New Jersey Court of Errors and Appeals.

ELIZABETH L. HOWELL, Executrix, *Prosecutor-Appellant.* vs. EDWARD I. EDWARDS, Comptroller, et als., *Respondents-Appellees.*	*On Appeal.*

BRIEF FOR PROSECUTOR—APPELLANT.

Since the main brief which follows (pages 1 to 29) was written, the Supreme Court by the opinion of Mr. Justice Kalisch, has decided against the Prosecutor. She has appealed and is before this Court.

An examination of the opinion filed in the Supreme Court decides the case very largely upon the authority of

Magoun v. Illinois Trust & Savings Bank, 170 U. S. 283-296.

I had examined this case previously and have done so again. I cannot find that it is at all in point. The reasons are two.

First: The taxation provisions in the constitutions of Illinois and of New Jersey are totally different. They follow:

ILLINOIS CONSTITUTION, 1870, a. 9, s. 1.

The general assembly shall provide such revenue as may be needful by levying a tax by valuation, so that every person and corporation shall pay a tax in proportion to the value of his, her or its property—such value to be ascertained by some person or persons to be elected or appointed in such manner as the general assembly shall direct, and not otherwise; but the general assembly shall have the power to tax pedlers, auctioneers, brokers, hawkers, merchants, commission merchants, showmen, jugglers, inn-keepers, grocery-keepers, liquor-dealers, toll-bridges, ferries, insurance, telegraph and express interests or business, venders of patents and persons or corporations owning or using franchises and privileges, in such manner as it shall from time to time direct by general law, uniform as to the class upon which it operates.

NEW JERSEY CONSTITUTION: 1875.

PROPERTY SHALL BE ASSESSED FOR TAXES UNDER GENERAL LAWS BY UNIFORM RULES ACCORDING TO ITS TRUE VALUE.

Second: There is a vast difference in the language employed in the Illinois Statute (laws of 1895) page 301—found in full at pages 284 to 286 of the Magoun (supra) case and that of New Jersey (Chapter 151, Laws of 1914).

The difference in both respects is so obvious as to make further comment unnecessary.

I am still of the opinion that the New Jersey act as worded is a tax on property. (Page 3 of the main brief, line 36; page 4, lines 10 to 35.)

> A separately independent property tax cannot, under the constitution, be put on property arbitrarily selected for the purpose and set apart from other property of the same kind.
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> Central R. R. vs. State Board, 19 Vroom 146.
>
> 8 Amer. and English R. R. Cases, 1.

As nearly, if not all of the cases cited in the Magoun (supra) case have received attention in the following main brief and as this is lengthy and a full discussion of the subject, I will conclude by calling special attention to these cases, all favorable to a conclusion for the Prosecutor:

State v. Mann, 76 Wisconsin, 469.
State v. Gorman, 41 N. W. 948.
Curry v. Spencer, 61 N. H. 624.
State v. Ferris, 41 N. W. 579.
State v. Switzler, 143 Mo. 287.
Cope's Estate, 43 Atlantic Reporter 79.

The Legislature of this State, at the 1914 session, adopted an act which is designated as Chapter 57 (page 91) of the Session Laws. Its title reads as follows:

AN ACT to amend an act entitled "An act to tax the transfer of property, of resident and non-resident decendents, 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. (Chapter 228) 1909 Statutes.

This act (Chapter 57) was in force only from March 26th, 1914, to April 8th, 1914. It had a life of less than two weeks. On the last named date, Chapter 57 was succeeded by Chapter 151 (page 267). Chapters 58 and 59 of the 1914 statutes are amendments also of Chapter 228, Laws of 1909. They are not, however, important in this case.

A comparison of Chapters 57 and 151 shows some slight differences, but essentially these acts are alike.

It is Chapter 151 which is under attack in this proceeding. The object of this act is the taxing of property passing to *direct* descendants, under all the circumstances mentioned in its title. The money so raised, (ninety-five per cent.) is used for general State purposes, and five per cent. (5%) of it is returned to the county from which the property taxed emanated.

Without regard to the degree of relationship, the act levies a tax. A pamphlet containing the act and issued by the New Jersey

Comptroller of the Treasury has the following comprehensive table printed upon the inside front cover:

RATES OF TRANSFER INHERITANCE TAX.

Pursuant to Chapter 228, Laws of 1909, as amended by Chapter 151, Laws of 1914.

	In Excess of $5,000.00 to $50,000.00.	In Excess of $50,000.00 to $150,000.00	In Excess of $150,000.00 to $250,000.00	In Excess of $250,000.00
Father, ...	2%	2½%	3%	4%
Mother, ...	2%	2½%	3%	4%
Brother, ...	2%	2½%	3%	4%
Sister, ...	2%	2½%	3%	4%
Wife of Son, ...	2%	2½%	3%	4%
Widow of son, ...	2%	2½%	3%	4%
Husband of Daughter, ...	2%	2½%	3%	4%
Husband, ...	1%	1½%	2%	3%
Wife, ...	1%	1½%	2%	3%
Child or Children, ...	1%	1½%	2%	3%
Issue of Child or Children..	1%	1½%	2%	3%
Adopted Children, ...	1%	1½%	2%	3%
Issue of Adopted Children,	1%	1½%	2%	3%
Child to whom decedent for not less than ten years prior to death stood in mutually acknowledged relation of parent providing such relationship began at or before the child's fifteenth birthday and continued at least ten years thereafter, ...	1%	1½%	2%	3%

None of the above are taxable if they receive $5,000 or less from a decendent's estate.

ALL OTHERS, excepting churches, hospitals and orphan asylums, public libraries, Bible and tract societies, religious, benevolent and charitable institutions and organizations, ORGANIZED UNDER THE LAWS OF THIS STATE, OR OPERATING SOLELY WITHIN THIS STATE, are liable to a five per cent. tax on amounts of five hundred dollars ($500) or more.

This must be taken as an authoritative, official analysis of the statute and amendments so far as the value of property taxed and the rate of tax is concerned.

It will be observed that there are certain exemptions mentioned in the act. Where the amount of property received by a person who receives it by either will or the intestate laws, or in fact, under any of the conditions mentioned in the act, is of the value of five thousand dollars ($5,000) or less, such property is exempt.

In the case before the Court, the daughter has by the mother's will inherited the latter's entire estate. The mother was Sidney K. Laninger, who departed this life April 18th, 1914. The daughter is Elizabeth L. Howell. Mrs. Laninger resided in Essex County, this State, and Mrs. Howell also resides in Essex County, at 40 Park Place, Newark. The estate of the deceased was in value far in excess of five thousand dollars ($5,000).

The Comptroller of the State of New Jersey, following the probate of Mrs. Laninger's will, proceeded with the aid of an affidavit made by Mrs. Howell, which affidavit disclosed the nature and character of the estate, both real and personal, together with the debts of the deceased, and all proper charges against her estate, to levy a tax upon the property passing to Mrs. Howell. The State claims this tax to be in amount two thousand one hundred and twenty dollars and seventy-two cents ($2,120,-72.).

This proceeding is brought to test the constitutionality of the act and amendments; especially of Chapter 151.

The reasons for asking the writ were specified in the notices served in the matter.

It will no doubt be contended for the State that the Transfer Inheritance Tax is not a tax upon property; that it is a tax upon the right to receive property; that the right to inherit may be properly subject to taxation; that the State may determine upon what terms and conditions persons may take property from deceased persons, and under the varied conditions mentioned in the title of the act. Also the State may contend that in the present instance the *act* taxes the *right* and not the property.

For the Prosecutor, however, it is contended that the tax is upon property and in consequence, Chapter 151 is void. This, however, is but one of her several contentions. An examination of the act discloses the fact that the word "Property" in the chapter in question occurs with great frequency, and in such connection as to make the tax upon property. In the last paragraph (page 268, laws 1914) occurs this sentence:

> "Property passing to churches, hospitals and orphan asylums, public libraries, Bible and tract societies, religious, benevolent and charitable institutions and organizations, organized under the laws of this State, or operating solely with-

> in this State, shall be exempt from taxation under this act, and also property to the amount of five thousand dollars passing to a father, mother, husband, wife, child or lineal descendant born in lawful wedlock, brother or sister, or the wife or widow of a son, or the husband of a daughter, shall be exempt from taxation under this act, but no other exemption of any kind or character shall be allowed."

Shortened, this sentence reads:

> "*Property* passing to churches * * * shall be exempt from taxation under this act. * * *"

The next sentence, "*Property* transferred to a father * * * shall be taxed," reads, so far as construction of the sentence is concerned, as does the first sentence in the last paragraph on the page last mentioned. The next sentence, "*Property* transferred to any child, * * *" reads as does the former one and so on through all the degrees of included relationship.

Clearly this is a tax upon *property. The text of the act says so: nowhere in the act does it appear that the Legislature intended the tax to be upon the right to inherit or receive. The contrary is stated in plain language. It is not a tax upon the devolution, but upon "property."*

And further, in establishing the contention that the tax imposed under this act is a tax upon *property,* the language of the statute itself is invoked, and that language is at paragraph five (5) of the original act of the laws of 1909, (Chapter 228):

> "All taxes levied and assessed under this act on the transfer of any real *property* shall be and remain a lien on said real *property* until paid;"

which is exactly the same kind of a lien created upon property under the general taxation act. (General Statutes); also 1903, par. 49, page 425.

This question of the tax being a lien upon lands until paid has received attention in the case of the Appeal of the Commonwealth (Pa. 1889) 18 Atlantic, 132. Here the Court, speaking through Chief Justice Paxson, after quoting from the act which is almost identical with the New Jersey law, said, (near the bottom of the second column, page 132):

"The collateral inheritance tax imposed by the Act of 1887 upon the real estate is a tax upon the property itself. This clearly appears from the second proviso in the third section of the act, which is as follows: 'And provided further that the tax on real estate shall remain a lien on the real estate on which the same is chargeable until paid.' "

The New Jersey statute provides that, "All taxes levied and assessed under this act on the transfer of any real property shall be and remain *a lien on said property* until paid." (Section 5.)

New Jersey has very restricted constitutional provisions regarding matters of taxation. The constant effort of the courts has been to construe the words "Property shall be assessed for taxes under general laws by uniform rules according to its true value," in strict accord with their meaning and intent, and a law so broad as Chapter 151 must fail when attacked.

The States of Ohio, Michigan, Pennsylvania and Minnesota placed similar acts upon their statute books. All have been found void. It should here be said, in passing, that no doubt the State will contend that the State of New York, which has an act very like the 1914 New Jersey act, has found it constitutional. There is, however, such a vast difference in the language of the two constitutions as to give no force to this contention.

On this point it is said in the case of Drew vs. Tifft (Minnesota) 81 Northwestern Reporter, page 839 and at page 842, second column, near the conclusion of the opinion:

> * * * "for the constitution of the State of New York contains no limitations and restrictions upon the exercise of the power of taxation by the Legislature similar to those of our own (Minnesota) Constitution which we have considered. This difference in the constitutions of the two States seems to have been lost sight of in the adoption of the New York statute in this State, and explains why a statute which violates our Constitution in so many particulars was enacted."
>
> "New York's Constitution (1894) seems to contain no provisions requiring uniformity in taxation."
>
> Thorpe, Volume 5; page 2694.

New Jersey, it would appear, is in the same position which

Minnesota occupied before the decision just mentioned was given. This State has adopted an act very much like that of New York with a Constitution *very unlike* that of New York, and has stepped beyond the bounds set by the Constitution.

Here are set down the taxation provisions of the New York and New Jersey Constitutions:—

> NEW YORK: "Every law which imposes, continues or revises a tax shall distinctly state the tax and the object to which it is to be applied, and it shall not be sufficient to refer to any other law to fix such tax or object." (1894.)

> NEW JERSEY: "Property shall be assessed for taxes under general laws by uniform rules according to its true value." (1875.)

Ohio in 1894 passed an act entitled, "An act to impose a direct inheritance tax." (Volume 91, Ohio Laws, page 166.) It was challenged in the Supreme Court and held not constitutional. The case is State ex rel. Schwartz vs. Ferris, 41 Northeastern Reporter, page 579, and Section 3 of the syllabus (by the Court) reads as follows:

> "The act of April 20, 1894, entitled 'An Act to impose a direct inheritance tax' (91 Ohio laws, 166) by its exemption from taxation of the right to receive or succeed to estates exceeding $20,000 in value, and taxing the whole right of receiving or succeeding estates which exceed that sum in value, and in taxing at a higher rate per centum the right to receive or succeed to estates of larger value than to estates of smaller value *is in conflict with Section 2 of the bill of rights of the Constitution of this State,* which declares that: 'All political power is inherent in the people. Government is instituted for their equal protection and benefit;' and the whole act is therefore unconstitutional and void."

The purpose of the Ohio act was the same as that of New Jersey. The text of the acts are similar. The word "property" is used in the same way and manner as in Chapter 151, laws of 1914. Ohio was more generous in that it permitted a person within the degrees mentioned, to share in an estate and to receive twenty thousand dollars ($20,000) free from a tax upon this amount of property.

It is submitted that several of the questions raised in the Ohio case are identical with those in this. Reference is had to the constitutional phase of the matter. As applied to the Bill of Rights Sections (Section 2 in both instruments) is the act constitutional? Ohio's Supreme Court decided in the negative. (State v. Ferris, supra.)

Here follow the respective sections:

> OHIO: "All political power is inherent in the people. Government is instituted for their equal protection and benefit." (Section 2.)
>
> NEW JERSEY: "All political power is inherent in the people. Government is instituted for the protection, security, and benefit of the people." * * * (Section 2.)

It will be observed that the word "equal" is placed before the word "protection," in the Ohio section, but its absence from that of New Jersey does not change the meaning of the section in New Jersey; New Jersey employs the word "security," omitted from that of Ohio. Essentially, however, and for the purposes of a determination of the questions raised here, the constitutional language is the same.

The essence of State vs. Ferris, (supra) is contained in the paragraph of the syllabus before quoted, but the case is so much in point that further reference to it may be advisable. On page 583, after a discussion of the various rates of taxation under the act and the exemptions, Mr. Justice Burket says:

> "The exemption of $20,000 and the increase of the per cent. as the value of the estate increases, renders this statute unconstitutional. Our Constitution requires equality in our tax laws and also *equality in* their execution as near as may be. * * * The exemption must be equal for all, and the rate per cent. must be the same on all estates. *There can be no discrimination in favor of rich or poor. All stand upon an equality under the provisions of the Constitution, and it is this equality that is the pride and safeguard of us all.*"

"There can be no discrimination in favor of rich or poor." So says the learned Ohio judge. The New Jersey Legislature has, however, taken a totally different view. New Jersey has enacted a statute and has based the rate of taxation entirely and solely upon the wealth of the decedent. It has said that the richer the decedent the higher shall be the rate of taxation. The following illustrates this arbitrary rule of classification as applied to children:

A $250,000 daddy's child pays 3 per cent. on $245,000.

A $150,000 daddy's child pays 2 per cent. on $145,000.

A $50,000 daddy's child pays 1½ per cent. on $45,000.

A $5,000 daddy's child pays nothing.

Children of other less wealthy daddies pay nothing.

The act prescribes one rule for the rich and another for the poor and is therefore void.

Cooley Const. Lim. p. 392.

Bull v. Conroe, 13 Wis. 238.

Attention has already been called to the table prepared to show the complete operation of the statute, so far as degrees of kindred and interest in the estate are concerned.

The Ohio case (State v. Ferris, supra) cites as further holding to the same principle:

Hocking Valley Coal Company v. Rosser, 41 Northeastern Reporter, 263.

In re State v. Ferris (supra), the learned Justice (page 583, bottom of first column), further says:

> "This statute (Session Laws, Volume 91, page 166) is in direct conflict with this section (2nd) of the Bill of Rights. If government is instituted for the equal protection and benefit of the people, it follows that laws which are passed under a government so instituted must likewise be for the equal protection and benefit of the people. *"This statute fails to protect equally the people who exercise the right and privilege of receiving or succeeding to property."*

Then follows in the case, the analysis showing the inequality and non-equal protection of persons under the statute.

It is submitted that State v. Ferris (supra) is so well in point and so fair a discussion of the entire subject that great weight should be given it by this Court.

The case of Cope's Estate, (Pennsylvania, 1899) 43 Atlantic Reporter, 79, is very nearly on all fours with the one now before the Court. The tax law attacked was one practically identical with Chapter 151, and the syllabus reads in part as follows:

> * * * "that personal property of the amount of $5,000 shall be exempt from the payment of this tax in all estates" violates the Pennsylvania Constitution which holds that "all taxes shall be uniform upon the same class of subjects."

The opinion was by Mr. Chief Justice Sterrett who, at page 80, second column, last paragraph, presents a very clear discussion of the subject, and sustains his views with reference to several cited cases, some of which are referred to in this brief.

He says on page 80:

> "Having thus seen that the act in question is essentially and avowedly a 'tax law,' imposing a State tax on certain specified personal property, and providing for the collection thereof, let us briefly inquire whether it offends against the fundamental principles of taxation, or the provisions of our Constitution relating thereto. If it does, our manifest duty is to support and defend the latter by declaring the act unconstitutional. Perkins v. City of Philadelphia, 156 Pa. St. 554, 27 Atl. 356. In that case, it was well said, *inter alia,* by our Brother Dean: 'Every department of the government is bound by its (the Constitution's) provisions, but especially in this court; for on it is the duty of judicially determining any violation of it.' It is of the very essence of taxation that it should be relatively equal and uniform, and, where the burden is common, there should be a common contribution to discharge it. Cooley, Const. Law, 495. In this treatise on Taxation (2d Ed. pp. 2, 3), the same learned author says: 'In an exercise of the power to tax, the purpose always is that a common burden shall be sustained by common contributions, regulated by some fixed general rule, and apportioned by the law according to some uniform ratio of equality. The power is not, therefore, arbitrary, but rests

on fixed principles of justice, which have for their object the protection of the taxpayer against exceptional and invidious exactions, and is to have effect through established rules, operating impartially.' Equality in the imposition of the burden is of the very essence of the right, and, though absolute equality and absolute justice may not be attainable, the adoption of some rule tending to that end is indispensable. Equality, as far as practicable, and security of property against irresponsible power, are principles which underlie the power of taxation as declared ends and principles of fundamental laws.' Desty, Tax'n, 29, and cases there cited. As was well said by Mr. Justice Brewer in his dissenting opinion in Magoun v. Bank, 170 U. S. 283, 301, 18 Sup. Ct. 594, 601: 'Equality in right, in protection and in burden, is the thought which has run through the life of this nation and its constitutional enactments from the Declaration of Independence to the present hour. Of course, absolute equality is not attainable, and the fact that a law, whether tax law or other, works inequality in its actual operation, does not prove its unconstitutionality. Merchants' & Manufacturers' Natl. Bank of Pittsburg v. Pennsylvania, 167 U. S. 461, 17 Sup. Ct. 829. But where a tax law directly, necessarily, and intentionally creates an inequality of burden, it then becomes imperative to inquire whether this inequality, thus intentionally created, can find any constitutional justification."

Where similar language, especially to that of Chapter 151, was used in Pennsylvania, the Supreme Court there held the tax to be upon *property.*

Commonwealth v. Smith, 5 Pa. State 142.

Bittinger's Estate, 129 Pa. State 338, 344. (18 Atlantic Reporter, 132.)

The further Ohio case of the State v. Guilbert, 71 N. E., 636, was held constitutional, but only for the reason that the tax is "An excise tax which operates uniformily throughout the State and bears equally upon all persons standing in the same category, does not deprive any citizen of the equal protection of the laws." The act under consideration imposed no tax on an estate of less than three thousand dollars ($3,000), but taxed at a uniform rate those above three thousand dollars ($3,000). This is precisely where the acts of the two States differ, and that of New Jersey, measured by the Ohio case, is clearly void.

In this act (Chapter 151) there is a classification made by setting apart for the purposes of taxation all property of deceased persons (excepting in the case of exemptions) and the division thus made by this act is a classification within a classification. Such an act is clearly not constitutional.

In Wisconsin, a statute provided that an administrator should pay in lieu of fees to the County Treasurer of the county, for the use of the county, a sum equal to one and one-half per cent. of the estate in his hands, if worth more than $3,000. The Court held that this tax was a tax not upon the succession, but upon the property of the whole estate at its appraised valuation.

State vs. Mann, 76 Wis., 469.

In Minnesota the statute provided that each administrator should pay to the County Treasurer, for the use of the county, a tax, upon a sliding scale of $10, for all property inventoried between $2,000 and $5,000; $25 if it inventoried between $5,000 and $10,000, etc.

The constitution of the State provided that all taxes should be as nearly equal as might be, and that all property on which taxes were to be levied should have a cash valuation, and be equalized and uniform throughout the State.

The Court held that the imposition was a tax, and that the law wholly failed, in apportioning the burden imposed, to regard the constitutional rule of equality.

State vs. Gorman, 40 Minn., 432.

In New Hampshire, the power to tax is limited by the Constitution to "proportional and reasonable assessments, and taxes upon all the inhabitants and residents within the said State, and upon the assets within the same." The bill of rights provides that "every inhabitant is to contribute only his share," that is his proportional share of the common burden. The statute required that all estates settled in the Probate Court, and all transfers of property from the dead to the living by gift, bequest or devise, should pay one per cent. of the value of such estates, except.

however, that all property passing to husband, wife, children and grandchildren, was absolutely exempt.

The Court held that it was immaterial whether the exaction was a tax upon property or upon a civil right or privilege; that the same principle of equality applied to every tax alike; that the tax in any aspect was absolutely void. The Court held that if it was a property tax, it was unequal and double taxation, and if it was a tax on a civil right or privilege, it was discriminating and disproportionate.

Curry vs. Spencer, 61 N. H., 624.

Everyone's tax being his share of public expense, an unequal division of that expense is not taxation.

State v. Express Co. 60, New Hampshire, 251.

Any other scheme than an equal sharing of public expense is not in accord with the New Hampshire compact of 1783.

Thompson v. Kidder, 65 Atlantic Reporter 392.

In adopting a graded or progressive inheritance tax law from States having no such constitutional provision as exists in this State the Legislature has enacted a statute incapable of execution according to the rule required by the Constitution. In Minnesota it was found necessary to amend the Constitution before a valid statute of this kind could be enacted.

Drew vs. Tifft, 79 Minn., 175.

State vs. Bazille, 87 Minn. 500; 6 L. Rep. Ann. new series, 732.

See also Curry vs. Spencer, 61 N. H. 624; 60 Am. Rep. 337.

Portuondo's Estate, 191 Pa. St. 28.

State vs. Switzler, 143, Mo. 287.

Some taxation questions pertinent to the subject are discussed in the following New Jersey cases:

State v. Trustees, 36 N. J. L. 66.

(Opinion by Justice Depue, who quotes from Cooley, Const. Law, 495, 493 and 513; also the case of People v. Mayor, 4 Comstock, 420.)

State v. Parker, 32 N. J. L. 426.

(See paragraphs 1 and 2, page 435; also second section of syllabus; opinion also by Mr. Justice Depue.)

Williams v. Bettle, 50 N. J. L. 132.

Sisters of St. Elizabeth v. Chatham, 51 N. J. Law, 89.

(Contains an excellent discussion of the subject by the late Justice Dixon, but the case was reversed in 52 N. J. Law, 373, owing to the uses for which the property was employed.)

Little v. Bowers, 46 N. J. Law, 300.

(Affirmed 48 N. J. Law, 370.)

Attention of the Court is also directed to the case of Estate of Fox, (Michigan), 117 N. W., 558.

In this case, under the third section of the syllabus, (near the top of the first column, page 559) is said: "Public acts, 1903, p. 277, No. 195, imposing inheritance taxes and exempting transfers of personalty to lienal heirs where its value is less than two thousand dollars ($2,000) and taxing the entire transfer where the personalty is worth more than two thousand dollars ($2,000) is not constitutional, as an unjust discrimination based on an illegal classification." It is to be noted—and this should not be overlooked—that the above case is one holding that the tax is not upon property but is a tax upon the right or privilege of receiving property by inheritance.

Another Minnesota case very much in point is that of State ex rel Frye v. Bazille, 92 Northeastern Reporter, 415. This was held void "because it operates unequally as between collateral and also as between collateral and lineal descendants."

This precise situation has arisen in New Jersey. Collaterals who receive five hundred dollars ($500) or in excess, are taxed at the rate of five per cent. (5%) (Statute 1894, page 318 and amendments) without any change of rate based upon the amount received. The tax on five hundred dollars ($500) would be at the rate of five per cent. (5%); on a million dollars it would be at five per cent (5%).

The Minnesota act construed was passed after the decision in the Drew v. Tifft (supra) case. On page 416 (second column) at least some of the inequalities as created by the statute are noted and apply with equal force to New Jersey's 1914 Transfer Inheritance Tax Law.

The act (Chapter 151) is invalid if any of the following propositions are true:

First: The purpose of the act is to raise general revenue, and even if the act should be construed as levying the tax upon the privilege of succession to property, and not the property itself, it nevertheless violates an established rule of uniformity in New Jersey respecting taxes.

Second: The sole source of taxation for general revenue is property, and every tax for that purpose must, under the Constitution of New Jersey, be taxed "under general laws, by uniform rules according to its true value."

Third: The tax is nominally (and in fact) laid upon property, and as the act requires the tax to be levied unequally, it is violative of the just mentioned constitutional provisions.

Fourth: If the act should be construed as a limitation upon or regulation of the privilege of either giving or taking property by the varied methods mentioned in the act, it concerns a subject of a general nature and prescribes arbitrary and invidious classification; and it also denies "the equal protection of the laws" within Amendment XIV to the Constitution of the United States.

The constiutional provisions as to taxation in New Jersey, Ohio and Minnesota are here set down:

> Ohio: "All laws of a general nature shall have a uniform operation through the State." Schwartz v. Ferris (supra).
>
> New Jersey, (1875): "Property shall be taxed under general laws by uniform rules according to its true value."
>
> Minnesota (1894): "And provided further, that there may be by law levied and collected a tax upon all inheritances, devises, bequests, legacies and gifts of every kind and description above a fixed and specified sum of any and all natural persons and corporations." * * * State v. Gorman, 41 N. W., 948.

Any departure from this is condemned by the courts of both Ohio and Minnesota.

In Minnesota a statute was declared unconstitutional because it fixed an arbitrary scale of amounts payable as probate fees. The scale was as follows:

Estates under $2,000 were not to be taxed.

Where inventory exceeded $2,000 and did not exeed $5,000	$10
Where inventory exceeded $5,000 and did not exceed $10,000	25
Where inventory exceeded $10,000 and did not exceed $15,000	35
Where inventory exceeded $15,000 and did not exceed $20,000	50
Where inventory exceeded $20,000 and did not exceed $35.000	75
Where inventory exceeded $35,000 and did not exceed $50,000	100
Where inventory exceeded $50,000 and did not exceed $75,000	200
Where inventory exceeded $75,000 and did not exceed $100,000	300
Where inventory exceeded $100,000 and did not exceed $150,000	500
Where inventory exceeded $150,000 and did not exceed $200,000	800
Where inventory exceeded $200,000 and did not exceed $500,000	1000
Where inventory exceeded $500,000	5000

This was held to be unequal taxation and the setting up of a system of sale of justice contrary to the Constitution.

State v. Gorman, 40 Minn., 232.

And it may be said of the Gorman case (supra): The Court holds that there is no question about the power of the Legislature to require suitors to pay reasonable fees and costs, but it regards this inheritance tax as taxes in the ordinary sense of that word. The Court finds that the arbitrary sums exacted and the fact that there is no probable correspondence between the sums to be paid and the character and extent of the service which may be required, show that this payment is an exaction as "taxes."

If estates are taxable in this manner at all an exemption of estates not exceeding two thousand dollars is contrary to the requirement of the Constitution. Therefore, this statute is void as imposing a tax which is not equal.

* * * * * * * * * * *

Even if the Court should decide that Chapter 151 provides for a tax not upon property but upon the right to inherit or devolution, the statute is nevertheless a TAXATION act. It is submitted that a rule of taxation is not uniform which requires only uniformity in each particular sub-class. The burden is unequally distributed and in apportioning the burden the rule of uniformity is disregarded. This can not be under our constitutional provisions.

State v. Gorman, 41 N. W., 948.

The Railroad Tax Cases, 13 Federal Reporter, p. 722, 733, 773.

"But whatever may be the basis of the taxation, the requirement that it shall be uniform is universal."

Cooley Const. Lim. (6th Ed.) page 615.

The very definition: "Taxes are the *regular, uniform and equal* contribution which all citizens are required to make for the support of the government," (New London v. Miller, 22 Atlantic 499) indicates a departure by our Legislature from the principle of taxation. And New Jersey has gone so far in Chapter 151 as to totally disregard the rule of regularity, the rule of uniformity and the rule of equality. There is not the slightest attempt at either of these three cardinal taxation principles and no attempt is made in the act to conceal the unequality and non-uniformity.

"Equality of taxation means equality of sacrfiice. It means apportioning the contributions of each person towards the expenses of government, so that he shall feel neither more nor less inconvenience from his share of the payment than every other person experiences from his."

Mill, Pol. Econ. book 5, chapter 2, section 2.

"The subjects of every State ought to contribute towards the support of the government as nearly as possible in proportion to their respective abilities; that is the proportion to the revenue which they respectively enjoy under the protection of the State."

"Wealth of Nations," by Adam Smith, book 5, chapter 2, page 2.

There is evidence that this was the equality sought by the framers of the Constitution.

The constitutional provision does not take away from the Legislature the power of selecting the subjects of taxation; but it requires that all the members of the class selected shall be included in the taxing law, and that the rule applied thereto shall be uniform as to the whole of the class, and that the assessments shall be made at the true value of the property constituting the class; and if those requirements are not answered by the law, it is in conflict with the constitutional provision.

State Board vs. Central R. R. Co., 19 Vr. 146, (E. & A.).

In the case of State v. Readington (7 Vroom 66) Mr. Justice Depue expressed his views on this subject with the utmost directness. He said: "But it is not every exaction made under color of taxation that can be supported as the legitimate exercise of the sovereign power of taxation. It is of the very essence of taxation that it should be *equal and uniform,* and that where the burden is common there should be a common contribution to discharge it." Ib. p. 69.

But the most signal repudiation of the doctrine that as a matter of law there is no distinction to be drawn between an arbitrary exaction and taxation, is to be found in the opinion of Mr. Justice Field, sitting in the Circuit Court of the United States in the case of the County of San Mateo v. Southern Pacific Railroad, reported in 8 Am. & Eng. R. R. Cas. 1. He said: "Unequal exactions, in every form or under any pretence, are absolutely forbidden, and of course unequal taxation, for it is in this form that oppressive burdens are usually laid. It is not possible to conceive of equal protection under any system of laws when arbitrary and unequal taxation is permissible; where different persons may be taxed on their property of the same kind, similarly situated at different rates."

A law that confers equal rights on all citizens of the State or subjects them to equal burdens is an equal law.

State v. Griffin, 39 Atlantic, 260.

And it is not possible to conceive of a law drafted as Chapter 151 which could be regarded as "an equal law."

There are good reasons why the passing of property to near relatives or the gift of it to charitable purposes or directly to the public should not be subject to an exaction by the State.

Minot v. Winthrop, 38 N. E., 512.
Nunnemacher v. State, 108 N. W., 627, 637.

The case of Black v. State (Wisconsin) 1902, reported in 89 N. W., 522, decides substantially the same points as are raised in the case now before this Court. In this case (Black v. State, supra) it was found that the act was not constitutional, as it was in violation of Const. Art. 1, declaring that all men are born free and independent. This was a statute taxing all inheritance in an estate exceeding ten thousand ($10,000) dollars * * * and did not authorize the taxation of any inheritance in an estate of less than ten thousand dollars ($10,000) in value.

Cites—

Wis. Cent. R. R., 8 N. W., 833.
State v. Mann, 45 N. W., 522; 46 N. W., 51.

And on page 528, near the end of Mr. Justice Winslow's decision, are gathered many of the cases having a bearing upon the subject.

The case of Bell's Gap R. R. Co. v. Pa., 134 U. S. 232, at page 237, states a rule of classification which is not prohibited by the Fourteenth Amendment to the Federal Constitution, but adds:

> "But clear and hostile discrimination against particular persons and classes, especially such as are of an unusual character, unknown to the practice of our governments, might be obnoxious to the constitutional prohibition."

The case of Home Insurance Company v. (N. Y.) State, 134 U. S. 594, most certainly condemns a classification such as has been made by the State of New Jersey under Chapter 151.

See also—

Express Co. v. Seibert, 142 U. S. 338.
Soon Hing v. Crowley, 113 U. S. 703, at top of page 709

Being a tax on property, the New Jersey act is void as providing for general revenue for the following reasons:

(A) Because the rate is not uniform.

(B) Because it does not tax *all* property; not even the property of *all* decedents.

(C) Because there is an exemption of $5,000 but no exemption on the access where it passes to an individual.

(D) Because it provides for double taxation, by taxing the estate of a decedent a second time in the year of his demise.

(E) Because it permits a tax to be collected on the property of a deceased person situated in different counties, but only the county where the deceased lived is benefited by the five per cent. (5%) paid by the State to such county from the tax collected.

Assuming that the act provided for a succession tax, the act is, nevertheless, void as being unequal in its operation and as discriminating against persons on account of the wealth of the decedent, and so violates:—

First: The New Jersey Constitution, Bill of Rights, Section 2.

Second: Federal Constitution: Fourteenth Amendment.

The exemption of certain estates causes an inequality; and the more wealthy the parent or relative, the higher the rate of tax. *Clearly an arbitrary and unequal classification.*

There are ample authorities for the statement that if the Legislature has the power to impose a State succession tax, there is no objection to a *uniform* percentum upon the value of the property transmitted.

> Eyre v. Jacob, 73 Am. Dec. 371-7 (Va.).
> Matter of McPherson, 104 N. Y., 315.
> U. S. v. Hummewell, 13 Fed. Rep. 617.

But in Chapter 151 the *uniform* percentum has been ignored and a graded scale of taxation adopted, clearly making the act void.

*   *   *   *   *   *   *   *   *   *   *

Attention is here called to the fact that in none of the records in this case does it appear that the Prosecutor was notified of the time and place when the estate of her mother would be appraised. No such notice as prescribed by statute (Section 18, Chapter 228, Laws of 1909) was given her. No proof is offered that such notice was given.

Such a situation is quite fully discussed by Judge Cooley in his work on Taxation, pages 255, 256: "It is not to be presumed that constitutional provisions carefully framed for the protection of property were intended or could be construed to sanction legislation under which officers might strictly assess one for one amount in their discretion without giving an opportunity to contest the justice of the assessment. When the assessment is based upon value or benefits, whether it be a tax on property or succession tax, and that value is to be ascertained by appraisement, assessors or other tribunal which involves in giving notice and an opportunity for hearing, are essenial to the validity of the proceedings."

"Notice of the time and place of an appraisement must be given to all parties interested in the estate or whose interest may be affected by the imposition of the tax." * * * (This said of cases where the statute is like Section 18 of New Jersey.)

37 Cyc., 1578.

Under this heading are cited the following:

In re Backhouse, 77 Northeastern Reporter, 1181 (Affirming 110 N. Y. App. Div. 737, 96 N. Y. Supp. 466.)

Matter of Wood, 46 Misc. (N. Y.) 155, 81 N. Y. Suppl. 511.

Matter of Winters, 21 Misc. (N. Y.) 552, 48 N. Y. Suppl. 1697.

Matter of Vanderbilt, 10 (N. Y.) Suppl. 239.

2 Connoly Surv. 319.

Matter of Astor's Estate, 14 N. Y. St. 478, 6 Dem. Surv. 402.

Also Belcher's Estate, 12 Pa. Dist. 774, 11 Kulp 107.

Let it be said here that in the absence of any decisions of the courts of New Jersey construing our statute upon this subject, the construction given to the statute of New York by the Court of Appeals of that State, is followed, the statutes being similar.

In re Estate of Strong, 17 N. J. L. J. 234.

The practical application of this well founded rule is fully discussed in the cases of—

Ferry v. Campbell (Iowa) 81 N. W., 604.

Re McPherson, 104 N. Y. 321 (10 N. E., 685).

The Legislature did not overlook this matter of notice. It simply has not been observed in the taxation of this case.

* * * * * * * * * * *

Some exceedingly forceful arguments have been presented against any classification at all for taxation purposes.

Kitty Roups' Case 81 State (Pa.) p. 211, 215.
Atty. Gen. v. W. L. & F. River R. R. Co., 11 Wis. 35.
W. C. Ry. Co. v. Taylor Co., 52 Wis., 43.

It is submitted that the rates prescribed and classification attempted by this act violates our constitutional rule of uniformity.

Roups' Case 81, Pa. State, 211.
Desmond v. Dunn, 55 Cal. 242.

The privilege of inheritance does not come within the police power of the tax privileges; that power is based on the idea that the business licensed or regulated is liable to work mischief and therefore needs restraint in order to promote the public protection. The right of inheritance is not liable to work mischief.

Tenny v. Lutz, 16 Wis. 566-8.
N. F. Dep. v. Helfenstein, 16 Wis. 136.

Mr. Justice Black, of this Court, in his book on Taxation, Second Edition, Section 127, page 150, says:

"Every person everywhere, who takes by this succession, pays a tax for the privilege, and this tax is proportioned to the value of the interest which he acquires." Citing Eyre v. Jacob (supra).

This rule laid down in a leading case is clearly violated by Chapter 151.

Cooley on Taxation, pages 22-392.
Desty on Taxation, Vol. 1, page 316.
Hood's Estate, 21 Pa. St., 106.
Short's Estate, 16 Pa. St., 63.

Below is pointed out a further inequality in Chapter 151—an inequality as between the counties of the State.

A decedent resident of Mercer County may die possessed of no lands or other property whatever in that county; he may die seized of real estate in each of the other twenty (20) counties of the State. Under such circumstances, however, Mercer County would alone benefit, as the act provides that five per cent. (5%) of the tax shall revert to the county of which the decedent was a resident at the time of his death. It is of course a well settled principle that real estate is not drawn to the domicil for taxation or any other purpose, and it is submitted that a tax which is assessed on real estate, or upon its devolution, in one county, or more than one county, for the support of another county, is not constitutional and consequently void. This is entirely outside of the question of devolution of property and goes to the question of benefit to the county receiving in effect a tax or benefit from property situated beyond its borders. It will be observed that no question of devolution is embraced in such a situation, as clearly the tax collected is money and money is property. This relates to a situation where the tax has been assessed and paid and passed over by the State to the county entitled under the act to receive it. The county where the person is domiciled at the time of his death in effect receives something for nothing.

Appeal of Commonwealth, 18 Atlantic, 132.

Article 14 of the Amendments to the U. S. Constitution, provides that "no State shall 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."

(1.) The assessment or appraisal of the property to be taxed under the act in question, was made without any notice to the executor, administrator, heir devisee or legatee; no provision was made for a hearing or opportunity to be heard in reference to the valuation of his property, and the amount of the tax thus to be imposed; nor is there any provision for an appeal from the appraisal, or for an equalization of values between different estates; and the constitutional right to due process of law has been invaded.

Matter of McPherson, (supra).
Hayar v. Dis. No. 108, 111 U. S. 701.
Wallace v. Myers, 38 Fed R., 184.
Davidson v. New Orleans, 96 U. S., 104.

(2.) The act under consideration establishes an unjust and unequal discrimination, and thereby denies the equal protection of the laws.

Equality of protection implies not only equal accessibility to the courts, but equal exemption with others of the same class from all charges and burden of every kind.

In re Ah Fong, 3 Savoy, 157.
Civil Right Cases, 103 U. S., 23.

The first section of Article 1 of the Constitution provides inter alia, that:

"All men * * * have certain inalienable rights, among which are those of * * * acquiring, possessing and protecting property."

The right to acquire property is here declared to be an inalienable right, as well as the right to possess and protect it. The right to acquire and enjoy property carries with it the right of disposition. The jus disponendi is an incident of property. It is an attribute of every ownership. The right to acquire property necessarily involves the right to dispose of it. It cannot be acquired unless somebody parts with it. The right of disposition is correlative to the right of acquisition. To lay a burden on transmission or succession is to tax that which the Constitution declares to be an inalienable right.

The legal meaning of the word "property" whatever thing the term is applied to, is a right to its use, enjoyment and disposition. The right of enjoyment implies right of user and of the fruits or increase of the thing possessed. And the right of disposition carries with it the right of alteration or destruction, as also the right of alienation.

Holland's Jurisprudence, pages 176-7.

In Todd vs. Wick Brothers, 36 O. S. 385, it was said:

"In the strict legal sense 'property' whether the term is applied to things animate or inanimate, consists in the right to their use, enjoyment and dosposition."

In 1st Blackstone's Commentaries, 138, the author says:

"The third absolute right of every Englishman is that of property, which consists in the free use, enjoyment or disposal of all his acquisitions."

In 2d Commentaries, 320, Chancellor Kent says:

> "The exclusive right of using and transferring property follows as a natural consequence from the perception and admission of the right itself."

At page 326, he further says:

> "The power of alienation of property is a necessary incident to the right, and was dictated by mutual convenience and mutual wants."

Bouvier in his definition of "property" says:

> " 'Property' considered as an exclusive right to things, contains not only a right to use those things, but a right to dispose of them either by exchanging them for other things, or by giving them away to any other person without any consideration, or even throwing them away."

Austin defines property as a right over a determinate thing, indefinite in point of user, unrestricted in point of disposition and unlimited in point of duration. 2 Holland's Jurisprudence, 447.

To the same effect are:

Toledo Bank vs. Bond, 1 O. S., 662.
Babcock vs. Buffalo, 56 N. Y., 268.
Jones vs Van Zandt, 4 McLean, 603.
Wynehamer vs. People, 13 N. Y., 307.
Stevens vs. State, 2 Ark., 291.
R. R. Co. vs. R. R. Co., 115 Ill., 385.
Eaton vs. R. R. Co., 51 N. H., 511.
Kugn vs. Common Council, 70 Mich., 537.

A tax upon property which the Constitution declares shall be by uniform rule "according to its true value of money," is a tax upon the *res*, or thing, and not on the incidents of title or ownership. This is so from the very nature of the case. The only thing that is taxable under the Constitution is what would descend from ancestor to heir under the interstate laws of the State, or what is capable of being passed by will under the wills act; in other words, property capable of enjoyment.

Neither transmission nor succession have inheritable qualities. The right to acquire and the right to dispose of property and which are incidents of ownership and embraced within the meaning of the term "property" can have no "true value in money." No estimate of value can be placed upon it. No "uniform rule" can be created respecting it. The requirement that all property is to be taxed "according to its true value in money" is necessarily confined to property that has a value, and not to any of its incidents or attributes. No value can be placed upon such incidents or attributes. As well may you tax the right to acquire and possess, as the right to dispose of it.

See McCullock v. Maryland, 4 Wheat, 36, 428-429.

In County of Santa Clara vs. Southern Pacific Ry. Co. et al., 18 Fed. Rep., 385. Opinion by Field, Justice:

> "The Fourteenth Amendment of the Constitution, in declaring that 'no State shall deny to any person within its jurisdiction the equal protection of the laws,' imposes a limitation upon the exercise of all the powers of the State which can touch the individual or his property including that of taxation. 'The equal protection of the laws,' to any one, implies, not only that the means for the security of his private rights shall be accessible to him on the same terms with others, but also that he shall be exempted from any greater burdens or charges than such as are equally imposed upon all others under like circumstances. This equal protection forbids unequal exactions of any kind and among them that of unequal taxation."

In Railroad Tax Case, 8 Sawyer, 238, the opinion was delivered by Mr. Justice Field. At page 251 he says:

> "By 'the equal protection of the laws,' is meant equal security under them to every one on similar terms, in his life, his property, his liberty, and in the pursuit of his happiness. It not only implies the right of each to resort on the same terms with others to the courts of the county for the security of his person and property, the prevention and redress of wrongs and the enforcement of contracts, but also his exemp-

tion from any greater burdens or charges than such as are equally imposed upon all others under like circumstances."

These cases establish the doctrine that the exemption of five thousand dollars ($5,000) from the burden of the tax under Chapter 151 clearly denies the equal protection of the laws to those possessing property of a value exceeding that amount.

In the case of Minot et al, v. Winthrop, (Massachusetts) 38 Northeastern Reporter 512, a very novel conclusion was reached. The case is well worth attention. Judge Lathrop in the dissenting opinion presented a powerful argument in favor of the proposition that no such authority is to be derived from the power to tax what the court found to be a "commodity" and that the power in consequence does not exist.

Thus far the case before the Court is the first action brought in New Jersey as an attack upon the 1914 act (Chapter 151). The act being such a radical departure and addition to the 1894 (and amended) Collateral Inheritance Tax legislation such leading New Jersey cases as:

> Neilson v. Russell, 76 N. J. Law, 655;
> Hoyt v. Hancock, 65 N. J. Law, 688;
> Dixon v. Russell, 79 N. J. Law, 490;
> In re Hartman, 79 N. J. Eq. 664, etc.,

are of little or no assistance in a determination of the constitutionality of the law now being contested in this court; in fact, no decided cases in New Jersey are so nearly in point as the Ohio, Pennsylvania, Wisconsin and other State cases cited in this brief.

* * * * * * * * * * *

This being a statute imposing a tax, it must be construed strictly in favor of the taxpayer and against the State. This is a general rule recognized by all authorities.

> United States vs. Wigglesworth, 2 Story 269.

In the above case Judge Story laid down this rule as follows:

> "It is a general rule in the interpretation of all statutes levying taxes or duties upon subjects or citizens not to extend their provisions by implication beyond the clear import of the language used, or to enlarge the operation so as to embrace

matters *not specifically pointed out,* though standing in close analogy. In every case, therefore, of doubt, such statutes are construed most strongly *against* the *government* and in *favor* of the *subjects* or *citizens,* because burdens are not to be imposed nor presumed to be imposed beyond what the statutes expressly and clearly import."

Stevens vs. White, 181 U. S. 264.

In this case Justice Brewer used the following language:

"If there is doubt as to the liability of an instrument to taxation, the construction is in favor of the exemption, because a tax cannot be imposed without clear and express words for that purpose. There must be certainty as to the meaning and scope of language imposing any tax, and doubt in respect to its meaning is to be resolved *in favor of the taxpayer.*"

Merced vs. Helm, 102 Cal. 159.

In this case Justice Harrison said:

"All laws having for their purpose the taking of the property of an individual for public purposes must be construed strictly in favor of the individual and against the State. No presumption is to be indulged in in favor of the right to take the property, or any intention that is not distinctly expressed in the statute under which it is sought to be taken. A tax can never be extended by construction to things not named or described in the statute on the subject of taxation."

It is contended by the attorney for the County Treasurer that this rule does not apply to collateral inheritance tax. Such is not the fact.

In 27 Am. & Eng. Encyc. of Law, p. 340, the rule of construction is laid down as follows:

"The succession tax is a special tax, and the rule is that special tax laws are to be construed strictly against the government and favorably to the taxpayer, so that a citizen cannot be subjected to special burdens without clear warrant of law."

In re Harbeck's Will, 55 N. E. Rep. 851.

This was an action involving a collateral inheritance tax. The Court followed the rule that where the question is involved in doubt, the doubt should be resolved in favor of the taxpayer and against the taxing-power, and quoted from Enston's Will, 21 N. E. Rep. 87, as follows:

> "The tax imposed by the Act is not a common burden upon all the property or upon all the people within the State. It is not a general but a special tax, reaching only to special cases and affecting only special classes of persons. It is a well established rule that a citizen cannot be subjected to special burdens without the clear warrant of the law."

In re Fayerweather, 38 N. E. 280.

This was another case involving inheritance tax, and the Court said:

> "If there was a doubt upon the question, it should be resolved in favor of the taxpayer as represented by the executors and against the taxing power."

The New York Court of Appeals in this case, in laying down this rule, cited in support of it the case we have above cited from Story, to-wit, United States vs. Wigglesworth, 2 Story 269.

In re Stewart's Estate, 131 N. Y. 274 (30 N. E. Rep. 184), the New York Court of Appeals expressly affirmed the above cited rule that "where the question is whether a certain *subject of taxation* is embraced within an act, and brought within the power of taxation, the statute should be strictly construed in favor of the citizen, since it assumed to impose a special burden upon particular property and persons, and was not, in any proper sense, a general tax."

See Bull's Estate (California) 96 Pacific Reporter, 366.

This case held: "A taxing law is to be construed strictly, and this rule extends to exemptions as well as impositions."

"An inheritance tax law should be construed strictly *against* the government and in favór of the taxpayer, and a doubt as to the taxability of a particular fund should be resolved in favor of the citizen."

37 Cyc., 1556.

To this effect are:

People v. Koenig (Colorado) 85 Pacific Reporter, 1129.

Matter of Kimerley, (New York) 27 N. Y. App. Div. 470; 50 N. Y. Suppl. 586.

Respectfully submitted on behalf of the Prosecutor,

HENRY C. HUNT,
Attorney.

Dated Newark, New Jersey,
June 9, 1915.

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NEW JERSEY
Court of Errors and Appeals

ELIZABETH L. HOWELL, EXECUTRIX OF SIDNEY K. LANINGER, DECEASED, *Prosecutor-Appellant*, *vs.* EDWARD I. EDWARDS, COMPTROLLER OF THE TREASURY OF THE STATE OF NEW JERSEY, *Defendant-Respondent.*	On Certiorari. On Appeal from Supreme Court.

Brief of John W. Wescott, Attorney-General, and Herbert Boggs, Assistant Attorney-General, for Defendant-Respondent.

This writ brings up for review a transfer or inheritance tax against the estate of Sidney K. Laninger, deceased, transferred by her last will to the prosecutor, the sole devisee and beneficiary under the will. The net estate for distribution, less the $5,000 exemption, is $153,536.22, and the transfer tax thereon (the prosecutor being a child of the decedent) is $2,120.72.

(State of Case, pp. 3 and 4.) No attack is made upon the amount of the tax or the propriety or fairness of the appraisal. We understand it to be admitted that the tax is properly assessed as to amount, and that prosecutor is liable for and should pay the same, if liable to any transfer tax whatsoever.

The Supreme Court sustained the tax in question and the constitutionality of the acts.

For Opinion see State of Case, p.

The whole attack, as disclosed by the reasons, and by prosecutor's brief, with one exception hereafter noted, is upon the constitutionality of the act of 1894, the act to tax intestates' estates, gifts, legacies, etc., and the act of 1909, the act to tax the transfer of property of resident and nonresident decedents, etc. (*P. L.* 1909, *p.* 24; *Comp. Stat., p.* 5301), and the amendment of 1914 to this later act (*P. L.* 1914, *p.* 267).

The transfer tax in question and under review was assessed and levied under the provisions of the act of 1909 and the amendment of 1914. The earlier act of 1894 and its supplements and amendments therefore are not in question in this case.

I.

The first question raised in prosecutor's brief is that this tax assessed and levied under the act of 1909, and the amendment of 1914, is a property tax, and that these acts are violative of paragraph 12, section 7, article 4 of the Constitution, that "property shall be assessed for taxes under general laws, and by uniform rules, according to its true value."

But this very question has been decided by the courts of this State, and decided adversely to prosecutor's contention. *It is not a property tax. It is not a tax regulated by this section of the Constitution.*

Eastwood v. *Russell,* 81 *N. J. L.* 672, *Court of Errors and Appeals; Neilson* v. *Russell,* 76 *N. J. L.* 27.

This point is expressly decided in *Eastwood* v. *Russell, supra.* This Court held that a tax levied upon property passing by will, by virtue of the act of 1894 (the act to tax intestates' estates, gifts, legacies, devises and collateral inheritances), is not a property tax to which the provisions of the Constitution, article 4, section 7, paragraph 2, was designed to apply. Mr. Justice Voorhees, speaking for the Court of Errors and Appeals, said, at page 677: "We do not find it necessary to deal with the contention that the tax is a property tax, to which the provision of the Constitution was designed to apply. In *Neilson* v. *Russell, supra,* a legacy duty was declared to be imposed by the act. That is not a tax regulated by the above paragraph of the Constitution."

In *Neilson* v. *Russell, supra,* the Supreme Court held that "the tax imposed by the Collateral Inheritance Tax Act of this State (act of 1894) upon the passing of a decedent's property to strangers or collateral kindred is not a tax upon property, but an excise upon the devolution of property—in fine, is a succession tax."

Mr. Justice Garrison says, at p. 33, bottom, that "the impost we are considering is not a tax upon property, but is a premium or privilege upon the devolution of property—in fine, a succession tax, and that as such it rests fundamentally upon the sovereign right of a State to withhold, and hence to limit, the right of testamentary disposition or of intestate succession." And again, on p. 34: "Constitutionally they (succession taxes) rest, as before indicated, upon the doctrine that the rights of testamentary disposition and of succession are creatures of law, upon the exercise and operation of which the lawmaker may impose terms."

Also, see *United States* v. *Perkins,* 163 *U. S.* 625; *Mager* v. *Grima,* 49 *U. S.* 490; *State* v. *Dalrymple,* 70 *Md.* 294, and cases cited by Justice Garrison, in *Neilson* v. *Russell,* at page 35.

This decision of the Supreme Court was overruled by the Court of Errors and Appeals, same case, 76 *N. J. L.*

677, but not upon this question. And in *Dixon* v. *Russell*, 79 *N. J. L.* 490, Chief Justice Gummere, speaking for this Court, says (p. 492): "We do not doubt the power of the State to impose a succession tax where the succession is by reason of death, without regard to the domicile of the decedent from whom the property passes, provided that the property which is the subject of the succession is within the jurisdiction of the State."

True, these decisions of this State do not directly pass upon the act of 1909 and its amendment of 1914, but they are none the less decisive upon their constitutionality. The earlier act of 1894 imposed a legacy duty, while the act 1909 is, as its title shows, a tax upon the transfer of property by testamentary disposition or by succession, essentially a succession and not a property tax; in the language of Justice Garrison, in *Neilson* v. *Russell, supra,* a premium or privilege upon the devolution or transfer of property, resting fundamentally upon the sovereign right of the State to withhold, and hence to limit, the right of testamentary disposition or of intestate succession.

II.

The second point made by prosecutor is that the act of 1909 and the amendment of 1914 are constitutionally inefficacious, because they violate the Fourteenth Amendment to the United States Constitution, and also paragraphs one and two of Article I of the State Constitution, in that they prescribe arbitrary and unequal classification and arbitrary and unequal exemptions.

The act of 1909 imposes a duty or tax of five per cent. upon the transfer of any property, real or personal, of the value of five hundred dollars or over, but excepts from the operation of the act lineal descendants and certain classes of collateral and other relatives and connections. The amendment of 1914 brings within the act these classes exempted by the original act, but grants to them an exemption of five thousand dollars, and imposes a lesser tax, the rate increasing with the value of the property transferred. The prosecutor comes under the act of 1914. She (a daughter) would not be taxable under the original act. It is this discrimination which the prosecutor conceives is in violation of the constitutional provisions above referred to.

As to the Fourteenth Amendment, this very question has been decided by the Supreme Court and similar legislation held not in conflict with that provision. *Magoun* v. *Illinois Trust & Savings Bank,* 170 *U. S.* 283.

The inheritance tax law of Illinois of 1895 was under consideration in that case. The statute provided for a tax of one per cent. where the beneficial interest to any property or income therefrom passed to or for the use of any father, mother, husband, wife, child, brother, sister, wife or widow of a son, or husband of a daughter, or adopted child or children, or to whom the deceased stood in the acknowledged relation of a parent, or to any legitimate lineal descendant, but exempted all estates valued at less than twenty thousand dollars. A tax of two per cent. was imposed where the property or income passed to any uncle, aunt, niece, nephew or lineal descendant of the same, exempting two thousand dollars in value. In all other cases the rate was made three per cent. on ten thousand dollars and less; from ten thousand to twenty thousand dollars, four per cent.; from twenty to fifty thousand dollars, five per cent., and all over fifty thousand dollars, six per cent., an exemption, however, being made for any sum less than five hundred dollars. The Court held this statute within the legislative power and not in conflict in any way with the provisions of the Constitution of the United States. Says Mr. Justice McKenna (p. 296):

> "There are three main classes in the Illinois statute, the first and second being based, respectively, on lineal and collateral relationship to the testator or intestate, and the third being com-

posed of strangers to his blood and distant relatives. * * * The first two classes, therefore, depend on substantial differences, differences which may distinguish them from each other, and them or either of them from the other class —differences, therefore, which 'bear a just and proper relation to the attempted classification'— the rule expressed in the *Gulf, Colorado & Santa Fe Railway* v. *Ellis,* 165 *U. S.* 150. And if the constituents of each class are affected alike, the rule of equality prescribed by the cases is satisfied. In other words, the law operates 'equally and uniformly upon all persons in similar circumstances.' "

And again (p. 299);

"The first and second classes, therefore, of the statute depend on substantial distinctions and their classifications are not arbitrary. Nor do the exemptions of the statute render its operation unequal within the meaning of the Fourteenth Amendment."

Paragraph 1 of Article I of the State Constitution, which secures the right of acquiring, possessing and protecting property, clearly does not apply to a case of property acquired by will or by the intestate laws, and while the right of possessing property necessarily includes the right of disposition, it does not include the right of disposition of property by a testamentary instrument taking effect after death or by a statute which prescribes how property shall pass in case of intestacy. As held in the cases above cited, the rights of testamentary disposition and of succession are creatures of law upon the exercise and operation of which the Legislature may impose terms. The Bill of Rights, as crystallized by the Constitution of 1844, certainly did not intend to abrogate this legislative power, or to confer upon the individual, as a constitutional right, the power of testamentary disposition.

III.

The prosecutor also contends, in her brief (pp. 19, bottom, to 21, top), that it does not appear in the record in the case that prosecutor was notified of the time and place when and where the estate would be appraised; that the record does not show that the notice prescribed by section 18 of the act of 1909 was given.

(1.) This section provides that "every such appraiser (appointed by the Comptroller to appraise the estate) "shall forthwith give notice, by mail, to such persons as the Comptroller of the Treasury of this State shall direct, of the time and place when and where he will appraise such property. He shall, at such time and place, appraise the same at its fair market value," etc.

This question of want of notice of appraisal is not raised by any of the reasons assigned. It cannot be considered under the general reason, because it is not apparent upon the record. The only record is the return to the writ, and that shows only the assessment of the tax by the Comptroller. If the return did not, in fact, send up the whole record in the custody of the Comptroller, to whom the writ was directed, the prosecutor should have alleged diminution of the record and obtained an order upon the Comptroller. As the record stands before this Court there is nothing from which the Court can find either that notice was served or was not served. Nor is the burden upon the defendant in certiorari to show that the notice was served. The prosecutor attacks the validity of the tax assessed; it is upon her to show, by affirmative proof, wherein it is invalid.

The notice and proof of service would not be part of the record in custody of the Comptroller brought up by the writ. The appraiser makes report in writing to the Comptroller of his appraisal of the property and of the market value. He is not required to make proof to the Comptroller of the service of notices. If, in fact, notice was not served upon prosecutor, she should have proved this under an order to take depositions. As the record is now before the Court, there is nothing to show that notice was not served, and the presumption should be in the absence of any proof, that the statutory requirements were complied with, and that the tax was regularly assessed.

(2.) The statute merely requires the appraiser to give notice to such persons as the Comptroller shall direct. If the Comptroller fails to direct, no notice is to be given. It is discretionary with the Comptroller to direct notice, and if notice be not directed or given, the mere omission cannot invalidate the tax, where it is not claimed that the appraisal and assessment are excessive, where no injury is caused by the omission. It is not claimed, in this case, that the estate was overvalued or assessed. It is admitted that the tax assessed is proper, if the property of prosecutor, or any of it, is liable to the tax. No reduction is claimed or asked for.

(3.) The return, as amended, shows the report and appraisal, and an affidavit of the prosecutor, filed with the appraiser, setting forth the property and a valuation thereof. A comparison of the appraisal with the affidavit shows that the property of the estate was valued and appraised at prosecutor's own figures.

Whether or not, then, prosecutor received any statutory notice, she was not injured; she was, in fact, heard upon the value of the property, and her own valuation was adopted.

IV.

As to question raised by prosecutor, on pp. 21 and 22 of brief, that 5 per cent. of the tax collected is to be paid to the county wherein decedent resided, and that this creates an inequality between the several counties, it is enough to say that the act providing for these payments is a separate and distinct act, with separate title. Its validity or invalidity can in no way affect the validity of the act of 1909 and the amendment of 1914, or the taxes levied and assessed thereunder.

These payments are provided for by Chapter 238, p. 375, of the Laws of 1909, "An act to provide for the payment to counties of five per centum of transfer taxes collected."

V.

The second of the reasons assigned (Case, p. 6), attacking the title, for the reason that the purpose is not stated with clearness or certainty, not being in any way discussed, or even referred to in prosecutor's brief, may be regarded as abandoned, and, therefore, will not be considered herein.

Respectfully submitted,

JOHN W. WESCOTT,
Attorney-General.
HERBERT BOGGS,
Assistant Attorney-General.

New Jersey Supreme Court.

NEW JERSEY SS.

(SEAL)

The State of New Jersey to Edward I. Edwards, Comptroller of the Treasury of the State of New Jersey.

We, being willing for certain reasons to be certified of a certain appraisement, assessment or fixing of a transfer inheritance tax upon the property of the estate of Sidney K. Laninger, or on the property passing under her will to the beneficiary thereof.

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 first Tuesday of June next, said appraisement, assessment and order fixing said taxes, 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.

Witness William S. Gummere, Chief Justice of our Supreme Court, at Trenton, this fifth day of March, nineteen hundred and fifteen.

WM. C. GEBHARDT,
Clerk.

HENRY C. HUNT,
Attorney.

NEW JERSEY SUPREME COURT.

ELIZBETH L. HOWELL, Individually and as Executrix under the will of Sidney K. Laninger, Deceased, *Prosecutrix,* vs. EDWARD I. EDWARDS, Comptroller of the Treasury of the State of New Jersey, *Defendant.*	*On Certiorari.* *Return to Writ.*

I, Edward I. Edwards, pursuant to the command of the within writ and for a return thereto, do hereby annex copies of all the papers relating to the transfer or inheritance tax levied against the estate of Sidney K. Laninger, as within I am commanded.

EDWARD I. EDWARDS,
Comptroller of the Treasury of the State of New Jersey.

CHAPTER 228, LAWS 1909

AS AMENDED AND SUPPLEMENTED BY CHAPTER 57 AND CHAPTER 151, LAWS OF 1914.

TRANSFER INHERITANCE TAX.

ASSESSMENT.

Estate of Sidney K. Laninger, of Essex County.
Late Resident of Newark. Date of Death, April 18th, 1914.

Amount of Estate	Real	143,000.00	$
	Personal	18,052.01	161,052.01
Debts, Expenses, &c.			2,515.79
Net Estate for Distribution			158,536.22
Exempt Interests			5,000.00
Taxable Interests			153,536.22
Will or Intestate, Tax			$2,120.72

Items of Will	Beneficiaries and Requests	Relationship	Age	Value of Life Estate or Annuity	Exempt	Taxable
1	Payment of Debts			$	$	$
2	Entire estate to Elizabeth Howell, Daughter.				5000.00	153,536.22
	$45,000.00 @ 1 % $450.00					
	$100,000.00 @ 1½% $1500.00					
	$8,536.22 @ 2 % $170.72					
	$153,536.22 $2120.72					

Endorsed:

Filed Apr. 26, 1915.

WM. C. GEBHARDT,

Clerk.

NEW JERSEY SUPREME COURT.

ELIZABETH L. HOWELL, Executrix of Sidney K. Laninger, Deceased, *Prosecutrix,* vs. EDWARD I. EDWARDS, Comptroller, et als., *Defendants.*	*On Certiorari.* *Reasons.*

The said Prosecutrix, by Henry C. Hunt, her attorney, comes and prays that the assessment of the direct transfer tax made against her as executrix of Sidney K. Laninger, deceased, may be set aside, reversed and for nothing holden, for the following reasons:

First: Because the property and estate of the aforesaid deceased, passing under her last will and testament is not taxable, nor is the right of succession thereto under an act of the New Jersey Legislature 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 (20th) one thousand nine hundred and nine (1909) being Chapter 228 of the Session Laws of New Jersey for the year nineteen hundred and nine (1909) effective the fourth (4th) day of July, nineteen hundred and nine (1909), nor is the right of succession thereto under certain amendments to said act effective March twenty-sixth (26th) nineteen hundred and fourteen (1914) and effective April eighth (8th) nineteen hundred and fourteen (1914) being Chapter 57, Chapter 58, Chapter 59, and Chapter 151 of the Session Laws of New Jersey for the year nineteen hundred and fourteen (1914) is not properly included within said act nor the assessment or levy of a Transfer Inheritance Tax under the said statute, or amendments thereto or supplements thereto.

Second: Because said statute, amendments, and supplements are unconstitutional, for the reason that the purpose of the same is not stated with certainty nor clearness in the title or caption of said act, and that the title of said act does not clearly state its subject matter.

Third: Because said statute, amendments and supplements are unconstitutional for the reason that said statute, amendments and supplements impose a property tax, thus violating articles four (4) and seven (7) of the New Jersey Constitution, as amended in the year eighteen hundred and seventy-five (1875), which amended constitution provides that "Property shall be assessed for taxes under general laws of uniform rules, according to its true value," and that said act arbitrarily exempts persons within the degree of relationship mentioned who take or receive an interest in the estate of a deceased person of less than five thousand dollars ($5000) and imposes a transfer inheritance at various rates upon the excess of five thousand dollars ($5000). such rate being contingent upon: (a) the amount received; (b) the degree of relationship existing between the deceased and the beneficiary, distributee or heir at law; and by reason of such irregularity of rule, the said statute, amendments and supplements are unconstitutional, and void.

Fourth: Because said statute, amendments, and supplements give no right of appeal to the Prosecutor to review the imposing of said tax.

Fifth: Because said statute, amendments, and supplements are unconstitutional, being in violation of section two (2) of the Bill of Rights Section of the New Jersey Constitution, wherein it is provided that:

"All political power is inherent in the people. Government is instituted for the protection, security and benefit of the people." * * * * * * * * *

Sixth: Because said statute, amendments and supplements are unconstitutional, being in violation of the first (1st) section of the Fourteenth (14th) Amendment of the Constitution of the United States, which provided that no state shall "deny to any person within its jurisdiction the equal protection of the laws."

Seventh: Because said tax and assessment thereunder is in all respects illegal, erroneous and contrary to law and should be set aside and for nothing holden.

HENRY C. HUNT,
Atty. of Prosecutrix.

NEW JERSEY SUPREME COURT.

June Term, 1915.

ELIZABETH L. HOWELL, Executrix of Sidney K. Laninger, Deceased,
Prosecutor,
vs.
EDWARD I. EDWARDS, Comptroller, et als.,
Respondents.

Submitted June term, 1915. Decided Dec. 1915.

On certiorari.

Before Justices Parker, Minturn and Kalisch.

For the prosecutor, Henry C. Hunt.

For the respondents, John W. Westcott, Attorney General, and Herbert Boggs, Assistant Attorney General.

The opinion of the court was delivered by Kalisch, J.

OPINION.

A transfer tax of $2,120.72 was assessed and levied against the estate of Sidney K. Laninger, deceased, transferred by her last will to the prosecutrix, sole devisee and beneficiary under the will and a daughter of the decedent.

The prosecutrix challenges the constitutionality of the acts of 1909 and 1914 under which the transfer tax was levied.

Indirectly the constiutionality of the act of 1894 is also attacked.

The act of 1894 is entitled "An Act to tax intestates' estates, gifts, legacies, devises and collateral inheritance in certain cases. P. L. 1894, p. 318.

The constitutionality of this act was considered in Neilson v. Russell, 76 N. J. L. 27, and in Eastwood v. Russell, 81 N. J. L., 672 (Court of Errors and Appeals) and held to be constitutional. Although Neilson v. Russell was reversed by the Court of Errors and Appeals, it was on a point which left the fundamental question as to the constitutionality of the act, decided by the Supreme Court, unimpaired.

The objections made by the prosecutrix against the constitutionality of the acts of 1909 and 1914, are in all respects the same, with the exception of the one which involves a consideration of the Fourteenth Amendment to the Constitution of the United States, as were levelled against the constitutionality of the act of 1894, and which were decided against the prosecutors' contentions in the cases above referred to. The act of 1909 is 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," P. L., p. 325.

The act of 1914 is entitled, "An Act to amend 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 20, 1909. P. L. 1914, p. 267.

The basic principle on which the act of 1894 was held to be constitutional is preserved intact in the acts of 1909 and 1914, which latter acts are now challenged by the prosecutor on the ground that they are violative of paragraph 12, section 7, article 4 of the Constitution, which declares that property shall be assessed for taxes under general laws and by uniform rules, according to its true value." But this question is no longer open to discussion, since the declaration of the Court of Errors and Appeals on this topic in Eastwood v. Russell, *supra*.

In that case, in an opinion by the late Mr. Justice Voorhees, the court held that a tax levied upon property passing by will by virtue of the act of 1894 is not a property tax to which the provision of the constitution invoked in the present case by the prosecutrix was designed to apply.

In Neilson v. Russell, *supra*, Mr. Justice Garrison, speaking for the Supreme Court, on p. 33, says: "Examination will show that the concensus of judicial opinion is that the impost we are considering is not a tax upon property, but is a premium or privilege upon the devolution of property in fine, a succession tax, and that as such it rests fundamentally upon the sovereign right of a state to withhold, and hence to limit the right of testamentary disposition or of intestate succession."

But it is further argued for the prosecutrix that the acts of 1909 and 1914 are in violation of the Fourteenth Amendment to the Constitution of the United States and also of paragraph one and two of article one of the State Constitution, in that said acts prescribe arbitrary and unequal classification and arbitrary and unequal exemptions.

As a demonstration of this assertion it is pointed out that the prosecutrix was a daughter of the decedent and as such under the act of 1909, which imposes a duty or tax of five per cent. upon the transfer of any property real or personal of the value of five hundred dollars or over, but excepts from the operation of the act lineal descendants and certain classes of collateral and other relatives and connections, she was exempt and that therefore the transfer was not taxable; that the effect of the act of 1914 was to make those previously exempt under the act of 1909 subject to a duty or transfer tax, the rate of tax being graded on the value of the property transferred, increasing in rate with the increase in value of the property transferred, and that this is unlawful discrimination in violation of the constitutional provisions referred to.

The like character of attack was made on the inheritance tax law of the State of Illinois, a statute similar in its provisions to the acts under consideration, and the Supreme Court of the United States, in an opinion by Mr. Justice McKenna, decided that that act was not in conflict with the Fourteenth Amendment to the Constitution of the United States, Magoun v. Illinois Trust and Savings Bank, 170 U. S. 283, 296.

Section one of the Illinois statute provided, *inter alia,* that when the beneficial interest in any property or income therefrom passed to or for the use of any father, mother, husband, wife, child, brother, sister, wife or widow of a son or husband of a daughter, or adopted child or children or to whom the deceased, for not less than ten years prior to death stood in the acknowledged relation of a parent or to any lineal descendent born in lawful wedlock for a rate of tax of one dollar on every hundred dollars of the clear market value of such property, but exempted all estates valued at less than twenty thousand dollars. When such beneficial interest or income passed to any uncle, aunt, niece, nephew or any lineal descendant of the same a rate of tax of two dollars on every hundred of the clear market value of such property on the excess of two thousand dollars received by each of such persons. In all other cases the rate was declared to be, as follows: "On each and every hundred dollars of the clear market value of all property and at the same rate for any less amount; on all estates of ten thousand dollars and less, three dollars; on all estates of over ten thousand dollars and not exceeding twenty thousand dollars, four dollars; on all estates over twenty thousand dollars and not exceeding fifty thousand dollars, five dollars; on all estates over fifty thousand dollars, six dollars; Provided, that an estate in the above case which may be valued at a less sum than five hundred dollars shall not be subject to any duty or tax."

The above text of the Illinois statute paraphrased and quoted by a comparison with the provisions of the acts of 1909 and 1914 relating to the same subject matter will make it plain that the case of Magoun v. Illinois Trust and Savings Bank, *supra,* fully disposes of the objections made by the prosecutrix in the present case, against the contention of the prosecutrix that the acts of 1909 and 1914 are in conflict with the Fourteenth Amendment of the Constitution of the United States.

The reasoning of Mr. Justice McKenna in the case referred to is peculiarly applicable to the situation presented here. On p. 296, discussing the Illinois statute, he says: "There are three main classes in the Illinois statute, the first and second being based, respectively, on lineal and collateral relationship to the testator or intestate, and the third being composed of strangers to his blood and distant relatives." The first two classes, therefore, depend on substantial differences, differences which may distinguish them from each other, and them or either of them from the other class—differences, therefore, which bear a just and proper relation to the attempted classification—the rule expressed in the Gulf, Colorado & Sante Fe Railway v. Ellis, 165 U. S. 150. And if the constituents of each class are affected alike, the rule of equality prescribed by the cases is satisfied. In other words, the law operates equally and uniformly upon all persons in similar circumstances."

And again, on p. 299, the learned justice says:

"The first and second classes, therefore, of the statute depend on substantial distinctions and their classifications are not arbitrary. Nor do the exemptions of the statute render its operation unequal within the meaning of the Fourteenth Amendment."

As to the further contention of the prosecutrix that the acts of 1909 and 1914 are in contravention of paragraph one, article one of the State Constitution, which secures the right of acquiring, possessing and protecting property, we are unable to perceive under the cases above cited, any applicability of the constitutional provision invoked to the matter in hand.

Another ground of attack upon the legality of the proceeding under review is that it does not appear in the record of the proceeding that the prosecutrix was notified of the time and place when and where the estate would be appraised; that the record does not show that the notice prescribed by section 18 of the act was given. A complete answer to this is that there is no reason assigned by the prosecutrix which raises the question. Furthermore it appears by an amended return to the writ that the prosecutrix had notice of the appraisement and assisted in making the the same, as appears by her affidavit, made as to the value of certain stocks which were being appraised.

There is no claim that the appraisal as made is not fair and just.

Lastly, it is argued, by counsel for prosecutrix, that the assessment is invalid because by Chapter 238 of the laws of 1909, p. 375, five per cent. of the assessment is to be paid to the county wherein decedent resided, and therefore an inequality is created between the several counties. We are unable to see how that can affect the validity of the acts under which the assessment was made. The statute providing for the payment of the five per cent. to the county where the decedent resided is an entirely independent one and therefore, whether it be valid or not, cannot in anywise affect the validity of the levy of the assessment under review.

A reason assigned by the prosecutrix, but which was not argued in the brief, is that the act of 1909 is unconstitutional because the title of the act does not state its object with clearness and certainty. We have given it no consideration, assuming that it was not relied on.

Finding no error in the proceedings the assessment will be affirmed, with costs.

NEW JERSEY SUPREME COURT.

ELIZABETH L. HOWELL, Executrix of Sidney K. Laninger, Deceased,
Prosecutor,
vs.
EDWARD I. EDWARDS, Comptroller of the Treasury of the State of New Jersey,
Defendant.

On Certiorari. Rule for Judgment.

This matter coming on to be heard before the Court, in the presence of Henry C. Hunt, Esq., of counsel for prosecutor, and Herbert Boggs, Esq., Assistant Attorney General, of counsel for defendant, and the Court having heard the arguments of counsel and considered the matter, are being of opinion that the certiorari heretofore allowed in the above-entitled matter should be dismissed and the tax affirmed,

It is ordered that the certiorari heretofore allowed in the above-entitled matter be and the same is hereby dismissed and the tax affirmed.

Entered January 4, 1916,

On motion of Herbert Boggs,
Assistant Attorney General.

A true copy.
WM. C. GEBHARDT,
Clerk.

NEW JERSEY SUPREME COURT.

ELIZABETH L. HOWELL, Executrix of Sidney K. Laninger, Deceased, *Prosecutor,* vs. EDWARD I. EDWARDS, Comptroller, et als., *Defendants.*	*Notice of Appeal.*

To Honorable John W. Westcott,
Attorney of Defendants.

Take notice that the prosecutor appeals to the Court of Errors and Appeals from the whole of the judgment entered in this cause.

HENRY C. HUNT,
Attorney of Prosecutor.

Dated, February 1st, 1916.

Endorsed:

"Service of within notice acknowledged, Feb. 7, 1916.

JOHN W. WESTCOTT,
Atty. of Deft.

NEW JERSEY COURT OF ERRORS AND APPEALS.

ELIZABETH L. HOWELL, Executrix, etc.,
Appellant,
vs.
EDWARD I. EDWARDS, Comptroller, et als.,
Respondents.

On Appeal.
Stipulation.

An appeal having been taken by the relator in the above-stated cause from the judgment rendered in said cause in the Supreme Court;

It is hereby stipulated and agreed that the said cause shall not be brought on for argument before the June, 1916, term of Court of Errors and Appeals, and that the reasons, state of the case and other proceedings shall be served as if the appeal were taken to said June, 1916, term.

Dated, February 16th, 1916.

HUNT & ANDERSON,
Attorneys of Appellant.

JOHN W. WESCOTT,
Attorney General,
Attorney of Respondents.

NEW JERSEY COURT OF ERRORS AND APPEALS.

ELIZABETH L. HOWELL, Executrix of Sidned K. Laninger, Deceased, *Prosecutor, Appellant,* vs. EDWARD I. EDWARDS, Comptroller, et als., *Respondents, Appellees.*	*On Appeal. Notice of Argument.*

SIR:

TAKE NOTICE OF the argument of the issue joined in this cause before the Court of Errors and Appeals of New Jersey to be held at the State House in the City of Trenton, State of New Jersey on the third Tuesday of June next at eleven o'clock in the forenoon or as soon thereafter as the said Court can attend to the same.

Dated, May 27th, 1916.

To

HON. JOHN W. WESTCOTT, Attorney General,
Attorney of the Comptroller, Respondent, Appellee.

Yours respectfully,

HENRY C. HUNT,
Attorney of the
Prosecutor, Appellant.