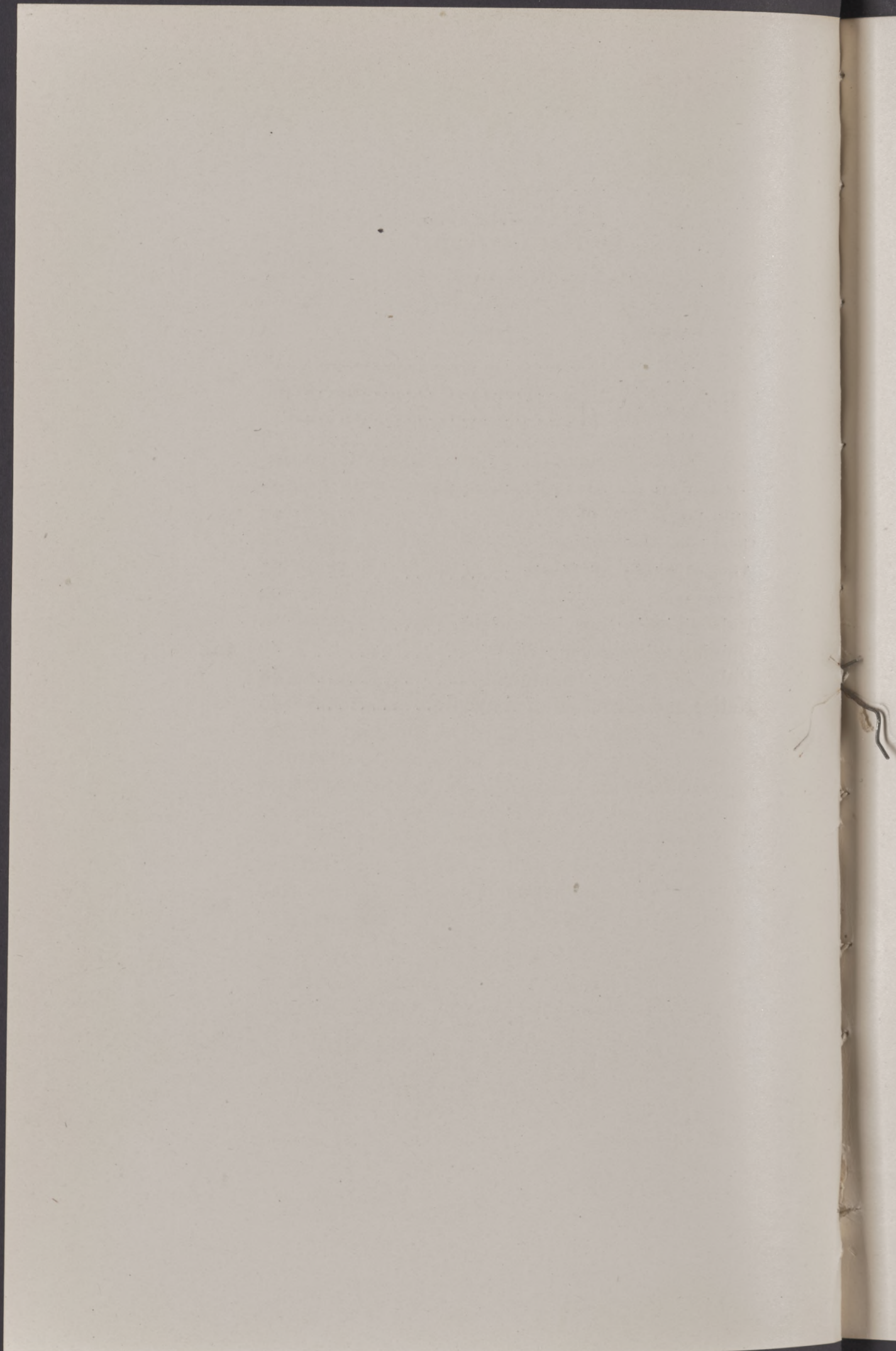


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*Writ of Certiorari.*

**Writ of Certiorari.**

Filed September 21, 1917.

NEW JERSEY, ss.

THE STATE OF NEW JERSEY to NEW-  
(L. S.) TON A. K. BUGBEE, Comptroller of the  
Treasury of the State of New Jersey: 10

We being willing for certain reasons to be certified of a certain return, appraisement, assessment or fixing of a transfer or inheritance tax upon the transfer of property left by James J. Hill, who died intestate, or a tax on the property passing on his death, which appraisement, assessment or fixing of tax was made on or about the 27th day of November, 1916. 20

We do hereby command that you send under your hand and seal to our Justices of our Supreme Court of Judicature at Trenton, on the eleventh day of October, 1917, the said return, appraisement or fixing of said tax together with all things touching and concerning the same, as fully and entirely as they remain before you, together with this writ, that we may further cause to be done thereon what of right we shall see fit to be done. 30

WITNESS, the Honorable WILLIAM S. GUMMERE, Chief Justice of our Supreme Court, at Trenton, the twenty-first day of September, 1917.

WM. C. GEBHARDT,  
*Clerk.*

COULT & SMITH,  
*Attorneys.*

*Writ of Certiorari.*

Endorsement.

Allocatur September 21st, 1917.

SAMUEL KALISCH,  
*J. S. C.*

10      Service of the within writ is hereby acknowl-  
          edged for both defendants this 21st day of Sept.,  
          1917.

JOHN W. WESCOTT,  
*Attorney General.*

20

30

40



*Return.*

STATE OF NEW JERSEY, TRANSFER IN-  
HERITANCE TAX, NON-RESIDENT DECE-  
DENTS.

10 In the matter of the Estate of  
JAMES J. HILL, deceased, late  
St. Paul, Ramsey Co., Min-  
nesota, } *Affidavit of*  
*Administra-*  
*tor.*

STATE OF MINNESOTA, }  
COUNTY OF RAMSEY. } *ss.*

LOUIS W. HILL, administrator of the estate  
of the above-named decedent being duly  
sworn, deposes and says:

20 Decedent died intestate May 29th, 1916.  
Address of deponent, 344 Jackson street,  
Saint Paul, Minnesota.  
Attorney of Estate is E. C. Lindley,  
Address of Attorney is 1120 Great Northern  
Bldg., St. Paul, Minn.

	Total amount of real estate less mortgages, Schedule A.....	\$ 1,885,120.00
30	Total amount of personal estate, Schedule B .....	8,262,311.30
	Total amount of estate wherever situate, .....	50,147,431.30
	Total amount of debts (exclu- sive of mortgages on real es- tate), including funeral, ad- ministration and other expen- ses, detailed in Schedule C..	757,571.20
40	Net estate .....	<u>\$49,369,860.10</u>

*Return.*

Property owned by decedent at date of death and subject to the jurisdiction of State of New Jersey:

Real estate, less mortgages....	None	
Personal estate .....	1,207,078.68	
Total amount of real and personal estate subject to jurisdiction of the State of New Jersey, Schedule D.....	1,207,078.68	10

Deponent further says that the decedent was not possessed of any other property subject to the jurisdiction of the State of New Jersey.

THE NAMES OF BENEFICIARIES AND RELATIONSHIP OF EACH TO DECEDENT, ETC., ARE AS FOLLOWS:

Names	Relationship	Sur-	Age of	Interest of Beneficiary in Estate	20
		vived	Ten-		
		Dece-	ants or		
		dent	Annui-		
		State	tants at		
		Yes	Death		
		or no	of De-		
			cedent		
Mary T. Hill,	Widow	Yes		One Third.	
Mary Hill Hill,	Daughter	Yes		Two-twenty-sevenths	
James N. Hill,	Son	Yes		Two-twenty-sevenths	
Louis W. Hill,	Son	Yes		Two-twenty-sevenths	
Clara A. Hill	Daughter	Yes		Two-twenty-sevenths	
Charlotte Hill Slade,	Daughter	Yes		Two-twenty-sevenths	
Ruth Hill Beard,	Daughter	Yes		Two-twenty-sevenths	
Rachel Hill Boeckmann,	Daughter	Yes		Two-twenty-sevenths	
Gertrude Hill Gavin,	Daughter	Yes		Two-twenty-sevenths	
Walter J. Hill,	Son	Yes		Two-twenty-sevenths	

Deponent further says that all of the above-named beneficiaries survived the decedent and are still living, with the exception of none. All of said beneficiaries were of age at the time of the death of decedent. 30

(Signed) LOUIS W. HILL,  
*Executor.*

Sworn and subscribed before me this 7th day of November, A. D. 1916.

Signed JOHN W. ROSE. 40

*Return.*

IMPORTANT—READ FOLLOWING IN-  
STRUCTIONS.

If decedent died testate attach Certified Copy of Will and Certificate of Qualification of Executors.

10 If decedent died intestate attach Certificate of Appointment of Administrator.

If this affidavit is made by an administrator strike out the word "Executor" wherever found herein, and if by an executor strike out the word "Administrator" wherever found.

Administrators with will annexed will use the letters "C. T. A." and forward certified copy of will.

20 All papers must be certified by the public official under whose jurisdiction the estate is, whether it be surrogate, probate judge or by whatever title such official may be designated.

All documents remain on file in department of the state comptroller as his authority and voucher for action taken.

Unauthenticated statements are not acceptable. Answer each question in detail. Make each schedule in full detail.

30 Relationship of beneficiaries to decedent, whether or not such beneficiaries survived decedent and the interest of the beneficiary in the estate, are the important factors respecting transfer inheritance tax. The age at time of death of decedent, of beneficiaries who are life-tenants or annuitants, is information absolutely necessary.

Notaries public must affix seal or certificate of appointment to affidavit.

40 When decedent died prior to April 20, 1909. In lieu of above form.

*Return.*

Established this fact by certificate of public official authorized by law to so certify.

Supply certificate of appointment of executor or administrator.

Supply affidavit of executor or administrator setting forth in detail the following data: Description of any and

## NOTE.

all property, real or personal, subject to the jurisdiction of the State of New Jersey and owned by the decedent at date of death; a recital stating whether or not the beneficiaries are still living; if any have died, give names, dates of death, and places of residence at date of death. Attach certified copy of will, if decedent died testate.

If a tax is due, consent permitting the transfer of shares of stock of New Jersey corporations will not be granted unless and until said tax is paid. Security is not acceptable in lieu thereof. However, consent to transfer will be granted upon payment of 5% of the full market value of the stock or property. If, after said transfer, it shall be ascertained by the Comptroller of the Treasury that said stock or property was not liable to said full 5% tax, the Comptroller of the Treasury will return to the executor, administrator, trustee or other representative the amount overpaid.

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*Return.*

State of New Jersey,  
Transfer Inheritance Tax,  
Non-Resident Decedents.  
Attached to and part of affidavit.

## SCHEDULE A.

10		Assessed Value for Year of Decedent's Death.	Estimated Market Value.
	Real property WHEREVER SITUATE, with statement of liens and encumbrances upon each parcel at death of decedent.		
20	Real Estate in City of St. Paul, Minnesota	\$63,655.00	\$333,450.00
	North Oaks Farms, Ramsey County, Minnesota .....	67,972.00	231,650.00
	Real Estate in City of Minneapolis, Minne- sota .....	76,345.00	120,600.00
	Lands in Kittson County, Minnesota..	284,922.00	510,000.00
30	Lots in Humboldt, Kittson County, Minnesota .....	1,696.00	4,000.00
	Lands in Clay County, Minnesota .....	29,073.00	15,000.00
	Real Estate in New York City .....	590,000.00	550,000.00
	Lands in Eddy County, North Dakota .....	1,076.00	1,600.00
40	Lands in Roberts County, South Da- kota .....	13,234.00	6,220.00

*Return.*

Mining Claims in Jefferson County, Montana .....	1,425.00	100.00	
Mining Claims in Stevens County, Washington .....	3,500.00	500.00	
Lands in Wellington County, Ontario, Canada .....		1,000.00	10
Real Estate in Guelph, Wellington County, Ontario, Canada ...		1,000.00	
Lands on St. John River, Saguenay County, Quebec, Canada .....		10,000.00	
Real Estate in Vancouver, B. C., Canada	45,000.00	100,000.00	20
		<hr/>	
		\$1,885,120.00	

## IMPORTANT.

The proceeding will receive no attention whatsoever unless this schedule is complete in every detail.

30

40

*Return.*

State of New Jersey,  
 Transfer Inheritance Tax,  
 Non-Resident Decedents.  
 Attached to and part of affidavit.

SCHEDULE B.

10 Personal Property Wherever Situate.

(Corporate Stocks.—State the correct corporate title, the number and kind of shares, the par and market values.

(Corporate Bonds.—State correct corporate title, nature of bond, year due, and rate of interest. State the amount of accrued interest computed to the date of death of decedent.

20 (Bonds and Mortgages, Notes, Etc.—Short description of each. State the amount of accrued interest computed to the date of death of decedent.)

Cash in hand and on deposit, bonds and mortgages, promissory notes, claims, insurance, corporate bonds and stocks and all other personal property wherever situate.

	Estimated Market Value.
<p>30 (Schedule omitted, includes stocks, bonds, &amp;c. valued at) . . . . . \$20,379,008.75</p> <p>Interest accrued to                      May 26, 1916. . . . . 316,038.61</p>	<hr style="width: 20%; margin-left: auto; margin-right: 0;"/> <p>\$20,695,047.36</p>

*Return.*

(Among the stocks scheduled are:

	No. of Shares.	Par Value.	
Northern Securities Company ..	24,141	\$2,414,100.00	\$1,207,050.00
			10
Northern Securities Company ..	Scrip	57.37	28.68)

IMPORTANT.

The proceeding will receive no attention whatsoever unless this schedule is complete in every detail.

State of New Jersey, Transfer Inheritance Tax, Non-Resident Decedents. Attached to and part of affidavit.	20
--	----

SCHEDULE C

Details of Debts, Other Than Mortgages on  
Real Estate.

(If any claims are secured by collateral, state  
what property has been pledged) 30

Last Sickness and Funeral Expenses.	\$60,000.00
Administration Expenses )	
Counsel Fees (Estimated) )	500,000.00
Administrator's Commissions )	

*Other Debts:*

Claims approved by Administrator, numbered 1 to 187, inclusive, and filed in the Probate Court of Ram- sey County, Minnesota .....	97,571.20	40
---	-----------	----

*Return.*

Claims in process of adjustment (Estimated) .....	100,000.00
	\$757,571.20

10 State of New Jersey,  
Transfer Inheritance Tax,  
Non-Resident Decedents.  
Attached to and part of affidavit.

SCHEDULE D.

Details of Real and Personal Property subject to the jurisdiction of the State of New Jersey. Consents to transfer will be granted only on property included in this schedule.

20		Estimated Market Value.
	Real property:	
	None.	
	Personal property:	
	Corporate Stocks:	
	No. of Par	
	Shares. Value.	
30	Northern Securities Company .. 24,141 \$2,414,100.00	\$2,317,536.00
	Northern Securities Company .. Scrip	57.37 28.68
	Total	

IMPORTANT.

40 The proceeding will receive no attention whatsoever unless this schedule is complete in every detail.

Return.

TAX ON TRANSFER OF SHARES OF STOCK IN NEW JERSEY CORPORATIONS STANDING IN THE NAME OF A NON-RESIDENT DECEDENT.

Estate of James J. Hill.

Late of St. Paul, Minn.

Administrator, Louis W. Hill.

10

Post-office Address, Coult & Smith, Prudential Bldg., Newark, N. J.

Date of Death of Decedent, May 29, 1916.

Shares of Stock in New Jersey Corporations.

Number of Shares.		Market	
Pfd.	Com.	Name of Company.	Value.
cap. stock			Total
24141		Northern Securities Company,	\$96.00 \$2,317,536.00
		Scrip Northern Securities Company,	28.68
			<hr/>
			\$2,317,564.68

20

Interests taxable:

Estate passes to widow and 9 children; \$53,057,191.60  
Stat. exemption, 50,000.00

---

\$53,007,191.60

\$450,000.00	1%	\$4,500.00
1,000,000.00	1½%	15,000.00
1,000,000.00	2%	20,000.00
50,557,191.60	3%	1,516,715.75

---

.043065

Tax.....\$67,018.43

30

Paid, Sept. 21, 1917.

KERSEY

Appraised Value of Estate, \$53,814,762.00) \$2317,564.68 (.043065  
Deductions, 757,571.20

---

Net Estate, \$53,057,191.60

Total Appraised Value of Shares  
in New Jersey Corporations.... \$2,317,564.68

Tax payable if decedent had lived  
in New Jersey and all the Prop-  
erty had been located in this  
State ..... 1,556,215.75

40

*Return.*

Percentage of whole estate invest- ed in New Jersey stocks.....	.043065
Tax due New Jersey.....	\$67,018.43

10            LETTERS OF ADMINISTRATION—FORM 405.

STATE OF MINNESOTA, }  
COUNTY OF RAMSEY. } ss:

LOUIS W. HILL

is hereby appointed administrator... of the  
estate of ..... James J. Hill .....  
deceased.

20            WITNESS, HON. EDMUND W. BAZILLE, Judge  
of the Probate Court in the County of Ramsey,  
and the Seal of the Court affixed the 3d day  
of July A. D. 1916.

Seal of  
Probate Court.

By the Court:

EDMUND W. BAZILLE,  
Judge of Probate, Ramsey County, Minn.

30            STATE OF MINNESOTA,  
COUNTY OF RAMSEY, ss.

IN PROBATE COURT.

I, FRED W. GOSEWISCH, Clerk of the Probate  
Court within and for said County of Ramsey,  
do hereby certify that I have compared the  
foregoing copy of the record of the Letters of  
Administration, In the Matter of the Estate of  
James J. Hill, Deceased,  
with the original records thereof now remain-  
40            ing in this office and have found the same to be

*Return.*

correct transcripts therefrom and of the whole of such original records. And I further certify that said exemplification would be received in evidence in all courts of the State of Minnesota.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the  
(SEAL) seal of said Court at Saint Paul, in said County, this 5th day of July, A. D. 1916. 10

FRED W. GOSEWISCH,  
Clerk of the Probate Court.

STATE OF MINNESOTA,  
COUNTY OF RAMSEY, ss.

IN PROBATE COURT. 20

I, EDMUND W. BAZILLE, sole Judge of Probate Court within and for said County of Ramsey, do hereby certify that said Court is a Court of Record, and that FRED W. GOSEWISCH, whose signature is affixed to the foregoing certificate, is the Clerk of the said Probate Court; that said certificate is attested in due form of laws; that the aforesaid signature of said clerk is genuine, and that the seal thereto affixed is the seal of said Probate Court. 30

WITNESS my hand at Saint Paul,  
this 5th day of July, A. D. 1916.

EDMUND W. BAZILLE,  
Judge of Probate.

*Return.*

STATE OF MINNESOTA,  
COUNTY OF RAMSEY, ss.

IN PROBATE COURT.

10 I, FRED W. GOSEWISCH, Clerk of the Probate Court within and for the said County of Ramsey, do hereby certify that the HON. EDMUND W. BAZILLE, whose name is subscribed to the preceding certificate, is the sole Judge of the Probate Court within and for the County of Ramsey aforesaid, duly elected, sworn and qualified, and that the signature of said Judge to said certificate is genuine.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed  
[SEAL] the seal of said Court, this 5th day  
20 of July, A. D. 1916.

FRED. W. GOSEWISCH,  
Clerk of the Probate Court.

30

40

*Stipulation.*

**Stipulation.**

NEW JERSEY SUPREME COURT.

LOUIS W. HILL, Administrator  
of the Estate of JAMES J.  
HILL, deceased,

*Prosecutor,*

*vs.*

NEWTON A. K. BUGBEE, Comp-  
troller of the Treasury of the  
State of New Jersey, and  
WILLIAM T. READ, State  
Treasurer,

*Defendants.*

10

*Stipulation.*

20

WHEREAS, a writ of certiorari has been allowed to review the assessment of an inheritance or transfer tax assessed in the above estate,

IT IS HEREBY STIPULATED between the respective parties as follows:

1. That the prosecutor shall forthwith pay through the defendant Newton A. K. Bugbee, Comptroller of the Treasury of the State of New Jersey, to the defendant William T. Read, State Treasurer, the amount of the tax assessed against the estate of James J. Hill and which is under review in this action.

30

2. That said payment shall be made and received without prejudice to the rights of the prosecutor in the event that it is determined that the tax should be set aside or reduced.

COULT & SMITH,  
*Att'ys for Prosecutor.*

JOHN W. WESCOTT,  
*Attorney General.*

40

Dated, Sept. 21, 1917.



*Supplemental Return.*

Filed August 29, 1917.

*In the Matter of*

THE ESTATE OF JAMES J. HILL, deceased, late  
of the City of Saint Paul, County of Ram-  
sey, State of Minnesota.

10

STATE OF NEW YORK, }  
COUNTY OF NEW YORK, } ss.

LOUIS W. HILL, administrator of the estate of  
the above-named decedent, respectfully repre-  
sents and states:

That heretofore, to-wit, on November 7, 1916,  
he filed with the Comptroller of the Treasury  
of the State of New Jersey his affidavit, to-  
gether with certain schedules thereunto attached,  
showing, among other things, the total amount  
of the real estate owned by the said decedent,  
the total amount of the personal estate owned  
by the said decedent, the total amount of the  
property owned by the said decedent at the  
date of his death subject to the jurisdiction of  
the State of New Jersey, etc.; that thereafter,  
to-wit, on November 27, 1916, the said Comp-  
troller notified this petitioner that there was  
due the State of New Jersey a transfer tax, on  
account of transfer of shares of stock in New  
Jersey corporations standing in the name of  
said decedent, to the amount of \$67,018.43.

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30

While this petitioner protests that there is no  
transfer tax due the State of New Jersey, on  
account of the transfer of shares of stock in  
New Jersey corporations standing in the name  
of the above-named decedent, from this peti-  
tioner and/or the heirs of the said James J.  
Hill, for the reason that this petitioner contends

40

*Supplemental Return.*

the law under which the said Comptroller purported to assess the said tax is void and of no effect, because it contravenes paragraph 1 of Section 2 of Article Four of the Federal Constitution, the provisions of the Fourteenth Amendment of the Federal Constitution and  
10 Sections 1977 and 1978 of the Federal Statutes of the United States (1 Fed. Stat. Ann, 791-2), nevertheless this petitioner respectfully submits that, if the said law of New Jersey under which the said transfer tax is alleged to be assessed be not void, the tax so assessed by the Comptroller of the Treasury of the State of New Jersey is erroneous for the following reasons:

(1) It appears from "Schedule A" attached to this petitioner's affidavit of November 7, 1916,  
20 that the said decedent died seized of real property situated in the State of Minnesota of the aggregate value of \$1,214,700.00 and that said decedent died seized of real property situated in the State of New York of the value of \$550,000.00. Your petitioner is informed and believes, and on such information charges the fact to be, that, in the assessment of the said tax, the said Comptroller made no deduction or allowance  
30 for or on account of the dower interest of the widow, Mary T. Hill, in the said real estate situated in the States of Minnesota and New York; that said widow Mary T. Hill was seventy years of age on July 2, 1916; that her dower interest in the real estate situated in the State of New York was a one-third interest for life; that her dower interest in the real estate situated in the State of Minnesota was and is an absolute one-third interest in fee; that the statutory provisions of the State of Minnesota governing said

*Supplemental Return.*

dower interest in said real estate in the State of Minnesota is as follows:

“The surviving spouse shall also inherit an undivided one-third of all other lands of which decedent at any time during coverture was seized or possessed, to the disposition whereof, by will or otherwise, such survivor shall not have consented in writing, except such as have been transferred or sold by judicial partition proceeding or appropriated to the payment of decedent’s debts by either execution or judicial sale, by general assignment for the benefit of creditors, or by insolvency or bankruptcy proceedings, and subject to all judgment liens. But the lands so inherited shall be subject in their just proportion to such debts of the decedent as are not paid out of his personal estate. The residue of such other lands, or, if there be no surviving spouse, then the whole thereof, shall descend, subject to the debts of the intestate, in the manner following:

“First—In equal shares to his surviving children, and to the lawful issue of his deceased children, by right of representation.

“Second—If there is no surviving child and no lawful issue of any deceased child, and the intestate leaves a surviving spouse, then the whole estate shall descend to such spouse.”

See also *Griswold v. McGee*, 102 Minnesota 114.

(2) Your petitioner further states that he is informed and believes, and on such information charges the fact, that in the assessment of the

*Supplemental Return.*

transfer tax as aforesaid the Comptroller of the Treasury of the State of New Jersey made no deduction or allowance for or on account of the widow Mary T. Hill's one-third interest in the personal property set forth and described in the "Schedule B" attached to your petitioner's said affidavit of November 7, 1916, which personal property is of an aggregate value of \$48,262,-311.30; that the said widow's one-third interest in the said personal estate is an interest accruing to her under the statutes of the State of Minnesota by reason of her marriage relation; that she cannot be deprived thereof without her consent; that it is in the nature of a dower interest to the same extent as her interest in real estate, as fully appears from the General Statutes of Minnesota for 1913, Section 7243, as follows:

"When any person dies owning personal property, or any interest therein, the same shall be disposed of and distributed as follows:

"1. The widow shall be allowed the wearing apparel of her deceased husband, his household furniture not exceeding five hundred dollars in value, and other personal property not exceeding the same amount, both to be selected by her; and she shall receive such allowances when she takes the provisions made for her by her husband's will as well as when he dies intestate.

"2. In case there is no surviving widow, then the minor children, if any, shall receive the same allowances, to be selected by their guardian.

"3. The widow of children, or both, constituting the family of the decedent, shall

*Supplemental Return.*

have such reasonable allowance out of his personal estate as the Probate Court deems necessary for their maintenance during the settlement of the estate, according to their circumstances, which in case of an insolvent estate shall not be longer than one year after administration is granted, nor, in any case, after the distributive share of the widow in the residue of the personal estate has been assigned to her. 10

\* \* \* \* \*

“6. The residue, if any, of the personal estate shall be distributed as follows: one-third thereof to the surviving spouse, if any, free from any testamentary disposition thereof to which such survivor shall not have consented in writing; the remainder of such residue, or, if there be no surviving spouse, then the whole thereof, except as otherwise disposed of by will, shall be distributed in the same proportions to the same persons and for the same purposes as prescribed for descent of real estate.” 20

WHEREFORE, your petitioner respectfully prays that the Comptroller of the Treasury of the State of New Jersey vacate and set aside the assessment of the transfer tax heretofore made by him and consent to the transfer of shares of stock in New Jersey corporations standing in the name of the above-named decedent, to-wit, the shares of stock of the Northern Securities Company described in your petitioner's said affidavit, of date November 7, 1916, without requiring the payment of any tax thereon; or, as an alternative, in the event your petitioner's first prayer be denied, your petitioner prays that the said Comptroller re-assess and re-de- 30 40

*Supplemental Return.*

termine the transfer tax alleged due the State of New Jersey, after making due allowance for the widow's dower interest in both the real and personal estates as above set forth.

Dated August 7, 1917.

10

(Signed) LOUIS W. HILL.

STATE OF NEW YORK, }  
COUNTY OF NEW YORK. } ss.

LOUIS W. HILL, being first duly sworn, says that he is the person who made and signed the annexed and foregoing petition; that he has read the same and knows the contents thereof, and that he verily believes the same to be true.

20

(Signed) LOUIS W. HILL.

Subscribed and sworn to before  
me, this 9th day of August,  
A. D. 1917.

(Signed) CELIA SACHS,  
*Notary Public, New York County No. 6.*  
My commission expires Mar. 30, 1918.

30

40

*Agreed State of Facts.*

**Agreed State of Facts.**

NEW JERSEY SUPREME COURT.

---

LOUIS W. HILL, Administrator  
of the estate of James J. Hill,  
*Prosecutor,*

*vs.*

NEWTON A. K. BUGBEE, Comp-  
troller, etc, *et al,*  
*Defendants.*

---

*Agreed  
Statement  
of Facts.*

10

The following statement of facts is agreed to by the attorneys for the prosecutor and by the Attorney General on behalf of the defendants in the above entitled action, to be used at the hearing upon the return of the writ of certiorari granted herein:

20

I.

That the statements in the affidavit of Louis W. Hill and the statements in the schedules attached thereto, annexed to the return of the writ in this case, shall, for the purposes of this action, be taken as true,

30

II.

That James J. Hill died intestate on May 29, 1916, in the State of Minnesota and was at and just prior to his death a resident of and domiciled in the State of Minnesota and was a citizen of the United States and of said State of Minnesota.

III.

That letters of administration were duly issued by the Judge of the Probate Court of the

40

*Agreed State of Facts.*

County of Ramsey in the State of Minnesota to Louis W. Hill on the 3d day of July, 1916, and that said Louis W. Hill duly qualified as such administrator.

## IV.

10 That no property of any kind, character or description was left by said decedent within the State of New Jersey other than 24,141 shares in the Northern Securities Company, a New Jersey corporation, and scrip in the said company to the value of \$57.37; that said certificates of stock were not physically within the limits of the State of New Jersey at the time of the death of the said James J. Hill.

## V.

20 That the Comptroller of the Treasury of the State of New Jersey made a demand upon the prosecutor for the payment of the taxes assessed under review in this action, before the commencement thereof.

## VI.

-30 That Mary T. Hill, the widow of James J. Hill, and Mary H. Hill, James N. Hill, Louis W. Hill, Clara A. Hill, Charlotte H. Slade, Ruth H. Beard, Rachel H. Boeckmann, Gertrude H. Gavin and Walter J. Hill, children of the said James Hill, his heirs-at-law, were at the time of the death of the said James J. Hill non-residents of the State of New Jersey and were citizens of the United States and of States of the United States other than the State of New Jersey.

## VII.

40 That Louis W. Hill, administrator of the estate of James J. Hill, is a citizen of the State of Minnesota and resident and domiciled in said State.

*Agreed State of Facts.*

## VIII.

That the method of assessing the tax due the State of New Jersey in the estate of James J. Hill is duly set forth in the return and that the sum of \$53,057,191.60 represents the entire value of the estate passing to the widow of James J. Hill and his nine children without any deduction therefrom for any dower or right of dower, or thirds, under the statute of any state. 10

## IX.

That the Northern Securities Company is a New Jersey corporation incorporated Nov. 13, 1901, under an act entitled "An Act concerning corporations" (Revision of 1896).

## X.

That the facts stated in the affidavit and petition of Louis W. Hill, dated August 7, 1917, and filed with the Comptroller August 29, 1917, are true, but this stipulation shall not apply to the statements contained in said petition as to the statute or common law of any other state, or as to the application of such statute or common law to the facts stated in said petition. 20

## XI.

That for the purpose of determining the law of the State of New York or the law of the State of Minnesota, reference may be made to any statute book or pamphlet session laws of said states, and to the official reports of the decisions of the courts of such states, or either of them. 30

COULT & SMITH,  
*Attorneys for Prosecutor.*

JOHN W. WESCOTT,  
Attorney General,  
*Attorney for Defendants.* 40

Dated January 9, 1918.

*Reasons.*

**Reasons.**

Filed Oct. 19, 1917.

NEW JERSEY SUPREME COURT.

10	LOUIS W. HILL, Administrator of the estate of James J. Hill, <i>Prosecutor,</i>	}	<i>On</i>
	<i>vs.</i>		<i>Certiorari.</i>
	NEWTON A. K. BUGBEE, Comp- troller, etc, <i>et al,</i> <i>Defendants.</i>		<i>Reasons.</i>

20 Louis W. Hill, administrator of the Estate  
of James J. Hill, deceased, by Coult & Smith,  
his attorneys, comes and prays that the assess-  
ment of an inheritance transfer or transfer tax  
upon the stock in Northern Securities Com-  
pany, a New Jersey corporation, owned by said  
intestate, which tax was assessed on or about  
November 27, 1916, may be set aside, reversed  
and for nothing holden, or may be reassessed  
according to law, as the determination and na-  
30 ture of this action shall require, for the fol-  
lowing reasons:

1. Because the Comptroller in the computing  
of said tax under review in this action in-  
cluded in the property transferred on the death  
of said James J. Hill the entire real estate  
owned by said James J. Hill at the time of his  
death, including that situate in the States of  
New York and Minnesota without any allow-  
ance or deduction therefrom or reduction there-  
40 in in value by reason of the dower interest

*Reasons.*

of the widow of the said James J. Hill, which interest was a dower interest which she received by virtue of the laws of the State of New York and the State of Minnesota, respectively.

2. Because the Comptroller in the computing of said tax under review in this action included in the amount of taxable property passing on the death of the said James J. Hill the entire amount of the personal property owned and possessed by him at the time of his death, without any deduction therefrom or reduction thereof of personal property passing to the widow of the said James J. Hill by virtue of the laws of the State of Minnesota, which property passed as the widow's thirds under the statute of the State of Minnesota. 10  
20

3. Because the Comptroller in the computing of said tax under review in this action included property and taxed the transfer thereof which was not transferred by will or intestate law, or by deed, grant, bargain, sale or gift, made in contemplation of death by the grantor, vendor or donor, intended to take effect in possession or enjoyment at or after such death, and the transfer of which property was not taxable under the laws of the State of New Jersey. 30

4. Because the Comptroller in computing the tax under review included property or the transfer of property which would not have been subject to a tax under Chapter 228 of the Laws of 1909 as amended by Chapter 51 of the Laws of 1914 and as amended by Chapter 392 of the Laws of 1915 had James J. Hill been a resident of the State of New Jersey at the time of his death and all his real and personal estate 40

*Reasons.*

had been located within the State of New Jersey, namely, because the Comptroller included property passing on decedent's death to his widow by virtue of her dower and one-third interest in his real and personal estate; and further because said Comptroller did include in the  
10 computation of said tax as properties of the entire estate of said James J. Hill, pursuant to the provision in Chapter 39 of the Laws of 1915, a part of said estate, namely, the share of the real and personal estate taken by the widow under her right of dower and thirds.

5. Because the transfer tax under review in this action on the transfer of stock in Northern Securities Company, a New Jersey corporation, forming a part of the estate of the  
20 said James J. Hill, late a non-resident of New Jersey, was assessed pursuant to the third or last paragraph of Sec. 12 of an Act entitled: "An Act to tax the transfer of property, of resident and non-resident decedents by devise, bequest, descent, distribution by statute, gift, deed, grant, bargain and sale, in certain cases, approved April twentieth, one thousand nine hundred and nine, as amended by Chapter 392  
30 of the Laws of 1915; said paragraph of said Sec. 1 being inoperative as against the transfer of the aforesaid stock because the assessment of a tax on the transfer thereof pursuant to said paragraph denies to James J. Hill and his estate, his administrator, and distributees and heirs-at-law of his real and personal property, all citizens and residents of the United States and citizens and residents of other states of the United States than the State of New Jersey, and non-residents of the State of New  
40 Jersey, privileges and immunities enjoyed by

*Reasons.*

citizens of the State of New Jersey, and, therefore, the imposition of said tax contravenes Article IV, Sec. 2, Par. 1 of the Federal Constitution and the prosecutor claims the protection thereof.

6. Because the transfer tax referred to in Reason 5 under review in this action is assessed pursuant to the third or last paragraph of Sec. 12 of the said acts referred to in Reason 5, and said paragraph of said Sec. 12 provides for the assessing of a tax as against the transfer of the aforesaid stock and is inoperative because the assessment of a tax under the said Sec. 12 requires the enforcement of a law which abridges the privileges and immunities which were of James J. Hill and now of his estate and his administrator and distributees and heirs-at-law of his real and personal estate, all residents and citizens of the United States and not of the State of New Jersey, in violation of the Fourteenth Amendment of the Federal Constitution.

7. Because the transfer tax under review in this action and referred to in Reason 5 is assessed, pursuant to the third or last paragraph of Sec. 12 of the acts therein referred to, upon the transfer of said stock within the jurisdiction of the State of New Jersey, and the said assessment and imposition of said tax denies to James J. Hill, his estate, his administrator and the distributees and heirs-at-law of his real and personal property, all residents and citizens of the United States and non-residents of the State of New Jersey, the equal protection of the laws of the State of New Jersey and particularly such acts and the assessment thereunder contravenes the Fourteenth Amendment

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*Reasons.*

of the Federal Constitution, and the prosecutor claims the protection thereof.

10 8. Because the entire acts referred to in Reason 5 are unconstitutional and void and the tax thereunder should be set aside and for nothing holden because said acts contravene Article IV., Section 2, Paragraph 1 of the Federal Constitution by denying to the prosecutor and the other persons mentioned in Reason 5 privileges and immunities enjoyed by citizens of the State of New Jersey, and the prosecutor claims the protection of said constitutional provision.

20 9. Because the entire acts referred to in Reason 5 are unconstitutional and void and the tax thereunder should be set aside and for nothing holden, because they contravene the Fourteenth Amendment of the Federal Constitution by abridging the privileges and immunities of the prosecutor and other persons referred to in Reason 5 and deny to them the equal protection of the laws of the State of New Jersey and particularly the acts referred to, and the prosecutor claims the protection of said constitutional provisions.

30 10. Because the assessment of said tax referred to in Reason 5 under the acts therein referred to operates differently in the case of non-resident citizens of the United States where there is a transfer by intestate law or a legacy which is general or residuary than in the case of a transfer by a resident citizen of the State of New Jersey to persons of the same class, of a legacy which is specific, and therefore such acts are inoperative and void for the same reasons set out in Reasons 5, 6 and 7.

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*Reasons.*

11. Because the assessment of said tax referred to in Reason 5 under the acts therein referred to and under Chapter 151 of the Public Laws of 1914 and amended by Chapter 392 of the Laws of 1915 in the case of non-resident citizens of the United States operates differently than it does upon citizens of the State of New Jersey and non-resident citizens of the United States who are specific legatees and upon distributees and heirs-at-law and general and residuary legatees, and therefore said statutes are inoperative and void for the reasons set out in Reasons 5, 6 and 7. 10

12. Because as against the prosecutor and the other persons referred to in Reason 5 the assessment of said tax referred to in said Reason 5 under the acts therein referred to and under Chapter 151 of the Laws of 1914 and under Chapter 392 of the Laws of 1915, is made in a different manner and at a higher rate than on the transfer of stocks by intestate law or by bequests to specific legatees or general or residuary legatees of the same class referred to in Sec. 1 of the Act of 1909 therein referred to, as amended by Chapter 151 of the Laws of 1914, and amended by Chapter 392 of the Laws of 1915, where the decedent was a resident of the State of New Jersey, which said method of assessment is in violation of the constitutional provisions referred to in Reasons 5, 6 and 7. 20 30

13. Because the assessment of said tax referred to in the foregoing reasons and the acts therein referred to violate the provisions of Sections 1977 and 1978 of the Revised Statutes of the United States (1 Federal Statutes, Annotated, pages 791-792). 40

*Reasons.*

14. Because the assessment of the tax referred to in the foregoing reasons is made under the statutes hereinbefore referred to, which are inoperative and ineffective to tax the transfer of the stock in New Jersey corporations left by the said decedent, because said New Jersey corporations are incorporated under the General Corporation Act of the State of New Jersey and the enforcement of said acts would be inconsistent with the provisions contained in said act and the charter of said companies with reference to the transfer of stock in New Jersey corporations upon the books of said New Jersey corporations and the only power that the State of New Jersey has to tax a transfer of stock is its power over the charter provisions and acts incorporating corporations of the State of New Jersey and to enforce the provisions of Chapter 228 of the Laws of 1909 as amended by Chapter 151 of the Laws of 1914 and as amended by Chapter 392 of the Laws of 1915 would violate the following provisions of the State Constitution:

Art. IV, Sec. 7, Paragraph 3.

Art. IV, Sec. 7, Paragraph 4.

Art. IV, Sec. 7, Paragraph 12.

15. Because Chapter 228 of the Laws of 1909 as amended by Chapter 151 of the Laws of 1914 and as amended by Chapter 392 of the Laws of 1915 is unconstitutional and violates Article IV, Section 7, Paragraph 3 of the Constitution of the State of New Jersey in that the object thereof is not expressed in the title.

16. Because Chapter 228 of the Laws of 1909 as amended by Chapter 151 of the Laws of 1914 and as amended by Chapter 392 of the

*Reasons.*

Laws of 1915 is unconstitutional and violates Article IV, Section 7, Paragraph 4 of the Constitution of the State of New Jersey in that said law embraces more than one object in contravention thereof.

17. Because Chapter 228 of the Laws of 1909 as amended by Chapter 151 of the Laws of 1914 and as amended by Chapter 392 of the Laws of 1915 is unconstitutional and violates Article IV, Section 7, Paragraph 12 of the Constitution of the State of New Jersey in that said law provides that an existing law or part thereof shall be made or deemed a part of the act and provides that an existing law and part thereof shall be applicable and does not insert such provision in said act. 10

18. Because there is no succession by virtue of the laws of the State of New Jersey on the transfer of the stock in New Jersey corporations held by a non-resident at the time of his death which is taxable pursuant to the provisions of Chapter 228 of the Laws of 1909 as amended by Chapter 151 of the Laws of 1914 and as amended by Chapter 392 of the Laws of 1915, and to so hold would violate the constitutional provisions hereinbefore referred to. 20

19. Because the stock hereinbefore referred to on the right of succession thereto, owned, held and descending as aforesaid, is not embraced within the property or transfers made taxable in the acts referred to in the foregoing reasons. 30

20. Because Chapter 228 of the Laws of 1909 as amended by Chapter 151 of the Laws of 1914 and as amended by Chapter 392 of the Laws of 1915, if construed to impose a tax such as has 40

*Reasons.*

been levied, is unconstitutional, as it is a property tax and violates Article IV, Section 9 of the New Jersey Constitution which provides that property shall be assessed for taxes under general laws by uniform rules according to its true value.

10 21. Because Chapter 228 of the Laws of 1909 as amended by Chapter 151 of the Laws of 1914 and as amended by Chapter 392 of the Laws of 1915, under which the assessment of the tax under review purports to have been made, is unconstitutional in that it violates the essential quality of taxation which requires that taxes be imposed under a rule of uniformity.

20 22. Because Chapter 228 of the Laws of 1909 as amended by Chapter 151 of the Laws of 1914 and as amended by Chapter 392 of the Laws of 1915, under which the assessment of the tax under review purports to have been made, is unconstitutional and void in that it attempts to subject to taxation property, rights and the succession thereto and transfer thereof which cannot be subject to taxation by the State of New Jersey.

30 23. Because the said tax and the assessment thereunder is in divers other respects illegal, erroneous and contrary to law and should be set aside and for nothing holden.

40 24. Because Chapter 228 of the Laws of 1909 as amended by Chapter 151 of the Laws of 1914 and as amended by Chapter 392 of the Laws of 1915 is unconstitutional and violates Article I, Sec. 10, Paragraph 1 of the Federal Constitution because the enforcement thereof will impair the obligation of contracts.

*Reasons.*

25. Because Chapter 228 of the Laws of 1909 as amended by Chapter 151 of the Laws of 1914 and as amended by Chapter 392 of the Laws of 1915 is unconstitutional and violates Article IV of the Amendments to the Federal Constitution because it will permit the State of New Jersey through its agencies to authorize an unreasonable search in violation of such constitutional provision. 10

26. Because the said Comptroller did not correctly compute the said tax in accordance with the provisions of the statute in such case made and provided and did not grant the prayer of the prosecutor for a revision and re-computation thereof.

27. Because the Comptroller did not correctly compute the said tax in accordance with the provisions of the statute in such case made and provided, in that said Comptroller assessed the tax as if the accelerated rates of taxation set forth by Sec. 1, Chapter 228 of the Laws of 1909, as amended by Chapter 151 of the Laws of 1914, referred to the entire amount of the distributive share passing on the death of James J. Hill instead of the amount subject to the previous rate of taxation. 20 30

28. Because the said Comptroller did not correctly compute the said tax in accordance with the provisions of the statute in such case made and provided, in that the said Comptroller in assessing said tax did not apply the accelerated rates to the New Jersey property passing to the distributees.

29. Because the said Comptroller did not correctly compute the said tax in accordance 40

*Reasons.*

with the provisions of the statute in such case made and provided, in that said Comptroller did not allow an exemption of five thousand dollars, as provided by Sec. 1 of Chapter 228 of the Laws of 1909, as amended by Chapter 151 of the Laws of 1915, page 267, on the legacy of  
10 the New Jersey assets passing to the beneficiary.

COULT & SMITH,  
*Attorneys for Prosecutor.*

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*Rule Substituting Defendant.*

**Rule Substituting Defendant.**

**New Jersey Supreme Court.**

LOUIS W. HILL, Administrator  
of the estate of James J.  
Hill, deceased,

*Prosecutor,*

*vs.*

EDWARD I. EDWARDS, Comptrol-  
ler of the Treasury of the  
State of New Jersey, and  
WILLIAM T. READ, State  
Treasurer,

*Defendants.*

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*On  
Certiorari.*

*Rule  
Substituting  
Defendant.*

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It appearing that the defendant Edward I. Edwards has been succeeded by Newton A. K. Bugbee as Comptroller of the Treasury of the State of New Jersey,

IT IS ORDERED that Newton A. K. Bugbee be substituted as defendant in the place and stead of Edward I. Edwards.

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Entered.

On motion of

JOHN W. WESCOTT,  
*Attorney General.*

We hereby consent to the entry of the above rule.

COULT & SMITH,  
*Attorneys for Prosecutor.*

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*Opinion of Supreme Court.*

**Opinion.**

Filed April 25, 1918.

NEW JERSEY SUPREME COURT.

10	LOUIS HILL, Admr. of James Hill, Dec'd., <div style="text-align: right; padding-right: 20px;"><i>Prosecutor,</i></div>	}	<i>On          Certiorari to          review inher-          itance trans-          fer tax.</i>
20	<div style="text-align: center; padding-bottom: 5px;"><i>vs.</i></div> NEWTON A. K. BUGBEE, Comp- troller, <i>et al.</i> , <div style="text-align: right; padding-right: 20px;"><i>Defendants.</i></div>		

In estimating the tax to be paid for the trans-  
 20 fer of property of a non-resident intestate de-  
 cedent, the Comptroller included the value of the  
 widow's interest in lands located in the State  
 of Minnesota where dower has been abolished  
 and the widow takes by inheritance, under the  
 statute, an undivided one-third of the land of  
 her deceased husband; Held, that the widow did  
 not take as doweress, but by inheritance under  
 an intestate law; that it was subject to a trans-  
 30 fer tax under the law of Minnesota, and prop-  
 erly included by the Comptroller as property  
 inherited under an intestate law in estimating  
 the total estate passing by inheritance from a  
 decedent intestate.

Argued February term, 1918, before Justices  
 Bergen and Black.

Coult & Smith, for prosecutor.

Herbert Boggs, assistant attorney general,  
 for defendant.

*Opinion of Supreme Court.*

The opinion of the court was delivered by Bergen, *J.*

James J. Hill died intestate while a resident of the State of Minnesota, leaving real estate in that state and also in the State of New York, as well as personal property in New Jersey, the latter being subject to a transfer tax under the statute of New Jersey, and the Comptroller of New Jersey, in determining the amount of the transfer tax, included the value of the lands in Minnesota and New York without allowance for the value of the interest of the intestate decedent's widow in such real estate. The amount of the tax as ascertained and levied is not disputed if the basis is correct. A writ of certiorari was allowed to review the Comptroller's conclusion, and the only question presented is the legality of the inclusion of the value of the widow's dower, or interest in the lands in the amount upon which the transfer tax is based. Counsel for the defendant admits that the value of the interest of the widow in the New York land was improperly included because, under the law of that state, she takes as doweress and not by inheritance under any intestate law, and to that extent it is conceded that the assessment is erroneous. A different condition exists as to the land in Minnesota, for there dower has been abolished and by statute "The surviving spouse shall inherit an undivided one-third part of all other lands of which decedent at any time during coverture was seized or possessed to the disposition whereof, by will or otherwise, such survivor shall not have consented in writing," subject to a just proportion of decedent's debts not paid out of the personal estate.

Under this statute it cannot be doubted that as to lands in Minnesota the widow takes the

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*Opinion of Supreme Court.*

undivided one-third of the lands of her deceased husband by inheritance and not as doweress, and that this interest is taken by inheritance and subject to a transfer tax as a transfer by an intestate law of the state has been decided for the Supreme Court of Minnesota, *Pettit v. Probate Court*, 163 N. W. Rep. 285.

The prosecutor suggests that this court ought to take the view that the value of the widow's interest in the lands in Minnesota should be determined by the law of this state, where she does not take by inheritance, but as doweress, and therefore the interest of the widow is that of dower and not one acquired by any intestate law. But no authority is cited or reason presented for this novel proposition, and it ignores the fact that the character of her estate is determined by the law of the state where the land is located and not by the laws of this state. The transfer tax is levied upon the estate transferred either by will or intestate law, and the law of this state cannot create an interest in real estate, located out of its jurisdiction, different from that fixed by the law of its *locus*. The title of the widow to the land in Minnesota devolved on her by inheritance, under the intestate laws of that state, and its value properly included by the Comptroller, in the sum upon which the transfer tax was estimated.

The other points argued by the prosecutor have all been decided against his contention in *Maxwell v. Edwards*, 101 Atl. 248.

As this assessment improperly includes the value of the dower of the widow in the New York State lands, it will be set aside in order that it may be modified to conform to the views above expressed. No costs will be allowed as each party has succeeded in part.

*Rule Affirming Judgment.*

**Rule Affirming Judgment.**

Entered April 29, 1918.

NEW JERSEY SUPREME COURT.

LOUIS HILL, Administrator  
of the estate of James  
Hill, deceased,

*Prosecutor,*

*vs.*

NEWTON A. K. BUGBEE, Comp-  
troller of the Treasury of  
the State of New Jersey,

*Defendants.*

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*On  
Certiorari.*

*Rule for  
Judgment.*

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A writ of certiorari having heretofore been allowed in the above entitled cause, and the court having inspected the record returned with the certiorari in this cause, the reasons filed by the prosecutor, and having heard the argument of counsel, and having duly considered the same,

It is, on this twenty-sixth day of April, nineteen hundred and eighteen, ordered that the assessment, appraisal and levy of said tax, insofar as it relates to the interest of the widow of John J. Hill, deceased, in the lands situate in Minnesota, be affirmed, and insofar as it relates to the interest of the widow in lands situate in the State of New York, be reversed and set aside and modified by the Comptroller in accord-

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*Rule Affirming Judgment.*

ance therewith, without costs to either party, and  
in all other respects said tax is affirmed.

Entered April 29, 1918,

On motion of

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JOHN W. WESCOTT,  
Attorney General,  
*Attorney of Defendant.*

A true copy.

ENOCH L. JOHNSON,  
*Clerk.*

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*Notice and Grounds of Appeal.***Notice and Grounds of Appeal.**

Filed.

## NEW JERSEY SUPREME COURT.

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LOUIS W. HILL, Administrator  
of the estate of James J.  
Hill, deceased,

*Prosecutor,**vs.*

NEWTON A. K. BUGBEE, Comp-  
troller, etc., *et al.*,

*Defendants.*

*On Appeal to  
the New  
Jersey Court  
of Errors  
and Appeals.  
Notice and  
Grounds of  
Appeal.*

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To John W. Wescott, Attorney General of the  
State of New Jersey, attorney for defendants:

TAKE NOTICE that the prosecutor appeals from  
the whole of the judgment entered in this cause  
to the New Jersey Court of Errors and Appeals  
on the following grounds and for the following  
reasons:

1. Because the Comptroller in the computing  
of said tax under review on this appeal included  
in the property transferred on the death of  
said James J. Hill the real estate owned by  
said James J. Hill at the time of his death and  
included the real estate situated in the State of  
Minnesota, without any allowance or deduction  
therefrom or reduction therein in value by rea-  
son of the dower interest of the widow of the  
said James J.. Hill, which interest was a dower  
interest which she received by virtue of the laws  
of the State of Minnesota.

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*Notice and Grounds of Appeal.*

2. Because the Comptroller in the computing of said tax under review on this appeal included in the amount of taxable property passing on the death of the said James J. Hill the entire amount of the personal property owned and possessed by him at the time of his death  
10 without any deduction therefrom or reduction thereof of personal property passing to the widow of the said James J. Hill by virtue of the laws of the State of Minnesota, which property passed as the widow's thirds under the statute of the State of Minnesota.

3. Because the Comptroller in the computing of said tax under review on this appeal included property and taxed the transfer thereof which was not transferred by will or intestate  
20 law or by deed, grant, bargain, sale or gift made in contemplation of death by the grantor, vendor or donor, intended to take effect in possession or enjoyment at or after such death, and the transfer of which property was not taxable under the laws of the State of New Jersey.

4. Because the Comptroller in computing the tax under review included property, or the transfer of property, which would not have been subject to a tax under Chapter 228 of the Laws  
30 of 1909 as amended by Chapter 151 of the Laws of 1914, and as amended by Chapter 392 of the Laws of 1915, had James J. Hill been a resident of the State of New Jersey at the time of his death and all his real and personal estate been located within the State of New Jersey, namely, because the Comptroller included property passing on decedent's death to his widow by virtue of her dower and one-third interest in his real and personal estate; and further because  
40 said Comptroller did include in the com-

*Notice and Grounds of Appeal.*

putation of said tax as properties of the entire estate of James J. Hill, pursuant to the provision in Chapter 39 of the Laws of 1915, a part of said estate, viz., the share of the real and personal estate taken by the widow under her right of dower and thirds.

5. Because the transfer tax under review in this action on the transfer of stock in Northern Securities Company, a New Jersey corporation, forming a part of the estate of the said James J. Hill, late a non-resident of New Jersey, was assessed pursuant to the third or last paragraph of Sec. 12 of an act entitled "An Act to tax the transfer of property, of resident and non-resident decedents by devise, bequest, descent, distribution by statute, gift, deed, grant, bargain and sale, in certain cases, approved April twentieth, one thousand nine hundred and nine," as amended by Chapter 392 of the Laws of 1915; said paragraph of said Sec. 1 being inoperative as against the transfer of the aforesaid stock because the assessment of a tax on the transfer thereof pursuant to said paragraph denies to James J. Hill and his estate, his administrator, and distributees and heirs-at-law of his real and personal property, all citizens and residents of the United States and citizens and residents of other states of the United States than the State of New Jersey, and non-residents of the State of New Jersey, privileges and immunities enjoyed by citizens of the State of New Jersey, and, therefore, the imposition of said tax contravenes Article IV, Sec. 2, Par. 1 of the Federal Constitution and the prosecutor claims the protection thereof.

6. Because the transfer tax referred to in Reason 5 under review in this action is assessed

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*Notice and Grounds of Appeal.*

pursuant to the third or last paragraph of Sec. 12 of the said acts referred to in Reason 5, and said paragraph of said Sec. 12 provides for the assessing of a tax as against the transfer of the aforesaid stock and is inoperative because the assessment of a tax under the said Sec. 12 re-  
10 quires the enforcement of a law which abridges the privileges and immunities which were of James J. Hill and now of his estate and his administrator and distributees and heirs-at-law of his real and personal estate, all residents and citizens of the United States and not of the State of New Jersey, in violation of the Fourteenth Amendment of the Federal Constitution.

7. Because the transfer tax under review in this action and referred to in Reason 5 is  
20 assessed, pursuant to the third or last paragraph of Sec. 12 of the acts therein referred to, upon the transfer of said stock within the jurisdiction of the State of New Jersey, and the said assessment and imposition of said tax denies to James J. Hill, his estate, his administrator and the distributees and heirs-at-law of his real and personal property, all residents and citizens of the United States and non-residents of the State of New Jersey, the equal protection  
30 of the laws of the State of New Jersey and particularly such acts and the assessment thereunder contravenes the Fourteenth Amendment of the Federal Constitution, and the prosecutor claims the protection thereof.

8. Because the entire acts referred to in Reason 5 are unconstitutional and void and the tax thereunder should be set aside and for nothing holden because said acts contravene Article IV, Section 2, Paragraph 1 of the Federal Consti-  
40 tution by denying to the prosecutor and the

*Notice and Grounds of Appeal.*

other persons mentioned in Reason 5 privileges and immunities enjoyed by citizens of the State of New Jersey, and the prosecutor claims the protection of said constitutional provision.

9. Because the entire acts referred to in Reason 5 are unconstitutional and void and the tax thereunder should be set aside and for nothing holden, because they contravene the Fourteenth Amendment of the Federal Constitution by abridging the privileges and immunities of the prosecutor and other persons referred to in Reason 5 and deny to them the equal protection of the laws of the State of New Jersey and particularly the acts referred to, and the prosecutor claims the protection of said constitutional provisions.

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10. Because the assessment of said tax referred to in Reason 5 under the acts therein referred to operates differently in the case of non-resident citizens of the United States where there is a transfer by intestate law or a legacy which is general or residuary than in the case of a transfer by a resident citizen of the State of New Jersey to persons of the same class, of a legacy which is specific, and therefore such acts are inoperative and void for the same reasons set out in Reasons 5, 6 and 7.

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11. Because the assessment of said tax referred to in Reason 5 under the acts therein referred to and under Chapter 151 of the Public Laws of 1914 and amended by Chapter 392 of the Laws of 1915 in the case of non-resident citizens of the United States operates differently than it does upon citizens of the State of New Jersey and non-resident citizens of the United States who are specific legatees and upon dis-

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*Notice and Grounds of Appeal.*

tributees and heirs-at-law and general and residuary legatees, and therefore said statutes are inoperative and void for the reasons set out in Reasons 5, 6 and 7.

10 12. Because as against the prosecutor and the other persons referred to in Reason 5 the assessment of said tax referred to in said Reason 5 under the acts therein referred to and under Chapter 151 of the Laws of 1914 and under Chapter 392 of the Laws of 1915, is made in a different manner and at a higher rate than on the transfer of stocks by intestate law or by bequests to specific legatees or general or residuary legatees of the same class referred to in Sec. 1 of the Act of 1909 therein referred to, as amended by Chapter 151 of the Laws of 1914, and amended by Chapter 392 of the Laws of 20 1915, where the decedent was a resident of the State of New Jersey, which said method of assessment is in violation of the constitutional provisions referred to in Reasons 5, 6 and 7.

13. Because the assessment of said tax referred to in the foregoing reasons and the acts therein referred to violate the provisions of Sections 1977 and 1978 of the Revised Statutes of the United States (1 Federal Statutes, Annotated, pages 791-792). 30

14. Because the assessment of the tax referred to in the foregoing reason is made under the statutes hereinbefore referred to, which are inoperative and ineffective to tax the transfer of the stock in New Jersey corporations left by the said decedent, because said New Jersey corporations are incorporated under the General Corporation Act of the State of New Jersey and the enforcement of said acts would be inconsistent with the provisions contained in said 40

*Notice and Grounds of Appeal.*

act and the charter of said companies with reference to the transfer of stock in New Jersey corporations upon the books of said New Jersey corporations and the only power that the State of New Jersey has to tax a transfer of stock is its power over the charter provisions and acts incorporating corporations of the State of New Jersey and to enforce the provisions of Chapter 228 of the Laws of 1909 as amended by Chapter 151 of the Laws of 1914 and as amended by Chapter 392 of the Laws of 1915 would violate the following provisions of the State Constitution:

Art IV., Sec. 7, Paragraph 3.

Art. IV., Sec. 7, Paragraph 4.

Art. IV., Sec. 7, Paragraph 12.

15. Because Chapter 228 of the Laws of 1909 as amended by Chapter 151 of the Laws of 1914 and as amended by Chapter 392 of the Laws of 1915 is unconstitutional and violates Article IV., Section 7, Paragraph 3 of the Constitution of the State of New Jersey in that the object thereof is not expressed in the title.

16. Because Chapter 228 of the Laws of 1909 as amended by Chapter 151 of the Laws of 1914 and as amended by Chapter 392 of the Laws of 1915 is unconstitutional and violates Article IV., Section 7, Paragraph 4 of the Constitution of the State of New Jersey in that said law embraces more than one object in contravention thereof.

17. Because Chapter 228 of the Laws of 1909 as amended by Chapter 151 of the Laws of 1914 and as amended by Chapter 392 of the Laws of 1915 is unconstitutional and violates Article IV., Section 7, Paragraph 12 of the Constitution of the State of New Jersey in that said law provides that an existing law or part thereof shall

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be made or deemed a part of the act and provides that an existing law and part thereof shall be applicable and does not insert such provision in said act.

10 18. Because there is no succession by virtue of the laws of the State of New Jersey on the transfer of the stock in New Jersey corporations held by a non-resident at the time of his death which is taxable pursuant to the provisions of Chapter 228 of the Laws of 1909 as amended by Chapter 151 of the Laws of 1914 and as amended by Chapter 392 of the Laws of 1915, and to so hold would violate the constitutional provisions hereinbefore referred to.

20 19. Because the stock hereinbefore referred to on the right of succession thereto, owned, held and descending as aforesaid, is not embraced within the property or transfers made taxable in the acts referred to in the foregoing reasons.

30 20. Because Chapter 228 of the Laws of 1909 as amended by Chapter 151 of the Laws of 1914 and as amended by Chapter 392 of the Laws of 1915, if construed to impose a tax such as has been levied, is unconstitutional, as it is a property tax and violates Article IV., Section 9 of the New Jersey Constitution which provides that property shall be assessed for taxes under general laws by uniform rules according to its true value.

40 21. Because Chapter 228 of the Laws of 1909 as amended by Chapter 151 of the Laws of 1914 and as amended by Chapter 392 of the Laws of 1915, under which the assessment of the tax under review purports to have been made, is unconstitutional in that it violates the essential quality of taxation which requires that taxes be imposed under a rule of uniformity.

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22. Because Chapter 228 of the Laws of 1909 as amended by Chapter 151 of the Laws of 1914 and as amended by Chapter 392 of the laws of 1915, under which the assessment of the tax under review purports to have been made, is unconstitutional and void in that it attempts to subject to taxation property, rights and the succession thereto and transfer thereof which cannot be subject to taxation by the State of New Jersey. 10

23. Because the said tax and the assessment thereunder is in divers other respects illegal, erroneous and contrary to law and should be set aside and for nothing holden.

24. Because Chapter 228 of the Laws of 1909 as amended by Chapter 151 of the Laws of 1914 and as amended by Chapter 392 of the Laws of 1915 is unconstitutional and violates Article I., Sec. 10, Paragraph 1 of the Federal Constitution because the enforcement thereof will impair the obligation of contracts. 20

25. Because Chapter 228 of the Laws of 1909 as amended by Chapter 151 of the Laws of 1914 and as amended by Chapter 392 of the Laws of 1915 is unconstitutional and violates Article IV. of the Amendments to the Federal Constitution because it will permit the State of New Jersey through its agencies to authorize an unreasonable search in violation of such constitutional provision. 30

26. Because the said Comptroller did not correctly compute the said tax in accordance with the provisions of the statute in such case made and provided and did not grant the prayer of the prosecutor for a revision and recomputation thereof. 40

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27. Because the Comptroller did not correctly compute the said tax in accordance with the provisions of the statute in such case made and provided, in that said Comptroller assessed the tax as if the accelerated rates of taxation set forth by Sec. 1, Chapter 228 of the Laws of 1909, as amended by Chapter 151 of the Laws of 1914, referred to the entire amount of the distributive share passing on the death of James J. Hill instead of the amount subject to the previous rate of taxation.

28. Because the said Comptroller did not correctly compute the said tax in accordance with the provisions of the statute in such case made and provided, in that the said Comptroller in assessing said tax did not apply the accelerated rates to the New Jersey property passing to the distributees.

29. Because the said Comptroller did not correctly compute the said tax in accordance with the provisions of the statute in such case made and provided, in that said Comptroller did not allow an exemption of five thousand dollars, as provided by Sec. 1 of Chapter 228 of the Laws of 1909, as amended by Chapter 151 of the Laws of 1914, page 267, on the legacy of the New Jersey assets passing to the beneficiary.

COULT & SMITH,  
*Attorneys for Prosecutor.*

Due and legal service of the within notice and grounds of appeal is hereby acknowledged this 23rd day of May, 1918.

JOHN W. WESCOTT,  
Attorney General,  
*Attorney for Defendants-Respondents.*

# New Jersey Court of Errors and Appeals

JUNE TERM, 1918.

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LOUIS W. HILL, Administrator  
of the Estate of James J.  
Hill, deceased,  
*Prosecutor-Appellant,*

*vs.*

NEWTON A. K. BUGBEE, Comp-  
troller, etc., *et al.*,  
*Defendants-Respondents.*

---

*On Appeal  
from  
Supreme  
Court.*

*On Certiorari  
to review  
Transfer In-  
heritance  
Tax.*

## **Brief of Coult & Smith for Appellant.**

This case comes before the Court of Errors and Appeals from the Supreme Court on certiorari.

The writ allowed in this action brings up for review the assessments of the transfer inheritance tax upon the estate of the late James J. Hill, who died May 29, 1916, intestate, a resident of the State of Minnesota, leaving him surviving his widow and nine children.

The New Jersey estate subject to the tax consisted of stock in the Northern Securities Company valued at \$2,317,564.68. The comptroller appraised the value of the entire estate at \$53,814,762.00 and allowed therefrom deductions of \$757,571.20 for debts and administration expenses, leaving a net entire estate of \$53,057,191.60.

The comptroller found the percentage of the entire estate situate within the State of New Jersey to be .043065 and that the tax which would have been assessed in this estate had Mr. Hill

died a resident of the State of New Jersey, leaving all his property, including real estate, situate in the State of New Jersey, was \$1,556,215.75, and, taking the percentage of this tax of .043065, assessed the tax on this case at \$67,018.43 (see state of case, p. 13).

Included in the property owned by James J. Hill at the time of his death, and scheduled in the return, was real estate situate in the State of New York valued at \$550,000 and real estate situate in the State of Minnesota valued at \$1,214,700 (state of the case, p. 20).

In assessing the tax under the method of assessment provided for in the case of a non-resident, by the last paragraph of Sec. 12 of the Taxing Act as amended by Chapter 392, P. L. 1915, p. 745, at p. 747, the comptroller included in the decedent's entire estate passing the entire value of the real estate situate in the states of New York and Minnesota, without allowing any deductions therefrom by reason of the widow's dower interest therein.

The comptroller refused to disturb the tax as assessed and one of the questions before the Supreme Court was as to the right of the comptroller to include in the entire estate passing, upon which the tax should be computed, the property passing to the widow under her right of dower.

The Supreme Court held that the value of the dower should not be included in the value of the entire estate upon which the tax is to be assessed and that therefore the tax was excessive, as the value of the property on which it was computed included the entire value of the New York real estate without any deduction for the widow's dower.

The Court held further that the widow took her interest in decedent's Minnesota real estate by virtue of the intestate law of Minnesota and not as dowress and that dower had been abolished by the State of Minnesota, and that therefore the value of her interest in the Minnesota real estate should not be deducted.

We are inclined to agree with this latter finding of the Supreme Court, but are in the position of not consenting to the affirmance as there are other questions raised all of which have been passed upon adversely by this court.

These points in question are the same as were passed upon by this court in the case of *Maxwell v. Edwards*, 101 Atl. Rep. 248; affirming 89 N. J. L. 446. The Maxwell case is now on the calendar of the United States Supreme Court awaiting argument and it is the desire of counsel for the appellant to take this case in a similar manner to the United States Supreme Court and have this case and the Maxwell case argued together, and it is earnestly desired that the decision of this court be rendered as soon as possible so as to expedite the argument of these cases together.

The points previously passed upon adversely by this court and intended to be reviewed in the United States Supreme Court are as follows:

### I.

**The assessment of the tax against transfer in the case of a non-resident estate, pursuant to the specific manner directed by the last paragraph of Section 12 of the Taxing Act, is invalid as being in contravention of the Federal Constitution and Federal Statutes.**

#### First.

It denies to citizens of other states the privileges and immunities granted to citizens of this

state, in violation of paragraph 1, Sec. 2, of Art. IV of the Federal Constitution, which reads as follows:

“1. The citizens of each state shall be entitled to all privileges and immunities of citizens in the several states.”

### Second.

It denies to the appellant, the deceased and his widow and children the full and equal benefit of the laws for the security of property, and subjects them to penalties, taxes, licenses or exactions different from those granted to or imposed upon citizens of the State of New Jersey, in violation of Sec. 1977 of the U. S. Revised Statutes, 1 Fed. St. Ann. 791, which provides as follows:

“All persons within the jurisdiction of the United States shall have the same right in every state and territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishments, pains, penalties, taxes, licenses, and exactions of every kind, and to no other.”

### Third.

It denies to the appellant, the deceased and his widow and children, citizens of the United States, the rights which are enjoyed by white citizens of the State of New Jersey to inherit, hold and convey personal property, in violation of Section 1978 of the Revised Statutes of the United States, 1 Fed. St. Ann. 729, which provides as follows:

“All citizens of the United States shall have the same right, in every state and

territory, as is enjoyed by white citizens thereof to inherit, purchase, lease, sell, hold and convey real and personal property."

#### Fourth.

It abridges the privileges and immunities of the appellant, the deceased and his widow and children, all citizens of the United States, and denies to them the equal protection of the laws of New Jersey, in contravention of the Fourteenth Amendment of the Federal Constitution, which provides as follows:

"All persons born or naturalized in the United States, and subject to the jurisdiction thereof are citizens of the United States, and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States. Nor shall any state deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws."

The reasons that these provisions are violated are as follows:

(a) Under the computation provided for by the statute the transfer of property of non-resident decedents is taxed at a higher rate than that of a resident decedent for the same amount of property passing.

(b) The tax is assessed on personal and real estate not located within the state and over which the State of New Jersey does not exercise any right of taxation.

(c) The tax violates the essential quality of taxation which requires that taxes be imposed upon a rule of uniformity.

## II.

**The wrong portions of the estate, or portions of property passing, were used in applying the graduated rates.**

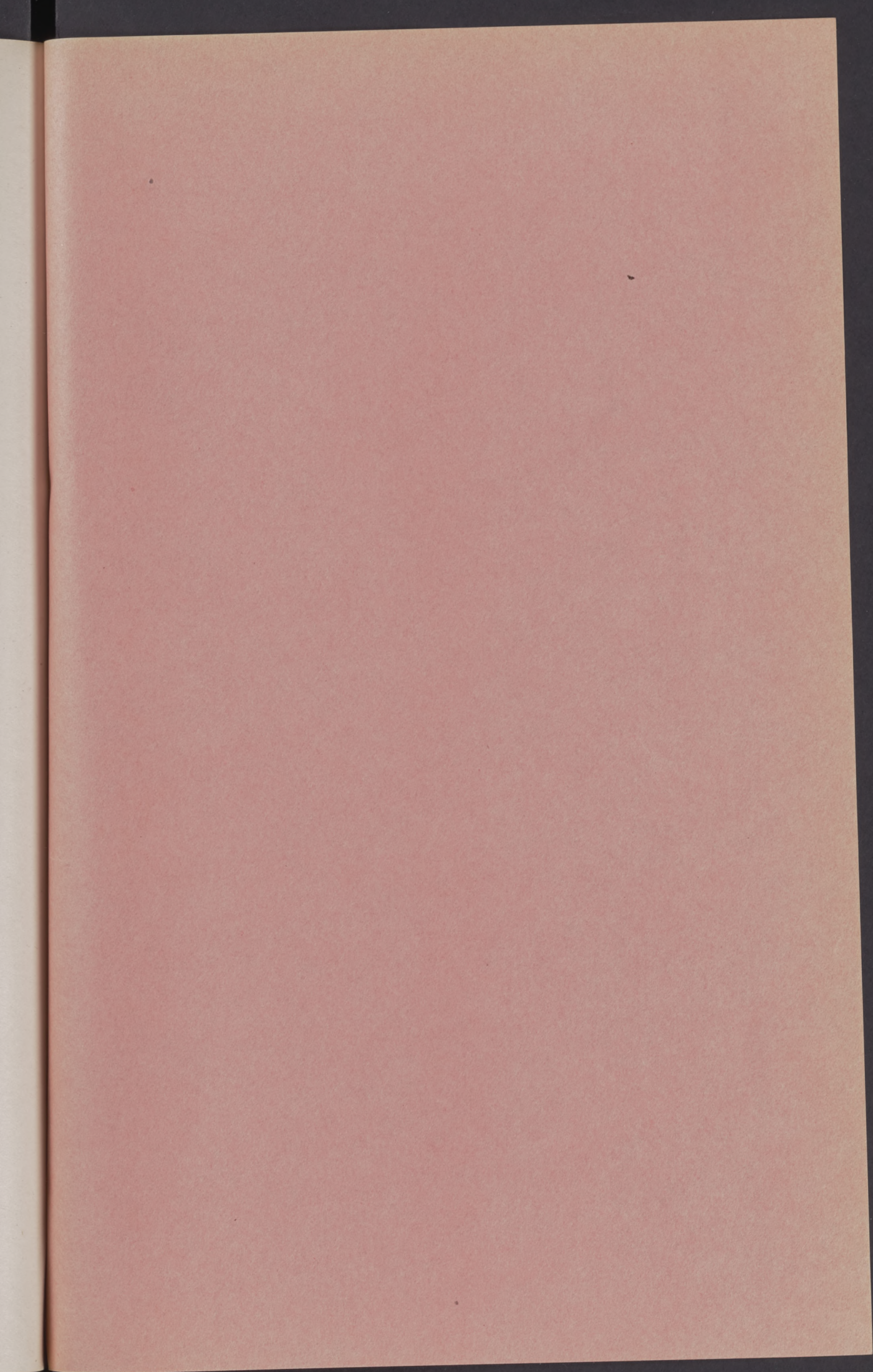
*In assessing the tax at the graduated rate under the Amendment of 1914 (Chapter 151, P. L. 1914, page 267), instead of assessing the first forty-five thousand dollars, after allowing the exemption of five thousand dollars, at the primary rate, and the next one hundred thousand dollars at the next higher rate, and the next one hundred thousand dollars at the next higher rate, and the balance at the highest rate, we submit that the proper construction of the taxing act is that a deduction of five thousand dollars should first be made from the individual legacy passing, then the tax figured at the primary rate on the sum of fifty thousand dollars, then at the next higher rate on the sum of one hundred and fifty thousand dollars, and then at the next higher rate on the sum of two hundred and fifty thousand dollars, and the balance figured at the highest rate.*

**Conclusion.**

We respectfully submit that the tax under review should be set aside.

COULT & SMITH,  
*Attorneys of Appellants.*

WILLIAM A. SMITH,  
E. C. LINDLEY (of the Minnesota Bar),  
*Of Counsel.*



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