Kentucky Law Journal

Volume 30 | Issue 1 Article 9

1941

Rights of Purchaser Against Processor--A.A.A. Tax Refunds

J. Granville Clark
University of Kentucky

Co. v. *Marks, et al.*[13] raised a question of fraud in an award made by arbitrators. Here the court said: "It would therefore seem clear that the jurisdiction of the issue of fraud in an award upon the part of the arbitrators, however presented, was exclusively equitable prior to the adoption of the Code, and that both the Code and the statutes have expressly declared it shall continue so."

Since equity had exclusive jurisdiction of fraud in the inducement and the Code[14] affirms this jurisdiction, the statement by the court in the principal case that it is well settled in Kentucky that all fraud is tried at law, does not seem to be justified.

GLENN DENHAM

RIGHTS OF PURCHASER AGAINST PROCESSOR—A. A. A. TAX REFUNDS

In the case of *Sparks Milling Co.* v. *Powell et al.*, a buyer contracted for the purchase of flour and the A.A.A. processing tax was included in the purchase price. The contract provided that in case of:

> "any new or additional tax or taxes other than those included in the price hereof, (if the seller shall be required by law to collect such increases or additional taxes) then, in that event, said increases or additional taxes shall be added to the price hereof; and correspondingly if any tax included in the price hereof shall be decreased or abated, then, in that event, said decrease or abatement shall be deducted from the price hereof."

The Supreme Court of the United States invalidated the Agricultural Adjustment Act processing Tax, and the seller brought this action for flour delivered and the buyer entered a counterclaim for the amount of the tax paid by him through the medium of the purchase price. The Kentucky Court of Appeals held: 1) The contract did not provide for a return of the tax money in case of a subsequent judicial declaration of invalidity. 2) The buyer's recovery if any must be under an express provision of the contract. 283 Ky. 669, — S. W. 2d — (1940).

In the case of *Wayne County Produce Co.* v. *Duffy-Mott Co.*,[1] Chief Justice Cordozo, said:

> "This is a case where the promise of the buyer is to pay a stated price and to put the seller in funds for the payment of a tax besides. In such cases the failure of the tax reduces to an equivalent extent the obligation of the promise."[2]

---

should not be ascertained in the same manner by an action at law, with the court exercising equity powers to protect and preserve any recovery."

[13] 204 Ky. 664, 265 S. W. 30 (1924).

[14] *Supra* n. 11.

[1] 244 N. Y. 351, 155 N. E. 669 (1927). See (1937) 37 Col. L. Rev. 910.

[2] See note 1 *supra* at 353, 669.

But as in the present case where the tax is absorbed by the purchase price, the courts have almost unanimously held that there can be no recovery; for the amount added because of the tax paid to get the goods and for nothing else.[3]

It was not denied that the seller was unjustly enriched by the tax money, but the court did not allow restitution saying that a subsequent tax had been passed which subjected the processor to a similar tax which amounted to eighty per cent of the A.A.A. processing tax. The reason for not allowing restitution is inadequate; the seller has been unjustly enriched at the expense of the buyer even though there is another tax imposed upon the seller. However, the apparent reluctance of the court to allow restitution of invalid taxes by purchasers who have assumed them can be justified on practical grounds. If a wholesale buyer may recover there is no reason why the retail buyer should not recover, and the individual consumer should recover his pro rata share of the tax. Thus, theoretically, the court would be opening the door to a multiplicity of small suits. But from a practical standpoint these suits by the individual consumer would never be brought because of the small amount which would be involved in each suit. Therefore, in allowing restitution in this particular case, the court would be shifting an unearned profit from the miller to the wholesaler. The wholesaler has passed the tax burden on to the individual consumer and there is no reason why the unearned profit should not be left where it falls.

The contract expressly provided that in case of an "abatement" of the tax the buyer was to have the benefit of such; but the court held that the word "abatement" did not include the judicial declaration of invalidity, but that it was used only in the sense in which it was used in the A.A.A. and meant an "abatement" by and through the agencies designated in the act.

A contract is generally construed according to the intentions of the parties and to ascertain this intention the words of the contract are usually given their ordinary meaning.[4] The dictionary meaning of "abatement" would include a judicial declaration of invalidity, but the court said that "abatement" was not used in this contract so as to be given its ordinary meaning. The court said that:

> "where words having a definite legal meaning are knowingly used . . . the parties will be presumed to have intended such

[3] Casey Jones, Inc. v. Texas Textile Mills, Inc., 87 F. (2d) 454 (1937); Acme-Evans Co. v. Smith, 13 F. Supp. 356 (1936); Heckman and Co. v. I. S. Dawes and Son Co., 12 F. (2d) 154 (1926); Johnson v. Scott County Milling Co., 21 F. Supp. 847 (1937); O'Connor-Bills v. Washburn Crosby Co., 20 F. Supp. 460 (1937); Lashs Products Co. v. United States, 49 S. Ct. Rep. 100 (1929). But see Perry Mill and Elevator Co. v. Jones, 13 F. Supp. 241 (1936).

[4] McKinney's Heirs et al. v. Central Ky. Gas Co. et al., 134 Ky. 239, 120 S. W. 314 (1909); Union Light, Heat and Power Co. v. Young et al., 146 Ky. 430, 142 S. W. 692 (1912); Sower, Trustee v. Lilliard et al., 207 Ky. 283, 169 S. W. 330 (1925).

words to have their proper legal meaning in the absence of any contrary intention appearing in the instrument"[5]

Even though the parties used the word "abatement" which was used in the A.A.A. act, it is submitted that this strict construction was not reasonable. The contract provided that if an increase were required by law, the increase would be added to the purchase price. It seems reasonable to infer from this that the abolition of the tax as directed by law was within the contemplation of the parties. Cognizance might also have been taken of the general uncertainty in regard to the constitutionality of the A.A.A. at the time of the formation of the contract, and of the seller's insistence that independently of the alleged contract price funds be provided to meet a tax increase. All of these considerations tend to show a contractural relation which would allow recovery.

However, this strict construction might be justified on the ground of "letting the profit lie where it falls". As restitution was not allowed the retailer and consumer would not receive the return of the tax which was passed to them; thus, why should the wholesaler be allowed the unearned profit.

J. GRANVILLE CLARK

INCOME TAX—ASSIGNMENT OF RIGHT TO RENEWAL COMMISSIONS ON CERTAIN LIFE INSURANCE POLICIES—TO WHOM TAXABLE AND WHEN

A life insurance agent after termination of successive agencies assigned in 1924 and in 1928, respectively, all his right to and interests in three contracts entitling the assignor to renewal commissions, if any, on certain life insurance policies. In 1933 the assignee collected renewal commissions in the amount of $15,612.79. The Supreme Court *held* for "the reasons stated" in the *Horst Case*[1] that commissions paid to the assignee were income of the assignor in 1933.[2] In the *Horst Case* an owner of bonds clipped negotiable interest coupons from the bonds and gave the latter to his son who collected in the same year the interest as it matured. Considering the *Horst Case* and the *Eubank Case* together, the reasoning of the Court in the latter decision, the instant case, appears to be as follows: First, the purpose of Congress as expressed in the Revenue Act[3] is to

[5] 12 Am. Jur. 760; and see note 4 *supra.*

[1] Helvering v. Horst, — U. S. —, 85 L. Ed. 99, 61 S. Ct. 144 (1940).

[2] Helvering v. Eubank, — U. S. —, —, 85 L. Ed. 104, 105, 61 S. Ct. 149, 150 (1940).

[3] The Revenue Act of 1932 provided that gross income included ". . . income derived from . . . compensation for personal service, of whatever kind and in whatever form paid . . .; also from interest . . ." 26 U. S. C. A. Internal Revenue Act of 1932, sec. 22; 1940 ed. p. 487.