicile taxes his shares on the assumption that every share represents an aliquot

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part of all the property of the corporation, wherever situate. The assumption that the shares are themselves property, and property located within the State, is the veriest and most mischievous fiction. *Safe Deposit & Trust Co.* v. *Virginia,* 280 U. S. 83.

Upon the assumption of the State's right to tax shares of its citizens, regardless of the paternity of the corporation, or the location of its property, the State has no just right to tax the shares at a rate in excess of the ratio of property of the corporation within the State to all its property in all the States, if at all. *Bethlehem Motors Co.* v. *Flynt,* 256 U. S. 421. See *Ward Baking Co.* v. *Fernandino,* 29 F. (2d) 789; *Campbell Baking Co.* v. *City,* 19 F. (2d) 159.

The doctrine that a State has no jurisdiction to tax the property of a foreign corporation situated outside the State is now well established. Citing and discussing cases.

Upon principle, how could it ever have been supposed that taxation of the corporation's property and taxation also of the shares of its shareholders was not double taxation? It is especially in the imposition of multiple inheritance taxes that the absurdity has been most plainly exposed; but such multiple taxation has been upheld upon the ground that inheritance taxes were excises, and not property taxes, and, consequently, not protected by the Fourteenth Amendment. This doctrine was announced in *Magoun* v. *Illinois Trust & Savings Bank,* 170 U. S. 283; *Blackstone* v. *Miller,* 188 U. S. 189, and in *Wheeler* v. *Sohmer,* 233 U. S. 434; but this Court called a halt on the extension of the doctrine in *Frick* v. *Pennsylvania,* 268 U. S. 473, and has now definitely condemned multiple taxation in inheritance tax cases in *Farmers Loan & Trust Co.* v. *Minnesota,* 280 U. S. 204, overruling *Blackstone* v. *Miller, supra.*

Assuming the propriety of taxing shares and also taxing the property of the corporation, the State of the share-

holder's domicile has no right arbitrarily to select those corporations whose stockholders are to be taxed and omit to tax the stockholders of the others. *Middendorf* v. *Goodale,* 202 Ky. 118; *Louisville Gas & E. Co.* v. *Coleman,* 277 U. S. 32; *Siler* v. *Board of Supervisors,* 221 Ky. 100.

That the statute under which the complaining stockholders were taxed discriminates against them is illustrated by the history of legislation on the subject in Kentucky. The first statute exempted the shares if the corporation paid taxes on all its property in Kentucky—how much or how little the corporation might have in this State—provided the property was held for corporate purposes; the next statute taxed the shares where the corporation did not pay taxes in Kentucky on at least one-fourth of its total property, and the present statute taxes the shares except where the corporation pays taxes in Kentucky on 75% or more of its total property. Obviously, the legislature took no note of any ratio between the corporation's property in Kentucky and its property elsewhere.

While a proper classification for taxation might be reasonably based upon the ratio of net assets in the State to total net assets, no proper classification can be based upon gross assets. Gross assets mean nothing in such a problem.

Classification for taxation must rest upon some ground of difference having a fair and substantial relation to the object of the legislation. *Stebbins* v. *Riley,* 268 U. S. 137; *Air-Way Electric Co.* v. *Day,* 266 U. S. 71; *Liggett Co.* v. *Baldridge,* 278 U. S. 105; *Macallen Co.* v. *Massachusetts,* 279 U. S. 620; *Brown* v. *Maryland,* 12 Wheat. 419; *Flint* v. *Stone-Tracy Co.,* 220 U. S. 107; *Bekins Van Lines* v. *Riley,* 280 U. S. 80. *Louisville Gas & E. Co.* v. *Coleman,* 277 U. S. 32, and *Quaker City Cab Co.* v. *Pennsylvania,* 277 U. S. 389, are decisive of this case. Distinguishing: *Flint* v. *Stone-Tracy Co.,* 220 U. S. 107; *New York* v.

Latrobe, 279 U. S. 421; *International Shoe Co.* v. *Shartel,* 279 U. S. 429; *White River L. Co.* v. *Arkansas,* 279 U. S. 692; *Kidd* v. *Alabama,* 188 U. S. 730; *Ohio Oil Co.* v. *Conway,* 281 U. S. 146.

Mr. M. B. Holifield, Assistant Attorney General of Kentucky, with whom *Messrs. J. W. Cammack,* Attorney General, and *Samuel B. Kirby, Jr.,* Assistant Attorney General, were on the brief, for appellee.

Mr. Justice Holmes delivered the opinion of the Court.

This is an appeal from a judgment of the Court of Appeals of Kentucky affirming the validity of a State tax and the constitutionality of the statutes under which the tax was imposed. 230 Ky. 182.

Holders of stock in a corporation generally are required to list their shares for taxation, but it is provided that "the individual stockholders of a corporation, at least seventy-five per cent (75%) of whose total property is taxable in Kentucky, shall not be required to list their shares for taxation so long as the corporation pays taxes on all its property in Kentucky" &c. Kentucky Statutes, § 4088. Ed. Carroll, 1930. Acts 1924, c. 116, § 2, pp. 402, 406. The appellant contends that this section makes the tax contrary to the Fourteenth Amendment. The appellant owned shares in the Standard Sanitary Manufacturing Company, a New Jersey corporation, less than seventy-five per cent of whose total property was taxable in Kentucky. He was taxed as contemplated and he says that the discrimination between himself and holders of stock in a corporation paying taxes on more than seventy-five per cent of all their property is arbitrary and denies to him the equal protection of the laws.

This contention was so thoroughly disposed of by the Court of Appeals that it is not necessary to deal with the

argument for the appellees that if § 4088 is invalid the general tax law stands unaffected and unqualified and the appellant still must pay the tax. It will be enough to present an abridgment of the considerations that prevailed. There is no doubt that a State may tax a corporation and also tax the holders of its stock. *Tennessee* v. *Whitworth,* 117 U. S. 129, 136. The owners are different and, although the appellant calls it a mischievous fiction, the property is different. While no doubt the property and expectations of the corporation are the backbone of the value of the shares, yet the latter may get additional value from another source. In this case the appellant alleges that the price of shares was much enhanced by rumors of a stock dividend, which of course would have added nothing to the property of the corporation. On the other hand there is no constitutional obligation to tax both the corporation and the holders of its stock. See *Kidd* v. *Alabama,* 188 U. S. 730, 732. If the corporation having all its property in the State has paid taxes upon the whole, usually it would be just not to tax the stockholders in respect of values derived from what already has borne its share. And what would be true in the case supposed would be true when the corporation was paying for the great body of its property although some small fraction happened to be outside of the State. Thus we come to the usual question of degree and of drawing a line where no important distinction can be seen between the nearest points on the two sides, but where the distinction between the extremes is plain. *Hudson County Water Co.* v. *McCarter,* 209 U. S. 349, 355. Numerous illustrations are cited by the Court below, e. g., *McLean* v. *Arkansas,* 211 U. S. 539, 551. *Booth* v. *Indiana,* 237 U. S. 391, 397. *Miller* v. *Strahl,* 239 U. S. 426, 434.

We agree with the Court of Appeals that there could have been no question if the statute had said ninety per cent and that fixing seventy-five was equally plainly "a

reasonable effort to do justice to all in view of the way all our other assessments are made."

The appellant, pursuing his notion that shares of stock represent an interest in the property of the corporation, insists that if taxed at all he should be taxed only in the ratio of the property in the State to the entire property of the corporation; that to tax him for the whole value is to tax property outside of the jurisdiction of the State. But it leads nowhere to call a corporation a fiction. If it is a fiction it is a fiction created by law with intent that it should be acted on as if true. The corporation is a person and its ownership is a nonconductor that makes it impossible to attribute an interest in its property to its members. *Donnell* v. *Herring-Hall-Marvin Safe Co.*, 208 U. S. 267, 273. The stockholders in some circumstances can call on the corporation to account, but that is a very different thing from having an interest in the property by means of which the corporation is enabled to settle the account. The principle of justice that leads to the exemption that has been dealt with could not be insisted upon as a matter of constitutional right and it is reasonable for the legislature to confine it to well marked cases, rather than to press it to a logical extreme. Of course it does not matter here that in an earlier year the exemption was greater than now.

It is alleged as a distinct point of objection, though perhaps less earnestly pressed, that appellant's stock was assessed at its full selling price whereas land was taxed at seventy-five per cent of its sale value. There is nothing in the Fourteenth Amendment that requires land and stock to be taxed at the same rate or by the same tests and the Court of Appeals thinks that the Board of Tax Commissioners "judged that seventy-five per cent of the sale values represented about fairly the cash value of real estate." Whether this be so or not we see no constitutional ground for complaint.

Judgment affirmed.