INDEX.

Notice and Grounds of Appeal.

Filed January 30, 1917.

New Jersey Supreme Court.

SECURITY TRUST COMPANY, Executor of the Last Will and Testament of Leonard Morse, deceased, *Prosecutor,* *vs.* EDWARD I. EDWARDS, Comptroller of the Treasury of the State of New Jersey, *Defendant.*	*On Certiorari.* *Notice and Grounds of Appeal.*

TO MESSRS. LUM, TAMBLYN & COLYER,
Attorneys of Prosecutor.

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

1. Because the Supreme Court set aside and for nothing held the transfer or inheritance tax levied and assessed upon the estate of the above named Leonard Morse, deceased, whereas it should have affirmed in all things the said appraisement, assessment and tax, with costs.

2. Because the Supreme Court erred in holding that there was no transfer of the New Jersey stocks pledged in the lifetime of said Leonard Morse, deceased, by his last will and testament.

3. Because the Supreme Court should have held that the interest of the said Leonard Morse, deceased, in the New Jersey stocks pledged by him in his lifetime, was comprehended within the meaning of the words "shares of stock of corporations of this State," the transfer thereof by will is subject to tax under the provisions of an act entitled "An act to tax the transfer of property, of resident and non-resident decedents, by devise, bequest, descent, distribution by statute, gift, deed, grant, bargain and sale, in certain cases," approved April twentieth, one thousand nine hundred and nine, and the supplements and amendments thereto.

4. Because the Supreme Court should have held that the transfer by the will of said Leonard Morse, deceased, of his "interest" in the "shares of stock of corporations of this State," pledged by him during his lifetime, was a transfer upon which a tax is imposed by said statute, and the supplements and amendments thereto.

5. Because the Supreme Court erred in not holding that the debt should be considered as satisfied out of the shares of stock of corporations of other states.

Respectfully yours,

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

Service of within notice and grounds of appeal acknowledged January 27, 1917.

LUM, TAMBLYN & COLYER,
Attorneys of Prosecutor.

Writ of Certiorari.

Allowed January 26, 1916.

Returnable February 15, 1916.

New Jersey Supreme Court.

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 the transfer inheritance tax upon the transfer of shares of stock in New Jersey corporations standing in the name of Leonard Morse, deceased, and passing under his last will and testament to the beneficiaries therein named, made the thirtieth day of December, nineteen hundred and fifteen, do command you that you send under your hand and seal to our Justices of our Supreme Court of Judicature, at Trenton, on the third day of February 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.

Writ of Certiorari.

WITNESS WILLIAM S. GUMMERE, Esquire, Chief Justice of our Supreme Court, at Trenton the 27th day of January, A. D. nineteen hundred and sixteen.

WM. C. GEBHARDT,
Clerk.

LUM, TAMBLYN & COLYER,
Attorneys.

Allocatur, January 26, 1915.

SAMUEL KALISCH, *J. S. C.*

Return.

Filed February 15, 1916.

NEW JERSEY SUPREME COURT.

SECURITY TRUST COMPANY, a corporation, executor of the last will and testament of LEONARD MORSE, deceased, *Prosecutor,* *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 Leonard Morse, deceased, as within I am commanded.

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

Transfer Tax.

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

Estate of Leonard Morse.
Late of Hartford, Conn.
Executor, The Security Trust Company,
Post-office address, Joseph F. McCloy, 20 Vesey St., New York City.
Date of death of decedent, April 2, 1915.

SHARES OF STOCK IN NEW JERSEY CORPORATIONS.

Number of Shares. Pfd.	Com.	Name of Company.	Market Value.	Total.
100	——	Bethlehem Steel Company.....	$104.50	$10,450.00
68	——	Allis Chalmers Company.....	45.00	3,060.00
——	306	Allis Chalmers Company.....	11.50	3,519.00
——	100	United States Steel Corp.....	48.00	4,800.00
Cap. stock				
100		Amalgamated Copper Company..	62.00	6,200.00
5		Copper Range Consolidated Co...	44.00	220.00
				$28,249.00

Decedent's equity in above stock $11,507.00

Interests taxable:

Entire estate passes to collateral heirs $24,767.67

.05

$1,238.38

.426

$527.55—tax.

Appraised value of estate .....$27,018.64 $11,507.00 .426

Deductions 2,250.97

Net estate.....$24,767.67

Total appraised value of shares in New Jersey corporations $11,507.00

Tax payable if decedent had lived in New Jersey and all the property had been located in this State.....	1,238.38
Percentage of whole estate invested in New Jersey stocks.....	.426
Tax due New Jersey.....	527.55

STATE OF NEW JERSEY,
TRANSFER INHERITANCE TAX.
NON-RESIDENT DECEDENTS.

In the Matter of the Estate of LEONARD MORSE, deceased, late of Hartford, } *Affidavit of Executor.*

STATE OF CONNECTICUT, }
COUNTY OF HARTFORD, } *ss.*

I, Francis Parsons, of the City of Hartford, in said County and State, being duly sworn, depose and say:

That I am Vice-President and Trust Officer of Security Trust Company, a corporation organized under the laws of the State of Connecticut, having its office in said City of Hartford, which said corporation is the duly appointed and qualified executor of the will of Leonard Morse, above named, who died a resident of the said City of Hartford, on April 2nd, 1915, leaving a last will and testament.

That letters testamentary upon the estate of said decedent were duly issued to Security Trust Company by the Court of Probate in and for the District of Hartford in the State of Connecticut, to which jurisdiction in that behalf belong, and no application for letters testamentary, ancillary or otherwise has been made to any Court in the State

of New Jersey, nor is it necessary to apply for or have issued such letters within the State of New Jersey in order to administer the estate of said decedent.

Total amount of real estate, less mortgages, Schedule A..... None.

Total amount of personal estate, Schedule B $1,458.85

Total amount of estate wherever situate.. 1,458,85

Total amount of unsecured debts(exclusive of mortgages on real estate), including funeral, administration and other expenses, detailed in Schedule C 2,250.97

Net estate .....$

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

Real estate, less mortgages..... None.

Personal estate (within purview of the act) $220.00

Total amount of real and personal estate subject to jurisdiction of the State of New Jersey, Schedule D (within purview of Tax Act)..... $220.00

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

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

NAMES. Relationship.	Survived decedent. State yes or no.	Age of life tenants or Annuitants at Death of Decedent.	Interest of Benficiary in Estate.
Marie A. Ashmead, no relation.	Yes	.....	Income for life in trust fund of $7,000, as per paragraph 2d of will.
Board of Park Commissioners, no relation.	Yes.	.....	Entitled to $5,000, under 3d paragraph of will.

Hartford Public Library, no relation	Yes.	.....	Entitled to $5,000, under 3d paragraph of will.
Clara Morse Partridge, niece	Yes.	.....	Entitled to 1-5 undivided share of residue including remainder after life estate of Marie A. Ashmead above.
Ernest C. Morse, nephew.	Yes.	.....	Entitled to 1-5 undivided share of residue including remainder after life estate of Marie A. Ashmead above.
Alice Morse, niece.	Yes.	.....	Entitled to 1-5 undivided share of residue including remainder after life estate of Marie A. Ashmead above.
Josie Morse, niece.	Yes.	.....	Entitled to 1-5 undivided share of residue including remainder after life estate of Marie A. Ashmead above.
Henry James Potter, nephew.	Yes.	.....	Entitled to 1-5 undivided share of residue including remainder after life estate of Marie A. Ashmead above.

Deponent further says that all of the above named beneficiaries survived the decedent with the exception of———no exception.

That hereto annexed and marked Schedule E is a true copy of the *Lat* Will and Testament of said decedent.

That at the time of said decedent's death he had pledged with the Phoenix National Bank of Hartford, Conn., as security upon his note the following shares of New Jersey corporations.

100 shares Bethlehem Steel Co. pfd.....	$10,450.00
68 shares Allis Chalmers, pfd.....	3,060.00
306 shares Allis Chalmers, com.....	3,519.00
100 shares Amalgamated Copper Co.....	6,200.00

100 shares U. S. Steel Corp., com.....		4,800.00
5 shares Copper Range Consolidated Co.		220.00

That the said Amalgamated Copper Company has been dissolved and the stock thereof is in process of exchange for an equal number of shares par $50.00 of the Anaconda Copper Mining Company.

That at the time of said decedent's death he had also pledged with the said Phoenix National Bank of Hartford, Connecticut, as security for a note, the following securities:

40 shs.	Farmington River Power Co.	@48	$1,920.00
162 shs.	Nevada Con. Copper Co.	@12¾	2,065.50
50 shs.	Torrington Co., com...	@29	1,450.00
50 shs.	Torrington Co., com...	@29	1,450.00
90 shs.	Anaconda Copper Co..	@28½	2,565.00
25 shs.	Amer. Agri. Chemical Co., com.	@50	1,250.00
300 shs.	Bigelow-Hartford Carpet Corpn., com.....	@75	22,500.00
350 shs.	Chicago Utilities Co....	@ 0	.....
22 shs.	Green Cananea Copper Co.	@28	616.00
20 shs.	Atlantic G. & W. I., pfd.	@11	220.00
$4,000.00	Chicago Utilities Co...		1,000.00

FRANCIS PARSONS,
Vice-President and Trust Officer of Security Trust Co., Executor.

Sworn and subscribed before me this 4th day of November, 1915.

EARLE E. DIMON,
Notary Public.

STATE OF NEW JERSEY,
TRANSFER INHERITANCE TAX,
NON-RESIDENT DECEDENTS.
Attached to and part of
affidavit.

SCHEDULE A.

Real property wherever situate, with statement of liens and encumbrances upon each parcel at death of decedent.

Assessed value for year of decedent's death.

Estimated market value.

Value of equity.

FRANCIS PARSONS,
Vice-President and Trust Officer of
Security Trust Co., Executor.

Important—The proceedings will receive no attention whatsoever unless this schedule is complete in every detail.

STATE OF NEW JERSEY,
TRANSFER INHERITANCE TAX,
NON-RESIDENT DECEDENTS.
Attached to and part of
affidavit.

SCHEDULE B.

PERSONAL PROPERTY WHEREVER SITUATE.

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

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

(Bonds and Mortgages, Notes, Etc.—Short description of each. State the amount of accrued

Schedule B.

interest computed to the date of death of decedent.)

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

		Estimated Market Value.
6 shs.	Atlantic Gulf & W. I. S. S. Lines, com ..... @ 5	$ 30.00
12 shs.	Atlantic Gulf & W. I. S. S. Lines, pfd ..... @11	132.00
6 shs.	Hendee Manufacturing Co., pfd ..... @98	588.00
5 shs.	Copper Range Cons. Co.... @44	220.00
	On hand	2.55
	On deposit Phoenix National Bank.....	115.81
	On deposit Dime Savings Bank.....	10.92
	On deposit Mechanics' Savings Bank.....	57.46
	On deposit State Savings Bank.....	59.11
	Book case at apartment.....	5.00
	Law Library	137.50
	Other books	29.00
	Safe	25.00
	Other office furniture.....	31.50
	Watch, chain and other small jewelry.....	10.00
	Clothing	5.00

FRANCIS PARSONS,
Vice-President and Trust Officer of Security Trust Co., Executor.

Important—The proceedings will receive no attention whatsoever unless this schedule is complete in every detail.

Schedule C.

STATE OF NEW JERSEY,
TRANSFER INHERITANCE TAX,
NON-RESIDENT DECEDENTS.
Attached to and part of
affidavit.

SCHEDULE C.

Details of debts, other than mortgages on real estate and unsecured debts.

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

(See page 4.)

Debt or Claim of. Nature of same.		Amount.
Funeral expenses		$197.50
Administration expenses (estimated)		200.00
Counsel fees (estimated).....		50.00
Executor's or administrator's-commissions (estimated)....		800.00
(Detail other debts).		
Ellen J. Bird, services and expenses last illness.....	$104.74	
H. J. Potter, services and expenses last illness.....	66.97	
Marie A. Ashmead, interest..	11.67	
Bill Bros. Co., packing and shipping personal effects...	3.07	
Herbert A. Ross, court fees...	3.00	
S. C. Doty, agent, office rent..	62.50	
Orson H. Hart, D. D. S., services	4.00	
Wm. Porter, Jr., M. D., services	10.00	
Henry A. Martelle, M. D., services	28.00	

Schedule D.

Phoenix Nat'l Bank, interest on loan	705.81	
A. H. Cushing, sheriff's fees...	3.71	—$1,003.47
		$2,250.97

FRANCIS PARSONS,
Vice-President and Trust Officer of Security Trust Co., Executor.

Important—The proceedings will receive no attention whatsoever unless this schedule is complete in every detail.

STATE OF NEW JERSEY,
TRANSFER INHERITANCE TAX,
NON-RESIDENT DECEDENTS.
Attached to and part of affidavit.

SCHEDULE D.

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

		Estimated Market Value.
5 shares Copper Range Consolidated Co.	@44	$220.00

FRANCIS PARSONS,
Vice-President and Trust Officer of Security Trust Co., Executor.

Consents to the transfer of the pledged securities herein above referred to is requested.

Important—The proceedings will receive no attention whatsoever unless this schedule is complete in every detail.

First Supplemental Affidavit of Francis Parsons.

STATE OF CONNECTICUT, }
COUNTY OF HARTFORD, } *ss.*

I, Francis Parsons, of Hartford, in said County and State, being duly sworn, depose and say that I am Vice-President and Trust Officer of Security Trust Company, a Connecticut corporation, which corporation is the duly appointed and qualified executor of the will of Leonard Morse, who died a resident of said Hartford on April 2, 1915; that at the time of his death the said Leonard Morse was indebted to the Phoenix National Bank of said Hartford in the sum of Thirty-eight Thousand ($38,000) Dollars (with interest), being the amount due at the date of his death on a certain promissory note secured by the pledge of certain stocks as collateral, all of which have been duly set forth in an affidavit to which this is supplemental, all of said stocks so pledged as collateral having been deposited with said bank by said Leonard Morse, together with powers of attorney to transfer the same duly executed by him; that said indebtedness to said Bank was, to the best of deponent's knowledge and belief, a valid obligation of the said decedent, for which he received full value; that since the death of said decedent the principal of said note has been reduced by the sum of $11,075.50, being the proceeds of one hundred (100) shares of Bethlehem Steel, preferred, part of said collateral, which was sold by said Phoenix National Bank and applied in reduction of said principal on or about April 27, 1915; that said executor has paid the interest on said note when called for by said bank since said decedent's death, but that except as stated herein, there have been no changes in the status of said note or collateral since the decedent's death; that this affidavit is made at the request of the authori-

ties of the State of New Jersey supplemental to certain prior affidavits for the purpose of obtaining the consent of said authorities to the transfer of such stocks of New Jersey corporations owned by said decedent at the time of his death, for the transfer of which such consents may be legally required.

FRANCIS PARSONS.

Subscribed and sworn to, before me,
this 12th day of November, 1915.

ARTHUR M. BUNCE,
Notary Public.

STATE OF CONNECTICUT,
COUNTY OF HARTFORD. } *ss.*

I, Francis Parsons, of Hartford, in said County and State, being duly sworn, depose and say that I am Vice-President and Trust Officer of Security Trust Company, a Connecticut corporation, which is the duly appointed and qualified executor of the will of Leonard Morse, who died a resident of said Hartford on April 2, 1915; that this affidavit is made supplemental to a former affidavit by said deponent, sworn to November 12, 1915, for the purpose of correcting said former affidavit to the extent of stating that since said former affidavit was executed the deponent has been informed that the Phoenix National Bank, of said Hartford, has exchanged one hundred (100) shares of the capital stock of the Amalgamated Copper Company stock, which it held as partial collateral for said Leonard Morse's promissory note referred to in said former affidavit, for one hundred (100) shares of the capital stock of the Ana-

conda Copper Mining Company issued in said Leonard Morse's name, and that therefore the statements in said former affidavit that none of said collateral had been changed since the said Leonard Morse's death, except as stated therein, should be modified by the above fact.

FRANCIS PARSONS.

Subscribed and sworn to, before me,
this 15th day of November, 1915.

ARTHUR M. BUNCE,
Notary Public.

STATE OF NEW JERSEY,
TRANSFER INHERITANCE TAX,
NON-RESIDENT DECEDENTS.

In the Matter of the Estate of LEONARD MORSE, deceased, late of Hartford, State of Connecticut.

MEMORANDUM.

The claim is made on behalf of the Security Trust Company that the title to the pledged securities under the Laws of the State of Connecticut was in the pledgee, and that, therefore, there is no transfer subject to tax under the Laws of the State of New Jersey.

Matter of Phipps, 77 Hun. 325, affd. 143 N. Y. 641.

Matter of Chabot, 44 App. Div. 340; affd. sub nom.

Memorandum.

Matter of Zefita, 167 N. Y. 280.
Matter of Ames, 141 N. Y. Supp. 793.

The language of Surrogate Fowler in the Matter of Ames, *supra,* states our position fully:

"The same reasoning applies in regards to the value of decedent's interest in the stock of the General Electric Company pledged with foreign creditors for the payment of loans made by them to the decedent. There was no proof before the appraiser that the loans had been paid, or that the collateral had been sold by the foreign creditors. Therefore at the time of decedent's death his interest in such collateral consisted of a right to redeem, and as this was not a right to any share or shares of stock of the General Electric Company, but merely a chose in action, it was not taxable under the transfer tax law of this State."

Respectfully submitted,

JOSEPH F. MCCLOY,
Attorney for Security Trust Company, Executor,
Office and P. O. Address 20 Vesey Street,
Borough of Manhattan,
City of New York.

Second Affidavit of Francis Parsons.

STATE OF NEW JERSEY,
TRANSFER INHERITANCE TAX,
NON-RESIDENT DECEDENTS.

In the Matter of the Estate of LEONARD MORSE, deceased, late of Hartford.	*Affidavit of Executor.*

STATE OF CONNECTICUT,
COUNTY OF HARTFORD, } *ss.*

I, Francis Parsons, of the City of Hartford, in said County and State, being duly sworn, depose and say:

That I am Vice-President and Trust Officer of Security Trust Company, a corporation organized under the Laws of the State of Connecticut, having its office in said City of Hartford, which said corporation is the duly appointed and qualified executor of the will of Leonard Morse above named, who died a resident of the said City of Hartford, on April 2d, 1915, leaving a Last Will and Testament.

That Letters Testamentary upon the estate of said decedent were duly issued to Security Trust Company by the Court of Probate in and for the District of Hartford in the State of Connecticut, to which jurisdiction in that behalf belonged and no application for Letters Testamentary, Ancillary or otherwise has been made to any Court in the State of New Jersey, nor is it necessary to apply for or have issued such Letters within the State of New Jersey in order to administer the estate of said decedent.

Total amount of real estate, less mortgages, Schedule A..... None.

Total amount of personal estate, Schedule B	$64,524.35
Total amount of estate wherever situate	64,524.35
Total amount of debts (exclusive of mortgages on real estate), including funeral, administration and other expenses, detailed in Schedule C	39,756.18
	$24,768.17
Net estate	

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

Real estate, less mortgages	None.
Personal estate	$28,249.00
Total amount of real and personal estate claimed to be subject to the jurisdiction of the State of New Jersey (Schedule D)	28,249.00

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

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

NAMES. Relationship.	Survived decedent. State yes or no.	Age of life tenants or Annuitants at Death of Decedent.	Interest of Benficiary in Estate.
Marie A. Ashmead, no relation	Yes.	.....	Income for life in trust fund of $7,000, as per paragraph 2d of will.
Board of Park Commissioners, no relation	Yes.	.....	Entitled to $5,000, under 3d paragraph of will.
Hartford Public Library, no relation	Yes.	.....	Entitled to $5,000, under 3d paragraph of will.
Clara Morse Partridge, niece.	Yes.	.....	Entitled to 1-5 undivided share of residue including remainder after life estate of Marie A. Ashmead above.

Ernest C. Morse, nephew.	Yes.	.....	Entitled to 1-5 undivided share of residue including remainder after life estate of Marie A. Ashmead above.
Alice Morse, niece.	Yes.	.....	Entitled to 1-5 undivided share of residue including remainder after life estate of Marie A. Ashmead above.
Josie Morse Nickerson, niece.	Yes.	.....	Entitled to 1-5 undivided share of residue including remainder after life estate of Marie A. Ashmead above.
Henry James Potter, nephew.	Yes.	.....	Entitled to 1-5 undivided share of residue including remainder after life estate of Marie A. Ashmead above.

Deponent further says that all of the above named beneficiaries survived the decedent with the exception of———no exception.

That hereto annexed and marked Schedule E is a true copy of the Last Will and Testament of said decedent.

That at the time of said decedent's death he had pledged with the Phoenix National Bank of Hartford, Conn., as security upon his note the following shares of New Jersey corporations:

100 shares Bethlehem Steel Co. pfd.....	$10,450.00
68 shares Allis Chalmers, pfd.....	3,060.00
306 shares Allis Chalmers, com.....	3,519.00
100 shares Amalgamated Copper Co.....	6,200.00
100 shares U. S. Steel Corp'n, com....	4,800.00
5 shares Copper Range Consolidated Co.	220.00

That the said Amalgamated Copper Company has been dissolved and the stock thereof is in process of exchange or has been exchanged for an equal number of shares par $50.00 of the Anaconda Copper Mining Company.

That at the time of said decedent's death he had also pledged with the said Phoenix National Bank of Hartford, Connecticut, as security for a note, the following securities:

40 shs.	Farmington River Power Co. .....@48	$1,920.00
162 shs.	Nevada Con. Copper Co.@12¾	2,065.00
50 shs.	Torrington Co., com...@29	1,450.00
50 shs.	Torrington Co., com...@29	1,450.00
90 shs.	Anaconda Copper Co...@28½	2,565.00
25 shs.	Ameri. Agri. Chemical Co., com. .....@50	1,250.00
300 shs.	Bigelow-Hartford Carpet Corpn., com.....@75	22,500.00
350 shs.	Chicago Utilities Co.... 0 0	.....
32 shs.	Green Cananea Copper Co. .....@28	616.00
20 shs.	Atlantic G. & W. I., pfd.@11	220.00
$4,000.00	Chicago Utilities Co.....	$1,000.00

That at the time of his death the said Leonard Morse was indebted to the Phoenix National Bank of said Hartford in the sum of Thirty-seven Thousand Five Hundred ($37,500) Dollars, erroneously stated in a previous affidavit to be Thirty-eight Thousand ($38,000.00) Dollars, with interest, amounting to $5.21, being the amount due at the date of his death on a certain promissory note secured by the pledge of certain stocks as collateral, all of which have been duly set forth in an affidavit to which this is supplemental, all of said stocks so pledged as collateral having been deposited with said bank by said Leonard Morse, together with powers of attorney to transfer the same duly executed by him; that said indebtedness to said bank was, to the best of deponent's knowledge and belief, a valid obligation of the said decedent for which he received full value;

that since the death of said decedent the principal of said note has been reduced by the sum of $11,075.50, being the proceeds of one hundred (100) shares of Bethlehem Steel, preferred, part of said collateral, which was sold by said Phoenix National Bank and applied in reduction of said principal on or about April 27, 1915; that said Executor has paid the interest on said note when called for by said bank since decedent's death, but that except as stated herein, there have been no changes in the status of said note or collateral since decedent's death, except that the Phoenix National Bank, of said Hartford, has exchanged one hundred (100) shares of the capital stock of the Amalgamated Copper Company stock, which it held as partial collateral for said Leonard Morse's promissory note referred to in said former affidavit, for one hundred (100) shares of the capital stock of the Anaconda Copper Mining Company, issued in said Leonard Morse's name.

FRANCIS PARSONS,
Vice-President of Security Trust Co., Executor.

Sworn to, before me this 22nd day of December, 1915.

ELIZABETH A. PHIPPS,
Notary Public.

Schedule A—Schedule B.

STATE OF NEW JERSEY,
TRANSFER INHERITANCE TAX,
NON-RESIDENT DECEDENTS.
Attached to and part of
affidavit.

SCHEDULE A.

Real property wherever situate, with statement of liens and encumbrances upon each parcel at death of decedent.

Assessed value for year of decedent's death, none.

Estimated market value.

Value of equity.

FRANCIS PARSONS,
Vice-President of Security
Trust Company, Executor.

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

STATE OF NEW JERSEY,
TRANSFER INHERITANCE TAX,
NON-RESIDENT DECEDENTS.
Attached to and part of
affidavit.

SCHEDULE B.

PERSONAL PROPERTY WHEREVER SITUATE.

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

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

Schedule B.

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

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

		Estimated Market Value.
40 shs.	Farmington River Power Co. .....@ 48	$1,920.00
100 shs.	Bethlehem Steel Co., pfd. .....@104½	10,450.00
58 shs.	Allis Chalmers, pfd....@ 45	3,060.00
306 shs.	Allis Chalmers, com...@ 11½	3,519.00
162 shs.	Nevada Con. Copper Co. .....@ 12¾	2,065.50
50 shs.	Torrington Co., com...@ 29	1,450.00
50 shs.	Torrington Co., com...@ 29	1,450.00
90 shs.	Anaconda Copper Co...@ 28½	2,565.00
25 shs.	Amer. Agri. Chemical Co., com. .....@ 50	1,250.00
300 shs.	Bigelow-Hartford Carpet Corpn., com.....@ 75	22,500.00
100 shs.	Amalgamated Copper Co. .....@ 62	6,200.00
350 shs.	Chicago Utilities Co... 0 0	.....
22 shs.	Green Cananea Copper Co. .....@ 28	616.00
20 shs.	Atlantic G. & W. I., pfd.@ 11	220.00
100 shs.	U. S. Steel Corpn., com. .....@ 48	4,800.00
6 shs.	Atlantic Gulf & W. I. S. S. Lines, com.....@ 5	30.00
12 shs.	Atlantic Gulf & W. I. S. S. Lines, pfd.....@ 11	132.00

Schedule B.

6 shs. Hendee Manufacturing Co., pfd.....@ 98	588.00
5 shs. Copper Range Consolidated Co. .....@ 44	220.00
Bonds:	
$4,000.00 Chicago Utilities Co.....	1,000.00
Cash:	
On hand	2.55
On deposit Phoenix National Bank.	115.81
On deposit Dime Savings Bank....	10.92
On deposit Mechanics' Savings bank	57.46
On deposit State Savings Bank....	59.11
Personal chattels:	
Book case at apartment.....	5.00
Law library	137.50
Other books	29.00
Safe	25.00
Other office furniture.....	31.00
Watch, chain and other small jewelry	10.00
Clothing	5.00
	$64,523.85

FRANCIS PARSONS,
Vice-President of Security Trust Co., Executor.

Important—The proceedings will receive no attention whatsoever unless this schedule is complete in every detail.

Schedule C.

STATE OF NEW JERSEY,
TRANSFER INHERITANCE TAX,
NON-RESIDENT DECEDENTS.
Attached to and part of
affidavit.

SCHEDULE C.

Details of debts, other than mortgages on real estate.

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

Debt or claim of. Nature of same.		Amount.
Funeral expenses		$197.50
Administration expenses (estimated)		200.00
Estimated Counsel Fees		50.00
Estimated executor's or administrator's commissions		800.00
(Detail other debts.)		
Ellen J. Bird, services and expenses last illness	$104.74	
H. J. Potter, services and expenses last illness	66.97	
Marie A. Ashmead, interest.	11.67	
Bill Bros. Co. packing and shipping personal effects	3.07	
Herbert A. Ross, Court fees.	3.00	
S. C. Doty, agent, office rent.	62.50	
Orson H. Hart, D.D.S., services	4.00	
Wm. Porter, Jr., M.D., services	10.00	
Henry A. Martlee, M. D., services	28.00	
Phoenix Nat'l Bank, interest on loan	705.81	
A. H. Cushing, sheriff's fees.	3.71	1,003.47
		$2,250.97

Schedule C.

	Claim of Phoenix National Bank of Hartford, for $37,500.00 upon said decedent's note, which sum with interest to the date of death of said decedent amounted to	$37,505.21
		$39,756.18

Said note was secured by the pledge of the following:

100	shares Bethlehem Steel Co., preferred	$10,450.00
68	shares Allis Chalmers, preferred	3,060.00
306	shares Allis Chalmers, common	3,519.00
100	shares Amalgamated Copper Co.	6,200.00
100	shares U. S. Steel Corpn., common	4,800.00
5	shares Copper Range Consolidated Co.	220.00
40	shs. Farmington River Power Co. .....@ 48	1,920.00
162	shs. Nevada Con. Copper Co. .....@ 12¾	2,065.50
50	shs. Torrington Co., common .....@ 29	1,450.00
50	shs. Torrington Co. ....@ 29	1,450.00
90	shs. Anaconda Copper Co.@ 28½	2,565.00
25	shs. Amer. Agri. Chemical Co., common.....@ 50	1,250.00
300	shs. Bigelow - Hartford Carpet Corpn., common.@ 75	22,500.00

Schedule D.

350 shs. Chicago Utilities Co.		
22 shs. Green Cananea Copper Co.	@ 28	616.00
20 shs. Atlantic G. & W. I., preferred	@ 11	220.00
$4,000.00 Chicago Utilities Co.		1,000.00
		$63,285.50

FRANCIS PARSONS,
Vice-President of Security Trust Co., Executor.

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

STATE OF NEW JERSEY,
TRANSFER INHERITANCE TAX,
NON-RESIDENT DECEDENTS.
Attached to and part of affidavit.

SCHEDULE D.

Details of Real and Personal Property claimed to be subject to the jurisdiction of the State of New Jersey.

100 shs. Bethlehem Steel Co., pfd.	@104½	$10,450.00
68 shs. Allis Chalmers, pfd.	@ 45	3,060.00
306 shs. Allis Chalmers, com.	@ 11½	3,519.00
100 shs. Amalgamated Copper Co.	@ 62	6,200.00
100 shs. U. S. Steel Corpn., com.	@ 48	4,800.00

5 shs. Copper Range Consolidated Co. .....@ 44	220.00
	$28,249.00

FRANCIS PARSONS,
Vice-President of Security Trust Co., Executor.

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

STATE OF CONNECTICUT,
PROBATE DISTRICT OF HARTFORD, } *ss.*

I, Frank M. Mather, Clerk of the Court of Probate for the District of Hartford, in said State, and keeper of the seal thereof, do certify that the within constitutes a true copy of the last will and testament of Leonard Morse, late of Hartford in said District, as appears by the records and files of this Court.

IN TESTIMONY WHEREOF, I have hereunto affixed the Seal of said Court, and subscribed my name at Hartford, this 20th day of September, 1915.

FRANK M. MATHER, *Clerk.*

STATE OF CONNECTICUT,
PROBATE DISTRICT OF HARTFORD, } *ss.*

I, L. P. Waldo Marvin, Sole Judge of the Court of Probate for the District of Hartford, in said State, do hereby certify that Frank M. Mather, whose name is subscribed to the above attestation, was, at the time of signing the same, and still is,

Clerk of said Court, and that said attestation is in due form of law.

In Testimony Whereof, I have hereunto subscribed my name at Hartford, this 20th day of September, A. D. 1915.

L. P. Waldo Marvin, *Judge.*

State of Connecticut,
Probate District of Hartford, } *ss:*

I, Frank M. Mather, Clerk of the Court of Probate for the District of Hartford, in said State, and keeper of the seal thereof, do certify that the signature of L. P. Waldo Marvin, to the preceding certificate is genuine and that he is the duly elected and qualified Judge of said Court of Probate for the District of Hartford.

In Testimony Whereof, I have hereunto affixed the Seal of said Court, and subscribed my name at Hartford, this 20th day of September, 1915.

Frank M. Mather, *Clerk.*

I, Leonard Morse of Hartford in the State of Connecticut, hereby make this my last will and testament.

First: I direct that my just debts be paid by my Executor hereinafter named as soon after my death as may by it be found convenient.

Second: I give the sum of seven thousand (7,000) dollars to Security Company, a corporation located in said Hartford, in trust for Marie A. Ashmead, of Wethersfield, in said State for the period of her natural life. Such Trustee shall cause such trust fund to be and continue to be properly invested, and shall pay all the net income of such fund to said Marie A. Ashmead in equal quarterly

instalments, so far as reasonably practicable, during all such period. On the death of said Marie A. Ashmead such principal sum of seven thousand dollars shall be disposed of as a part of the residue of my estate.

Third: I give the sum of ten thousand (10,000) dollars as follows: Five thousand dollars to the Board of Park Commissioners of said Hartford; five thousand dollars to the Hartford Public Library of said Hartford. The income of the sum named in this paragraph, and no more, shall be used in meeting the ordinary expenses and outlay of the two beneficiaries receiving such sums.

Fourth: All succession taxes which may legally become due on the bequests described in the foregoing paragraphs shall be paid from the body of my estate, not from such bequests.

Fifth: All the residue of my estate shall go share and share alike, to my nieces and nephews as follows, to wit: Clara Morse Partridge, Ernest C. Morse, Alice Morse, Josie Morse Nickerson, and Henry James Potter.

Sixth: I desire that the Executor of this will take such time in the settlement of my estate as shall in its opinion, having in mind the market prices of the various stocks belonging to the estate, best advantage the residuary beneficiaries above named.

Seventh: I hereby appoint said Security Company to be executor of this will.

In Testimony Whereof, I hereto set my hand and seal this 3d day of May, A. D., 1912.

LEONARD MORSE. [L. S.]

Signed and published as his last will and testament by the said Leonard Morse in the presence of us, who in his presence and in the presence of each other have hereto subscribed our names as witnesses.

ALBERT C. BILL,
Hartford, Connecticut.
HENRY J. MARKS,
Hartford, Connecticut.
STELLA E. HALL,
Rockville, Connecticut.

STATE OF CONNECTICUT,
COUNTY OF HARTFORD. } *ss.*

Hartford, May 3d, A. D. 1912.

We, the subscribers, attesting witnesses of the foregoing last will and testament of Leonard Morse, do at his request declare: That all the attesting witnesses to said will signed the attestation clause thereof in the presence of Leonard Morse, the testator, and in the presence of each other; that said testator declared said will to be his last will and testament and signed the same in presence of all such witnesses; that at the time he executed such will he appeared to us to be of full age and of sound mind and memory.

HENRY J. MARKS,
STELLA E. HALL.

Personally appeared the above named Henry J. Marks and Stella E. Hall and made solemn oath to the truth of the foregoing declaration on the day last above written.

Before me,

ALBERT C. BILL,
Justice of the Peace.

Stipulation.

(Filed May 10, 1916).

New Jersey Supreme Court.

ESSEX COUNTY

SECURITY TRUST COMPANY, a Corporation, Executor of the Last Will and Testament of LEONARD MORSE, deceased, *Prosecutor,* *vs.* EDWARD I. EDWARDS, Comptroller of the Treasury of the State of New Jersey, *Defendant.*	*On Certiorari.* *Stipulation.*

It is hereby stipulated and agreed by and between the attorneys for the prosecutor and the defendant respectively in the above entitled cause that the following is a statement of additional facts to be used upon the final argument upon the return of the writ of certiorari granted herein:

1. That the statement of facts set forth in the affidavits and schedules annexed thereto executed at various times by Francis Parsons, Vice-President and Trust Officer of Security Trust Company, the prosecutor herein, copies of which are annexed to the return in this action, shall, for the purpose of this action, be taken as true.

2. That the Phoenix National Bank, of Hartford, Connecticut, is a corporation organized under

the law of the State of Connecticut, with its place of business in said State and is not authorized to do business in the State of New Jersey.

3. That the Comptroller of the Treasury of the State of New Jersey refused to give his consent in writing to the transfer of the shares of stock of New Jersey corporations, pledged with the Phoenix National Bank, of Hartford, Connecticut, as is more fully set forth in the various affidavits referred to in Paragraph 1 of this stipulation, although requested at various times so to do by the prosecutor and pledgee herein and their attorneys, unless and until certain tax or assessments, levied against and computed upon the equity of the decedent in and to said stock, be first paid. The tax was paid January 21, 1916, and the waivers issued the same day.

LUM, TAMBLYN & COLYER,
Attorneys for Prosecutor.

JOHN W. WESCOTT,
Attorney for Defendant.

Rule.

Rule.

(Filed May 10, 1916).

NEW JERSEY SUPREME COURT.

SECURITY TRUST COMPANY, a corporation, Executor of the Last Will and Testament of LEONARD MORSE, deceased, *Prosecutor,* *vs.* EDWARD I. EDWARDS, Comptroller of the Treasury of the State of New Jersey, *Defendant.*	*On Certiorari.* *Rule.*

It appearing that the attorneys for the prosecutor and the Attorney-General on behalf of the defendant, have entered into a stipulation as to a statement of additional facts to be used upon the final argument upon the return of the writ of certiorari herein:

It is ORDERED that said stipulation so entered into as aforesaid, be made part of the record of this action and be used as evidence on the hearing and determination thereof.

Rule dated, May 10, 1916.

SAMUEL KALISCH,
J. S. C.

On motion of

LUM, TAMBLYN & COLYER,
Attorneys for Prosecutor.

Reasons.

(Filed March 15, 1916.)

NEW JERSEY SUPREME COURT.

SECURITY TRUST COMPANY, a corporation, Executor of the Last Will and Testament of LEONARD MORSE, deceased, *Prosecutor,* *vs.* EDWARD I. EDWARDS, Comptroller of the Treasury of the State of New Jersey, *Defendant.*	*On Certiorari.* *Reasons.*

The said prosecutor by Lum, Tamblyn & Colyer, its attorneys, comes and prays that the assessment of the transfer tax in the above entitled matter be set aside, reversed and for nothing holden for the following reasons:

1. That there was no property in New Jersey within the purview of the Transfer Tax Act of the value of five hundred dollars or over belonging to the decedent at the time of his death.

2. That the rights and property assessed and taxed in this case were not subject to assessment or taxation.

3. That the said Comptroller of the State of New Jersey who made the said assessment had no authority or jurisdiction to make the same, and the act of the said State Comptroller in making said assessment is void for want of jurisdiction.

Reasons.

4. That the situs of decedent's equity in New Jersey stocks which were pledged to a foreign pledgee (pledgor also being foreign) was necessarily at the domicile of the pledgor or pledgee, and in either event beyond the limit and control of the State of New Jersey.

5. That the Comptroller of the State of New Jersey had no jurisdiction to assess property the situs of which was not properly ascribable to the State of New Jersey.

6. That the decedent's equity in the stocks in question was a chose in action, intangible, and in the absence of the pledgee and pledgor from the State of New Jersey there was no property of the decedent within the State of New Jersey subject to tax.

7. That the assessment herein is in violation of Article 12, Section 7, Paragraph 4 of the Constitution of the State of New Jersey, which provides that property shall be assessed for taxes under general laws and by uniform rules, according to its true value.

8. That said assessment herein violates the essential quality of taxation which requires that taxes be imposed under a rule of uniformity.

9. That said assessment is unconstitutional in that it attempts to subject to taxation property rights and the succession thereto and transfer thereof, which cannot be subjected to taxation by the State of New Jersey.

10. That Chapter 228 of the Laws of 1909 as amended by Chapter 151 of the Laws of 1914 and as further amended by Chapters 58 and 59 of the Laws of 1914, and as further amended by Chapter 392 of the Laws of 1915, under which said assessment purports to have been made, are each and all of them unconstitutional in that they and the assess-

Reasons.

ment made thereunder subject the prosecutor herein to unreasonable searches and seizures in violation of Article 1, Section 6 of the Constitution of the State of New Jersey.

11. That Chapter 228 of the Laws of 1909 as amended by Chapter 151 of the Laws of 1914 and as further amended by Chapters 58 and 59 of the Laws of 1914, and as further amended by Chapter 392 of the Laws of 1915, under which said assessment purports to have been made, are each and all of them unconstitutional in that they violate Section 2, Sub-division 1, Article IV of the Constitution of the United States, which provides that "the citizens of each state shall be entitled to all privileges and immunities of citizens in the several states."

12. That Chapter 228 of the Laws of 1909 as amended by Chapter 151 of the Laws of 1914 and as further amended by Chapters 58 and 59 of the Laws of 1914, and as further amended by Chapter 392 of the Laws of 1915, under which said assessment purports to have been made, are each and all of them unconstitutional in that they violate Article 14 of Amendments to the Constitution of the United States, Sub-division 1, which provides that "no state shall make or enforce any law which shall abridge the privileges or immunities of citizens in the United States, nor shall any state deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws."

13. That Chapter 228 of the Laws of 1909 as amended by Chapter 151 of the Laws of 1914, and as further amended by Chapters 58 and 59 of the Laws of 1914, and as further amended by Chapter 392 of the Laws of 1915, under which said assessment purports to have been made, are each and all

Reasons.

of them unconstitutional in that they violate Article IV of Amendments to the Constitution of the United States, providing the right of the people to be secure in their persons, houses, papers and effects against unreasonable searches, seizures, etc.

14. Because the transfer tax under review in this action on the transfer of stock in New Jersey corporations forming part of the estate of Leonard Morse, late a non-resident of New Jersey, is assessed pursuant to the third or last paragraph of Section 12 of an act, entitled, "An Act to tax the transfer of property, of resident and non-resident decedents, by devise, bequest, descent, distribution by statute, gift, deed, grant, bargain and sale, in certain cases," approved April 20, 1909, as amended by Chapter 151 P. L. 1914 as amended by Chapter 392 of the Laws of 1915, 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,' " and said paragraph of said Section 12 is inoperative as against the transfer of the aforesaid stock because the assessment of tax pursuant to the said paragraph denies to Leonard Morse and his estate, his executors, the beneficiaries under this will and his residuary legatees, all citizens and residents of the United States and citizens and residents of other States of the United States than New Jersey and non-residents of the State of New Jersey, privileges and immunities enjoyed by citizens of the State of New Jersey, and therefore contravenes Article 4, Section 2, Paragraph 1 of the Federal Constitution, and the prosecutor claims the protection thereof.

15. Because the assessment of the tax referred to in the foregoing reasons is assessed under the

Reasons.

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

Art. IV, Sec. 7, Paragraph 3.
Art. IV, Sec. 7, Paragraph 4.
Art. IV, Sec. 7, Paragraph 12.

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

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

Reasons.

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

LUM, TAMBLYN & COLYER,
Attorneys for Prosecutor.

Opinion of Supreme Court.

Filed November 9, 1916.

New Jersey Supreme Court.

June Term, 1916.

SECURITY TRUST COMPANY, Executor of Leonard Morse,

vs.

EDWARD I. EDWARDS, Comptroller.

Submitted June Term, 1916; Decided November , 1916.

Certiorari of Inheritance Tax.

Before Justices Swayze, Minturn and Kalisch.

Ralph E. Lum, (Joseph F. McCloy of the New York Bar on the brief) for prosecutor.

Herbert Boggs, Assistant Attorney-General, for defendant.

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

Leonard Morse, a resident of Hartford, Connecticut, in his lifetime pledged certain stocks of New Jersey corporations and other collateral with the Phoenix National Bank of Hartford, as security for a note and died intestate, no part of the note having been paid. The question presented by this case is whether the New Jersey stocks so pledged are subject to the transfer tax under the act of 1914 (P. L. 267). That act, so

far as material to this case, imposes the tax when the transfer is by will or intestate law of shares of stock of corporations of this state. The question therefore narrows to whether the testator's will transferred these stocks. He did not own the stocks; at most he had an interest therein, which was subject to the rights of the pledgee, and the pledgee could not be deprived of its property right to transfer the shares to a purchaser and apply the proceeds to the debt. There might or might not be a valuable equity, but all that could be transferred by testator's will was the right to redeem, or, if the stocks had been transferred by the pledgee, the right to an accounting and the payment of the balance, if any, after satisfaction of the debt. There could be no transfer of stock within the meaning of the statute until and unless the debt was paid. The pledgee might sell and transfer the New Jersey stocks and apply the proceeds to payment of the debt and leave no equity therein, since their value was less than the debt; in that event the transfer of the stocks would be by virtue of the power of attorney given by the testator in his lifetime and not by his will or by intestate law as required by the statute. The question has been decided in the same way by the courts of New York. We can not add to the reasoning of Surrogate Fowler; Estate of Ames, 141 N. Y. Supp. 793.

We are not called upon by the facts of this case to express an opinion on the question that would be presented if the debt was satisfied out of other collateral and the New Jersey stocks or some of them still remained in the hands of the pledgee.

The tax must be set aside.

Rule Reversing Assessment of Taxes.

Filed November 15, 1916.

New Jersey Supreme Court.

SECURITY TRUST COMPANY, Executor of the Last Will and Testament of Leonard Morse, deceased, *Prosecutor,* *vs.* EDWARD I. EDWARDS, Comptroller of the Treasury of the State of New Jersey, *Defendant.*	*On Certiorari.* *Rule Reversing Assessment of Taxes.*

The court having inspected the proceedings relating to the transfer or inheritance tax levied against the estate of Leonard Morse, deceased, returned with the certiorari in this cause, and having duly considered the reasons filed, and having heard the argument of Ralph E. Lum, Esquire, on behalf of the prosecutor, and of Herbert Boggs, Esquire, Assistant Attorney-General on behalf of the defendant;

It is thereupon ORDERED that the said transfer or inheritance tax levied and assessed against the estate of Leonard Morse, deceased, be and

the same is hereby set aside, made void and for nothing holden.

Entered November 15, 1916,

On motion of

LUM, TAMBLYN & COLYER,
Attorneys for Prosecutor.

Let the above Rule be entered.

By the Court.

F. J. SWAYZE,
J.

Dated November 13, 1916.

Clerk's Certificate on Appeal.

I, WILLIAM C. GEBHARDT, Clerk of the Supreme Court of the State of New Jersey, do certify that the foregoing is a true copy of the notice of appeal filed and also of a rule entered in the minutes of the Court in the above-stated cause.

In testimony whereof I have set my hand and the seal of said Court at Trenton, this thirtieth day of January, A. D. nineteen hundred and seventeen.

(L. S.)

WM. C. GEBHARDT,
Clerk.

New Jersey Court of Errors and Appeals

SECURITY TRUST COMPANY, a corporation, executor of the Last Will and Testament of Leonard Morse, deceased, Prosecutor-Respondent, v. EDWARD I. EDWARDS, Comptroller of the Treasury of the State of New Jersey, Defendant-Appellant.	On Appeal.

BRIEF FOR PROSECUTOR-RESPONDENT.

This appeal is taken by the Comptroller of the State of New Jersey from an order or judgment of the Supreme Court setting aside the tax theretofore imposed and reviewed under a writ of certiorari brought by the respondent.

This writ was brought to review an assessment of transfer inheritance tax made by Edward I. Edwards, the Comptroller of the State of New Jersey, in the sum of Five hundred and twenty-seven and 55/100 ($527.55) Dollars.

The decedent, Leonard Morse, died on or about the 2d day of April, 1915, a resident of the City of Hartford, State of Connecticut, leaving a Last Will and Testament which was thereafter duly admitted to probate by the Court of Probate in

and for the District of Hartford in the State of Connecticut and Letters Testamentary thereupon issued to said prosecutor, Security Trust Company, as executor. No Letters Testamentary, Ancillary or otherwise have been issued in the State of New Jersey nor is it necessary to apply for or to have issued such letters within the State of New Jersey in order to administer the estate of the said decedent.

Said decedent at the time of his death owned no real estate within the State of New Jersey.

At the time of his death the said decedent, Leonard Morse, was indebted to the Phoenix National Bank of Hartford, in the State of Connecticut, in the sum of Thirty-seven thousand and five hundred ($37,500) Dollars with interest due at the date of death amounting to Five and 21/100 ($5.21) Dollars, being the amount due on a certain promissory note secured by the pledge of certain securities as collateral, all of the same so pledged as collateral having been deposited with said bank by said Leonard Morse together with Powers of Attorney to transfer the same, duly executed by him.

Since the death of said decedent the principal of said note has been reduced by the sum of Eleven thousand and seventy-five and 50/100 ($11,075.50) Dollars, being the proceeds of the sale of one hundred (100) shares of Bethlehem Steel Preferred, part of said collateral, which were sold by the pledgee and applied in reduction of the principal on or about April 27th, 1915. There has been no other change of record in the status of said note or collateral since decedent's death except that the pledgee has exchanged one hundred (100) shares of the capital stock of the Amalgamated Copper Company, held as collateral, for one hundred (100) shares of the capital

stock of the Anaconda Copper Mining Company.

The securities so pledged as collateral included the following *shares of New Jersey Corporations:*

100	shares	Bethlehem Steel Co., Pfd...	$10,450.00
68	"	Allis Chalmers, Pfd.....	3,060.00
306	"	" " Com.....	3,519.00
100	"	Amalgamated Copper Co...	6,200.00
100	"	U. S. Steel Corporation, Com.	4,800.00
5	"	Copper Range Consolidated Co.	220.00

(The said Amalgamated Copper Company has been dissolved and the stock thereof is in process of exchange or has been exchanged for an equal number of shares par $50.00 of the Anaconda Copper Mining Company.)

As additional security the following securities and *shares of corporations organized elsewhere than in New Jersey* were likewise pledged:

40	shares	Farmington River Power Company	$ 1,920.00
162	"	Nevada Con. Copper Company	2,065.00
50	"	Torrington Company, Com.	1,450.00
50	"	" " "	1,450.00
90	"	Anaconda Copper Company	2,565.00
25	"	American Agri. Chem. Co., Com.	1,250.00
300	"	Bigelow-Hartford Carpet Corporation, Com.	22,500.00
350	"	Chicago Utilities Company	
22	"	Green Cananea Copper Company	616.00
20	"	Atlantic G. & W. & I., Pfd.	220.00
$4,000.00		Chicago Utilities Company, (Bonds)	1,000.00

The entire estate of the decedent passes to "collaterals" so called.

The assessment herein was made on or about the 30th day of December, 1915, and purports to be an assessment of *"decedent's equity in the above stock"* (New Jersey shares), the value of said "equity" being reported at Eleven thousand five hundred and seven ($11,507.00) Dollars.

The statute under which the assessment was made is Chapter 228, Laws of 1909, as amended by Chapter 151, Laws of 1914, and so much thereof as is pertinent is set forth following:

> "Section I. A tax shall be and is hereby imposed upon the transfer of any property, real or personal, of the value of five hundred dollars or over, or of any interest therein or income therefrom, in trust or otherwise, to persons or corporations, except as hereinafter provided, in the following cases:
>
> First: * * * * * *
>
> Second: When the transfer is by will or intestate law, of real property within this State, or of goods, wares and merchandise within this State, or of shares of stock of corporations of this State, or of national banking associations located in this State, and the decedent was a non-resident of the State at the time of his death.
>
> Third: * * * * * *
>
> Fourth: * * * All taxes imposed by this act shall be at the rate of five per centum upon the clear market value of such property, except as hereinafter provided, to be paid to the Treasurer of the State of New Jersey, for the use of said State.
>
> * * * * * * * *

The definitive section of the statute, numbered 26, provides:

> "The words, 'estate' and 'property', wherever used in this act, except where the subject or context is repugnant to such construc-

> tion shall be construed to mean the interest of the testator, intestate, grantor, bargainor or vendor, passing or transferred to the individual or specific legatee, devisee, heir next of kin, grantee, donee or vendee, not exempt under the provisions of this act, whether such property be situated within or without this state. The word 'transfer' as used in this act, shall be taken to include the passing of property, or any interest therein, in possession or enjoyment, present or future, by distribution by statute, descent, devise, bequest, grant, deed, bargain, sale or gift."

Section 12, safeguarding the State's claim for taxes in certain cases, provides for the procedure upon the transfer of stock as follows:

> "Section 12. If a foreign executor, administrator or trustee shall assign or transfer any stock or obligations in this State, standing in the name of a decedent or standing in the joint names of such decedent and one or more persons or in trust for the decedent liable to any such tax, the tax shall be paid to the Treasurer of this State on the transfer thereof.
>
> * * * * * * * *

The prosecutor based its demands for relief herein upon the ground that *the situs of the property, the transfer of which has been subjected to tax herein, is not within the State of New Jersey and the tax as imposed is illegal, unconstitutional and void:*

(a) *By reason of the fact that it is a tax upon property of the estate of a non-resident decedent not situated within the State of New Jersey within the provisions of the statute relating to taxable transfers of property.*

(b) *By reason of the fact that such tax is a taking of property without due process of law within the prohibitions of the Constitution of the United States and of the Constitution of the State of New Jersey.*

And upon the further ground that the assessment made herein diminishes the security of the pledgee and subjects the estate of the pledgor to an additional burden thereby; and so is illegal, unconstitutional and void:

By reason of the fact that such tax constitutes an impairment of the obligation of contracts within the prohibitions of the Constitution of the United States and the Constitution of the State of New Jersey.

There would be no controversy here *if the testate non-resident decedent had not pledged the shares* of New Jersey corporations referred to in the foregoing statement, for it is the settled law of this State that the Transfer Inheritance Tax Statute is effectual to impose a valid tax upon the transfer, by will, of such shares owned by non-residents.

Carr v. Edwards, 55 Vroom 667;
Sawter v. Shoenthal, 83 N. J. L. 500;
Eastwood v. Russell, 81 N. J. L. 672.

Nor would there be any question presented as to taxability of the property transferred *if the testator had been a resident decedent and had pledged the shares,* for the same statute is also held effectual to impose a valid tax upon the transfer of or succession to all property of deceased residents of the State, excluding, of course, real property beyond its boundaries.

Eastwood v. Russell, *supra;*
Howell v. Edwards, 96 Atl. Rep. 186.

(It is suggested, however, that prudence would counsel, even in such case, a delay or suspension of appraisal or assessment until the contract of pledge terminated, so that the security of the pledgee be not diminished and the obligations of the contract be not impaired, for it is not inconceivable that the property pledged as collateral might so depreciate in value, as sometimes happens, that upon the extinction of the pledge the equity would be without value. So, for instance, as in the case at bar, the pledged New Jersey shares or the proceeds thereof, may be wholly, as they already have been, partly applied in satisfaction of the loan and the equity as to such shares rendered valueless.)

It is undeniably one of the incidents of the contract of pledge that the pledgee may not be restricted to any particular portion of the property pledged for the satisfaction of his lien.

Schouler on Bailments, &c., 4th Edition, pp. 84-85; also p. 109 and cases there cited.

The assertion is further ventured that the question which arose in the present circumstances would have continued to remain academic were it not for the unusual requirement of waivers from the Comptroller made by the Transfer Agents upon the reorganization of the Amalgamated Copper Company and reissuance of stock in the Anaconda Copper Mining Company, for it is a matter of common knowledge, in the business world at least, that the provisions of Section 12 of the statute under consideration, relative to giving notice upon the transfer of New Jersey

shares, is ordinarily no obstacle to the transfer of shares pledged as collateral, the transfer thereof being by virtue of the power granted to the pledgee, who is clothed with all the *indicia* of a true owner in such case.

Evidently the assessment complained of herein was made upon these assumptions by the taxing authorities:

First. That the interest of the non-resident decedent in relation to the pledged New Jersey shares is necessarily an interest in the shares within the meaning of the statute, and,

Second. That the *situs* of such or of any interest in relation to said shares, in case the pledgor is a non-resident, is necessarily within this State.

Both of these assumptions, upon examination, being found gratuitous and in conflict with universally accepted principles of the law, the imposition of tax thereupon falls to the ground.

In the first place, there is unanimity among the authorities that the interest of the pledgor in relation to the property pledged is to be defined as a right of redemption merely.

Lawson on Bailments, p. 105;
Dobie on Bailments, &c., at p. 201:

> "Practically, this is the only real interest remaining in the pledgor, and his other rights are all incidental thereto."

In the second place the *situs* of such right, (*i. e.,* chose in action) is upon no ascertainable theory ascribable elsewhere than to the domicile of the non-resident decedent. It is there and nowhere else that the right must be enforced.

Estate of Ames, 141 N. Y. Supp., 793;
Estate of Morse, Security Tr. Co. v. Edwards, 99 Atl. 133.

Analogous cases involving the question of *situs* have been passed upon by the Courts of this State.

Penfold v. Edwards, 87 N. J. L. 462;
Miller v. Edwards, 85 N. J. L. 517.

In view of the foregoing it is perhaps unnecessary to speculate concerning the processes of the taxing officials in forming the erroneous assumptions underlying the assessment, but if they were made in reliance upon the provisions of the statute or a distortion of the same calling for a tax upon the transfer of certain property of non-residents (in this case shares of stock in domestic corporations) being within the State, "*or any interest therein,*" it is pointed out that the *situs* of such interest must be likewise within the State and the "transfer" subject to its control otherwise the assessment cannot stand.

While negotiations were pending for the assessment of the tax in question the position was taken by the officials in charge of the Comptroller's Department, that the interest of the non-resident decedent in the pledged shares was in all respects analogous to the interest of a non-resident owner of mortgaged lands within the State and this position, it is understood, was approved by the Attorney General, in reviewing the prosecutor's preliminary objections. A moment's consideration of this claim exposes its fallacy. The interest of the deceased mortgagor in relation to real property within the State, has its *situs* where the real property lies, whereas the interest of the pledgor of personal property has its *situs* at the foreign domicile.

The precise point involved in this case had been passed upon and an exhaustive opinion rendered against a tax by the able jurist of an adjoining jurisdiction—Mr. Surrogate Fowler—in the Estate of Ames, 141 N. Y. Supp. 793. No appeal was taken from the decision. An examination of that opinion shows that the learned Surrogate with characteristic courage applied the controlling elementary principles of the law to similar facts in the following language:

> "Did the decedent's interest in the bonds of the Northern Pacific Company, which, together with the stock of the American Sugar Refining Company, were pledged with the Mercantile Trust Company for the payment of the loan made to the decedent by the company constitute property within this State at the date of his death? The title to the bonds was in the Mercantile Trust Company, and at the time of decedent's death his interest in the bonds were merely a right to redeem them from the Trust Company by payment of the loan for which they were pledged. There is no evidence that any demand was made upon the decedent by the Trust Company for the payment of the loan. Until such a demand had been made the decedent was not indebted to the Trust Company, and the company would have no right to dispose of the collateral security. Therefore it would appear that at the time of decedent's death he did not own the bonds or any part of them, and that his only interest in them was a right to redeem them. This, however, was not a right to any particular bond or bonds; it was not a right to any particular property located in this State. It was merely a right of redemption, and as such it had its *situs* at the place of decedent's domicile. Such a right or interest when owned by a non-resident is not subject to a transfer tax in this State (Matter of Phipps, 77 Hun, 325; aff'd 143 N. Y. 641, Matter of

> Chabot, 44 App. Div. 340; aff'd *sub nom;* Matter of Zefita, 167 N. Y. 280). Therefore the appraiser erred in reporting as taxable that proportion of the difference between the amount loaned to the decedent by the Mercantile Trust Company and the value of the security pledged with the said company which the value of the bonds bore to the value of the entire security. The same reasoning applies in regard to the value of decedent's interest in the stock of the General Electric Company pledged with foreign creditors for the payment of loans made by them to the decedent. There was no proof before the appraiser that the loans had been paid, or that the collateral had been sold by the foreign creditors. Therefore at the time of decedent's death his interest in such collateral consisted of a right to redeem, and as this was not a right to any share or shares of stock of the General Electric Company, but merely a chose in action it was not taxable under the Transfer Tax Laws of this State." * * *
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> * * * * * * * * *
>
> "The only taxable assets were the shares of the General Electric Company which were not pledged, and from the value of these should be deducted the New York commissions and expenses of administration. Order fixing tax reversed."

The Court below upon an able opinion by Mr. Justice Swayze in the case at bar enunciates the principles upon which the respondent relies for exemption from tax:

> "The question therefore narrows to whether the testator's will transferred these stocks. He did not own the stocks; at most he had an interest therein, which was subject to the rights of the pledgee, and the pledgee could not be deprived of its property right to transfer the shares to a purchaser and apply the proceeds to the debt. There might or might

not be a valuable equity, but all that could be transferred by testator's will was the right to redeem, or, if the stock had been transferred by the pledgee, the right to an accounting and the payment of the balance, if any, after satisfaction of the debt. There could be no transfer of stock within the meaning of the statute until and unless the debt was paid. The pledgee might sell and transfer the New Jersey stocks and apply the proceeds to payment of the debt and leave no equity therein, since their value was less than the debt; in that event the transfer of the stocks would be by virtue of the power of attorney given by the testator in his lifetime and not by his will or by intestate law as required by the statute. The question has been decided in the same way by the courts of New York. We cannot add to the reasoning of Surrogate Fowler; Estate of Ames (141 N. Y. Supp. 793).

"We are not called upon by the facts of this case to express an opinion on the question that would be presented if the debt was satisfied out of other collateral and the New Jersey stocks or some of them still remained in the hands of the pledgee.

"The tax must be set aside."

It may be contended that the difference in the views of courts of different States as to where the title to stock in pledge lies, whether in pledgor or pledgee, may compel a different result from that reached in the Ames case, *supra,* and by the Court below in the case at bar. Answering, it is submitted that such a consideration should have no weight for the reason that *wherever the title to the stock may be lodged, the contract of pledge has destroyed its one essential attribute by reason of which statutes such as the one under consideration operate at all, to wit: the attribute of* TRANSFERABILITY.

In making the assessment complained of herein the taxing authorities were moved undoubtedly by a laudable desire to prevent an apparent transfer of New Jersey shares from escaping taxation, but with all due respect they failed to observe the larger aspect of the circumstances in the case: *If Morse had sold his shares before he died, no tax could be claimed. The* RIGHT TO SELL *is no more necessarily an incident to the lawful ownership thereof than the* RIGHT TO PLEDGE *such shares and the resulting status of the property* IN EITHER CASE (if the decedent is domiciled abroad) *removes it beyond the scope of a transfer tax act, such as the one under which this assessment was made.*

An argument frequently heard when no other is at hand in support of such a tax as in the case at bar is that failure to impose the tax upon some theory or another will open the door to an easy method for non-residents to evade this tax entirely. This argument should have no more weight than the assertion that non-residents can devise no better way of roasting a pig than by burning down their houses. If there is evasion intended, why not the simpler method (it is believed so much in vogue among non-residents) of endorsing stock certificates of New Jersey corporations in blank during lifetime or of disposing of such investments altogether?

Although it appears from the foregoing statement of facts that none of the pledged New Jersey shares have been actually redeemed, the argument is anticipated that the transfer of such shares upon redemption by the administrator would be subject to tax and the judgment herein should therefore suspend taxation instead of reversing the assessment and exempting the estate from tax. This contention if made in the case of a resident decedent would undoubtedly be compelling

and it has been so deemed in the fore part of this brief, but when urged in the case of the non-resident decedent it will be seen to have no merit whatsoever. The tax imposed by the statute under consideration is upon the universal succession to or transfer of the property of the decedent to his personal representatives. It will not be denied that it is the status of the property at the time of death that determines the taxability or non-taxability of the transfer. In the case of the resident decedent all of his property (excluding real estate beyond the State boundaries) is subject to the tax. In the case of the non-resident decedent, however, it is only the property within the jurisdiction at the time of his death that is subject to the operation of the statute. Therefore the right of redemption, or in other words the property to which the personal representative of the *resident decedent* succeeds is *in any event* certainly subject to tax (whether the tax be imposed at the time of the death or more prudently at the time when the value of the property which is the subject of taxation shall have become ascertainable upon the termination of the pledge contract), whereas the right of redemption, or in other words the property to which the personal representative of the *non-resident decedent* succeeds at death is exempt *in any event* by reason of its *situs* at the foreign domicile; and while any subsequent transaction in compliance with the terms of the contract of pledge *may serve to make certain the value of the right to which he succeeds, it cannot be given the effect of changing the status of the property which has already been transferred to the personal representative free from the operation of the transfer tax statute any more than such a subsequent transaction changes the status of the property transferred in the case of the resident decedent.* To repeat, it is

the transfer or the right of succession to the property that is subjected to the tax and not the property itself. The subsequent redemption of the New Jersey shares if effected by the personal representative of the non-resident decedent can be regarded as nothing else than an investment of other funds of the estate which must necessarily be employed for that purpose.

Furthermore, the question as to the taxability of pledged shares upon redemption would also ordinarily remain academic, for in the event of such a transaction the usage followed in the business world and in fact no other is possible upon the extinguishment of the bailment, is to re-transfer the shares to the possession of the executor or administrator in his representative capacity and not to the name of the decedent and neither such restoration nor any subsequent distribution would come within either the spirit or the letter of Section 12 of the statute under consideration.

The claim made for exemption upon the facts in the case at issue would not be warranted on those grounds if the statute imposed a *legacy tax* impinging upon the restoration of the pledged shares and distribution thereof to the particular legatees but if the statute imposed such a tax it would, for that reason, be invalid as affecting the estates of non-resident decedents.

Neilson v. Russell, 76 N. J. L. 655.

It must be deemed established from the foregoing that the estate of the prosecutor's testate is exempt from the tax in question.

The right to inheritance tax in the case of estates of decedents domiciled in this State is based upon the theory that the total succession to personal property in such case is subject to

regulation and condition whereas in the case of estates of decedents domiciled beyond the jurisdiction the only succession which may be taxed is that pertaining to property having *situs* here. The status of the testator in this instance resulting from foreign domicile taken in connection with the necessary incidents of the pledge contract is determinative of the foreign *situs* of the property succeeded to.

It has been assumed on behalf of the prosecutor, respondent herein, that if the statute in question aims to impose a tax upon the transfer of property "without the state" in case the decedent is domiciled elsewhere than in New Jersey, it is obviously unconstitutional, and the question of its unconstitutionality upon the ground that taxation of property beyond the jurisdiction is not due process is intended to be raised. This reservation is noted because of the peculiar language of the statute in question in the definition section above quoted to the effect that the property taxable is "property within *or without* the state."

The assessment made was void for the reasons stated above and should have been so declared and set aside.

The order or judgment of the Supreme Court setting aside the tax is proper and should be affirmed.

Respectfully submitted,

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The Evening Post Job Printing Office, Inc., 156 Fulton St., N. Y.

New Jersey Court of Errors and Appeals.

SECURITY TRUST COMPANY, a corporation, executor of the Last Will and Testament of Leonard Morse, deceased,
Prosecutor-Respondent,

VS.

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

On Appeal.

ADDENDA TO BRIEF FOR PROSECUTOR-RESPONDENT.

In the brief for the appellant much is set forth with respect to the nature of the pledgor's interests. It should be noted, however, that the law with respect to pledges originally dealt with and considered pledges of choses in possession. When the law of this type of bailment was in course of development choses in action were almost unknown. Even in Blackstone's time we find relatively little on the subject of law of personal property as we know it to-day.

By reference to the authorities it appears clearly that the transfer of shares of stock as collateral

security for the payment of a debt stand on their own peculiar basis.

See Cyc. 31, page 791, on the general subject of pledges, where we find the following:

> "In a pledge of choses in action, such as stocks, bonds and notes it may be necessary to the value of the security that the legal title pass to the pledgee; but it is held by him for the benefit of the pledgor, in whom the general property remains, and the contract is construed in all respects as one of pledge."

From this statement then it appears that transfers of stock of such a character stand upon a peculiar basis and that the rules with respect to pledges are applied apparently, in so far as is necessary, to carry out the intention of the parties thereto.

Furthermore it appears that in these transactions the legal title actually passes to the pledgee. This the text intimates is necessary to the value of the security.

By reference to the state of the case the testator had transferred during his lifetime these shares of New Jersey corporations to his banker to secure a loan. The certificates for the shares of stock were deposited with the bank by the testator " together with powers of attorney to transfer the same, duly executed by him ". The effect of such a proceeding on the part of the testator was to transfer the legal title to these certificates of stock to the bank. Such proceedings on his part were sufficient for that purpose.

In the " Uniform Stock Transfer Act (1916) " there is designated the methods by which title to a certificate and to the shares represented thereby may be transferred. These rules now laid down in statutory form are merely a statement of common law principles, well established by decisions in all mercantile countries. In subdivision (*b*) of para-

graph one of the said act, one of the methods of transfer is prescribed as follows:

> "By delivery of the certificate and a separate document containing a written assignment of the certificate, or a power of attorney, to sell, assign or transfer the same, or the shares represented thereby, signed by the person appearing by the certificate to be the owner of the shares represented thereby. Such assignment or power of attorney may be either in blank or to a specified person."

Evidently, then, the legal title to the shares passes from the testator to the banking company and is held in trust for the purpose of effectuating the contract between the parties.

In *Fairbanks* vs. *Sargent, 117 N. Y. 320, at page 332*, we find the following observation of the court with respect to pledges of choses in action:

> "The pledgee obtains a special property in the thing pledged, while the pledgor remains general owner. If the property consists of a thing in action the pledgee may sue upon it and collect it or receive voluntary payment of it from the debtor. The pledgee may require such payment and the debtor cannot resist his title. To the extent of his debt the pledgee may appropriate the proceeds to his own use, and holds the balance, if any, in trust for the pledgor."

The question is then suggested what is the nature of the pledgor's interest. From the quotations above it would appear that the interest of the pledgor is the same as that of the beneficiary under a trust, namely, a right to an accounting. In other words it is a mere chose in action.

We have hereinabove shown that one of the incidents of the contract of pledge is that the pledgee may not be restricted to any particular portion of the property pledged for the satisfaction of his lien.

Under such circumstances, then, the bank was entirely justified and entirely within its right in the sale and liquidation of the New Jersey securities for

the purpose of applying the proceeds toward the satisfaction of its claims. The appraisal of these New Jersey shares shows that their value was insufficient to meet the whole claim of the bank.

Under the circumstances, then, all that the testator could have done in his lifetime and all his executor can now do is to call upon the bank for an accounting. This, as we have before often mentioned, is a mere chose in action.

In the brief of the appellant an attempt is made ingeniously to establish the situs of the pledgor's interest in the State of New Jersey. This is evidently based upon some legal notion of the right of testator in the shares themselves; but the legal title, as we have above shown, has been actually transferred to the bank and its title in one instance passed on to a purchaser from it.

In view of the fact, as we have shown, that the pledgor's interest was and is merely a chose in action, the question suggested then is as to the situs of this chose in action. From what has been hereinabove set forth, it clearly appears that the situs of this particular chose in action was and is at the domicile of the non-resident decedent. Whatever right the said testator had in his lifetime, or his executor now has, with respect to the transaction resulting in the transfer and pledge of these stocks, was enforceable and had their situs at the domicile of the testator.

Our Transfer Tax Act clearly recognizes this situation, and to-day recognizes the situs of a chose in action at the domicile of the creditor.

On behalf of the respondent it is further respectfully insisted that the legislation of this state in recent years clearly indicates an intention to exempt choses in action in the hands of non-residents and an intention to tax only certain very limited items of property of non-resident decedents.

The provision of the Transfer Tax Act of 1909 with reference to the property of non-resident decedents, is as follows:

> "Second. When the transfer is by will or by intestate law of property within the state, and

the decedent was a non-resident of the state at the time of his death."

This provision as it stood in the laws of 1909 evidently permitted the taxation of all property of a non-resident decedent within this state.

This provision remained as above quoted until amended by the laws of 1914. The corresponding section in the latter act reads as follows:

> " Second. When the transfer is by will or interstate law, of real property within this state, or of goods, wares and merchandise within this state, or of shares of stock of corporations of this state, or of national banking associations located in this state, and the decedent was a non-resident of the state at the time of his death."

At the same time the third subdivision of the first section of the Transfer Act was amended to read as follows:

> " Third. When the transfer is of property made by a resident, or is of real property within this state, or of goods, wares and merchandise within this state, or of shares of stock of corporations of this state, or of national banking associations located in this state, made by a non-resident, by deed, grant, bargain, sale or gift made in contemplation of the death of the grantor, vendor or donor, or intended to take effect, in possession or enjoyment at or after such death."

It is evident that by the amendment the legislature intended to tax real property in this state, and chattels or choses in possession, and shares of stock of New Jersey corporations and national banks.

It will be noticed that these terms exclude choses in action altogether and makes it very apparent that the legislature intended that the transfer tax should operate only upon a certain well-defined and limited class of objects so far as non-residents are concerned.

In view of the Transfer Tax Act as it now stands

it is apparent that the chose in action of the non-resident decedent is not subject to transfer tax. Further in view of the fact that the legal title to these securities was actually transferred by the testator in his lifetime there could have been no transfer of these shares of stock by his will.

The erudite brief of the special counsel for the state contains much learning with reference to the nature and incidents of a pledge and title to choses in action. We think it has little application to the case in hand. Whether in the ordinary pledge of a chose in action legal title passes or not, and regardless of what may have been judicially determined to be the nature of a pledge in any jurisdiction, the fact remains that when Morse in his lifetime assigned his shares of stock and gave the accompanying power of attorney to the bank, with which he pledged his credit, he thereby and thereon transferred the legal title to those shares of stock as fully and effectively as could be done, and the title to those shares of stock did not and could not pass to his executor by his will.

We have already cited the changes in our legislation to show that instead of taxing all property of non-residents in this state the legislature limited the taxation to certain specific things, none of which would include a chose in action.

But even if the words of the statute were sufficiently broad to include, expressly or impliedly, a chose in action, it is elementary that it could only apply to property within this state. Now it might be held that a share of stock in a New Jersey corporation was a chose in action, and the corporation being a creature of this state, New Jersey has dominion, and having dominion of the thing, that is, the corporation, would hold dominion over immediate rights arising out of that thing, that is, the undivided interest represented by a share or shares of stock; the shares of stock representing a qualified ownership. In the present case, however, the chose in action which the state has at-

tempted to assess as an "equity" can under no theory of the law have ascribed to it a situs in New Jersey. This so-called "equity" is a chose in action arising out of a chose in action, and not even by the refined logic of medieval scholasticism can it be held that the grasp of the taxing authorities of New Jersey can seize this "chose upon a chose".

The Connecticut bank in the present case actually did sell and transfer certain shares of Bethlehem Steel Preferred, and it is nonsense to say that it did not give good title to it. Yet the contention of the appellant herein insists that the legal title remained in Morse. What did remain in Morse was the right to an accounting, and on paying the amount due the right to have his stock, or other stock of the same value, *re-transferred* to him. This right passed to his executor through no grace of this state; this right under no theory can be considered property within this state.

The brief of the appellant has raised men of straw and then annihilated them through an effect which is represented to flow from the opinion of the Supreme Court herein. It is also insisted that the learned jurist *in Re* Ames disregarded the law of New York. We respectfully insist, however, that neither decision changes the law of pledge as heretofore established, nor impinges upon the law of attachment, corporations or creditors. Both decisions hold that a chose in action or equity which the states of New Jersey and New York respectively attempted to tax were not property within the state and within the purview of the respective statutes. Neither decision attempts to deny the right of the pledgor, the retention by him of an interest in the thing pledged, the ability of his creditors to reach that interest, etc., etc.

An attempt also has been made in the brief of the appellant to point out a money loss to this state by the affirmance of the decision below. The same result would follow if this state had been assessing real estate in other jurisdictions in cases where

non-residents used New Jersey's railroads, but we would not expect the argument to prove persuasive. It is also pointed out that transfers could be made to avoid the statute if our contention should prevail. If the transfer was not made in good faith it would be considered as not made; that is, it would be set aside as of the original date, leaving the stock in the fraudulent pledgor. That, however, would all be a matter of evidence and could have no application to such a case as is now under consideration.

We respectfully urge that all extrinsic considerations of which so much display is made in the appellant's brief may be disregarded, and that this case be decided upon its own merits.

The executor in the present case has a qualified interest in a qualified interest in a thing. The second qualified interest, whether it be called a chose in action, an equity or what not, has no ascribable situs in this state, and is moreover not included in the subjects of taxation grouped by the legislature in the change made in 1914 as aforestated.

It is also a matter of great significance that our legislature by Section 12 of the act in question indicated a clear intent not to tax choses in action of non-residents whether they were in or out of this state, or whether the state had jurisdiction of them or not. It is expressly provided that no safe deposit company, etc., having in possession, etc., securities, deposits or other assets belonging to or standing in the name of a decedent who was a resident, etc., including shares of stock of or other interests in safe deposit company, trust company, corporation, etc., shall deliver or transfer the same to the executors, etc., unless notice, etc., be served upon the comptroller.

This whole paragraph makes it definitely apparent that it was the intent of the legislature to reach all interests, including choses in action of residents,

but not the interests of non-residents except as provided for in part Second of paragraph one.

Brief of special counsel for appellant calls attention to a salient fact in the *Ames* case (141 N. Y. Supp. 793, referred to approvingly in the opinion of the court below) to-wit: that the act there construed was different from our act of 1914 (under which Morse died). It *was* different in that it imposed a tax upon *all* property of non-residents within the jurisdiction while our act selects only certain specified property.

Under a later New York Act imposing tax only upon transfers of "goods, wares and merchandise" of non-residents (*Estate of Ludeke*, *New York Law Journal*, January 3, 1914) the Surrogate held the transfer of a partnership interest of a non-resident exempt saying:

> "The decedent, *who was a resident of New Jersey*, died on the 8th of September, 1912. He was a member of the firm of A. Ludeke & Co., dealers in diamonds and precious stones, and having a place of business at No. 170 Broadway, in the City of New York. The appraiser found the value of his interest in the partnership to be the sum of $98,796.53, and the order entered upon his report assessed a tax upon the transfer of this property. The executor has taken this appeal from the order. Chapter 732 of the Laws of 1911 provides that a tax shall be imposed 'when the transfer is by will or intestate law of tangible property within the State, and the decedent was a non-resident of the State at the time of his death'. Therefore the property of a non-resident in this State is not taxable unless it is tangible property. Section 243 of the Tax Law defines the words 'tangible property' to mean 'corporeal property, such as real estate and goods, wares and merchandise, and shall not be taken to mean money, deposits in bank, shares of stock, bonds, notes, credits or evidences of an interest in property and evidences of debt'. Upon the death of the decedent the legal title to the partnership property vested in the surviving partner for the purpose of liquidation. None of the goods

constituting the partnership property passed directly to the legatees under the will of the decedent.

The surviving partner was a trustee for the creditors and the representatives of the deceased partner, and it was his duty to pay the firm debts and dispose of the firm assets for the benefit of himself and the representatives of the deceased partner (Russell *v.* McCall, 141 N. Y. 437; Joseph *v.* Herzo, 198 N. Y. 456). The interest of the legal representatives of the deceased partner in the assets of the partnership was an equitable right to the decedent's share of what was left after the payment of the partnership liabilities (Reinhart *v.* Reinhart, 134 App. Div. 440). But this equitable interest in the partnership property which passed to the legatees under the will of the decedent is not tangible property within the meaning of those words in section 243 of the Tax Law. The order fixing tax will therefore be reversed and the appraiser's report remitted to him for correction."

A similar question arose in MATTER OF ALBERT D. SMITH, *N. Y. Law Journal*, March 4, 1914, Surrogate Cohalan saying:

"The decedent, *who was a resident of New Jersey*, died on the 17th of October, 1913. At the time of his death he was a member of the partnership that had its principal place of business in New York City. The executors of his estate have made this application to declare his interest in the partnership exempt from taxation. This court has recently decided in Matter of Ludeke (*N. Y. Law Journal*, January 22, 1914) that since the enactment of chap. 732, Laws of 1911, the interest of a non-resident in a partnership having its place of business in this State is not subject to the provisions of the Transfer Tax Law. Application granted."

Granting for the moment that the *situs* of a chose in action of the nature involved in this case might for some reason be ascribed to this state, yet in face of the clear specification of the only taxable property

in the statute in case of non-residents if any doubt arises as to the inclusion of such chose in action, such doubt must be resolved in favor of the estate. The doctrine that *special tax acts* should be so construed is too well established to need citation of authorities.

This doctrine applies with peculiar force to questions arising as to the taxability of transfers by will or intestacy from a non-resident. The application of the New Jersey inheritance tax act to estates of non-residents is an extreme exercise of the taxing power and is not logically consistent with the taxation of the whole of a resident's property on the ground of domicile. The imposition of a transfer tax upon any part of the estate of a non-resident presumably and in this case actually liable to a similar tax in the place of the decedent's residence necessarily involves double taxation. The constitutional right to levy such a tax is not controverted if the property has *situs* here, but, as said in *Matter of James, 144 N. Y., at page 11:*

> "Such a result of a double taxation is one which the courts should incline to avoid; whenever it is possible, within reason, to do so."

Such a result can be avoided in the case at bar by following the just and reasonable rule that a mere intangible right to a future accounting subsisting in a non-resident at the time of his death is not property within this state.

Respectfully submitted,

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New Jersey Court of Errors and Appeals

MARCH TERM, 1917.

SECURITY TRUST COMPANY, Executor of Leonard Morse, deceased, *Prosecutor-Respondent,* *vs.* EDWARD I. EDWARDS, State Comptroller, *Defendant-Appellant.*	*On Appeal from Supreme Court.*

Brief for Appellant.

Statement of Case.

This is an appeal by the State Comptroller, defendant in certiorari, from a judgment of the Supreme Court (Swayze, Minturn and Kalisch, *JJ.*), setting aside an inheritance tax levied under the Act of 1909 (P. L., p. 325; Comp. Stats. 5301, as amended in 1914, P. L. 267).

The question at law determined by the Supreme Court adversely to the State, here presented for review, is:

IS THE INTEREST OF A NON-RESIDENT DECEASED PLEDGOR OF STOCK OF A NEW JERSEY CORPORATION IN SUCH STOCK SUBJECT TO THE TRANSFER TAX IMPOSED BY OUR STATUTE.

The prosecutor below, Security Trust Company, a Connecticut corporation, is the executor of the will of Leonard Morse who died resident in Hartford, Connecticut, on April 2, 1915 (case

p. 5). Morse left no real estate whatever, either within or without New Jersey (case p. 6). His gross estate amounted to $64,523.85 (case p. 24). This consisted largely of certain securities, viz., corporate stock and four bonds appraised in the aggregate of $63,285.50 (case p. 27). All of these securities had been pledged by Morse in his lifetime, accompanied by a power of attorney in blank, to the Phoenix National Bank of Hartford, Connecticut, to secure his promissory note of $37,500, upon which there was due $5.21 of interest, together with all of the principal amount, at the time of his death (case p. 20). It does not appear that this note had been called prior to the death of Morse or that the pledgee had caused any of the securities to be transferred to it or that any demand had been made upon him prior to death for the payment of the note.

Among the securities pledged as aforesaid were New Jersey stocks appraised in the aggregate at $28,249.00 (case pp. 4, 27, 28).

A request was made for the Comptroller's consent to the transfer of these stocks (so far as appears, to the executor), and the Comptroller refused to consent thereto unless the New Jersey inheritance tax be paid upon the decedent's equity in the New Jersey stocks; the tax was therefore paid and the waivers issued (case p. 33).

The details of the assessment upon the decedent's interest in the New Jersey stocks appear at page 4 of the case. The Comptroller appraised the New Jersey stocks at the figures above mentioned, and the decedent's interest in the New Jersey stocks at the sum of $11,507.00. This amount was obtaind by prorating the amount of the loan together with such por-

tion of the general deductions as the other assets were insufficient to meet, over all of the stocks pledged. Of course this was the situation in law and in fact at the time when the succession took place, viz., at Morse's death. The value of the equity in the New Jersey stocks was thereupon arrived at by applying to the equity in all of the stocks the fraction represented by the value of the New Jersey stocks over the value of all the securities pledged.

Treating the gross estate for the purpose of taxation as the value of the equity in all of the stocks, plus the value of the other assets, the Comptroller arrived at the proportion demanded by the method of computation prescribed for non-resident estates in Section 12 of the Act (namely, the ratio of the New Jersey property to the total property wherever situate), which proportion was found to be 42.6%. The tax was then calculated in the manner prescribed in that section and found to be $527.55 (case p. 4).

The rate was 5%, for all of the beneficiaries were collaterals or unrelated to the testator (case pp. 18, 19, 29, 30).

It appears that after the death of Morse, the pledgee sold a portion of the New Jersey stock, viz., one hundred shares of Bethlehem Steel Preferred, for a sum greater than the amount at which they were appraised, applying the proceeds in reduction of the debt (case p. 13); also that the executors paid the interest on the note since the death of the decedent and that there has been no other change in the status of the note or collateral since the death of Morse, except that one hundred shares of the Amalgamated Copper Company stock, one of the New Jersey securities, has been exchanged under the terms of a corporate plan for one hundred shares of

Anaconda Copper Mining Company stock (case p. 14), which stock was issued in the name of the decedent (case p. 21, line 20).

The only question argued below was the question stated at the outset of this brief. It is true that the reasons filed by the prosecutor state the same points made in *Maxwell* v. *Edwards* and other inheritance tax cases argued or to be argued at this term, and having to do with the constitutionality of Section 12 of the Act, the ratio provision, objections which are founded upon the supposed unconstitutional discrimination against non-resident estates brought about by the combined effect of the progressive or graduated rates contained in Section 1 of the Act and the ratio provision found in Section 12.

As above suggested, these points were not urged in the Supreme Court. As a matter of fact, they are not properly involved in this case. In the first place, the entire estate goes to collaterals and is therefore taxed at the flat rate of 5% and not on a graduated rate. In the second place, decedent owned no foreign real estate, and the case does not involve the supposed invalidity occasioned by the statutory command for the inclusion of foreign real estate in a computation of the tax, and in the third place, the case does not even present the alleged vicious effect of the ratio provision upon what we may call the five hundred dollar exemption. An examination of the terms of the will and the amount of property passing will show that each and every beneficiary has an interest in the New Jersey property assessed and taxed exceeding $500. It is true that the age of the annuitant or life tenant of the seven thousand dollar trust fund is not stated; but whether we assume that she is forty years old, in which case

the value of her interest is approximately $4,-700, or whether we assume that she is sixty years old, in which case the value of her interest approximates $3,050, each beneficiary receives at least such portion of the estate that 42% thereof, or the New Jersey fraction, amounts to more than $500.

The only constitutional question involved is that of course lying at the root of respondent's argument that the State cannot tax the succession to property which is alleged to have no legal *situs* here.

We reiterate therefore that the only question presented by the record is that heretofore stated, and the importance of that question to the fiscal interests of this State need not be dwelt upon by us.

Grounds of Appeal Relied On.

1. Because the Supreme Court set aside and for nothing held the transfer or inheritance tax levied and assessed upon the estate of the above named Leonard Morse, deceased, whereas it should have affirmed in all things the said appraisement, assessment and tax, with costs.

2. Because the Supreme Court erred in holding that there was no transfer of the New Jersey stocks pledged in the lifetime of said Leonard Morse, deceased, by his last will and testament.

3. Because the Supreme Court should have held that the interest of the said Leonard Morse, deceased, in the New Jersey stocks pledged by him in his lifetime, was comprehended within the meaning of the words "shares of stock of corporations of this State," the transfer whereof by will is subject to tax under the provisions

of an act entitled "An act to tax the transfer of property, of resident and non-resident decedents, by devise, bequest, descent, distribution by statute, gift, deed, grant, bargain and sale, in certain cases," approved April twentieth, one thousand nine hundred and nine, and the supplements and amendments thereto.

4. Because the Supreme Court should have held that the transfer by the will of said Leonard Morse, deceased, of his "interest" in the "shares of stock of corporations of this State," pledged by him during his lifetime, was a transfer upon which a tax is imposed by said statute, and the supplements and amendments thereto.

Ground of Appeal No. 5 is abandoned.

The Opinion Below.

The only ground urged by respondents below and relied on by the Supreme Court was that Morse had ceased to be the owner before his death; hence there was no succession. The Supreme Court does indeed refer to his "interest" in the stock, but the tenor of the opinion appears to be that there is no taxable succession if the decedent owned anything less than the entire legal and beneficial interest in the stock. Such a view ignores the language of the statute, taxing

> "* * * the transfer of any property * * * or of any interest therein or income therefrom, in trust or otherwise, * * *
>
> "When the transfer is by will * * * of shares of stock of corporations of this State, * * * and the decedent was a non-resident of the State at the time of his death * *" (Sec. 1).
>
> "26. The words 'estate' and 'property' wherever used in this act * * shall be con-

> trued to mean the interest of the testator * * * passing or transferred to the (successors) * * * The word 'transfer,' as used in this act, shall be taken to include the passing of property, or any interest therein, in possession or enjoyment, present or future," etc. (Sec. 26).

The opinion below refers also to the possibility that the pledgor's right might be rendered valueless after his death by the sale of the stock. This suggestion we will discuss under Point III.

The only authority adduced by respondent and cited by the court is that of Surrogate Fowler of New York County in *Re Ames,* 141 N. Y. Supp. 793 (1913). If, as was said below, nothing can be added to his reasoning, the respondent's case is weak indeed, for his opinion contained neither reasoning nor authority. On the precise point for which the opinion is cited he said only (p. 797):

> "Therefore at the time of decedent's death his interest in such collateral consisted of a right to redeem, and as this was not a right to any share or shares of stock of the General Electric Company, *but merely a chose in action* it was not taxable under the Transfer Tax Law of this State."

On another branch of the case before him, he cited *Matter of Phipps,* 77 Hun. 325, 28 N. Y. Supp. 330, affirmed 143 N. Y. 641, 37 N. E. 823; *Matter of Chabot,* 44 App. Div. 340, 60 N. Y. Suppe. 927, affirmed *sub nom. Matter of Zefita,* 167 N. Y. 280, 60 N. E. 598. These cases dealt only with the *situs* of interests of legatees prior to settlement and accounting.

At another point in the opinion the surrogate also cites *Matter of Whiting,* 150 N. Y. 27, 44

N. E. 715, 34 L. R. A. 232, 55 Am. State 640, but to a proposition not in anywise therein involved.

That the Surrogate's opinion was in conflict with the doctrines of the highest court of New York we expect to show by reference hereafter to the decisions of that court.

There is no reason why his opinion should control because he may be said to have construed a New York statute (that of 1892), since repealed, which furnished the model for our Act of 1909. His decision (in 1913) came four years too late to be read into our Act.

The opinion in *Re Ames* was in no proper sense construction of a statute, but was a decision upon a question of general jurisprudence, viz., the nature of a pledgor's interest in stock pledged, and the *situs* of such interest. To follow him as though upon a question of supposed statutory construction is to follow where he has not led. Respondent cannot thus take from us questions here necessarily involved as to the construction of the United States Constitution, our State Constitution, as well as our Corporation Act and our Attachment Act, and our determination of questions of high importance affecting the jurisdiction of our courts.

1. The pledgor's interest in New Jersey stocks is a property interest which has a situs here for the purchase of succession taxation.

A. The nature of the pledgor's interest.

> "As between the pledgor and pledgee, however, the pledgor is still the general owner, the pledgee has a special property only and upon payment of the debt this is extinguished."

Goddard's Outlines of Bailments and Carriers, Sec. 87.

"The three elements necessary to constitute a contract one of pladge are, 1, the possession of the pledged property must pass from the pledgor to the pledgee or to some one for him; 2, the legal title to the pledged property must remain in the pledgor; 3, the pledgee must have a lien on the property for the payment of a debt or performance of an obligation due him by the pledgor or some other person." *31 Cyc. 787.*

"A pledge differs from a mortgage of personal property in being a lien on property and not a legal title to it; and the pledgee's special property in the pledge is not enlarged by the pledgor's default in paying the debt secured at its maturity. The legal title to property pledged remains in the pledgor, while a mortgage passes the legal title of the property itself to the mortgagee, subject to be revested in the mortgagor, upon the performance by him of an express condition subsequent."

Jones on Collateral Security, 3rd Ed., sec. 7.

See also 3 *Pomeroy's Equity Jurisprudence,* sec. 1229.

Schouler on Bailments and Carriers, 2nd Ed., sec. 168.

Story on Bailments, 9th Ed., secs. 303, 345, 350, 352.

2 Blackstone's Commentaries, *page 452, 453.

Inasmuch as the law relating to the subject of pledge is so largely founded upon the civil law we may be pardoned in referring to the latter. In the system of the Roman Law the forms of pledge, of which there are several,

are classified under the heading of *jura in re aliena* to distinguish them from ownership.

Sohm in his *Institutes of Roman Law,* translation of Ledlie, 2nd Ed., page 357, says:

> "The exigencies of human intercourse cannot be permanently satisfied by ownership alone. It must be possible for a person to deal in a manner authorized by law with things which belong to others.
>
> "The need we thus experience in the conduct of our affairs for supplementing our own property by the property of others, without being compelled to acquire ownership in the latter, may be satisfied, to some extent, by the aid of obligatory transactions concluded with the owner. * * *
>
> "Thus the rights we acquire in respect of the property of others by means of obligatory transactions are but incomplete, because their effect is merely personal. The need we are here discussing is therefore not adequately met by transactions of this description. There must be rights in respect of the property of others which enjoy a more effectual protection.
>
> "It was for the purpose of satisfying the need in question that the *real* rights *in re aliena* were developed. The rights they confer in respect of the thing are stronger, because they are absolute, i. e., they are rights which operate and are enforceable as against any third party (cp. p. 325). It is with these real rights *in re aliena,* which the Romans call *'jura in re'* simply, that we have to deal in the following sections. The common characteristic, legally speaking, of all these rights, and that which distinguishes them from ownership, is this, that the rights of control over things which they confer are limited in regard to their contents, although, like ownership, they are

directly operative as against any third party who interferes with them. In other respects the several *jura in re* differ essentially from one another in regard to the nature and extent of the control which they confer."

And at page 372 the same author says:

"A right of pledge is a real right which enables the person entitled to it to secure payment of a claim through the medium of a thing."

And after tracing the history of the several forms of pledge in the Roman Law he continues at page 376:

"A genuine right of pledge had thus been developed. The hypothecary agreement was now an agreement which had for its formal as well as its practical object the creation of a right to dispose of a thing not one's own, in a word, the creation of a right of pledge."

And at page 377:

"The owner of the pledge may transfer his ownership to a third party, but of course the right of pledge already created in favor of the creditor continues to hold good as against the new owner. In the same way the owner may pledge the identical thing to several persons in succession."

"One or more of the subordinate elements of ownership, such as a right of possession, or user, may be granted out while the residuary right of ownership, called by the Romans '*nuda propietas,*' remains unimpaired. The elements of the right which may thus be disposed of without interference with the right itself, in other words, which may be granted to one person over an object of which another continues to be

> the owner, are known as '*jura in re aliena.*'" *Holland, Jurisprudence,* (9th ed.) 208.

The doctrines set forth above have been stated and applied without challenge by eminent English judges in leading cases throughout at least three centuries of legal history.

In *Mores* v. *Conham,* Owen 123, 74 English Reprint 946, (1610), the court recognized that the right of the pledgee was but a special interest.

In *Coggs* v. *Bernard,* Ld. Raym. 909, 1 Smith's Leading Cases, 199 (1702), Chief Justice Holt stated the same principle. The learned annotator at * page 228 says:

> "A pawn never conveys the general property to the pawnee, but only a special property in the thing pawned; and the effect of a default in payment of the debt by the pawnor is, not to vest the entire property of the thing pledged in the pawnee, but to give him a power to dispose of it, accounting for the surplus, which power, if he neglected to use the general property of the thing pawned continues in the pawnor, who has a right at any time to redeem it."

Another leading case is *Donald* v. *Suckling,* L. R. 1 Q. B. 585, 35 L. J. Q. B. 232.

The opinion of Shee, *J.,* contains a quotation defining the nature of a pledge in the Scottish Law, which accurately states its status in the English Law and follows:

> "'a real right or *jus in re* inferior to property which vests in the holder a power over the subject, to retain it in security of the debt for which it is pledged, and qualifies so far and retains the right of property in the pledger or owner.'"

The opinions of the other judges state and illustrate with much clearness and learning the true nature of the contract of pledge.

Another famous case decided upon great consideration is *Sewell* v. *Burdick,* 10 App. Cas. 74, 54 L. J. Q. B. 156 (1884), where the court was dealing with the special case of the endorsement of a bill of lading in blank symbolizing goods at sea. Notwithstanding the principle of *Lickbarrow* v. *Mason* and the express provisions of the English Bills of Lading Act, the court held that the property in the goods did not pass within the meaning of one section of that act so as to render the endorsee liable in an action by the ship owner for the freight when the endorsement was made as security for advances.

Ld. Chancellor Selborne says:

> "It is very difficult to conceive that when the goods are still *in transitu,* when the substance of the contract is not sale and purchase, but borrowing and lending, and when the indorsement and deposit of the bill of lading is only by way of security for a loan, it can be the intention of either party thereby, without more, to divest the shipper of all proprietary right to the goods, and to take from him and transfer to the indorsee all rights of suit under the contract with the shipowner. That some proprietary right (his original right, subject only to the creditor's security) remains in him is indisputable."

It is further said by the same judge that the

> "right under that deposit being (whether at law or in equity) special and not general, and the shipper retaining (whether at law or in equity) the real and substantial property in the goods, subject to the security. * * *"

Ld. Blackburn says:

> "No one, in ordinary language, would say that when goods are pawned or money is raised by mortgage on an estate, the property either in the goods or land passes to the pledgee or mortgagee."

Ld. Bramwell says that a pledge would give the appellants, "a" property but not "the" property and he denies that when a bill of lading is endorsed in blank, in such case as this, the entire property passes, or that only an equitable right to redeem remains. He further says:

> "Consider the inconvenience of holding that the pledgor has only an equitable right; that he may repay the loan at the day appointed, but thereby acquire no legal title to the possession of the goods; that the pledgee may sell and pass the entire property to one not having notice of the equitable title."

Ld. Fitzgerald says that the pledgees

> "acquired a special property in the goods, with a right to take actual possession should it be necessary to do so for their protection or for the realisation of their security. They acquired no more, and, subject thereto, the general property remained in the pledgor."

The same views are expressed by Fry, Cotten, Lindley and Bowen, *L. JJ. in re Morritt,* 18 Q. B. D. 222, 56 L. J. Q. B. 139.

A very recent opinion by the Privy Council in a prize case is of the highest interest and instructiveness, *The Odessa,* (1916) 1 A. C. 145, affirming (1915) P. 52.

Prior to the outbreak of the European war German owners of the cargo had by assignment of the bills of lading pledged the cargo to

British bankers for advances made prior to the outbreak of the war. After war began and while the vessel was on the high seas the cargo was seized and condemned as prize. It is obvious that the contest was between the British pledgees and the Crown. Lord Mersey, speaking for a strong court, says that in determining the nationality of the thing seized, the courts:

> "have taken ownership as the criterion, meaning by ownership the property or *dominium* as opposed to any special rights created by contracts or dealings between individuals, without considering whether these special rights are or are not, according to the municipal law applicable to the case, proprietary rights or otherwise. The rule by which ownership is taken as the criterion is not a mere rule of practice or convenience; it is not a rule of thumb. It lays down a test capable of universal application, and therefore peculiarly appropriate to questions with which a Court of Prize has to deal. It is a rule not complicated by considerations of the effect of the numerous interests which under different systems of jurisprudence may be acquired by individuals either in or in relation to chattels. *All the world knows what ownership is, and that it is not lost by the creation of a security upon the thing owned.*"

And further dealing with the contention of the pledgees that they were clothed with ownership, he says:

> "This contention is based upon the right of sale accorded to a pledgee by the law of England by which, in the event of default by the pledgor in payment of his debt, the pledgee can sell the pledge without first having recourse to a Court of law for authority to do so. This right, it is said, creates a 'special' property in the pledge in

favour of the pledgee and is a right *in re* constituting or equivalent to ownership and distinguishable in character from the mere right *in rem* possessed by a lienholder. It is first to be observed of this right to sell without recourse to a Court of law that it is peculiar to the English law of pledge. * * *"

"The subject was very fully examined by Chancellor Kent in Lord Stowell's time in 1805 in a learned judgment declaring the decision of the Supreme Court of the State of New York (Cortelyou *v.* Lansing, 2 Caines Cas. 199): 'I believe,' he says, 'that there is no country at present, unless it be England, that allows a pledge to be sold but in pursuance of a judicial sentence.'"

* * * *

"But when the nature of the right of a pledgee to sell is examined it will be seen that the so-called 'special' property which it is said to create is in truth no property at all. This has been recognized by many judges who have used the expression 'special interest' as a substitute for 'special property:'" See *Mores* v. *Conham,* (1610) Owen, 123, and *Donald* v. *Suckling,* (1868) L. R. 1 Q. B. 585, at p. 613.

"If it were not for the somewhat unfortunate peculiarity of English terminology involved in the established use of the words 'special property' when 'special interest' would seem better, it is difficult to see how an argument could be maintained which would effectively distinguish pledge from lien for present purposes.

"The very expression 'special property' seems to exclude the notion of that general property which is the badge of ownership. If the pledgee sells he does so by virtue and to the extent of the pledgor's ownership, and not with a new title of his own. He

must appropriate the proceeds of the sale to the payment of the pledgor's debt, for the money resulting from the sale is the pledgor's money to be so applied. The pledgee must account to the pledgor for any surplus after paying the debt. He must take care that the sale is a provident sale, and if the goods are in bulk he must not sell more than is reasonably sufficient to pay off the debt, for he only holds possession for the purpose of securing himself the advance which he has made. He cannot use the goods as his own. These considerations show that the right of sale is exercisable by virtue of an implied authority from the pledgor and for the benefit of both parties. It creates no *jus in re* in favour of the pledgee; it gives him no more than a *jus in rem* such as a lienholder possesses, but with this added incident, that he can sell the property *motu proprio* and without any assistance from the Court."

On the other hand, in a similar case, it was held that such a cargo could not be seized after the pledgee had legally exercised the power of sale, by contracting to sell to a third person. *The Ningchow,* (1915) P. 221.

Our own decisions are uniformly to the same effect.

In *Donnell* v. *Wyckoff,* 49 N. J. L. 48, (Supreme Court, 1886), wherein the subject-matter of the pledge was corporate stock, Justice Depue said (page 49).

"Upon a pledge of property as security for a debt, the pledgee has only a special property. The general property is in the pledgor, subject to the rights of the pledgee."

In *Broadway Bank* v. *McElrath,* 13 N. J. Eq. 24 (Chancellor Green, 1860), the conflicting rights of a pledgee of stock and the attaching creditors of the pledgor were dealt with. It would appear from the opinion that the Court entertained no doubt *that the interest of a non-resident pledgor in stock of a New Jersey corporation pledged to a non-resident was subject to attachment,* under the New Jersey Statute, and the Court, on page 26, says that the rights of the creditors were unquestioned except so far as they conflict with the rights of the pledgee. The court says (p.):

> "To require a transfer of the stock to the lender as security for the loan against the right of attaching or execution creditors will at once destroy the value of the security, or compel the borrower to divest himself of his character as corporator to forfeit his control of the business of the corporation, of his right to dividends, and of all his other rights as a stockholder in the corporation. Why should the owner of stocks be deprived of the privilege of mortgaging or pledging his stock for the security of a loan, without stripping himself of all his rights of ownership, more than the owner of any other property?"

And again, speaking of the effect of a pledge:

> "The absolute ownership of the stock, it is true, was not transferred, nor was it intended it should be. The spirit and design of the contract was that the legal ownership of the stock should continue in McElrath; that he should remain a member of the corporation, with the right to receive the dividends upon the stock, to vote at all elections, and with all other rights pertaining to him as a stockholder and member of the company, and that the bank should hold the stock as collateral security

> for the payment of the loan, with the absolute and irrevocable right of transferring the legal ownership upon failure to pay the debt."

That the pledgor has the right to bring a possessory action against the pledgee to recover the stock itself, providing only he makes and keeps good a tender of the debt, is entirely established. 31 Cyc. 856; *Meisel* v. *Merchants' National Bank,* 85 N. J. L., 253. (Court of Errors, 1913).

In the case of *McCrea* v. *Yule,* 68 N. J. L. 465, Justice Fort, speaking for the Supreme Court in 1902, in a case of an assignment of a chose in action as collateral security, said (p. 467):

> "A pledgee of personal property, assigned as collateral security, has the right to collect the interest, dividends and income accruing on the collateral assigned, accounting to the pledgor upon the redemption of the pledge. In making such collections the pledgee is a trustee of the pledgor to see to the proper application of the funds collected or to refund the same to the pledgor if the debt be otherwise paid. Farwell *v.* Importers and Traders National Bank, 90 N. Y. 483; Garlick *v.* James, 12 Johns. 146; Strong *v.* National Mechanics' Banking Association, 45 N. Y. 718; Donnell *v.* Wyckoff, 20 Vroom 48; Ware *v.* Russell, 29 Am. Rep. 710; Story Bailm. (6th ed.) Sec. 303; Am. and Eng. Encycl. L. (2d ed.) 894."

When shares of stock are pledged, they "remain the property of the shareholder for every purpose excepting that of defeating the lien" of the pledgee. *Mechanics B. & L. Assn.* v. *Conover,* 14 N. J. Eq. 219, 226, reversed on an-

other point *Herbert* v. *Mechanics B. & L. Assn.* 17 N. J. Eq. 497.

> "* * * owners of stock alone are entitled to vote upon it at a stockholders' meeting. The single *exception* is that declared by Section 37 of the Corporation Act, of a *pledgee* of hypothecated stock who has been expressly empowered to vote thereon by the *owner.*" *O'Connor v. Internat'l Silver Co.,* 68 N. J. Eq. 680, 683. (E. & A.)

The section of the Corporation Act referred to in the foregoing opinion is *No. 37, Compiled Statutes, 1623,* and is of the highest importance as containing a clear legislative definition of the nature of the right which a pledgee obtains and that which a pledgor retains in the stock of a New Jersey corporation, a species of property which exists only by virtue of and under the statutes of this State and the characteristics of which, as property, necessarily depend for definition upon the statute.

This section was referred to in a number of the opinions delivered in:

Warren v. *Pim,* 66 N. J. Eq. 353.

The most extended reference thereto is in the opinion of Justice Pitney at page 385 where he says:

> "Is any exception to the general policy (that the right to vote is the personal privilege of the owner of shares) to be found in the latter part of Section 37, which declares that every person who shall pledge his stock as collateral security may, nevertheless, represent the same at all meetings and vote thereon as a stockholder, unless in the transfer to the pledgee on the books of the corporation he shall have expressly empowered his pledgee to vote thereon, in which case only the pledgee or his proxy

may vote? I think not. This clause simply recognizes that in a given share of stock there may be separate interests held by two or more persons adversely to each other. Manifestly, it is not practicable that they both vote upon the same stock at the same meeting, and the act therefore leaves it to be arranged by contract between themselves. Whether pledgor or pledgee votes, the vote in either case is incident to an actual property interest in the stock, and the presumption is that by contract it will be so arranged that to him whose interest is the more important will be accorded the privilege of voting while the interest continues."

The same section was dealt with in *Thomas* v. *International Silver Company,* 72 N. J. Eq. 224.

Vice-Chancellor Bergen held that even under the authorization of this section a pledgee of stock owned by the corporation itself could not vote it, notwithstanding the stock was registered in the name of the pledgee, as owner, and the corporate pledgor had expressly authorized the pledgee to vote the stock. This is held upon the principle that the pledgee votes, if at all, only by virtue of the pledgor's ownership for he has none except it be derived from the pledgor. This opinion is entitled to the most careful consideration in its application to the case at bar.

See also *Dirigo Tool Co.* v. *Woodruff,* 41 N. J. Eq. 336, 342 (E. & A.).

Morris Canal & Bkg. Co. v. *Fisher,* 9 N. J. Eq. 667, 685, 690, 64 Am. Dec. 423.

Drawing the familiar distinction between a chattel mortgage and a pledge, Mr. Justice Pit-

ney says, in *Dale* v. *Pattison,* 234 U. S. 399, 405, 58 L. ed. 1370, 1375, 52 L. R. A. (N. S.) 754:

> "On the other hand, where title to the property is not presently transferred, but possession only is given, with power to sell upon default in the performance of a condition, the transaction is a pledge, and not a mortgage."

The law of Connecticut appears to be to the same effect. In *Robertson* v. *Wilcox,* 36 Conn. 426 (1870), the highest court of that State at page 430, said:

> "A pledge of property does not carry with it the title to the thing pledged. The title remains as before. All that passes to the pledgee is the right of possession, coupled with a special interest in the property, in order to protect the right. 2 *Kent Com.,* 585; *Story on Bailments,* sec. 287; 2 *Story Eq. Jur.,* sec. 1030; 1 *Swift Dig.* 390.
>
> "We think therefore that the delivery of the property to the plaintiff, with the right to retain the possession of it as against the defendant till the plaintiff should be saved harmless from his engagement, cannot be regarded as a transfer of the property, or of the defendant's interest therein, within the meaning of the statute.
>
> "Should the plaintiff at any time attempt to sell the property, or the defendant's interest therein, by virtue of the pledge, then the defendant and his wife can make the claim now pressed upon our consideration, that such act, coupled with the pledge, would amount to a transfer of the property, or of the husband's interest therein, within the meaning of the statute. This would be a forcible argument to show that the plaintiff derived no power from the pledge to sell the property or the defendant's interest

therein. But till such time shall arrive this claim is premature and speculative.

"Even in cases where the pledgee has the right to sell in case of forfeiture, until such right is exercised no transfer of the property from the pledgor is effected. The pledge in such cases merely empowers the pledgee to sell in a certain event, on giving proper notice to the pledgor of the time and place of sale, and apply the proceeds to the payment of his claim. But giving the power to sell, although irrevocable, does not transfer the property. It surely is not transferred to the pledgee, for the authorities all agree that the title remains with the pledgor. To whom then is it transferred? It is clear that no transfer is made from the pledgor till the pledgee exercises the right to sell."

Turning from definition to a consideration of the respective rights of pledgor and pledgee, it will at once be perceived that they are wholly inconsistent with the theory of ownership in the pledgee. We refer first to the fundamental doctrines of pledge.

1. It is necessary to make delivery, actual or constructive, to him.

2. The pledgee is estopped to deny pledgor's title, *31 Cyc. 807.*

3. Abandonment of the property or relinquishment of possession to the pledgor or one claiming in his right is a waiver.

4. Property pledged for one debt cannot, without special agreement, be held as security for any other.

5. The pledgee must return the property on payment; and, generally, the identical property pledged, *31 Cyc. 855.*

6. He must account for income therefrom.

7. The *risk of loss* is on the pledgor, save that pledgee must exercise ordinary care.

8. The pledgee's right to use, repledge, or sell, is limited.

9. He cannot sell except on notice.

10. He cannot himself purchase unless by special agreement.

11. The delivery of a pledge is of course not satisfaction or payment of the debt.

12. On default, the property does not become absolute in the pledgee.

13. An agreement waiving the right to redeem is usually void.

14. On sale, any surplus belongs to the pledgor.

15. The pledgor may bring replevin, making and keeping good a tender of the debt. *Meisel* v. *Merchants Nat'l Bank,* 85 N. J. L. 253, (E. & A.),

16. He may sue for a conversion. *S. C.*

This necessarily imports that he has a legal property in the thing pledged.

> "Two things are necessary to be proved, to entitle the plaintiff to recover in this kind of an action: 1st, property in the plaintiff; and 2dly, a wrongful conversion by the defendant." Lord Mansfield in *Cooper* v. *Chitty,* 1 Burr. 20, 31, 97 Eng. Repr. 166.

The very definition of a conversion is an act inconsistent with the plaintiff's rights of property.

The pledgor may bring trover against the pledgee himself, *Meisel* v. *Merchants Nat'l Bank, supra.* Adopting for the moment the theory of respondent that ownership is in the pledgee, such an action must be considered as

one who has but an equitable right against the defendant for a conversion of property owned by defendant, the judgment in which will vest the ownership in the defendant who is already the owner.

Striking out from the trite statement of fundamentals, we notice a few particular instances of the result of the application of these principles.

(a) The pledgor's stock may be levied on, subject to the lien of the pledgee. *Mechanics B. & L. Ass'n* v. *Conover, supra.*

(b) It is held that a specific legacy is not adeemed by a pledge of the thing bequeathed. *Ashburner* v. *Macguire,* 2 Bro. C. C. 108, 113, 29 Eng. Repr. 62, 65, 2 White & Tudor's L. C. *267, 272.

Knight v. *Davis,* 3 My. & K. 361, 40 Eng. Repr. 136.

Ellis v. *Eden,* 25 Beav. 482, 53 Eng. Repr. 721.

Re Young, 32 Pittsb. L. J. 403, as stated in 49 Cent. Dig. Col. 3018.

Bearing in mind that a specific legacy must describe and point out the identical thing bequeathed (*Mecum* v. *Stoughton,* 81 N. J. Eq. 319), indicating the intention of the testator, that the thing should be taken or enjoyed in the state and condition indicated by that description (*Robertson* v. *Broadbent,* 8 App. Cas. 812; 53 L. J. Ch. 266), and that the legacy is adeemed unless the subject of the gift exist *in specie* at the time of death (*Wyckoff* v. *Perrine's Ex'rs.* 37 N. J. Eq. 118), it seems clear that these decisions are erroneous, if our opponents are sound in their contention that upon making the pledge the pledgor ceases to have stock, and that he has instead a mere equity of redemption;

that is, a right to bring the pledgee into a court of equity to answer such decree (*in personam*) as may be made touching the pledgee's dealings with the subject of the pledge. Whereas, if these authorities be correct, it is because the pledged stock passes under the will *as stock,* thus answering the identification of the will.

(c) There is an instructive line of cases in the United States Supreme Court, dealing with the liability of a pledgee of national bank stock under the provisions of the national banking act relating to shareholders' liability. It is settled that, under the act, the *real owner* is always subject to that liability, whether or not he is registered; and that the person who is registered as *owner* is always liable on grounds of estoppel. The pledgee, however, is not treated as the *real owner,* and is not subject to the assessment even if he is registered as *pledgee,* but only if he is registered as *owner.*

Anderson v. *Phila. Warehouse Co.,* 111 U. S. 479, 28 L. ed. 478.

In *Pauly* v. *State Loan & Trust Co.,* 165 U. S. 606, 41 L. ed. 844, the pledgee had the shares registered in its name as "pledgee," thereby escaping liability, because the stock list gave information to all who examined it that it

> "was not the real or absolute owner of the shares in question, but held them only as 'pledgee'; that there was no 'out and out' transfer of the stock, whereby the transferer, as between him and the transferee, parted with his interest; and that the real ownership remained with the pledgor, the pledgee acquiring only a lien upon the stock to secure its debt." (p. 620) * * * and "that the party to whom certificates were issued was not in fact, and did

not assume to be, the owner of the shares represented by them, but was and assumed to be only a pledgee having no general property in the thing pledged, but only a right, upon default, to sell in satisfaction of the pledgor's obligation." (p. 622).

"It can hardly be possible that the statute was intended to impose a liability upon a pledgee, who had taken the shares as collateral security and, through the failure of the pledgors, had been forced against its will into the position of ownership." *Rankin* v. *Fidelity Ins., etc., Co.,* 189 U. S. 242, 253, 47 L. ed. 792.

See also *Ohio Valley Nat'l Bank* v. *Hulitt,* 204 U. S. 162, 51 L. ed. 423.

And see 10 Cyc. 696.

(d) A pledgor may bring a bill in equity to compel a transfer of stock. *Smith* v. *Lee,* 77 Fed. 779.

(e) He may sue for a direct injury to his stock (other than a conversion). *Ritchie* v. *McMullen,* 79 Fed. 522; *Milliken* v. *McGarrah,* 159 App. Div. 725, 144 N. Y. Supp. 964.

(f) Can it be questioned that if the corporation dissolved, and the trustee realized for distribution an amount over and above the sum for which shares were pledged, the pledgor would receive the excess?

It is this intangible interest in the corporate property that the pledgor's executor succeeds to.

B. The Situs of the Pledgor's Interest.

The doctrine is too well established to need discussion that the stock of a New Jersey corporation has a *situs* in this State and is sub-

jext to succession taxation here. *Dixon* v. *Russell,* 79 N. J. L. 490 (Court of Errors); *Carr* v. *Edwards,* 84 N. J. L. 667.

The matter is nowhere more fully and ably discussed than in the opinion of Mr. Justice Garrison in the Supreme Court in *Neilson* v. *Russell,* 76 N. J. L. 27 (1908), reversed on another point, 76 N. J. L. 655 (1908). The following is quoted not for the purpose of supporting this elementary proposition, but as illuminating the precise question under review in this case: (At page 35).

> "In this country, where the general doctrine of the state courts is that the *situs* of property governs its liability to succession taxes, the weight of authority is that stock in a corporation is subject to the imposition of succession taxes by the state that created the corporation, and that in this regard the place of residence of the deceased stockholder is immaterial."

The learned Justice then discussed the cases of:

Greves v. *Shaw,* 175 Mass. 205.
Kingsbury v. *Chapin,* 196 Mass. 533.
Matter of Bronson, 150 N. Y. 1.
St. Albans v. *Car Company,* 57 Vt. 68.
Street Railroad Co. v. *Morrow,* 87 Tenn, 406.

He then quotes 27 *Am. & Eng. Encycl. L.* 349, *sub-tit. "Succession Taxes,"* where the succinct summary of the text is:

> "In legal contemplation the property of a shareholder as represented by certificates of stock is where the corporation exists, and therefore the capital stock of a domestic corporation is considered as having a *situs* within the home state, even though the owner be a non-resident and the stock (certificates?) be in his possession without the state at the time of his death."

He continues his discussion as follows:

"In the views thus expressed we concur to the extent of holding that the impost laid by our act for taxing collateral inheritances is not a property tax, but an excise upon the devolution of property on the death of its owner—in fine, a succession tax, a species of impost not unlike our franchise tax on the right of corporate existence; that such succession tax applies to all property within this state regardless of the place of residence of its former owner, and that stock in a New Jersey corporation is property within this state for the purposes of such succession tax, without regard to the place of residence of its late owner, or the place of deposit of the certificates of stock that evidence such ownership, or the location of the property owned by such corporation, or the place where its business is conducted. In a somewhat more precise form, our conclusion is that stock in a New Jersey corporation, *i. e.,* the proprietary right that a stockholder has in a corporation of this state, relating, as such proprietary right does, to an anomalous species of intangible property that owes its existence solely to the laws of this state—is itself property within this state in the sense that it has an inherent and abiding *situs* here for all matters appertaining to sovereignty, among which is the levying of an impost upon the devolution of such property upon the death of its owner. And furthermore, that such intangible proprietary right, although it is personal property as regards the acts of its owner, is, from its nature and because of its inherent *situs,* unaffected as regards the acts of the sovereign by the circumstance that the domicile of its former owner was elsewhere than in this state. In fine, we think that the sovereign power to

which a corporation owes its existence can never be wholly detached from it, and is not estranged from its creature by the circumstance that the owners of shares in the property thus created reside in one place rather than another. The metaphor that pictures the state as giving birth to a corporation is a figure more bold than accurate, for (to carry out the metaphor) the natal cord between the two is never completely severed. Acts of ownership that do not trench upon this vital union do not call for the recognition of its existence, but acts of sovereignty that are based upon its existence demand its recognition. In effect the anomalous species of incorporeal personal property we are considering has a dual *situs* accordingly as it is regarded from the standpoint of ownership or from that of sovereignty. As to the former, the *situs* changes with the domicile of the owner, but as to the latter, the *situs* is always within the dominion of the sovereign. In this latter sense, and for the purposes of the legislation under review, the *situs* of every share of stock in every company incorporated by this state, and coming within the purview of the act, is within the State of New Jersey.

"It may be superfluous to add that the whereabouts of the certificates of stock is immaterial upon the question of the legal *situs* of the property represented by them. Such certificates, being mere evidences of ownership, their place of deposit no more determines the *situs* of the personal property of which they are a muniment of title than the place where a deed of conveyance is kept would determine the *situs* of the real property described in it. A practical illustration is our statutory provision for levying upon corporate stock under a *fieri facias,*

the levy in such case being made, not upon the certificates of stock in the possession of the stockholder, but by notice to the corporate officer in possession of the books of registry of the stock itself. *Gen. Stat.*, p. 1415, sec. 5.

"Opposed to the foregoing conclusion, which is based upon the true nature and inherent *situs* of this species of property, there is really nothing by way of denial, the opposing contention being in effect a protest that by reason of the fiction *mobilia personam sequuntur* we are prohibited from looking into the true nature of the property in question or from determining its actual *situs*. I am convinced that this protest comes from having too much in view the corporeal certificates that evidence the intangible right in question whereby the nature of the right itself is lost sight of. The nature of such right will be best seen by conceiving of the right itself as existing unevidenced by any corporeal muniment of title. The legislature has declared that shares of stock are personal property, hence their *situs* follows the person of their owner, as far as the fiction of the common law applies. But this fiction, although sometimes spoken of as if it were a maxim of jurisprudence, is in reality but a fiction that was adopted from the Roman law, where it was based upon the division of all property according to its true nature into movables and immovables. Inasmuch as movables, which by reason of their nature were deemed to follow the person of their owner, soon came on this account to be called personal property, it was a short step to the paraphrase that personal property has no *situs* saving at the domicile of its owner. While the original fiction based on the true nature of movables has thus been lost sight

of in the broader generalization, it is still useful to recur to it whenever matters are sought to be included in such broader generalization, not by reason of their true nature, but solely by force of fiat. Property thus brought within the scope of this fiction is without doubt amenable to it as regards acts of ownership and contract, but not necessarily so as regards acts of sovereignty, a distinction that must be borne in mind whenever property created by and subject to the sovereign power of the state is at the same time susceptible of private ownership and control as personal property. In such cases, when the policy of the state conflicts 'with the fiction due to historical tradition, the fiction must give way,' to use the language of Mr. Justice Holmes in Blackstone *v.* Miller, 188 U. S. 189, 206.

"'It is a certain rule,' said Lord Mansfield, 'that a fiction of law shall never be contradicted so as to defeat the end for which it was invented, but for every other it may be contradicted.' Mostyn *v.* Fabrigas, Cowp. 161.

"'Although movables are for many purposes to be deemed to have no *situs* except that of the domicile of the owner,' says Judge Story, in his conflict of Laws, section 550, 'yet, this being but a legal fiction, it yields whenever it is necessary for the purposes of justice that the actual *situs* of a thing should be examined.'

"In People *v.* Tax Commissioners, 23 N. Y. 224, Judge Comstock quotes with approval the foregoing, and adds: 'I can think of no more just and appropriate exercise of the sovereignty of a state or nation over property situated in it and protected by its laws than to compel it to contribute towards the maintenance of government and law. Accordingly there seems to

be no place for the fiction of which we are speaking (*mobilia personam sequuntur*) in a well-adjusted system of taxation.'

"In the article 'Succession Taxes,' in 27 *Am. & Eng. Encycl.* L. 347, the matter is thus summarized: 'In the case of a non-resident decedent leaving personal property within the state, the maxim *mobilia personam sequuntur* does not prevail, and the *situs* of the personality depends upon whether *from its nature* the property can be said to be actually "within the state." ' "

The case of *Amparo Mining Company* v. *Fidelity Trust Co.,* 75 N. J. Eq. 555 (Court of Errors, 1909), affirming opinion of Vice-Chancellor Stevenson in 74 N. J. Eq. 197, is also instructive. In this case the jurisdiction of the courts of the state of incorporation over the enforcement of property interests in stock as against non-residents was upheld.

See also *Andrews* v. *Guayaquil & Quito Railway Co.,* 69 N. J. Eq. 211 (Vice-Chancellor Stevens, 1905), affirmed on opinion below in 71 N. J. Eq. 768.

See also *Sohege* v. *Singer Manufacturing Co.,* 73 N. J. Eq. 567 (Vice-Chancellor Howell, 1907).

See also *Cord* v. *Newlin,* 71 N. J. L. 438.

Jellenik v. *Huron Copper Mining Co.,* 177 U. S. 1, 44 L. ed. 647. *Re Culver,* (Ia.) 123 N. W. 743, 25 L. R. A. (N. S.) 384. *Hopper* v. *Edwards,* 88 N. J. L. 471. *Baker* v. *Baker, Eccles & Co.,* 242 U. S. 394, 401; 61 L. ed. ——:Commented on, 30 Harvard Law Rev. 486.

It being firmly established and necessarily conceded that the stock is subject to succession taxation by the State, it is contended by the appellant that it necessarily follows that not only is the entire legal interest in the stock subject to taxation by the State but as well every

undivided or fractional interest in any such given share of stock; and as well any proprietary interest in such share of stock though it be an interest of a quality different in character from a mere fractional or other legal interest less than the whole; and that the interest of a pledgor of a share of stock is such a proprietary interest in the share of stock itself that the stock being taxable it follows that the pledgor's interest is taxable, whether it be called an equity of redemption or whatever may be a properly descriptive term.

We need not dwell on the distinctions which exist in respect to *situs* for the purpose of property taxes, on the one hand, and succession taxes, on the other. The argument of respondent is not forwarded by calling the pledgor's right an equity of redemption, or *chose in action,* or an intangible. The stock itself is a *chose,* and intangible. While an intangible right has really no locality, it must, in the nature of things, have ascribed to it a *situs* for legal purposes. The *situs* is based on the power of the sovereign; and if the sovereign has power to deal with it effectively as a property right, it may tax it as having an ascribed *situs* within its jurisdiction.

The *Amparo Mining Co.* case at once suggests such power. We note especially the attitude of the court towards the rights of *bona fide* holders. If any one class of such holders was more prominently in the mind of the court than another, it was probably that of pledgees. But the Court did not turn aside from rendering judgment, because of this possibility, which, if our opponents' argument be sound, *would at once have ousted it of jurisdiction.* That is to say, the court did not consider the possibility that a non-resident owner had pledged his stock

to a non-resident to affect the case as it would be affected if respondent's argument be sound. For, if it be sound, the pledgor's interest has no *situs* here, and hence our courts would have no jurisdiction to enforce property rights in the stock if such a pledge had been made.

It can hardly be doubted that the pledgor could resort to our courts to enfore a conflicting property right in respect to his stock; and that because he could obtain effective relief nowhere but in the domicile of the corporation. To be more concrete, suppose that Morse, a resident of Connecticut, had pledged New Jersey stock to residents of Massachusetts and New York jointly, and that the latter wrongfully delivered the same to a resident of Oregon, and that the stock had no market value (see *Safford* v. *Barber,* 74 N. J. Eq. 352). Where could he obtain relief except in New Jersey? *Gregory* v. *N. Y. L. E. & W. R. Co.,* 40 N. J. Eq. 38. Who would doubt that such a suit would be *quasi in rem?*

Respondent conceded below that the interest of a *resident* pledgor is taxable by the State of his domicile. This at least recognizes that interest as *property.* Our statute does not purport to tax a resident estate on anything except the transfer of *property.* (Sec. 1, sub-div. 1).

The New York courts recognize that the pledgor has a *residuary interest.*

Warner v. *Fourth National Bank,* 115 N. Y. 251, 22 N. E. 172, in which case the interest of a non-resident pledgor of notes held in pledge by a resident, was held to be subject to attachment in New York State.

Judge Gray says:

> "The title to property may remain in the pledger; but the pledgee has a lien, or

special property, in the pledge, which entitles him to its possession against the world."

And further:

"The pledger's residuary interest in the pledge constitutes a claim or demand upon the pledgee, which is property, and hence may become the subject of attachment."

And again:

"We think the attachment in question here operated to secure to the (attaching creditor) the lien upon the pledged property, to the extent of the interest of the (pledgor), and that interest was the right to the pledged property, or so much of it or of its proceeds from any collection as remained after the satisfaction of the pledgee's claim for advances."

See also opinion of the same Judge in *Simpson* v. *Jersey City Contracting Co.,* 165 N. Y. 193, 58 N. E. 896, 55 L. R. A. 796.

"The pledgee obtains a special property in the thing pledged, while the pledgor remains general owner."

Fairbanks v. *Sargent,* 117 N. Y. 320, 22 N. E. 1039, 1041, 6 L. R. A. 475, 478.

The most distinguished New York judge of all times, Chancellor Kent, expressly held in *Cortelyou* v. *Lansing,* 2 Caines Cases 200, 2 N. Y. Common Law Reports 802 (1805), that the legal property in a pledge does not pass as in the case of a mortgage with defeasance; that the general ownership remained with the pledgor and only a special property passed to the pledgee, and further that the pledgor's interest passed to his administrators.

The precise question before the Court, whether the death of the pledgor terminated the

right to redeem, was held in favor of the pledgor. In referring to the Civil Law, the Court states the latter to be that the pledgee can never hold the pledge by prescription.

> "And that no length of time would preclude the debtor and his representatives from the right to redeem, and the reason given is very conclusive, because the creditor holds not as his own, but in other's right; *alieno nomine possidet.*"

This case has been much cited and as we have seen, was paid the unusual compliment of citation by the Privy Council in *The Odessa, supra.*

The same views are set forth in Chancellor Kent's *Commentaries* Vol. 2 *pages 577 to 581.

The learned Surrogate, therefore, in *Re Ames,* overlooked the learning of his own superior courts.

If the stock has a *situs* here, where else can be the situs of that *residuum?*

If the interest of the pledgee is less than absolute and unqualified ownership, how can the residuary interest of the pledgor have a *situs* other than that of the subject of the pledge? The stock never ceases to have a *situs* in this State, whoever may be the owner. *Neilson* v. *Russell, supra.* If the transfer of full ownership does not change the *situs* of the property, how can the transfer of a limited right *take out of the jurisdiction or affect the situs of what of the rights of ownership remain after such partial transfer?*

The tax is *in rem;* the *res* is the succession to "the proprietary right that a stockholder has in a corporation of this State"; unless the whole of the proprietary right be transferred, the remainder must be taxable here as property

of the pledgor having a *situs* here, to which his executor succeeds.

The stock has a *situs* here; and the "general property in the thing pledged" must continue, notwithstanding the pledge, to have a legal *situs* here for the purpose of the taxation of the succession to such "general property."

In *Merrill* v. *New England Ins. Co.*, 103 Mass. 245, 4 Am. Rep. 548 (1869), a non-resident had pledged his policy in a Massachusetts Insurance Company and an ancillary administrator was appointed in Massachusetts upon the estate of the pledgor. Such appointment was attacked on the ground that there was no jurisdiction for the same but the court said:

> "There can be no doubt that the appointment of the administrator in Massachusetts was legal and proper. A debt due to the intestate from any party having a domicile in this State, or any demand or right, requiring legal authority for its enforcement, is sufficient to give jurisdiction for such an appointment."

It is true that the pledgee in that case was a resident of Massachusetts and that it was such pledgee who was appointed such administrator. It seems perfectly clear, however, that the court was referring not to any equitable duty of the pledgee to account, but to the legal liability of the Insurance Company, as the basis for the grant of the administration in Massachusetts.

We submit that this authority would justify the appointment of an ancillary administrator if stock were pledged, in the state of the incorporation of the company, and without reference to whether the pledgee were a resident or non-resident; and this is but another way of holding that the interest of the non-resident pledgor has a *situs* in such State.

II. The legislature intended to tax the general property of the non-resident deceased pledgor in the stock.

Having established the power to tax, we have no difficulty in finding in the act the intention to do so. It is clear that every proprietary interest of whatever nature in those species of property subject to tax is included.

See Section 1, through sub-div. 3; and that paragraph following "Fourth," imposing the tax "upon the *clear* market value" of the property, which impliedly recognizes that the property taxed may be incumbered; Sections 2 and 3, taxing future and contingent estates of every character; Section 12, forbidding transfer by a corporation without Comptroller's waiver of shares of stock of, "or other interests in" the corporation; the last paragraph of Sec. 12 (the ratio provision) which necessarily contemplates that every kind of property interest be brought into hotchpot, and puts the non-resident on the same footing as the resident; and Section 26.

Such words as "property" and "interest" are ordinarily used in a revenue act in a popular sense, and should be broadly construed.

Pollock, *B.*, said in *Smelting Co.* v. *Comm. of Inland Revenue* (1896) 2 Q. B. 179, 65 L. J. Q. B. 513 (affirmed (1897) 1 Q. B. 175, 66 L. J. Q. B. 137):

> "It has frequently been said by Judges that in construing Revenue Acts the popular sense of words rather than the strict legal meaning ought to be looked at, and the reason for that is obvious. The object of these taxing Acts has nothing to do with the strict legal meaning of words, except where the words used are terms of art, such as describe an estate in real property, or other technical terms which are peculiar

> to the English law. The proposition is very well put in *Maxwell on the Interpretation of Statutes,* at p. 29, where it is said: 'To arrive at the real meaning, it is always necessary to get an exact conception of the aim, scope, and object of the whole Act;' and at p. 77 it is said that, 'In dealing with matters relating to the general public, statutes are presumed to use words in their popular sense, *uti loquitur vulgus.*' ''

In the *Matter of Whiting,* 150 N. Y. 27, 44 N. E. 715, 34 L. R. A. 232, 55 Am. Stat. 640, which held that bonds owned by a non-resident decedent but physically present within the State of New York, were property within the State and subject to inheritance tax, Judge Vann says:

> "When the design of the legislature is to tax the transfer of everything that it has power to tax, there is no inconsistency in taxing in one form, if another is not available. Indeed, perfect consistency is not always practicable in a scheme of taxation that is intended to let nothing escape that can be owned or transferred. * * * That dominant purpose is the key to the construction of the act, and it should not be thwarted by the conservatism of the courts, even if, in order to embrace all kinds of property, it is necessary to make it so pliable in application as to conform to all methods of doing business, and all ways of holding property."

The pledgor's "equity" certainly is property in a popular sense.

It has value; it may be sold; it may be incumbered; it may be made the basis of extending credit; the pledgor enjoys income therefrom; he may participate in the management of the corporation.

In holding good-will to be "property locally situate" within the meaning of a Revenue Act, Lord Macnaghten, for the House of Lords, said in *Inland Revenue Comm.* v. *Muller & Co.'s,* etc., (1901) A. C. 217, 70 L. J. K. B. 677.

> "Good-will is bought and sold every day. It may be acquired, I think, in any of the different ways in which property is usually acquired. When a man has got it he may keep it as his own. He may vindicate his exclusive right to it if necessary by process of law. He may dispose of it if he will, of course, under the conditions attaching to property of that nature."

Dealing with a property tax on the membership of a non-resident in a grain exchange, in *Rogers* v. *Hennepin,* 240 U. S. 184, 189, 60 L. ed. 594, 598. Justice Hughes said:

> "As was said by the Supreme Court of the state with respect to memberships deemed to be essentially similar: 'A membership has a use value and a buying and selling or market value. It is bought and sold * * * There is a lien upon it for balances due members * * * It passes by will or descent and by insolvency or bankruptcy. * * * It is true that there are certain restrictions in the ownership and use of a membership. These may increase or decrease its value, probably in the case of a board of trade membership greatly enhance it. They do not prevent its being property.'"

And such membership was held to have a *situs* in the State where it transacted business.

See also as to the extensive application of the language of the Act, *Hopper* v. *Edwards, supra,* (88 N. J. L. 471).

Bliss v. *Bliss,* 221 Mass. 201, 109 N. E. 148, L. R. A. 1916 A, 889.

Gardiner v. *Burrill,* (Mass.) 114 N. E. 617.

A contrary holding will have practical results which would astound that branch of our government which enacted this measure for the production of State revenue.

If the judgment below be affirmed, there can be no possible escape from this proposition:

That the estate of non-resident A., who owns unincumbered $10,000 of New Jersey stock will pay a tax, whereas the estate of non-resident B., who, in his lifetime, has pledged $10,000,000 of New Jersey stock to secure the sum of 39c., will not pay a penny of tax!

By the necessary logic of the decision below, a surprising number of loopholes in the law will be created.

Stock will escape which has been vested in a non-resident trustee for a non-resident *cestui,* for the latter does not own the stock. He has only an "equity," a right to call the trustee to account in a court of conscience. He cannot vote the stock (as can the pledgor). He has no such legal interest therein (as has the pledgor) as will support an action of trover or a writ of replevin. 38 Cyc. 2049; 24 Am. & Eng. Enc. (2nd Ed.) 483.

Holders of voting trust certificates will escape. They have only a right to an accounting. They cannot call on the voting trustees for any specific shares. Nevertheless, they are "stockholders" within the meaning of Sec. 65 of the Corporation Act. *O'Grady* v. *U. S. Ind. Tel. Co.,* (Ct. of E. & A.) 75 N. J. Eq. 301, opinion reported in 71 Atl. 1040.

Stock held by non-resident partnerships will escape—for on death the stock passes to the surviving partner, and the decedent's executor has only a right to an accounting from him.

This very contention was made in an English case, but repelled. *Comm. of Stamp Duties* v. *Salting* (1907), A. C. 449, 76 L. J. P. C. 87.

It should also be considered whether the decision of the Supreme Court is in harmony with *Hopper* v. *Edwards, supra,* 88 N. J. L. 471.

We further suggest that if the respondent's theory is sound, a non-resident pledgee, upon his death, must be treated as the owner of the stock for the purpose of a succession tax. Such result, however, would work great injustice and cannot be considered as the proper construction of the act.

These, and other imaginable kindred illustrations, furnish a perhaps unnecessary demonstration of the fallacy of an argument that the pledgor's interest is not within the meaning, as well as the express words, of the act.

The analogy to a succession tax on the equity in mortgaged realty is strikingly apparent, and is a sound one. A mortgage *is* a conveyance, at law. The analogy to a mortgage of local chattels to a non-resident is also true. No one doubts the legality, in either case, of a succession tax upon the "equity."

And, lastly, it should be remembered that the decedent was in receipt of an income from these shares within the words of Section 1. It does not appear, and must be assumed, that the pledgee was in receipt of the dividends, which may very largely exceed the interest arising on the note. See *In re Rothschild,* 71 N. J. Eq. 210, affirmed *per curiam* 72 N. J. Eq. 425.

III. The pledgee's rights are not here involved, or any practical difficulties in the actual collection of the tax on incumbered stock.

Some stress was laid below by the respondent on the rights of the pledgee, and their supposed infringement by the Comptroller. No pretense is made by the State that its lien on the stock is other than inferior to that of the pledgee. The latter is not before the court, and there appears in the case nothing of interference with his rights. Certain practical difficulties in the collection of such a tax as this may be compassed within the imagination, but the present case is free therefrom.

It is enough for the decision of this case that the Comptroller's consent to transfer was requested, that he refused unless payment of the tax was forthcoming, that the tax was paid, the waivers issued, and the stock transferred. *The only question before the court is the legality of the assessment.*

In the opinion of the Supreme Court (but whether it was the basis of the decision we cannot tell), mention was made of the possibility that the "equity of redemption" be rendered valueless by a resort to the security after the pledgor's death.

This possibility would, with equal force, support the proposition that no tax should be levied on an equity in real estate, since that might be foreclosed. This might be due to the owner's neglect to pay the incumbrance, or for a hundred other reasons. Likewise, a house might be destroyed by wind or flood; a chattel burnt or lost; the assets of the estate might be embezzled; a debt become uncollectible by incompetent management; a security valueless by fluctuations in

the market or the receipt of "news from abroad."

The tax is on the succession, which occurs *at death;* and is then *due and payable* (Sec. 1). If the subject matter of the succession be of value at that time, *and the universal or particular successors choose to accept the succession,* the State may then levy, as of the situation then existing, a premium upon the privilege so to succeed. What becomes of the thing after the State has admitted the successors to the succession, is not of its concern.
And so hold the authorities.

See *Tilford* v. *Dickinson,* 79 N. J. L. 302, 305. (reversed on another point, 81 N. J. L. 576).

McCurdy v. *McCurdy,* 197 Mass. 248, 83 N. E. 881, 16 N. R. A. (N. S.) 329.

In re Penfold's Estate, 216 N. Y. 173, 110 N. E. 497, affirming 168 App. Div. 948, 153 N. Y. Supp. 1131, affirming 87 Misc. 522, 149 N. Y. Supp. 920.

37 Cyc. 1579.

Blakemore & Bancroft, Inheritance Taxes, p. 252.

The argument of respondent that due prudence and caution requires that assessment be withheld pending realization on the pledge is self-destructive. Contending that the State should take into computation the loss or shrinkage which has taken place in the meantime, does it argue that if there be an increase in value, a tax should be laid on this? Why should the State stay the exercise of the taxing power at the pleasure of the pledgee, and chance the collection of a tax on his judgment and honesty, and on the variability of the market's demand for the thing to be sold?

In the case at bar, certain of the New Jersey stocks were sold by the pledgee shortly after Morse's death, *at an amount in excess of the appraisement.* Certainly this did not render valueless the "equity" in these stocks. It was a realization of their value. While the proceeds were applied in reduction of the principal of the debt, this increased correspondingly the "equity" in the other stocks. It is as if the proceeds of the Bethlehem Steel preferred were paid to the respondent, and by it applied to the payment of the testator's legal obligation.

The validity of the tax, therefore, is affected by none of the foregoing matters.

IV. The State has the power to tax the pledgor's general property in New Jersey stock; the legislature has provided for the exercise of that power by the inheritance tax act; the Comptroller has lawfully assessed the tax in this case; and therefore—

The judgment below should be reversed, with costs, with direction for the entry of an order below affirming the assessment and tax.

Respectfully submitted,

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