

962. Such statutes are a police regulation to protect the general public from fraud and imposition, and the theft of motor vehicles. *Carolina Discount Corp. v. Landes' Motor Co.* (1925) 190 N. C. 157, 129 S. E. 414; *Williams v. Stringfield et al.* (1925) 76 Colo. 696, 231 Pac. 658. The statutes in these jurisdictions provide for liability under the penal provisions, but not that failure to comply with the provisions would render the sale void.

The theft of motor vehicles has no relation to sales and transfers, and a statute passed as a measure against fraud and theft should not be construed as rendering contracts unenforceable. Neither compliance nor non-compliance with the terms of a registration statute should be regarded as conclusive of title.

E. S., '31.

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CONSTITUTIONAL LAW—INTERNAL REVENUE—GIFT TAX NOT INVALID AS DIRECT TAX UNAPPORTIONED.—Plaintiff sued to recover a tax alleged to have been illegally exacted upon gifts made by him after the passage of the Revenue Act of 1924, 43 Stat. 253, 313, as amended by sec. 324 (a) of the Revenue Act of 1926, 44 Stat. 86, 26 U. S. C. A. 1131, providing for a tax on gifts *inter vivos* not made in contemplation of death. *Held*, not invalid under U. S. Const. Art. 1, sec. 2, par. 3 and Art. 1, sec. 9, par. 4, as imposing a direct tax not apportioned, since such tax was but an excise or impost applicable only to a limited exercise of property rights. *Bromley v. McCaughn* (1929) 50 S. Ct. 46.

Art. 1, sec. 8 of the Constitution authorizing the levy and collection of taxes and requiring uniformity throughout the country is limited by sec. 2 of the same article which requires that "direct" taxes be apportioned, and by sec. 9 which provides that "no capitation or direct tax shall be laid, unless in proportion to the census." It has been consistently held that a tax laid upon a particular use of property incidental to ownership is an excise, and therefore need not be apportioned. *Hylton v. United States* (U. S. 1796) 3 Dall. 171; *Nicol v. Ames* (1898) 173 U. S. 509; *McCray v. United States* (1903) 195 U. S. 27; *Knowlton v. Moore* (1899) 178 U. S. 41.

The statute in question imposes a graduated tax upon the exercise of the power to give property *inter vivos*. In *Knowlton v. Moore*, above, it was held that a graduated tax on legacies does not violate the Constitution. *Accord: Brushaber v. Union Pacific R. R. Co.* (1915) 240 U. S. 1; *Stebbins v. Riley* (1924) 268 U. S. 137.

The tax in question is levied only upon the power to give the property. There is no logical distinction between this tax and the one on the disposition of property by legacy upheld in *Knowlton v. Moore*, above; the tax upon the manufacture and sale of colored oleomargarine sustained in *McCray v. United States*, above; or the tax upon the sale of grain upon an exchange held valid in *Nicol v. Ames*, above. A recognized distinction exists between a tax imposed upon the exercise of a single one of those powers incident to ownership and a tax levied upon the owner of property regardless of the use made of the property. *Billings v. United States* (1913) 232 U. S. 261. The reason for the distinction lies first in the fact

that taxes of the former kind were not understood to be direct taxes when the Constitution was ratified, and second in the importance attached to the government's immediate need for revenue.

A dissenting opinion in the principal case holds that the tax on gifts is a direct tax and is therefore unconstitutional because unapportioned, and points out that the substance and not the form governs the determination of whether taxes are direct or excise. Mr. Justice Sutherland says, "A tax imposed upon an ordinary gift measured by the value of the property given . . . is a tax by indirection upon the property, as much, for example, as a tax upon the mere possession by the owner of a farm, measured by the value of the land possessed, would be a tax on the land." But this opinion overlooks the fact that the right to give property is one merely incident to the property, and more logically classed as a use of the property than as the property itself.

E. S., '31.

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CONSTITUTIONAL LAW—JURISDICTION OVER FOREIGN CONSUL'S DIVORCE.—A consul's wife's suit for divorce in a district court of the United States was dismissed on the ground that divorce jurisdiction is exclusively that of the states. She then filed her suit in the state court of Ohio, where an order for temporary alimony was made after the consul's objection to the jurisdiction of the court was overruled. A writ of prohibition was denied, and this decision was affirmed by the United States Supreme Court. *Ohio ex rel. Popovici v. Aigler* (1930) 50 S. Ct. 154. It was held that the provisions of Const. Art. 3, sec. 2, that the judicial power shall extend to and that the Supreme Court shall have original jurisdiction in all cases affecting ambassadors or other public ministers and consuls must be interpreted in the light of the tacit assumptions on which it is reasonable to suppose that the language was used, including the fact that the whole subject of domestic relations belongs exclusively to the states, and that jurisdiction of federal courts over divorce has always been denied.

By the Judiciary Act of 1789 the District Courts of the United States were given jurisdiction, exclusively of the courts of the several states, of all suits against consuls and vice consuls, except for certain offenses mentioned in the Act. This was repealed by 18 Stat. 318 (1875) so that from 1875 until 1911 there was no statutory provision which made jurisdiction of the federal courts exclusive of the state courts in suits against consuls and vice consuls. On Mar. 3, 1911, the U. S. Judicial Code was amended as follows: "The jurisdiction vested in the courts of the United States in the cases and proceedings hereinafter mentioned, shall be exclusive of the courts of the several states. . . Eighth. Of all suits and proceedings against ambassadors, or other public ministers, or their domestics, or domestic servants, or against consuls or vice consuls." 36 Stat. 1161 (1911), 28 U. S. C. A. 371. In the face of this statute the Supreme Court refuses to consider a divorce suit as included within the "all suits and proceedings" phrase.

Directly contra are two New York decisions, one based on the Judiciary Act of 1789 and the other on the statute of 1911. In *Davis v. Packard*