will be personally liable to a creditor who knew of the existence of partners but not their identity. 1 Mechem Agency (2d ed. 1914), § 1169; Restatement of the Law of Agency (1933), § 336, comment C.

In the present case, the court held the plaintiff bound by his knowledge of the agreement by the partners to restrict their liability. It is not clear whether the liability of the managers, who were also investors, was intended by the court to be similarly limited.

In Illinois the position of a shareholder without control in a business trust is uncertain. See Judah, Possible Partnership Liability under the Business Trust, 17 Ill. L. Rev. 77 (1922). A strong dictum in *Schumann-Heink v. Folsom*, 328 Ill. 321, 159 N.E. 250, 58 A.L.R. 485 (1928) recognized the shareholders' immunity from personal liability to creditors, but the case actually involved an express contract by the creditor not to hold the trustees personally liable, and the court gave effect to that contract. On the other hand, an equally strong dictum in *Hunter v. Winter*, 268 Ill. App. 487 (1932) indicates that the shareholders will be answerable to creditors, although the decision merely held trustees personally liable in the absence of an express contract against personal liability as was present in the *Schumann-Heink* case. The use of the trust device in Illinois was no doubt stimulated by the prohibition in the former General Corporation Act against corporations founded for the purpose of owning and dealing in real estate. Ill. Cahill's Rev. Stat. (1931), c. 32, § 10. See Aaron, The Massachusetts Trust as Distinguished from Partnership, 12 Ill. L. Rev. 482 (1918). The present Business Corporation Act removes that restriction. Ill. Cahill's Rev. Stat. (1933), c. 32, § 7.

HAROLD ALFRED LIPTON

Taxation—Excise Tax upon Sales of Stock Made Outside the Jurisdiction—[Federal].—A Florida statute placed a stamp tax upon "all sales, agreements to sell, or memoranda of sales or deliveries of, [or] transfers of legal title to shares," whether or not entered upon the books of the corporation; and upon written obligations to pay money which were made, executed, or transferred in Florida. [Laws (Ex. Sess. 1931), c. 15787]. Plaintiffs, doing business as brokers in Florida, sought to enjoin the levying of the tax, presumably upon transactions wherein the plaintiffs received orders to sell stock from customers in Florida and executed the sales on the New York exchange. *Held*, (1) that the tax was unconstitutional as applied to sales of stock of foreign corporations made outside the state; (2) that as to shares of a Florida corporation and transfers thereof made on the company books in Florida, the tax was valid, even though the sales were executed outside the state; and (3) that stockbrokers' loans to clients on margin accounts were subject to the tax as transactions distinct from the sale or purchase of the stock. *Bickell v. Lee*, 5 F. Supp. 720 (D.C.N.D. Fla. 1934).

In addition to Florida, tax statutes of this type have been enacted by the federal government, 43 Stat. 331 (1924), 26 U.S.C.A. § 901(3) (1928); Indiana, Acts (1933), c. 81; Massachusetts, Gen. Laws (1932), c. 64; New York, Cahill's Cons. Laws (1930), c. 61, §§ 270–281; Pennsylvania, 72 Purdon's Stat. (1931), §§ 2041, 2042; South Carolina, Code (1932), § 2525. Since most sales of shares take place in New York the present decision serves to prevent states other than New York from realizing any considerable income from taxing transactions of this character. The severity of the decision is lessened by the holding that loans upon margin accounts are subject to an excise tax.

As to transfers of corporate shares within the taxing jurisdiction, the validity of excise taxes of this nature is well established. *Thomas v. United States*, 192 U.S. 363, 24 Sup. Ct. 305, 48 L.Ed. 481 (1904); *Opinion of the Justices*, 196 Mass. 603, 85 N.E. 545 (1908); *People ex rel. Hatch v. Reardon*, 184 N.Y. 431, 77 N.E. 970 (1906), affd. 204 U.S. 152, 27 Sup. Ct. 188, 51 L.Ed. 415 (1907). Also, the state in which the stock transfer books are kept may tax transfers made upon such books. Christy, The Transfer of Stock (1929), 555. It has been said that the state of the company's incorporation may place an excise tax upon the transfer of the shares of that company. See *First Nat. Bank of Boston v. State of Maine*, 284 U.S. 312, 330, 52 Sup. Ct. 174, 76 L. Ed. 313 (1932). The language of the present case indicates that for the tax to be valid as to sales outside the taxing jurisdiction, that jurisdiction should be the state where the transfer books are kept as well as the state of incorporation. See 5 F. Supp. 721. Normally transfer books will be kept in the state of incorporation, however, and that result is required by statutes which have been enacted in a number of states, including Florida; hence the problem raised is largely academic. 3 Florida Comp. Gen. Laws (1927), § 6584; Mass. Gen. Laws (1932), c. 155, § 22; N.Y. Cahill's Cons. Laws (1930), c. 60, § 10; 72 Pa. Purdon's Stat. (1931), § 2082; Ind. Burn's Stat. (1933), § 2–3611 (by implication). It is to be noted that a tax upon transfers on the corporate books would not reach many unrecorded transfers which the statute in the principal case did attempt to affect.

Though the court in the present case decided that the memorandum passing between the customer and broker in Florida could not be subjected to an excise tax, a recent Supreme Court case indicates that a different decision possibly could have been reached on this point. Cf. *Graniteville Mfg. Co. v. Query*, 283 U.S. 376, 51 Sup. Ct. 515, 75 L.Ed. 1126 (1931), in which notes drawn in South Carolina and sent outside the state were subject to a stamp tax imposed by South Carolina, though, by the agreement under which they were sent out, they were to be of no effect until received and accepted. The loans which were to be effected by the notes were clearly consummated outside the state; similarly, in the principal case the sales which the memoranda effected took place outside the taxing jurisdiction.

BRIMSON GROW

Taxation—Income Tax—Deductions—[Federal].—Bankruptcy proceedings against a partnership of Donnelley and another were dismissed in 1905 when Donnelley's brother in law, Thorne, paid creditors of the partnership a percentage of the full amount due from the firm, and secured an assignment of their claims. In 1927 Donnelley made a payment to these former creditors to be applied as principal and interest on the old debts, and deducted that sum from his gross income for 1927 in computing his income tax. *Held*, the payments to the former creditors may not be deducted in determining taxable income. *Donnelley v. Commissioner of Internal Revenue*, 68 F.(2d) 722 (C.C.A. 7th 1934).

The liability to pay the income tax attaches when the income is received. *Rosenwald v. Com.*, 12 B.T.A. 350 (1928), affd. 33 F.(2d) 423 (C.C.A. 7th 1929). Subsequent disbursements or losses are, therefore, deductible only if authorized by statute. *Spring Canyon Coal Co. v. Com.*, 43 F.(2d) 78 (C.C.A. 10th 1930), cert. den. 284 U.S. 654, 52 Sup. Ct. 33, 76 L. Ed. 555 (1931); *Jankowsky v. Com.*, 56 F.(2d) 1006 (C.C.A. 10th 1932); *Mitchel v. Bowers*, 15 F.(2d) 287 (C.C.A. 2d 1926).