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
97 Md. 659, 55 A. 316

Court of Appeals of Maryland.
MAYOR, ETC., OF BALTIMORE et al.
 v.
**SAFE DEPOSIT & TRUST CO. OF
 BALTIMORE.**
 July 1, 1903.


Appeal from Baltimore City Court; Henry D. Harlan, Judge.

Application by the Safe Deposit & Trust Company of Baltimore to the appeal tax court of Baltimore to correct an assessment of personal property. From a judgment of the city court reversing the appeal tax court, and directing the correction of the assessment, the mayor and city council of Baltimore appeal. Affirmed.

West Headnotes


Taxation 371  **2131**
[371k2131 Most Cited Cases](#)
 (Formerly 371k40(11))

Acts 1902, p. 711, c. 486, providing that all corporate bonds, certificates of indebtedness, or evidence of debt, in whatever form, and all personal property, not exempt from taxation, held in trust, shall be assessed to the equitable owner in the county in which he resides, is not in conflict with Bill of Rights, art. 15, declaring that every person "holding property" in the state ought to contribute his part of the taxes.

Taxation 371  **2191**
[371k2191 Most Cited Cases](#)
 (Formerly 371k83)

The Legislature, in providing, as it has done in Acts 1902, p. 711, c. 486, that railroad and other bonds and railroad stock held in trust shall, for purposes of taxation, be treated as belonging to the cestui que trust, and not to the legal holder thereof, has not violated any of the provisions of

the Bill of Rights or Constitution.

Taxation 371  **2402**
[371k2402 Most Cited Cases](#)
 (Formerly 371k278)

The law requiring a domestic corporation to pay the taxes on its stock for the stockholder, and Acts 1902, p. 711, c. 486, requiring that personal property held in trust shall be assessed to the equitable owner in the county in which he resides, should be construed together, and the residence of the equitable owner should be treated as the situs for taxation, and the taxes should be paid by the corporation.

Argued before McSHERRY, C.J., and FOWLER, BOYD, PAGE, PEARCE, and SCHMUCKER, JJ.

Olin Bryan and Albert C. Ritchie, for appellants.
 W. Burns Trundle and Osborne I. Yellott, for appellee

SCHMUCKER, J.

This appeal raises the question of the validity of the Acts of 1902, p. 711, c. 486, which prescribes the method of assessment and taxation of personal property held in trust. The property involved in the present controversy consists of bonds of railroad and traction companies, and stock of a railroad company chartered in Maryland, so that the precise issue now before us is that of the validity of the act in so far as it relates to personal property of that character.

The act under consideration adds a new section to article 81 of the Code of Public General Laws, tit. "Revenue and Taxes," to be designated as section 221, and to read as follows: "Sec. 221. All bonds, certificates of indebtedness, or evidence of debt, in whatsoever form, made or issued by any public or private corporation, incorporated by this state or any other state, territory, district or foreign country, or issued by any state, territory, district or foreign country, and all personal property of any kind whatsoever, not exempt from taxation by

the laws of this state, in which any resident of any county of this state, has an equitable interest, with the legal title to the same in some other person or corporation who is a resident of some other county of this state or of the city of Baltimore, or (in the case of a corporation) which has its main office or principal place of business in some other county in this state or in the city of Baltimore, shall be valued and assessed for the purposes of state and county taxation to the equitable owner thereof in the county in which he or she resides, to the extent of his or her equitable interest as aforesaid, and the taxes due thereon shall be paid by the holder of said legal title to the collector of taxes for the county or city in which said property is so valued and assessed.” Then follows a section repealing all inconsistent prior legislation.

It appears from the present record that the appellee, which is a corporation having its main office in Baltimore City, had in its possession \$28,890 worth of railroad and other bonds in trust for Noah Walker, a resident of Baltimore county, and \$22,930 worth of similar securities, including, however, 24 shares of stock of the Philadelphia, Wilmington & Baltimore Railroad Company, in trust for Emily R. Hoff, who is also a resident of Baltimore county. It is admitted that these securities were liable to assessment and taxation for the year 1903. The appellee, having been assessed on the taxbooks of Baltimore City for all of these securities, applied by petition to the appeal tax court of that city to correct its assessment, by striking therefrom the securities, upon the ground that under the Acts of 1902, p. 711, c. 486, it was required to pay the taxes on them for the year 1903, to the collector of taxes for Baltimore county, where the equitable owners resided. The appeal tax court rejected the application, and refused to correct the assessment. The trustee thereupon appealed, under the statute, to the Baltimore city court, which, relying upon the act of 1902, passed its order of April 1, 1903, from which the present appeal was taken,

directing the appeal tax court to abate the assessed value of the securities from the trustees' assessment list.

It has long been settled that the power of taxation belongs exclusively to the legislative*317 branch of the government, and that the Legislature, except as restricted by the Bill of Rights and Constitution, has the absolute power of taxation over all the property within the state. [Faust v. Building Ass'n](#), 84 Md. 192, 35 Atl. 890; [State v. Mayhew](#), 2 Gill, 487; [State v. Sterling](#), 20 Md. 516, 517; [United States v. New Orleans](#), 98 U.S. 392, 25 L.Ed. 225; [Meriweather v. Garrett](#), 102 U.S. 472, 26 L.Ed. 197; [Savings Society v. Multnomah Co.](#), 169 U.S. 421, 18 Sup.Ct. 392, 42 L.Ed. 803. This court has also repeatedly recognized and upheld the power of the Legislature to fix the situs of personal property for purposes of assessment and taxation. [M. & C.C. of Balto. v. Balto. City Pass. R. Co.](#), 57 Md. 31; [Am. Coal Co. v. County Com'rs of Allegany Co.](#), 59 Md. 185; [Baldwin v. Washington Co.](#), 85 Md. 157, 36 Atl. 764; [Corry v. M. & C.C. of Balto.](#), 96 Md. 320, 321, 53 Atl. 942.

As the act of 1902 specifically fixes the situs for purposes of taxation of personal property held in trust at the residence of the beneficial owner, the order appealed from was properly passed, unless the act is to be regarded as in conflict with some of the provisions of the Bill of Rights or the Constitution. The appellant contends that it does conflict with article 15 of the Bill of Rights, which declares that every person “holding property” in this state ought to contribute his proportion of taxes; and they rely upon the case of [Latrobe v. Baltimore](#), 19 Md. 13, as deciding that the holder of property there referred to is the holder of its legal title, and not the owner of the beneficial interest in it. They also rely upon section 51 of article 3 of the Constitution, which provides that “personal property of residents in this state shall be subject to taxation where the

resident bona fide resides for the greater part of the year,” as requiring all personal property, except those classes of it which are excepted in the latter part of the section, to be taxed in the county where its legal owner resides. In the case of [Latrobe v. Baltimore](#), 19 Md. 13, which was decided long prior to the passage of the Acts of 1902, p. 711, c. 486, our predecessors undoubtedly held that, under the law as it then stood, the situs for purposes of taxation of personal property held in trust was the residence of the trustee, and not that of the cestui que trust, and that the trustee in whom the legal title was vested was the holder of the property, under the fifteenth article of the Bill of Rights. In that case, however, they arrived at their conclusion upon the general principles regulating taxation, when not modified by statute, for they preface their opinion with the statement, “We are not aware that the acts of assembly regulating the imposition and collection of taxes have affected any modification of the rules of law which otherwise must govern the determination of this question.” Applying those general rules to the case before them, they held that as the obligation under the fifteenth article of the Bill of Rights to pay taxes according to actual worth was a legal one, and the estate in the hands of a trustee had the legal incidents and obligations of an absolute title, the obligation fell upon him, and he was the proper person to be assessed for the payment of the taxes, and that through him it reached and fastened upon the interest of the beneficial owner. Upon the same principles the court there held that the Acts of 1841 (chapter 23), 1847 (chapter 266), and 1852 (chapter 337), requiring all property owned by residents of this state, and not permanently located elsewhere within the state, to be valued to the owner at his place of residence, referred to the ownership of the legal estate, without regard to the ownership of the equitable title or use. That the decision in *Latrobe v. Baltimore* was intended to go no further than we have said is apparent from the fact that when it afterwards, for the first

time, came before this court for consideration, in [Tyson v. State](#), 28 Md. 587, it was construed to have determined only “that, in the absence of any law regulating the imposition and collection of taxes, the trustee holding the legal title was properly chargeable with the tax.” When the case recently came before us again, in [Cherbonnier v. Bussey](#), 92 Md. 422, 48 Atl. 923, we cited *Tyson's Case* along with it in our opinion, as showing that it was only “in the absence of any law regulating the imposition and collection of taxes” that the trustee was held chargeable with the tax. We therefore find nothing in the interpretation of the fifteenth article of the Bill of Rights adopted in *Latrobe v. Baltimore*, as that case has been construed by this court, to impair the validity of the act of 1902 in regulating the assessment and taxation of the class of personal property involved in the present case.

It is not necessary to refer to the cases of the Mayor and C.C. of [Baltimore v. Stirling](#), 29 Md. 48, [Appeal Tax Court v. Gill](#), 50 Md. 377, and the [Appeal Tax Court v. Patterson](#), 50 Md. 354, relied on by the appellants, further than to call attention to the fact that they were all decided before the Legislature had made provision by statute, as it has specifically done by the act of 1902, for the assessment for taxation of personal property held in trust to the cestui que trust, and not to the trustee. It is obvious, therefore, that those cases cannot be regarded as controlling the determination of the issue arising upon the present record. When property is held in trust, there are two persons, each of whom is, in a certain sense, its owner. The trustee, who holds the title, is the owner in a legal and technical sense, but the cestui que trust is the beneficial and substantial owner. We do not think that the Legislature has exceeded its power over the subject of taxation, or violated any of the provisions of the Bill of Rights or Constitution, in providing that personal property of the kind involved*318 in this case shall, for purposes of assessment and taxation, be treated as

belonging to its substantial owner, and not to its technical holder. When the personal property held in trust consists, as a small portion of that now before us does, of stock in corporations of this state, the act of 1902 being in pari materia with the existing laws requiring the corporation to pay the taxes on its stock for the stockholder, the two laws should be construed together, and the residence of the cestui que trust be treated as the situs for taxation, and the taxes be paid by the corporation in accordance with the uniform system in force in this state for the payment of such taxes.

We must not be understood by what we have said in this opinion to hold that the act of 1902 is valid or effectual in so far as it may conflict with the special provision made by section 51 of article 3 of the Constitution for the taxation of goods and chattels permanently located, or of mortgages and the debts thereby secured, or that the act was intended to apply to leaseholds or any other interest in lands.

From what we have said, it follows that the order appealed from must be affirmed. Order affirmed, with costs.

Md. 1903.
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