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Taxation—Foreclosure of In Rem Tax Lien

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Foreclosure Of In Rem Tax Lien

Town of Somers v. Covey[35] involved reargument before the Court of Appeals, following reversal of its prior decision[36] by the Supreme Court of the United States.[37] The Supreme Court had reversed on the grounds that notice by publication, to an incompetent, of foreclosure of a tax lien did not satisfy the requirements of due process.

In the instant case, the Court explained that its prior decision was not based on the sufficiency of such notice, but rather on the grounds that the incompetent's committee had pursued the wrong remedy. The committee sought to vacate the judgment of foreclosure, but the Court had held that, pursuant to statute,[38] the foreclosure proceedings could only be attacked by an action to set aside the deed executed by virtue of that judgment. Hence, sufficiency of notice was immaterial in view of this holding; furthermore, the committee was now without remedy altogether for the statutory remedy was subject to a two-year limitation period[39] which had now expired. Thus the committee defeated himself by persisting in his error.

Claim For Refund Of General Business Tax

The City of New York imposed a gross receipts tax[40] upon advertising receipts earned by petitioner over a three year period, upon the theory that these receipts were the fruits of activity peculiarly local, even though the subsequent circulation of the magazine could be considered interstate commerce. Petitioner, a New York City publisher, brought this proceeding to obtain a refund of monies paid to the city declaring that the tax upon gross receipts was a burden upon interstate commerce.[41] To succeed, petitioner had to distinguish the facts of its own situation from the Supreme Court decision in *Western Livestock v. Bureau of Revenue*,[42] a case involving state taxation of advertising receipts for advertising appearing in a magazine circulated throughout the country. The tax was sustained, and the business of "preparing, printing, and publishing magazine advertising"[43] was deemed to be local activity, and any burden upon interstate commerce viewed as too remote to call for an invalidation of the tax.

35. 2 N.Y.2d 250, 140 N.E.2d 277 (1957).
36. 308 N.Y. 798, 125 N.E.2d 862 (1955).
37. 351 U.S. 141 (1956); see 6 BUFFALO L. REV. 345 (1957) for discussion of the instant case as well as the Supreme Court decision.
38. N.Y. TAX LAW §165-h(7).
39. *Ibid.*
40. ADMINISTRATIVE CODE OF CITY OF NEW YORK, §§41, 46.
41. New Yorker Magazine v. Gerosa, 3 N.Y.2d 362, 165 N.Y.S.2d 469 (1957).
42. 303 U.S. 250 (1937); for a discussion of the decision see, note, 13 IND. L. J. 500 (1937). The case is also noted in ROTTSCHAEFER ON CONSTITUTIONAL LAW, 168, 169 (1939).
43. 303 U.S. at 258, 259.