

TAXATION—POWER OF FEDERAL COURTS TO ENJOIN PROCEEDINGS IN STATE COURTS.—This case was brought under section 266¹ of the Judicial Code to enjoin the collection of over \$12,000,000 assessed by New Jersey on the estate of John T. Dorrance. Dorrance died in 1930 at his New Jersey residence, and on Oct. 2, 1930, his will was probated there. The tax commissioner found that Dorrance was domiciled in New Jersey and assessed the amount stated as tax upon direct transfer payable under the New Jersey Transfer Inheritance Tax Act of 1909 as amended. On Dec. 12, 1931,² the assessment was opened for the executors to submit additional evidence concerning the domicile of the deceased—including a judgment of the Supreme Court of Pennsylvania first rendered Sept. 26, 1932. Then on Oct. 10, 1932, the New Jersey tax commissioner again assessed upon the estate the tax of \$12,000,000. The executors of the estate appealed to the Prerogative Court which by final decree entered May 11, 1932 affirmed the assessment.³ On certiorari to the Supreme Court of New Jersey, the decision of the Prerogative Court was affirmed on Sept. 8, 1935.⁴ The executors have not yet appealed to the New Jersey Court of Errors and Appeals, but the state practice allows them to do so at any time before Feb. 11, 1936.

Dorrance, however, also had a residence in Pennsylvania and that state claimed he was domiciled there and recovered over \$14,000,000 in taxes.⁵ The Supreme Court of the United States refused certiorari.⁶ The plaintiffs then brought suit in the Federal District Court contending that New Jersey violated the full faith and credit clause, and other provisions of the Constitution of the United States. The District Court denied the injunction for want of jurisdiction, and the Supreme Court affirmed the decision. *Hill v. Martin, Commissioner*, 56 S. Ct. 278, 80 L. Ed. 270. (1935).

Plaintiffs claim that the District Court erred in holding that section 265 of the Judicial Code prevents a federal court from granting the injunction prayed for since at the time of instituting these suits in the federal court the New Jersey proceedings had not passed into the judicial stage, and since in any case an independent judicial proceeding was necessary to collect the tax.

¹ Sec. 265, Judicial Code: "The writ of injunction shall not be granted by any court of the United States to stay proceedings in any court of a State, except in cases where such injunction may be authorized by any law relating to proceedings in bankruptcy."

Sec. 266, Judicial Code provides for "interlocutory injunction suspending or restraining the enforcement, operation, or execution of any statute of a State by restraining the action of any officer of such State in the enforcement or execution of such statute, or in the enforcement or execution of an order made by an administrative board or commission acting under and pursuant to the statutes of such State . . ."

² This date and perhaps others are incorrect, but are the ones appearing in the opinion of the court.

³ *Re Dorrance*: (Feb. 7, 1934) 115 N. J. E. 268, 170 Atl. 601; (May 10, 1934) 116 N. J. E. 204, 172 Atl. 503.

⁴ *Dorrance v. Martin* (Feb. 8, 1935) 13 N. J. Misc. R. 168, 176 Atl. 902.

⁵ *Dorrance's Estate* (Sept. 26, 1932) 309 Pa. 151, 163 Atl. 303.

⁶ (1932) 287 U. S. 660, 77 L. Ed. 570, 53 S. Ct. 222; (1933) 288 U. S. 617, 77 L. Ed. 990, 53 S. Ct. 507.

First: The New Jersey law provides for assessment by the commissioner after notice and hearing. Anyone dissatisfied may appeal to the Prerogative Court which has jurisdiction to determine any case arising under the act. The decree of the Prerogative Court is subject to certiorari by the New Jersey Supreme Court, its judgment in turn being reviewable by the Court of Errors and Appeals. After an examination of the New Jersey law the United States Supreme Court found that the action of the New Jersey Supreme Court was judicial action within the inhibition of section 265. The Court points out that the review by the Supreme Court was created by the Constitution of New Jersey and its power on certiorari was inherited from the King's Bench. The fact that the certiorari act gives it the right to determine disputed questions of fact as well as law does not deprive it of its purely judicial character nor does the statutory provision that it "may reverse or affirm in whole or in part such tax or assessment" imply that the court may exercise administrative discretion.

Second: Section 21 of the Transfer Inheritance Tax Act provides that if one fails to pay the tax the commissioner must proceed by seeking a Prerogative Court order directing the interested party to show cause why the tax should not be paid—enforceable by contempt proceedings. The plaintiffs then contend that as the state must institute a separate suit to collect the tax, their application for injunction was not to "stay proceedings in any court of" New Jersey, i. e., the determination of the amount and validity of the tax is a separate and distinct proceeding and not a step in the process of determining and collecting the tax imposed. But the court here holds that the "further proceedings do not differ in essence from those required to satisfy any judgment." Then too, the terms of section 265 "in any court of a state" are comprehensive. "It includes all steps taken or which may be taken in the state court or by its officers from the institution to the close of the final process." "It applies to any proceeding supplemental or ancillary taken with a view to making the suit or judgment effective."⁷

In reviewing past decisions in this matter, the court showed that the decision of the district court is consistent with *City Bank Farmer's Trust Co. v. Schnader*,⁸ which held that an appeal to a court from an administrative body is judicial action. The effect of the two cases is to hold that the federal court will enjoin an administrative proceeding that has reached its last stage before judicial action but it will not enjoin the action after it has gone into court—the *City Bank Case* representing the former state of facts, this case the latter.

The court makes the comment that the distinction made here between judicial and administrative action is consistent with previous decisions.⁹

W. H. M. '36.

⁷ *Mutual Reserve Fund Life Assn. v. Phelps* (1903) 190 U. S. 147, 47 L. Ed. 987, 23 S. Ct. 707.

⁸ (1934) 291 U. S. 24, 78 L. Ed. 628, 54 S. Ct. 259.

⁹ *Prentiss v. Atlantic Coast Line Co.* (1908) 211 U. S. 210, 53 L. Ed. 150, 29 S. Ct. 67; *Keller v. Potomac Electric Power Co.* (1923) 261 U. S. 428,