1923

Comment on Ward & Co. v. Commissioner of Taxes

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Recommended Citation
Comment on Ward & Co. v. Commissioner of Taxes, 32 Yale Law Journal 399 (1923)

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COMMENTS

wall therefore takes his right to that extent. It might be so, and we
might be driven to the economic and social considerations that we have
mentioned, if the law were an innovation, now heard of for the first
time. But if, from what we may call time immemorial, it has been the
understanding that the burden exists, the landowner does not have the
right to that part of his land except as so qualified, and the statute that
embodies that understanding does not need to invoke the police power."

The value of having an invariable meaning for the word "right" has
been often emphasized. 3 Accurate terminology does not solve legal
problems but it turns the spot-light on them so that lawyer and judge
may see more clearly the principles, historic, political, or economic,
which control the decision. To argue that the plaintiff had a "right"
to his six-inch strip of land and therefore that the defendant must
make compensation for damages caused by its use for a party wall is
to beg the question: the very issue in dispute is whether the legal rela-
tion between the parties with respect to damages caused by using that
strip for party wall purposes is one of right-duty, or of no-right-
privilege. When the issue is thus disclosed, Pennsylvania history
settles it. In some other state, where the history of party wall customs
has been different, the right-duty relation might prevail, 4 or, if a
statutory privilege had been granted the adjacent owner, such privilege
might have to be sustained under the rubric of police power. 5

The problem of legal causation has its interest even for the tax-
gatherer and the brewer. The income tax law of New Zealand permits
the taxpayers to deduct expenditures "exclusively incurred in the pro-
duction of the assessable income." A brewer expended 2,123l. 3s. 11d.
for the purpose of defeating the enactment of a prohibitory law at one
of the triennial polls which are provided for by the law of New Zealand.
In Ward & Co. v. Commissioner of Taxes (1922, P. C.) 39 T. L. R. 90,
the unfeeling Judicial Committee of the Privy Council refused to allow
the brewer to deduct his expenditure for the above purpose from the
taxable income of his business. It was contended that "it was inequip-
able that the Legislature should, on the one hand, force a certain class
of traders into a struggle for their very existence, and, on the other hand,
treat the reasonable expenses incurred in connection with such struggle
as part of the profits assessable to income tax." The court, however,
was not dealing with equities but with legal causation, and it held that
the expenditure in question "was incurred not for the production of
income, but for the purpose of preventing the extinction of the business
from which the income was derived, which is quite a different thing."

4 See Brooks v. Curtis (1873) 50 N. Y. 644; Fowler v. Saks (1890) 18 D. C.
570; 7 L. R. A. 649, note; Fowler v. Koehler (1915, D. C.) 43 App. Cas. 349;
Term, 1922, No. 135.