

It follows that the statutory presumption as construed by the court below is free from constitutional infirmity under the due process clause.

The objection that because the presumption applies only to railway companies, its effect is to deprive appellants of the equal protection of the laws is clearly untenable. *Atlantic Coast Line v. Georgia*, 234 U. S. 280, 289; *Kansas City Southern Ry. Co. v. Anderson*, 233 U. S. 325, 330; *Seaboard Air Line v. Seegers*, 207 U. S. 73, 76; *Mobile, J. & K. C. R. Co. v. Turnipseed*, *supra*; *Missouri Pacific Ry. Co. v. Mackey*, 127 U. S. 205, 209. There is even less ground for the final contention that the statutory presumption under consideration violates the interstate commerce clause of the federal Constitution. Upon that point we are satisfied with what was said by the court below upon the authority, among other cases, of *Atlantic Coast Line v. Georgia*, *supra*, at p. 290, and *Southern Ry. Co. v. King*, 217 U. S. 524, 531-533.

Judgment affirmed.

GUARANTY TRUST CO., EXECUTOR, v. BLODGETT, TAX COMMISSIONER.

APPEAL FROM THE SUPERIOR COURT OF FAIRFIELD COUNTY, CONNECTICUT.

No. 217. Argued December 15, 1932.—Decided January 9, 1933.

1. Where it is claimed that a state statute imposing a tax has been applied by the state supreme court to an earlier contract in violation of the contract impairment clause of the Constitution, the opinion of that court definitely sustaining the tax on another statute antedating the contract must be accepted, in the absence of convincing reasons to the contrary. P. 512.
2. The contract clause not being involved, a construction placed upon a state statute by the state supreme court binds this Court as fully as if expressed in the statute itself in specific words. P. 513.

3. Where property is conveyed irrevocably in trust to pay the income to the grantor during life and thereafter to another beneficiary, the shifting of possession or enjoyment on the grantor's death is an event "generated" by the death upon which the State constitutionally may impose a succession tax. P. 513.
114 Conn. 207; 158 Atl. 245, affirmed.

APPEAL from a judgment entered in the Superior Court of Connecticut on advice sent down from the Supreme Court of Errors in response to questions of law reserved for its decision. The case first came into the Superior Court by appeal of the Tax Commissioner from a decree of the Probate Court for the District of Greenwich holding the succession in question non-taxable.

Mr. Gregory Hankin for appellant.

The trust deed was a contract which vested the grantor and the beneficiaries with definite rights as of the date of the transfer.

In previous cases this Court has held that an irrevocable trust operated to fix the rights to the property as of the time of the transfer, not as of the time of the decedent's death,—this irrespective of whether the tax was imposed on the right to transmit or on the right to receive.

While the court below expressly held that the tax was governed by the statute in force at the time of the transfer, it actually gave effect to a statute enacted after the transfer.

This Court will give independent consideration to the question whether there was a contract, what was its nature and effect and whether any obligations thereunder have been impaired.

The imposition of the tax had to proceed on the assumption that the property which had already been transferred *inter vivos*, four years before death, continued to remain in the decedent until her death, thus impairing the rights and obligations under the contract.

Even if the court below gave effect to the 1923 statute, the tax was without due process. Property transferred during lifetime through an irrevocable trust is not subject to death duties, unless made in contemplation of death. This transfer, it is stipulated, was not made in contemplation of death.

The tax is not sustainable as a property tax, because the property was without the taxing jurisdiction of the State of Connecticut; nor as a gift tax, because the basis was the value of the property at the decedent's death, not as of the time when the gift was made.

The tax as applied violated the equal protection clause.

Mr. Farwell Knapp, Assistant Tax Commissioner, with whom *Mr. Ernest L. Averill* was on the brief, for appellee.

MR. JUSTICE SUTHERLAND delivered the opinion of the Court.

The Connecticut succession tax act of 1923 contains the following provision:

"All property and any interest therein owned by a resident of this state at the time of his decease, . . . which shall pass by will or inheritance under the laws of this state; and all gifts of such property by deed, grant or other conveyance, made in contemplation of the death of the grantor or donor, or intended to take effect in possession or enjoyment at or after the death of such grantor or donor, shall be subject to the tax herein prescribed." Chap. 190, Pub. Acts, 1923, § 1.

On December 28, 1926, while this act was in force, Harriet D. Sewell executed an irrevocable deed of trust to appellant, transferring certain securities, by which deed it was provided that the trustee collect the income and pay it to Mrs. Sewell during her life. Thereafter, the income was to be paid to her husband for his life, and upon his death the trustee was directed to pay and transfer the

principal of the trust absolutely to their daughter if she survived, but if not, then to the issue of the daughter, with a gift over in default of such issue. Mrs. Sewell died May 20, 1930, domiciled in Connecticut.

The state supreme court held that the statute recognized the distinction between taking effect in possession or enjoyment and vesting in right, title or interest, and intended to reach a shifting of the enjoyment of property although such shifting followed necessarily from a prior transfer of title *inter vivos*; that within the meaning and description of the statute, the transfer in question was a gift intended to take effect in possession or enjoyment at or after the death of the donor, and, therefore, was subject to the succession tax; and that the imposition of such tax did not offend against the Fourteenth Amendment or any other provision of the federal Constitution. 114 Conn. 207; 158 Atl. 245.

Appellant first contends that while the court below expressly upheld the tax under the act of 1923, it nevertheless gave effect to the later and more specific act of 1929 (Pub. Acts, c. 299, §§ 1 and 2), and thereby the contract impairment clause of the federal Constitution was infringed. This contention must be rejected. We are not at liberty to disregard the explicit holding of the state court as to the basis of its decision, except for convincing reasons, which here we are unable to find. Compare *Columbia Ry. v. South Carolina*, 261 U. S. 236, 245-247. The entire effort of the court upon this point plainly was directed towards sustaining the view that the event sought to be taxed fell within the provisions of the act of 1923. There is a reference to the act of 1929, but the decision is definitely put upon the act of 1923, and is supported by considerations of such weight as to leave no occasion for dependence upon the later act; and the supposition that in fact effect was given to it is without warrant.

Since the court below construed the act of 1923, without regard to the act of 1929, as embracing the event sought to be taxed, and since in that view the question of contract impairment does not arise, we are bound by the decision of that court as though the meaning as fixed by the court had been expressed in the statute itself in specific words. *Great Northern Ry. Co. v. Sunburst Oil & Refining Co.*, ante, p. 358; *Knights of Pythias v. Meyer*, 265 U. S. 30, 32.

In that view the tax was imposed upon an event generated by the death of the decedent. That such a tax does not conflict with any provision of the federal Constitution is clearly stated by this court in *Coolidge v. Long*, 282 U. S. 582, 596. There a similar tax was held bad because the state statute imposing it was passed after the creation of the trusts; but the court said: "Undoubtedly the State has power to lay such an excise upon property so passing after the taking effect of the taxing Act." While, strictly, that statement was not necessary to the decision, we follow it as expressing the settled conviction of this court, and, so far as the federal Constitution is concerned, sustain the validity of the act of 1923 as construed by the state court.

Judgment affirmed.

AMERICAN SURETY COMPANY OF NEW YORK
v. MAROTTA.

CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE
FIRST CIRCUIT.

No. 131. Argued December 8, 1932.—Decided January 9, 1933.

1. In § 1 (9) of the Bankruptcy Act, which declares that "creditor" shall "include" anyone owning a claim provable in bankruptcy, "include" is a word of extension or enlargement, not of limitation. P. 516.