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## CONTENTS

### THE FEDERAL SECURITIES ACT--A SYMPOSIUM

	PAGE
THE FEDERAL SECURITIES ACT OF 1933 . . . . .	
<i>William O. Douglas and George E. Bates</i>	171
THE SECURITIES ACT AND THE CONSTITUTION . . . . .	<i>Nathan Isaacs</i> 218
CIVIL LIABILITY AND THE SECURITIES ACT . . . . .	<i>Harry Shulman</i> 227
CRIMINAL PROVISIONS OF THE SECURITIES ACT AND ANALOGIES TO SIMILAR CRIMINAL STATUTES . . . . .	<i>Malcolm A. MacIntyre</i> 254
REGULATION OF SECURITIES BY THE FEDERAL TRADE COMMISSION . . . . .	<i>Fred Rodell</i> 272
FOREIGN BONDHOLDERS PROTECTIVE ORGANIZATIONS . . . . .	
<i>William H. Wynne and Edwin M. Borchard</i>	281

### COMMENTS

Rate Discriminations Between Ports—The Gulf Ports Differential Case . . . . .	297	The Distinction Between Legislative and Constitutional Courts . . . . .	316
Correlative Rights of Landlord and Tenant to Security Deposit . . . . .	307	Determination of Law Governing Power of Redemption in Conditional Sales of Chattels . . . . .	323

### NOTES

Power of Bondholders to Depose Protective Committee ( <i>Harrigan v. Pounds</i> , N. Y. App. Div. 1933) . . . . .	330
Validity of Gift in Trust to Charitable Corporation to be Formed After Testator's Death ( <i>In re Tower's Estate</i> , N. Y. Surr. Ct. 1933; <i>First Camden National Bank &amp; Trust Co. v. Collins</i> , N. J. Ct. of App. 1933) . . . . .	334
Constitutionality of State Privilege Tax on Cotton Brokers ( <i>Chassanoil v. Greenwood</i> , Miss. Sup. Ct. 1933) . . . . .	337
Joinder of Taxpayers in Municipality's Suit for Declaratory Judgment ( <i>Salem v. Oregon-Washington Water Service Co.</i> , Ore. Sup. Ct. 1933) . . . . .	340
Power of Settlor-Beneficiary to Terminate Spendthrift Trust ( <i>Rehr v. Fidelity-Philadelphia Trust Co.</i> , Pa. Sup. Ct. 1933) . . . . .	342
Power of State to Alter Effect of Bankruptcy Discharge ( <i>In re Perkins</i> , U. S. Dist. (Jefferies v. Wasson, Ark. Sup. Ct. 1933) . . . . .	344
Equity Jurisdiction over Liquidation of Insolvent Bank by State Bank Commissioner ( <i>Jefferies v. Wasson</i> , Ark. Sup. Ct. 1933) . . . . .	346
State Taxation of Assets Held by Receivers of Insolvent Banks ( <i>Federal Land Bank v. Yuma County</i> , Ariz. Sup. Ct. 1933) . . . . .	348

### BOOK REVIEWS

Lowenthal: <i>The Investor Pays</i> . . . . .	<i>Roger S. Foster</i>	352
Allen: <i>The Position of Foreign States Before National Courts, Chiefly in Continental Europe</i> . . . . .	<i>A. H. Feller</i>	358

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common-law distrust of the capacity of jurymen to appraise testimony, which was reflected in the hearsay rule, and today takes the form of protecting the jury from evidence which is too technical for it to evaluate. But it is not at all clear that the trial jury in the *Taylor* case would have been influenced by the records to deprive the plaintiff widow of her mite, for the diagnosis explicitly stated "no suicidal ideas." Nor would the type of psychoneurosis attributed to the patient—according to medical opinion—usually indicate suicide.<sup>42</sup> Thus, while relevant to the issue, the records did not necessarily establish suicidal tendencies. It would seem, therefore, that the records should have been admitted for their relevancy to the issue of suicide, and the question of their weight left to the jury; in no case should the probative value of evidence affect the issue of its competency, lest the judicial ideal of fullest knowledge be sacrificed once more to trial by battle.

### TAXATION OF INCOME FROM LITERARY PROPERTY OWNED BY NONRESIDENT ALIENS\*

COMMENSURATE with the practical limitations upon the Bureau of Internal Revenue's ability to collect moneys assessed,<sup>1</sup> federal jurisdiction to tax incomes in a given case is theoretically predicated upon a taxpayer's connection with the United States in at least one of three ways: (1) by citi-

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pressions" in the *Taylor* case are more prejudicial than more routine entries because more technical and therefore more impressive to a lay jury. Yet he would not exclude diagnostic records on which "competent physicians would not differ." The tendency of appellate courts to determine the admissibility of a record in terms of its apparent probative value is unfortunate. See statement by Clark, J. in *Ulm v. Moore-McCormack Lines, Inc.*, 115 F. (2d) 492, 496 (C. C. A. 2d, 1940): "The evidence would appear to be admissible for the purpose, and its weight to be only ground for attack after admission. . . ." "Whether . . . some parts of this evidence should be omitted is preeminently a matter of adjustment as a trial proceeds, and as to which precise directions from us could hardly be helpful." *Ibid.*

The American Law Institute would give the trial judge discretionary control over records which, among other things, "create substantial danger of undue prejudice," but cautions that "evidence may not be rejected under this Rule merely because it is opinion or hearsay." A. L. I., MODEL CODE OF EVIDENCE (1942) Rule 303. See also Rule 504. Maguire approves this as "an adaptable safeguard far superior to the unyielding principles of exclusion fashioned by the majority in *Hoffman v. Palmer* [see note 9 *supra*]." Note (1942) 56 HARV. L. REV. 458, 469.

42. Indeed, "No mention was made [in the entry] of the necessity for any special measures to prevent suicide." *New York Life Ins. Co. v. Taylor*, 147 F. (2d) 297, 302. In the literature on the subject, suicidal impulses are associated, not with conversion hysteria, but with "manic-depressive psychosis." See, e.g., NOYES, MODERN CLINICAL PSYCHIATRY (1934) 158-9, 394, 401.

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\* *Rohmer v. Comm'r of Int. Rev.*, 5 T. C., No. 22, June 6, 1945.

1. See 8 MERTENS, LAW OF FEDERAL INCOME TAXATION (1942) § 45.03.

zenship;<sup>2</sup> (2) by residence;<sup>3</sup> or (3) by source of income.<sup>4</sup> Since by definition the taxation of nonresident aliens must always rest upon the last basis alone, an in personam jurisdiction may not be claimed, as it may of citizens and resident aliens,<sup>5</sup> which would enable levy upon earnings from all sources whether foreign or domestic,<sup>6</sup> but only an authority in rem to tax income originating within this country.<sup>7</sup>

This power has been exercised, regardless of the possibilities of double taxation,<sup>8</sup> in each revenue act since that of 1866,<sup>9</sup> when Congress first tapped

2. *Cook v. Tait*, 265 U. S. 47 (1924), (1925) 23 MICH. L. REV. 396; *Guaranty Trust Co. v. Comm'r of Int. Rev.*, 79 F. (2d) 245 (C. C. A. 2d, 1935); *cf.* *United States v. Bennett*, 232 U. S. 299 (1914) (federal excise tax on use of foreign-built yacht never physically within territorial jurisdiction of United States upheld on grounds that owner was United States citizen and domiciled here); *United States v. Goelet*, 232 U. S. 293 (1914) (same type of yacht as in *Bennett* case, *supra*, but owner, a citizen of United States, domiciled abroad; power to tax upheld, but tax not applied through statutory construction); *Shaffer v. Carter*, 252 U. S. 37 (1920) (constitutionality of Oklahoma statute taxing income from oil leases owned by nonresident of state upheld). See HARDING, *DOUBLE TAXATION OF PROPERTY AND INCOME* (1933) 229 *et seq.*; Levitt, *Income Tax Predicated upon Citizenship: Cook v. Tait* (1925) 11 VA. L. REV. 607; Notes (1923) 7 MINN. L. REV. 515, (1923) 8 IOWA L. BULL. 269.

3. *Bowring v. Bowers*, 24 F. (2d) 918 (C. C. A. 2d, 1928), *cert. denied*, 277 U. S. 608 (1928).

4. *Compania General de Tabacos v. Collector of Int. Rev.*, 279 U. S. 306 (1929); *Sabatini v. Comm'r of Int. Rev.*, 98 F. (2d) 753 (C. C. A. 2d, 1938); *Lord Forbes (Archibald Williamson)*, 25 B. T. A. 154 (1932), (1932) 32 COL. L. REV. 549; *cf.* *Commonwealth v. Radio Corp. of America*, 299 Ky. 44, 184 S. W. (2d) 250 (1944), (1945) 45 COL. L. REV. 652. See Note (1935) 10 ST. JOHN'S L. REV. 103.

5. See *Berliner Handels-Gesellschaft v. United States*, 30 F. Supp. 490 (Ct. Cl. 1939), *cert. denied*, 309 U. S. 670 (1940); Angell, *The Nonresident Alien: A Problem in Federal Taxation of Income* (1936) 36 COL. L. REV. 908; Merrill, *Jurisdiction to Tax—Another Word* (1935) 44 YALE L. J. 582.

6. INT. REV. CODE §§ 11, 12, 400, 450 (1939). See U. S. Treas. Reg. 111 (1943) §§ 29.11-2, 29.11-3, 29.12-1, 29.211-1, 29.211-2; 8 MERTENS, *LAW OF FEDERAL INCOME TAXATION* (1942) § 45.03.

7. See cases cited *supra* note 4; *cf.* *Union Refrigerator Transit Co. v. Kentucky*, 199 U. S. 194 (1905); *Maguire v. Trefry*, 253 U. S. 12 (1920); *People ex rel. Cerf v. Lynch*, 237 App. Div. 283, 261 N. Y. Supp. 231 (3d Dep't 1932), *aff'd without opinion*, 262 N. Y. 549, 188 N. E. 59 (1933). See Angell, *The Nonresident Alien: A Problem in Federal Taxation of Income* (1936) 36 COL. L. REV. 908; Wurzel, *Foreign Investment and Extraterritorial Taxation* (1938) 38 COL. L. REV. 809; Note (1937) 50 HARV. L. REV. 704.

8. A nonresident alien is not exempt from taxation on his United States income on the ground that he is subject to taxes on the same income by the nations of his citizenship or residence. See *Burnet v. Brooks*, 288 U. S. 378 (1933); 8 MERTENS, *LAW OF FEDERAL INCOME TAXATION* (1942) § 45.03. *Cf.* Mr. Justice Holmes in *Kidd v. Alabama*, 188 U. S. 730, 732 (1903): "No doubt it would be a great advantage to the country and to the individual states if principles of taxation could be agreed upon which did not conflict with each other, and a common scheme could be adopted by which taxation of substantially the same property in two jurisdictions could be avoided."

Provision is made in the Internal Revenue Code for treaties with foreign nations regarding the taxation of income accruing to nonresident aliens in the United States. INT. REV. CODE §§ 143b, 211(a)(1)(A) (1939). See U. S. Treas. Reg. 111 (1943) §§ 29.143-1, 29.211-7.

9. 14 STAT. 137 (1866). See note 10 *infra*.

the vast sums annually paid to foreign investors by taxing their entire net income from United States sources.<sup>10</sup> Over the years, however, experience proved the enforcement of a tax on all types of income impracticable, for many earnings, such as those from capital gains, were capable of effective concealment by persons having neither citizenship, residence, nor place of business in this country.<sup>11</sup> To relieve this situation, Congress in 1936 introduced a policy of restricting the scope of the non-resident aliens' tax to items of ready collectibility, while maintaining the same flow of revenue by an increase in rates.<sup>12</sup> Accordingly, Section 211 of the Internal Revenue Code now imposes upon nonresident aliens not engaged in trade or business within the United States a tax—subject to withholding at the source of income<sup>13</sup>—which is measured solely by “the amount received . . . as interest . . . , dividends, rents, salaries, wages, premiums, annuities, compensations, remunerations, emoluments, or other fixed or determinable *annual or periodical* gains, profits, and income. . . .”<sup>14</sup> Whether income of a nonresi-

10. An income tax was proposed during the War of 1812 but not adopted. MAGILL AND MAGUIRE, *CASES ON THE LAW OF TAXATION* (1940) 567. The first federal income tax was passed by Congress in 1861 to meet governmental expenditures caused by the Civil War. 12 STAT. 309 (1861). A tax was levied on “the annual income of every person residing in the United States . . . from any . . . source whatever” and on “the income, rents, or dividends accruing upon any property, securities or stocks owned in the United States by any citizen of the United States residing abroad. . . .” 12 STAT. 309 (1861). Nonresident aliens with United States income were not mentioned.

The 1861 statute was superseded before any taxes were collected under it by an act effective December 1, 1862. 12 STAT. 473 (1862). Nonresident aliens were again ignored. Nor were they included in the 1865 tax. 13 STAT. 479 (1865).

In 1866, however, it was provided for the first time: “. . . and a like tax shall be levied, collected, and paid annually upon the gains, profits, and income of every business, trade, or profession carried on in the United States by persons residing without the United States, not citizens thereof.” 14 STAT. 137 (1866). This provision was continued in the 1867 act, 14 STAT. 478 (1867) and in that of 1870, 16 STAT. 257 (1870). The 1870 act expired by its terms on the last day of 1871. 16 STAT. 257 (1870). The act of 1894, 28 STAT. 553 (1894) contained the same provision as the 1866 act, *supra*. The later acts contained provisions of increasing complexity. See, e.g., 39 STAT. 756 (1916); 40 STAT. 1062, 1066, 1067, 1068, 1069-70 (1918); 42 STAT. 227, 233, 239, 242 (1921); 43 STAT. 253, 264, 269, 271, 272 (1924). See note 14 *infra*.

11. See Angell, *The Nonresident Alien: A Problem in Federal Taxation of Income* (1936) 36 COL. L. REV. 908.

12. Revenue Act of 1936, §§ 211-219, 49 STAT. 1648, 1714-6 (1936).

13. INT. REV. CODE § 143(b) (1939) states: “All persons, in whatever capacity acting, . . . having the control, receipt, custody, disposal or payment of . . . fixed or determinable annual or periodical gains, profits, and income (but only to the extent that any of the above items constitutes gross income from sources within the United States), of any nonresident alien individual . . . shall . . . deduct and withhold from such annual or periodical gains, profits, and income a tax equal to 30 per centum thereof. . . .”

14. INT. REV. CODE § 211(a)(1)(A) (1939) (emphasis supplied). Section 211 divides nonresident alien individuals into three groups: (1) those not engaged in trade or business within the United States at any time during the taxable year and deriving during the taxable year not more than \$15,400 gross amount of fixed or determinable annual or periodical income from sources within the United States; (2) those not engaged in trade or business, but

dent alien without a trade or business here is taxable therefore depends upon the answers to two questions: is it (1) from a United States source and (2) within the classification of "annual or periodical"?

The Congressional failure specifically to list royalties as taxable income, though not regarded by the Bureau as a meaningful omission,<sup>15</sup> has invited foreign authors and inventors to resist application of the tax to profits realized from use of their intellectual property in this country.<sup>16</sup> In the most recent of these attempts, *Rohmer v. Commissioner of Internal Revenue*,<sup>17</sup> an author who was both a citizen and resident of Great Britain sold to McFadden Publications, Inc., through a literary agent in the United States the exclusive right to publish serially his novel *The Island of Fu Manchu* in magazines and newspapers. All other rights, such as those of publication in book form or of production as a motion picture or stage play, were retained. The consideration paid was not in the usual royalty form of a stated percentage of the retail price of each copy sold, but was a flat sum of \$10,000. When a deficiency was determined in Rohmer's income tax return, he took the position that the \$10,000 was derived from a sale of personal property, which not being within the category of "annual or periodical gains, profits,

deriving more than \$15,400 from sources within the United States; (3) those who at anytime during the taxable year are engaged in trade or business within the United States.

Members of class (1) are now subject to a 30% tax on gross income of fixed or determinable annual or periodical nature from sources within the United States. INT. REV. CODE § 119 (1939) defines income which is to be regarded as emanating from the United States. See note 20 *infra*. Members of class (2) are allowed certain deductions, and the tax is computed under INT. REV. CODE §§ 11, 12, 450 (repealed) (1939), at the same rates as it is for citizens and residents. The tax under Sections 11 and 12 in no case, however, shall be less than 30%. Members of class (3) are allowed certain deductions and taxed in accordance with INT. REV. CODE §§ 11, 12, 450 (repealed) (1939) on their net income originating from all sources within the United States, not merely that within the category of "annual or periodical," described by INT. REV. CODE § 211 (a)(1)(A) (1939). See INT. REV. CODE § 211(b) (1939); U. S. Treas. Reg. 111 (1943) § 29.211-7.

Members of classes (1) and (2), *supra*, are the subjects of discussion in this note. Their taxable income is described by the Treasury regulation thus: "The gross income of a non-resident alien individual not engaged in trade or business within the United States at any time during the taxable year, whether such alien comes within section 211(a) [not engaged in trade or business, aggregate amount received from United States sources during taxable year less than \$15,400] or section 211(c) [aggregate amount more than \$15,400], is gross income from sources within the United States consisting of fixed or determinable annual or periodical income."

15. "Specific items of fixed or determinable annual or periodical income are enumerated in the Internal Revenue Code as interest (except interest on deposits with persons carrying on the banking business), dividends, rents, salaries, wages, premiums, annuities, compensation, remunerations, and emoluments, but other fixed or determinable annual or periodical gains, profits, and income are also subject to the tax, as, for instance, *royalties*." U. S. Treas. Reg. 111 (1943) § 29.211-7(a) (emphasis supplied).

16. See cases cited *infra* notes 17, 22, 23, 35.

17. 5 T. C., No. 22, June 6, 1945.

and income"<sup>18</sup> is not taxable to a nonresident alien,<sup>19</sup> or, alternatively, that if the money were not derived from a sale, it was nevertheless not "annual or periodical" proceeds, because it was paid in a lump sum. On appeal from the Commissioner's determination, the Tax Court of the United States rejected both arguments, however, and held the money to be income taxable to Rohmer.

It is conclusively determined by the Internal Revenue Code that income from the use of American copyrights in this country is income having its source in the United States,<sup>20</sup> but the court's reasoning to include Rohmer's payment within the scope of Section 211<sup>21</sup> is not equally inviolable. Following the leading *Sabatini* case<sup>22</sup> and other cases<sup>23</sup> which used the same rationalization, the court leaned upon the convenient conceptualism that "There was no transfer of title necessary to a completed sale,"<sup>24</sup> but merely a license to use the work in question for a limited purpose. Not having been paid for a transfer of "ownership," the \$10,000 was "in the nature of" a royalty, a category of earnings institutionally remitted at intervals, and therefore in this case taxable. This view, logically sound if one accepts the

18. INT. REV. CODE §§ 211(a)(1)(A), 211(c) (1939).

19. U. S. Treas. Reg. 111 (1943) § 29.212-1(a) states in part: "His [a nonresident alien not engaged in trade or business within the United States at any time during the taxable year] taxable income does not include profits derived from the effecting of transactions in the United States in stocks, securities, or commodities (including hedging transactions) through a resident broker, commission agent, or custodian, or profits derived from the sale within the United States of personal property or real property located therein."

20. INT. REV. CODE § 119(a)(4) (1939) directs that "The following items of gross income shall be treated as income from sources within the United States: . . . (4) RENTALS AND ROYALTIES.—Rentals or royalties from property located in the United States or from any interest in such property, including rentals or royalties for the use of or for the privilege of using in the United States, patents, copyrights, secret processes and formulas, good will, trade-marks, trade brands, franchises, and other like property. . . ." Income from sales of personal property may be derived from sources wholly within, or wholly without, or partly within and partly without the United States as determined in accordance with "rules and regulations prescribed by the Commissioner [of Internal Revenue] with the approval of the Secretary [of the Treasury]." INT. REV. CODE §§ 119(a)(6), 119(e) (1939). See U. S. Treas. Reg. 111 (1943) § 29.119-12. Cf. *Korfund Co., Inc. v. Comm'r of Int. Rev.*, 1 T. C. 1180 (1943); *Piedras Negras Broadcasting Co.*, 43 B. T. A. 297 (1941), *aff'd sub. nom. Comm'r of Int. Rev. v. Piedras Negras Broadcasting Co.*, 127 F. (2d) 260 (C. C. A. 5th, 1942).

21. INT. REV. CODE § 211 (1939). See note 14 *supra*.

22. *Sabatini v. Comm'r of Int. Rev.*, 98 F. (2d) 753 (C. C. A. 2d, 1938).

23. *Ehrlich v. Higgins*, 52 F. Supp. 805 (S. D. N. Y. 1943); *Estate of Alexander Mar- ton*, 47 B. T. A. 184 (1942); *Irving Berlin*, 42 B. T. A. 668 (1940); cf. *Goldsmith v. Comm'r of Int. Rev.*, 143 F. (2d) 466 (C. C. A. 2d, 1944), *cert. denied*, 323 U. S. 774 (1944). See I. T. 2624, XI-1 CUM. BULL. 122 (Bur. of Int. Rev., 1932); I. T. 2735, XII-2 CUM. BULL. 131, 134 (Bur. of Int. Rev., 1933); T. B. R. 29, 1 CUM. BULL. 230 (Bur. of Int. Rev., 1919).

24. *Rohmer v. Comm'r of Int. Rev.*, 5 T. C., No. 22, June 6, 1945, at 4. This sentence was taken verbatim by the Tax Court in the *Rohmer* case from the opinion in *Sabatini v. Comm'r of Int. Rev.*, 98 F. (2d) 753, 755 (C. C. A. 2d, 1938). It was also quoted (incorrectly) in *Irving Berlin*, 42 B. T. A. 668, 675 (1940). As authority for the sentence, the circuit court in the *Sabatini* case, *supra*, cited *Whitfield v. United States*, 92 U. S. 165 (1875), presumably

unexpressed major premise that the attributes of literary property are by nature indivisible and hence incapable of separate sale,<sup>25</sup> nevertheless neglects the possibility of an also tenable "bundle of rights" theory of copyright,<sup>26</sup> under which each right given by the Copyright Act<sup>27</sup> may be individually transferred, if the proprietor sees fit, as completely as a fee-simple estate in realty. The consideration for the conveyance is then not the theoretical sum of separate payments, but an integral, and hence nontaxable, compensation. The Copyright Act, in fact, supports this theory by segregating into lettered paragraphs the various types of monopoly afforded an author through registration of a copyrightable work.<sup>28</sup> On occasion, moreover, both the courts<sup>29</sup> and the Bureau itself<sup>30</sup> have referred to the "sale" of partial rights under copyrights and patents.

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referring to the statement in that case, "A sale of personal property, when completed, transfers to the purchaser the title of the property sold." *Id.* at 170. By taking as their minor premise that no transfer of title took place, the courts in the *Sabatini*, *Rohmer*, and *Berlin* cases, *supra*, were able to achieve their results with impeccable logic.

25. See *New Fiction Pub. Co. v. Star Co.*, 220 Fed. 994 (S. D. N. Y. 1915); *Goldwyn Pictures Corp. v. Howells Sales Co.*, 282 Fed. 9 (C. C. A. 2d, 1922); I. T. 2735, XII-2 CUM. BULL. 131, 134 (Bur. of Int. Rev., 1933).

26. Compare 1 LADAS, *THE INTERNATIONAL PROTECTION OF LITERARY AND ARTISTIC PROPERTY* (1938) pp. 1-11. Ladas gives an excellent summary of the various theories of the nature of copyright. See also *White-Smith Music Co. v. Apollo Co.*, 209 U. S. 1, 18-20 (1908).

27. 35 STAT. 1075 (1909), 17 U. S. C. § 1 (1940). See note 28 *infra*.

28. "SECTION 1. EXCLUSIVE RIGHTS AS TO COPYRIGHTED WORKS.—Any person entitled thereto, upon complying with the provisions of this title, shall have the exclusive right:

(a) To print, reprint, publish, copy, and vend the copyrighted work;

(b) To translate the copyrighted work into other languages or dialects, or make any other version thereof, if it be a literary work; to dramatize it if it be a nondramatic work; to convert it into a novel or other nondramatic work if it be a drama; to arrange or adapt it if it be a musical work; to complete, execute, and finish it if it be a model or design for a work of art;

(c) To deliver or authorize the delivery of the copyrighted work in public for profit if it be a lecture, sermon, address, or similar production;

(d) To perform or represent the copyrighted work publicly if it be a drama or, if it be a dramatic work and not reproduced in copies for sale, to vend any manuscript or any record whatsoever thereof; to make or to procure the making of any transcription or record thereof by or from which, in whole or in part, it may in any manner or by any method be exhibited, performed, represented, produced, or reproduced; and to exhibit, perform, represent, produce, or reproduce it in any manner or by any method whatsoever;

(e) To perform the copyrighted work publicly for profit if it be a musical composition and for the purposes of public performance for profit; and for the purposes set forth in subsection (a) hereof, to make any arrangement or setting of it or of the melody of it in any system of notation or any form of record in which the thought of an author may be recorded and from which it may be read or reproduced. . . ." 35 STAT. 1075 (1909), 17 U. S. C. § 1 (1940).

29. *Goldsmith v. Comm'r of Int. Rev.*, 143 F. (2d) 466 (C. C. A. 2d, 1944), *cert. denied*, 323 U. S. 774 (1944).

30. I. T. 1231, I-1 CUM. BULL. 206 (Bur. of Int. Rev., 1922); I. T. 2736, XII-2 CUM. BULL. 190 (Bur. of Int. Rev., 1933).

The choice between these concepts of copyright, for the purposes of the *Rohmer* problem, however, should be based upon the governmental policy to be thereby implemented, for the choice predetermines the result.<sup>31</sup> Since, in addition to the "sale" theory,<sup>32</sup> the courts have refuted the arguments that payments for literary property are damages for violation of the right of privacy<sup>33</sup> or are given in return for the personal service of writing performed abroad,<sup>34</sup> the taxability to nonresident aliens of all income, regardless of its form, from transfers of less than whole interests in copyrights and patents appears settled. Presumably, to immunize the income from a transfer, it must be so complete that the transferee's name is substitutable for the transferor's on the registration books of the Copyright Office.<sup>35</sup> That this result is to be approved from a fiscal point of view follows from the fact that Congress concededly has power to tax all *intra*-United States income and has done less than this in Section 211 as interpreted by the courts. Moreover, the taxation of earnings from patent and copyrights, unlike the taxation of income from money investments, can not drive authors or inventors to deal in other countries, for the non-use of intellectual property here obviously does not increase the yield elsewhere. It might be well, nevertheless, for Section 211 to be amended to make the present case-law interpretation explicit, for the necessity of manipulable concepts and the appearance of judicial legislation would then be removed.

DUDLEY L. MILLER†

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31. FRANK, *LAW AND THE MODERN MIND* (1930) c. III; McDougal, *Fuller v. The American Legal Realists: An Intervention* (1941) 50 *YALE L. J.* 327; Lasswell and McDougal, *Legal Education and Public Policy: Professional Training in the Public Interest* (1943) 52 *YALE L. J.* 203. Cf. Judge Frank's reasoning in *United Shipyards, Inc. v. Heey*, 131 F. (2d) 525 (C. C. A. 2d, 1942).

32. *Rohmer v. Comm'r of Int. Rev.*, 5 T. C., No. 22, June 6, 1945; see also cases cited *supra* notes 22, 23.

33. *Ehrlich v. Higgins*, 52 F. Supp. 805, 807-9 (S. D. N. Y. 1943). The court distinguished damages and consideration by saying that the former is given to compensate for violation of a right *after* the violation; the latter is given to compensate *before* the violation. The argument advanced by the taxpayer springs from Warren and Brandeis, *The Right of Privacy* (1890) 4 *HARV. L. REV.* 193, a classic work asserting the hypothesis that copyright is based on the author's moral right of privacy in his work.

34. *E. Phillips Oppenheim*, 31 B. T. A. 563 (1934).

35. *General Aniline & Film Corp. v. Comm'r of Int. Rev.*, 139 F. (2d) 759 (C. C. A. 2d, 1944); *Comm'r of Int. Rev. v. Celanese Corp. of America*, 140 F. (2d) 339 (App. D. C. 1944).

† Member of the third-year class.