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Stock Exchange Seats as Property

H. Hosmer
Washington University School of Law

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NOTES

STOCK EXCHANGE SEATS AS PROPERTY.

The right of a state under its general personal property tax laws to subject seats in stock exchanges to taxation has recently been upheld by the United States Supreme Court in *Rogers vs. Hennepin County*,[1] affirming two decisions of the Supreme Court of Minnesota.[2] The actions were brought to cancel assessments on memberships in stock exchanges, which though they were incor-

[1]60 L. Ed. 265, 36. Sup. Ct.
[2]Rogers vs. Hennepin Co., 124 Minn. 539, 145 N. W. 112; State vs. McPhail 124 Minn. 398, 145 N. W. 108, 50 L. R. A. (N. S.) 255, Ann. Cas. 1915C 538.

porated had no capital stock. These exchanges transacted no business for profit as corporations but merely furnished for the benefit of their members buildings and equipment upon which the corporations were separately taxed. The appeal from the decision of the state court was based on the contention that the tax violated the due process and the equal protection clauses of the federal Constitution, but the holding of the United States Supreme Court was adverse to the appellants on both points.

In holding that the memberships in the exchanges constituted property distinct from the assets of the association itself the Supreme Court is in accord with the overwhelming weight of authority. That court itself had previously held that seats in exchanges are to be considered assets in the hands of trustees of bankrupt members, though such property may be subject to reasonable regulations of the association, such as those requiring the proceeds from the sale of the seat to be applied first to debts owed to other members of the exchange.[3] There are many decisions of other courts to the same effect.[4] A few courts have held, however, that seats in stock exchanges cannot be levied on and sold under ordinary fi. fa. executions.[5] It seems that there may be an equitable lien arising from the assignment of a seat in an exchange by way of pledge.[6]

As to whether or not the Minnesota revenue statute embraced memberships in stock exchanges when it did not mention them specifically but provided only for the taxation of "all real and personal property"[7] the United States Supreme Court considered itself bound by the decision of the Minnesota court, the question being one of local law. In construing the statute as including property of this character the Minnesota Supreme Court declined to follow the decisions of every other court before which a similar question has arisen. The Supreme Court of California had held that a seat in a stock exchange is a mere "personal privilege of being and remaining a member of a voluntary association," having "no such qualities as make it assessable and taxable as property," and being

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[3]Hyde vs. Woods, 94 U. S. 523; Page vs. Edmunds, 187 U. S. 596; Sparhawk vs. Yerkes, 142 U. S. 1.

[4]Powell vs. Waldron, 89 N. Y. 328, 42 Am. Rep. 301; State ex rel, Crane vs. Chamber of Commerce, 77 Minn. 308; Re Gregory, 98 C. C. A. 383, 174 Fed. 629, 27 L. R. A. (N. S.) 613 and cases cited in note thereto.

[5]Barclay vs. Smith, 107 Ill. 349, 47 Am. Rep. 437; Pancoast vs. Gowen, 93 Pa. 66; Lowenberg vs. Greenebaum, 99 Cal. 162, 37 Am. St. Rep. 42, 21 L. R. A. 399.

[6]Nashua Savings Bank vs. Abbot, 181 Mass. 531, 92 Am. St. Rep. 430.

[7]Minn. Rev. Laws 1905 sec. 794.

"too impalpable to go into any category of taxable property."[8] Such is also the law in Maryland and New York.[9] It is to be noted that the California, Maryland, and New York cases all involved memberships in unincorporated associations, while the exchanges in the Minnesota cases were regularly incorporated bodies, but the decisions make no point of this distinction and it seems to be of little importance in view of the fact that a newspaper company has been held by the Colorado Court of Appeals not to be taxable on a membership in the Associated Press, which is incorporated under the laws of Illinois.[10] The Colorado court held that the contract or membership in the press association lacked two essential elements embraced in the meaning of the word "property" as used in the taxing statute in that the local paper had no exclusive use or enjoyment of it owning to the varying conditions which the directors of the association might impose and because the membership could not be assigned without the consent of the board. It is generally held, however, even in New York that seats in stock exchanges are included within the general class of property upon which inheritance taxes may be assessed.[11]

Another point was raised before the federal Supreme Court in the case of *Rogers vs. Hennepin Co.* by an appellant who was a non-resident of the state of Minnesota. His contention was that, even though the membership were conceded to be property, if it were owned by a person domiciled in another state it could be taxed only at the owner's domicil and,not in the state where the exchange was located. In denying this the court applied the "business situs" rule, according to which certain species of intangible property such as credits and shares of stock in domestic corporations owned by non-residents may be given a business situs apart from that of the owner, contrary to the maxim Mobilia sequuntur personam.[12] The decision in this respect is at variance with that of the New York Court of Appeals in *People ex rel. Lemmon vs. Feitner* (cited supra) which held that "the value of a seat in the New York Stock Ex-

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[8]San Francisco vs. Anderson, 103 Cal. 69, 42 Am. St. Rep. 98.

[9]Baltimore vs. Johnson, 96 Md. 737, 61 L. R. A. 568; People ex rel. Lemmon vs. Feitner, 167 N. Y. 1, 82 Am. St. Rep. 698.

[10]Arapahoe Co. vs. Rocky Mountain News Printing Co., 15 Col. App. 189.

[11]Re Hellman, 174 N. Y. 254, 95 Am. St. Rep. 582; Re Curtis, 31 Misc. 83; Re Glendinning, 68 App. Div. 125, aff. 171 N. Y. 684.

[12]Metropolitan Life Ins. Co. vs. New Orleans, 205 U. S. 395; L. L. & G. Ins. Co. vs. Orleans, 221 U. S. 346; Corry vs. Baltimore, 196 U. S. 466; Armour Packing Co. vs. Clark, 124 Ga. 369; Harrison Naval Stores Co. vs. Adams, 104 Miss. 299.

change is not capital invested in business in the state." "A broker in the purchase and sale of stocks and bonds," said the New York court "who neither receives nor delivers stocks but merely conducts the transaction on the floor of the exchange, giving up the name of the purchaser or seller to his principal, is in the position of one rendering services and cannot be regarded as conducting a business in which capital is invested in the legal sense. The money he has paid for his membership or seat is for the mere facility to transact his particular business and to surround it with such safeguards and honorable dealing as tend to promote both rapidity and safety in his transactions."

The decision of the United States Supreme Court in *Rogers vs. Hennepin County*, while it is of little importance from the standpoing of constitutional law will give strong support to the general rule relating to seats in stock exchanges stated in a dictum by Mr. Justice Lurton in the case of *O'Dell vs. Boyden*[13] that such memberships are property and as such "descendible, taxable, and assignable."

H. HOSMER.

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[13]80 C. C. A. 397, 150 Fed. 731, 10 Ann. Cas. 239.