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Constitutional Law--Exercise of the Governor's Veto--Necessity of an Accompanying Message--Arnett v. Meredith

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plete and more complicated statute.[15] The result is a desirable one. Taxation is a practical matter, and the common law theory that a right is extinguished and nothing transferred should not prevail when the actual result is that the survivor has an exclusive ownership where formerly he shared it.

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CONSTITUTIONAL LAW—EXERCISE OF THE GOVERNOR'S VETO —NECESSITY OF AN ACCOMPANYING MESSAGE.— ARNETT v. MEREDITH.

The Kentucky Legislature passed an act[1] which was sent to the governor for his approval. He wrote on the bill these words: *"This bill is hereby vetoed."* The attorney-general, believing the governor had not legally exercised his right of veto, demanded a copy of the act from the secretary of state. The request was refused and a declaratory judgment action was filed to compel delivery of the act to the public printer. The lower court sustained the plaintiff's petition, holding that the governor had failed to legally exercise his veto power in not assigning his reasons for vetoing the bill. Defendant appealed. *Held*: Judgment affirmed. A veto message of the governor is not complete, therefore

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[15] Tyler v. U. S., 281 U. S. 497 (1930) (tenancy by entirety created after passage of act taxable); Phillips v. Dime Trust & S. D. Co., 284 U. S. 160 (1931), noted 32 Col. L. Rev. 148 (1932) (tenancy by entirety created after passage of first act but before existing one taxable); Gwinn v. Commissioner of Int. Rev., 287 U. S. 224 (1932), noted 21 Calif. L. Rev. 286 (1933) (Joint estate created before passage of any act taxable); Griswald v. Helvering, 290 U. S. 56 (1933), noted 32 Mich. L. Rev. 868 (1934) (joint estate created before passage of act taxable); U. S. v. Robertson, 183 Fed. 711 (C. C. A. 7th, 1910) (tenancy by entirety created after passage of act taxable); Third Nat. Bank & Trust Co. v. White, 45 F. (2d) 911 (1930), *aff'd* 287 U. S. 577 (1932), noted 46 Harv. L. Rev. 718 (1933) (entire value of property held in tenancy by entirety created before passage of any act taxable); O'Shaughnessy v. Commissioner of Int. Rev., 60 F. (2d) 235 (1932, C. C. A. 6th) (entire estate created after passage of first act but before existing one taxable. This case is interesting in connection with the principal case because it arose in Ky. and involves our statutes on joint tenancy); White v. Commissioner of Int. Rev., 64 F. (2d) 119 (C. C. A. 8th, 1933) (joint estate created before passage of act taxable); Putnam v. Burnett, 63 F. (2d) 457 (Ct. of App., D. of C., 1933) (tenancy by entirety created before passage of any act taxable); Robinson v. Commissioner of Int. Rev., 63 F. (2d) 652 (C. C. A. 6th, 1933) (same); Clarke v. Welch, 7 F. Supp. 595 (S. D. Calif., 1933) (entire value of joint estate taxable); Richardson v. Helvering, 80 F. (2d) 548 (Ct. of App., D. of C., 1935) (amount contributed by survivor determined of amount taxable); Dimock v. Corwin, 19 F. Supp. 56 (F. D. N. Y., 1937) (entire value of joint estate taxable); Foster v. Commissioner of Int. Rev., 90 F. (2d) 487 (C. C. A. 9th, 1937) (same); Sheets v. Commissioner of Int. Rev., 95 F. (2d) 727 (C. C. A. 8th, 1938) (no consideration given so whole joint estate taxable).

[1] Acts, 1938, c. 275, amending and re-enacting Section 551 of Ky. Stat. (Carroll, 1936), which is a part of the chapter dealing with private corporations.

For text of the statute as amended, see Baldwin's Ky. Stat. Supp., May, 1938, c. 32, Section 551.

illegal and ineffective, when he fails to accompany his veto with a message giving his reasons for the veto. *Arnett* v. *Meredith*, 275 Ky. 223, 121 S. W. (2d) 36 (1938).

The court spent much time in laying a foundation for its holding. The basis was that the exercise of the veto power by the governor is a legislative act which is an encroachment by the executive upon the legislative powers and that, as such, it must be in strict accordance with the terms of the instrument granting the power and allowing the encroachment. The court could have simplified matters by merely stating that the Kentucky Constitution provides, in unambiguous terms, that the bill shall be returned with the governor's *objections* to the house in which it originated, and, in case of adjournment preventing a return to the legislature, *the veto message* shall be spread upon the register of the secretary of state.[2]

One reason given for requiring the governor to accompany the veto with his objections and grounds therefor, is that the framers of the Constitution intended such message to be a guide for the legislature in reconsidering the bill. The legislature might amend the bill so as to make it acceptable to the governor, or, if the reason seems unsound, might, after reconsideration, pass the bill over the veto of the governor.[3] The veto power so given by the Kentucky Constitution is a qualified, not an absolute, power. Therefore, the legislature is entitled to know the reasons so it may take further action on the bill if the members so desire.

The Kentucky Court sets forth a further reason for the rule which is of unquestionable validity. This secondary reason is that the public generally, as well as members of the legislature, have the right to know why the governor vetoed an act.[4] The right is given them, says the

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[2] Ky. Constitution 1892, Section 88.

"Every bill which shall have passed the two houses shall be presented to the governor. If he approve he shall sign it; but if not, he shall return it *with his objections* to the house in which it originated, which shall enter the objections in full upon its journal, and proceed to reconsider it. . . . If any bill shall not be returned by the governor within ten days (Sundays excepted) after it shall have been presented to him, it shall be a law in like manner as if he had signed it, unless the General Assembly by their adjournment, prevent its return, in which case it shall be a law, unless disapproved by him within ten days after the adjournment, in which case his veto message shall be spread upon the register kept by the secretary of state. . . ."

See also: Ky. Constitution 1892, Sections 27 and 28.

[3] For a good discussion of historical background pertaining to the executive veto power, see: State ex rel. Boynton v. French, 133 Kan. 579, 300 P. 1082 (1931), esp. at pp. 1083, 1084.

[4] The Ky. court's additional reason would have more strength in a state such as Arkansas, where, under the state Constitution, the governor's veto and objections must be given public proclamation. (Ark. Const. 1874, Art. 6, Section 15. Pope's Dig. of Ark. Stat. 1937.)

However, Arkansas has held a mere filing of the vetoed bill with the secretary of state for entry upon his register, to be a sufficient public proclamation. (Dickinson v. Page, 120 Ark. 377, 179 S. W. 1004 (1915).

court, so that they may exercise their rights and powers as voters in electing a governor who will act conscientiously in the exercise of his powers.[5]

The result in the case is desirable since it places responsibility for the failure to enact a law on the person who causes that failure. Such placing of responsibility for failure of an act gives the people an opportunity to take corrective steps.[6] Further, this requirement of reasons serves to inform the public as to why a particular bill was vetoed by their governor. In cases where non-legislative bodies have opportunity to exercise vital powers, the public should be allowed, in all fairness, to hear the reasons why this vital power was so exercised.

Of course, after the governor has once given his reasons for a veto the court should not attempt to pass upon the validity of such objections but should leave the merits to be considered by the legislature.[7] For a court to pass upon the substance of objections accompanying a veto would be an example of encroachment by the judiciary upon the functions of the executive. JOHN L. YOUNG

EQUITABLE SERVITUDES—TERMINATION—CHANGE IN NEIGHBORHOOD

Deeds to lots in a certain subdivision contained restrictive covenants as to character and minimum cost of residences which might be erected thereon. Since the establishment of the subdivision, a number of business houses had been erected there, and the city zoning commission had declared the subdivision to be a business district. The plaintiff lumber company acquired a lot adjoining defendant's garage and asserted its right to erect thereon a business house. Defendant denied that right because of the restrictive conditions mentioned.

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[5] In the principal case the attempt to exercise the veto power was made *after* the adjournment of the legislature. Conceding that the statement by the court in the *Arnett* case, that the reasons must be given in case of a veto while the legislature is in session, is mere dictum (Arnett v. Meredith, 275 Ky. 223, at p. 231), yet there would seem to be no ground upon which a rational distinction could be made in cases where the legislature is in session. The same reasons for requiring an accompanying message exist, without regard to whether the legislature is in session or adjourned.

[6] Whether the exercise of the "power to disapprove any part or parts of appropriation bills embracing distinct items" (Ky. Const., Sec. 88) will require an accompanying message containing reasons therefor will depend upon the court's construction of Sec. 88 in its entirety. One case intimates that a part or parts of an appropriation bill embracing distinct items could be vetoed by a mere notation of the fact of veto without any reasons. (Dickinson v. Page, 120 Ark. 377, 179 S. W. 1004 (1915). However, if the reason for the rule is sound, then there is no valid ground for relaxing the rule when applying it to parts of an appropriation bill as contrasted with the veto of a bill *in toto*. (See the dissenting opinion in the *Dickinson* case, 179 S. W. 1004, at p. 1007.)

[7] Birdsall v. Carrick, 3-4 Nev. Rep. (Hawley's Republication) 138 (1867). See esp. p. 141 of the opinion.