in 1964, however, signaled that a change in the Court's policy might be forthcoming.[23] In that case the Court ruled unconstitutional the criminal prosecution of a white woman and a Negro man under a Florida "Adultery and Fornication" statute which imposed less burden of proof on the prosecution where the alleged fornicators were of different races than where they were members of the same race.[24] This decision was based on equal protection under the fourteenth amendment. It was only a matter of time, therefore, before a direct challenge to statutes prohibiting inter-racial marriage would succeed. The *Loving* case gave the Court an ample opportunity to take that step.

There are many facets to the Georgia statutory scheme which seeks to prohibit miscegenation.[25] It is thought, however, that whatever scheme is created and however nicely it is drawn, it will probably be futile to attempt to enforce it. The *Loving* case represents a basic change in scientific information and social philosophy which will probably persist for many years.

SIDNEY L. MOORE

CONSTITUTIONAL LAW—DUE PROCESS—STATE TAXATION OF INTERSTATE COMMERCE

A mail order firm appeals from a judgment in favor of the Illinois Department of Revenue requiring the firm to collect use taxes.[1] The Supreme Court of the United States reversed the decision of the Illinois Supreme Court[2] and held that the State of Illinois could not hold the appellant firm liable for the collection of use taxes from its customers.[3]

The appellant contended that the imposition of the use tax violated the Due Process Clause of the fourteenth amendment and created an unconstitutional burden upon interstate commerce. The Court held that in order to determine whether a state tax falls within the confines of the Due Process Clause "the simple but controlling question is whether the state has given anything for which it can return."[4] Relying on the fact that appellant's business within the State of Illinois was conducted solely through

23. McLaughlin v. Florida, 379 U.S. 184 (1964).
24. FLA. STAT. ANN. §798.05 (1966 Rev.).
25. GA. CODE ANN. §§53-106, 53-309, 53-312 to -314 53-9902 to -9905, 53-9907 to -9908 (1961 Rev.).
1. National Bellas Hess, Inc. v. Department of Revenue of Ill., 286 U.S. 753 (1967).
2. Department of Revenue of Ill. v. National Bellas Hess, Inc., 34 Ill.2d 164, 214 N.E.2d 753 (1967).
3. The use tax is imposed the user of the goods, and not the seller. The seller is required to collect the tax, and the seller is liable for the tax whether collected or not. ILL. STATS., 1965, p. 120; ILL. REV. STATS. §439.8 (1965 Rev.).
4. Wiscossin v. J. C. Penny Co., 311 U.S. 435 (1940).

the mails or by common carrier,[5] the Court reasoned that there was absent a definite link, a minimum connection, between the state and the person, property, or transaction sought to be taxed.[6]

The dissenting Justices[7] felt that a definite link could be found to uphold the validity of imposing the tax. The dissent argued that the appellant was engaged in the business of regular, systematic solicitation within the State of Illinois in competition with the local retailers, and also sought deferred payment-credit accounts from residents of Illinois and that this was sufficient to constitute a definite link, a minimum connection between the state and the person, property or transaction sought to be taxed.[8] The dissent reasoned that without the solicitation of the appellant, Illinois residents would buy locally and pay the taxes to support their state. Thus, the majority opinion not only deprives the states of taxes they would otherwise receive; it also gives an out of state mail order retailer, in competition with local retailers, an unfair competitive advantage.[9]

The Supreme Court has upheld the imposition of a tax on an out-of-state seller where there were local agents in the taxing state,[10] or where the seller maintained a local retail store,[11] or where the seller had wholesalers or jobbers in the taxing state.[12] In this case, however, the Court reasoned that a strictly mail order business was entirely interstate commerce, and therefore there was no sufficient link between the transaction and the state.[13]

This decision confirmed the apparent belief of most state taxing authorities that an out-of-state mail order house could not be held liable for state use taxes.[14] Although there is a growing trend in the field of state taxation to rely heavily on use taxes as a source of revenue, it is apparent that the imposition of these taxes will now come under close scrutiny from both the state and Federal governments.[15]

The Georgia statute[16] is very similar to the Illinois statute,[17] and reads in part:

5. National did not maintain in Illinois any office, distribution or sales house. National employed no salesman or deliveryman in the State of Illinois. Twice a year National mailed catalogues to active or recent customers in Illinois and supplemented this by mailing flyers periodically. Orders were mailed to National and accepted at National's Missouri plant. The merchandise was shipped to the customers either by mail or common carrier. Department of Revenue of Ill. v. National Bellas Hess, Inc., 34 Ill.2d 164, 214 N.E.2d 755 (1966).
6. Miller Brothers Co. v. Maryland, 347 U.S. 340 (1954).
7. Mr. Justice Fortas was joined by Mr. Justice Black and Mr. Justice Douglas in the dissent.
8. Miller Bros. Co. v. Maryland, 347 U.S. 340 (1954)
9. National Bellas Hess, Inc. v. Department of Revenue of Ill., 386 U.S. 753, 757 (1967).
10. Felt and Tarrant Mfg. Co. v. Gallagher, 306 U.S. 62 (1939).
11. Nelson v. Sears, Roebuck and Co., 312 U.S. 359 (1941).
12. Scripto, Inc. v. Carson, 362 U.S. 207 (1960).
13. National Bellas Hess, Inc. v. Department of Revenue of Ill., 386 U.S. 753, 764 (1967).
14. CCH STATE TAX HANDBOOK 669 (1965).
15. H.R. Rep. No. 565, 89th Cong., 1st Sess. 631-35 (1965).
16. GA. CODE ANN. §92-3404a(8) (Supp. 1966).
17. ILL. STATS., 1965, p. 120; ILL. REV. STATS. §439.8 (1965 Rev.).

> 'Dealer' also means and includes every person who solicits business either by representatives or by the distribution of catalogs or other advertising matter and by reason thereof receives and accepts orders from consumers in the State of Georgia . . . .

Although the constitutionality of the Georgia statute as it applies to out-of-state sellers has not been challenged, the quoted language appears to fall within the confines of the decision under consideration, and would probably be held unconstitutional if challenged.

In *Drake v. Thayer Mfg. Co.*[18] the Georgia Court of Appeals did not consider the constitutionality of the statute as to its application to out-of-state sellers. In all probability, however, the Georgia Court would have held that the statute did not violate any constitutional provisions.

The decision in the principal case will have direct effect upon Georgia's use tax provisions, and could well increase the number of mail order firms in the United States and reduce the number of warehouses and retail outlets maintained by out-of-state firms in a foreign state.

H. NORWOOD PEARCE

CONSTITUTIONAL LAW—FOURTH AMENDMENT—GUARANTEE OF FREEDOM FROM UNREASONABLE SEARCHES APPLIED TO ADMINISTRATIVE SEARCHES

The appellant brought this action in a California superior court to obtain a writ prohibiting his prosecution in a municipal court on criminal charges of violation of a city housing code[1] by refusing to permit the warrantless inspecton of his leased apartment. The California superior court denied the writ; the California District Court of Appeals affirmed, and the California Supreme Court denied a petition for hearing. In vacating the judgments of the California courts, the United States Supreme Court held that searches by health and safety inspectors are significant intrusions upon the interests protected by the fourth amendment; when such searches are authorized and conducted without a warrant procedure, they lack the traditional safeguards which the fourth amendment guarantees to the individual.[2]

18. 105 Ga. App. 20, 123 S.E.2d 457 (1961).
1. Sec. 503 of the Housing Code of the City of San Francisco states that authorized employees of the City shall, upon presentation of proper credentials, have the right to enter, at reasonable times, any building in the city to perform any duty imposed on them by the Municipal Code Sec. 507 of the Code provides that any person who refuses to comply with or who opposes the execution of any provision of the Code shall be guilty of a misdemeanor and shall be punished by a fine not exceeding $500, or by imprisonment not exceeding six months, or by both.
2. Camara v. Municipal Court, 387 U.S. 523 (1967).