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Property—Rent Control—Per Curiam

Buffalo Law Review

exchange with Britain as part of a compromise for settlement of another portion of the boundary.[36] It seems reasonable to conclude that although there may have been ambiguity in the 1796 treaty because of the ambiguity in the Treaty of Paris, it did not extend to Barnhart's Island, as to which there was no uncertainty under the Treaty of Paris.

The dispute for which the 1856 compensation was granted seems to have had its origin in a grant by the State in 1823 to David Ogden, which included Barnhart's Island. Until that time, the Indians appear to have had a recognized title to the island, for the extinguishment of which they were not compensated. The origin of this claim, being in a transaction subsequent to 1796 and having to do with extinguishment of Indian title, would seem to come within the Indian Intercourse Act.

Although the Court, in the instant case, takes the position, though only in dicta, that the Indian Intercourse Act is inapplicable to the State of New York when exercising its pre-emptive rights to Indian lands,[37] that position is no longer tenable since it has been overruled in a recent decision by the United States Court of Appeals, Second Circuit.[38]

Rent Control—Per Curiam

Under the Emergency Housing Rent Control Law, housing accommodations subject to the act cannot be withdrawn from the rental market without prior approval of the State Rent Commission,[39] which approval will be given where it appears that the applicant is acting in good faith and, as here applicable, would suffer hardship by being compelled to continue to rent his property.[40] The Court refused to upset (as unreasonable) the denial of such permission by the State Rent Administrator where the applicant sought to withdraw a third floor apartment only, occupied by elderly tenants of long standing when the applicant intended to continue renting the first floor to a business interest at a substantial profit.[41]

36. St. Regis Tribe of Mohawk Indians v. State, *supra* note 31, at 30, 177 N.Y.S. 2d at 293.

37. Seneca Nation of Indians v. Christie, 126 N.Y. 122, 27 N.E. 275 (1891); "To require the presence and approbation of a United States Commissioner at a treaty or transaction where the State has the exclusive right to deal with the matter concerned, would appear to result in a conflict of legal rights. Evidence shows that the existence of such a requirement was not recognized by either the State of New York or by the United States," United States v. Franklin County, 50 F. Supp. 152 (W.D.N.Y. 1943).

38. Tuscarora Nation of Indians v. Power Authority, 257 F.2d 885 (2d Cir. (1958).

39. McKinney's Unconsolidated Laws, §8590(4).

40. Rent and Eviction Regulations §59, McKinney's Unconsolidated Laws Appendix.

41. Mercantile Enterprises, Inc. v. Weaver, 4 N.Y.2d 375, 175 N.Y.S. 2d 61 (1958).

TAXATION

Allocation of Income of Unincorporated Businesses Operating Both Within and Without the State

Under section 386-g of the Tax Law an unincorporated firm carrying on business both within and without the state is entitled to allocate its income in computing the unincorporated business tax. When one partnership receives a share of the income of another partnership the receiving partnership must prove that it carries on its own business outside the state to be permitted to allocate income.[1] The fact that the remitting partnership carries on business without the state is irrelevant, because the two partnerships are separate taxable entities.

The New York firm in *Young v. Bragalini*[2] contended that it was entitled to allocate its income, on the ground that it carried on business outside of the state through properly licensed and authorized local agents, consisting of a Texas partnership and a Brazilian organization. The Tax Commission asserted that since the New York partnership was not licensed to engage in business in the foreign jurisdictions its business could have been conducted only in New York, and therefore all of its income was earned within New York.

The evidence showed that the three firms were engaged in the insurance business. The Houston office never acted independently of New York in dealing with their major client and from "time to time" partners and employees of New York worked on this account in Houston. Both firms always described themselves as having offices in New York and Houston and acted in conjunction with each other. A Houston partner said they considered themselves to be an agent of the New York firm. However, the Texas and Braziiian companies delivered the insurance policies, billed the insured, and collected the payments in their own names.

The Appellate Division unanimously upheld the Tax Commission and the Court of Appeals affirmed (4-3). The majority reasoned that since the New York firm was unlicensed in Texas and Brazil it had no power to make a contract of any kind in those jurisdictions, and as it could not delegate a power it did not have, the claim of carrying on business in the foreign jurisdictions could not be sustained. The dissenters were of the opinion that licensing of the principal was not a prerequisite to a valid agency relationship.

The majority refused to recognize an agency relationship for New York taxing purposes on the ground that it was not recognized by another jurisdiction

1. Cromwell v. Bates, 284 App. Div. 1001, 135 N.Y.S.2d 534 (3rd Dep't 1954).
2. 3 N.Y.2d 602, 170 N.Y.S.2d 805 (1958).