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Taxation--Exemption Under Inheritance Tax

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(E) COMMENT.

A detailed study of the question of insanity convinces one that it may become a valid defense for the commission of a crime. The common law courts have recognized the plea of insanity from the earliest cases to the present date. Insanity as a plea for a criminal defense is an established fundamental principle of law.

An insane person, because of his condition may commit the most heinous crime, and it is beyond dispute that this person is a dangerous element to society. The state realizing the existence of this dangerous element has established asylums for the insane and laws have been enacted providing a method by which a person may be adjudged insane. Yet a person may commit murder, and upon trial, if mental insanity is established, he will leave our courts a free man, once more to mingle with society. It is only reasonable and proper to contend that the same jury acquitting a defendant upon the plea of insanity should have the power to adjudge him insane and commit him to an asylum for the insane, where he would no longer be a menace to society. Procedural laws should be enacted giving the Kentucky jury that power, that is, in a criminal case where insanity is established as a defense, if the jury finds that the prisoner is still insane he should be committed to the insane asylum without further proceedings.

G. W. MEUTH.

TAXATION—EXEMPTION UNDER INHERITANCE TAX.—At the time of testatrix's death she had the absolute title to a large estate, which is referred to as the Bingham estate. She also had the beneficial interest in the vast estate of her first husband, which is referred to as the Flagler trust. At the time of testatrix's death and ever since this latter estate has been administered by a trustee, in accordance with the will creating the trust. This case came before the court on two independent appeals, one by the defendant and the other by the plaintiff. The following six questions of law were raised:

(1) Is testatrix's interest in the Flagler trust, which passed under her will, subject to the inheritance tax of this state?

(2) Is the amount paid to the Federal government, as an "estate tax" to be deducted in determining the amount upon which the Kentucky tax is to be computed?

(3) Are the amounts paid by the administrator to states other than Kentucky as inheritance tax to be deducted in determining the amount upon which the Kentucky tax is to be computed?

(4) Are legacies to the University of North Carolina, and hospitals and churches located in Florida subject to an inheritance tax in this state?

(5) Are large blocks of stocks and securities, customarily traded in and quoted daily upon markets in New York City and elsewhere, to be appraised by the same small blocks of the same stocks?

(6) From what date is interest to be computed upon the inheritance tax ascertained to be due?

1. The first question is raised under subsection 1 of section 428, Kentucky Statutes, which created an inheritance tax. The statute reads: "All property which shall pass by will or by intestate laws of this state, from any person, who may die seized or possessed of the same while a resident of this state, etc., shall be subject to an inheritance tax." The defendant contended that at the time of testatrix's death she was not "seized or possessed" of the "Flagler trust," even, if it did pass under the will.

Mr. Flagler at the time of his death was possessed of a large estate which consisted of controlling interests in railroads, hotels and land companies in the state of Florida. Realizing the inability of his wife to properly develop this property, by his will he provided that it should be placed in the hands of a trustee for a period of ten years. The sole beneficial interest during this period if ten years was to be in his wife. Then the entire estate was to pass to her.

Under these conditions, was testatrix "seized or possessed" of the "Flagler trust?" The rule in Kentucky is that in construing a statute words which are technical must be given their technical meaning, and common words must be given their ordinary meaning, Sec. 460, Kentucky Statutes. The word "seized" has a technical meaning, and technically she was not seized of the "Flagler trust." The word "possessed" is a common word and must be given its common meaning. The court holds that the word "possessed" is used to denote ownership of any kind of property. Therefore at the time of her death, testatrix did possess the "Flagler trust" in the common meaning of the word.

She was possessed of it, in contemplation of the statute and it is therefore subject to the inheritance tax.

2. In deciding the second question, the court holds that the state inheritance tax law contemplates an assessment of the state tax upon the beneficial interest that the recipient would actually receive, rather than upon the interest, which theoretically and technically may have been passed under the will. The administrator has paid into the treasury of the United States $7,509,283.65 in accordance with the provision of the federal inheritance tax, enacted by Congress, Sept. 8, 1916. While, theoretically and technically, this amount passed to the heirs; yet, it did not pass as a beneficial interest. This amount they did not actually receive. Therefore, according to the rule for construing statutes in this state, this amount is to be deducted in determining the amount upon which the Kentucky tax is to be assessed.

3. The court holds that the amounts paid to other states, as inheritance taxes, should also be deducted in order to arrive at the amount upon which the Kentucky tax is to be assessed. The same reason was given for allowing this deduction as was given for allowing a deduction of the federal tax. The court also holds that necessarily the price that a state puts upon its consent to surrender possession of the property to our jurisdiction, must precede the price we put upon the recipient's right or privilege of receiving it.

4. In regard to the fourth proposition, the court holds that, non-resident educational and religious institutions, not operated for gain, but public charities and confessedly of the same kind as those claiming exemptions here, are exempt from payment of the tax. Therefore, the amount that passed by the will to the churches and schools of other states was allowed to be deducted, in order to arrive at the amount upon which Kentucky could assess her tax.

5. Testatrix's will passed large blocks of stocks in the Standard Oil Co. In determining the value of these stocks, the market price as quoted on the New York market the day following her death was taken to fix the value thereof. The legatees contended that this was an unfair method, for the price as quoted on the market had to do with small blocks of stock, and this price could not be obtained for the stocks when placed on the markets

in large blocks. The court holds that this is no reason for not allowing the stocks to be valued at their market price, since they could have been disposed of at the market price within a reasonable length of time after her death. The statute contemplates the valuation of all property in such units as it is ordinarily traded in, rather than in blocks as it happens to be owned at the time of the taxing date; therefore in determining the value of these stocks, the market price, as quoted, will be taken.

6. Section 4281a-1, Kentucky Statutes, provides: Interest is due to begin eighteen months after the death of the decedent and if not paid at that time interest will be charged at the rate of 10% from the time the tax accrued; if paid before the expiration of eighteen months, the rate of interest shall be 6%. Section 4281a-5 provides that the penalty of 10% shall not be charged, if due to litigation or necessary delay, etc., the estate can not be settled at the expiration of eighteen months, but interest at the rate of 6% shall be charged. The court holds that, since the statute is very plain on this matter, there could possibly be but one conclusion, which is that interest must run at the rate of 6% from the date of eighteen months after testatrix's death.

There is no decision in this state since the passage of the inheritance tax law, that has settled so many questions that might arise under the act. Some of the questions have been before the court prior to this case; others are new ones. The prior rulings of the court have been followed in this case. Since all of the states have an inheritance tax law, many of the points passed on by the Kentucky court have also been before other state courts. The holding here is in harmony with the holdings of some of the other states, while it differs with others. Since an inheritance tax law is purely a statutory provision, and the statutes creating the tax differ, it is impossible to deduct from the various decisions a rule that has been adopted as a leading principle in construing the questions that arise under them. While they differ in substance they are similar in principle, and the same questions arise under them, as will be shown by a review of some of them.

1. The rule has been laid down by the Kentucky court that in the interpretation of all statutes levying taxes a cardinal principle is that their interpretation is never extended by

implication beyond the fair meaning of the term used. Aetna Insurance Case, 115 Ky. 801. The case further holds that whenever there is any doubt as to the construction of the statute it is to be construed most favorably towards the taxpayer. In holding that testatrix was possessed of the Flagler trust in contemplation of the statute, this latter rule was adhered to. The word "possess" as used in the statute was certainly not extended by implication in order to include the Flagler trust, since its common meaning was adopted. It was certainly construed most favorably toward the defendants, even if the ruling was against them.

2. The principle involved in the second point has been before the courts of many states and the majority have held as did the Kentucky court. *Corbin* v. *Townshend,* 92 Conn. 501; *State* v. *Hennepin County,* 139 Minn. 210; *People* v. *Pasfield,* 284 Ill. 450; *In re Knight Estate,* 261 Pa. 537; *People* v. *Bemis,* 68 Colo. 48; *State* v. *First Calumet T. & S. Co.,* 71 Ind. App. 467; *Bugbee* v. *Roebling,* 94 N. J. Law 438; *Poulsen* v. *Hoff,* 101 Ore. 182; *In re Miller's Estate,* 184 Cal. 674; *Old Colony Trust Co.* v. *Burrell,* 238 Mass. 544.

The following cases have been held adversely to the Kentucky court and the majority rule: *In re Sherman's Estate,* 166 N. Y. 19; *Hayord* v. *Bliss,* 43 R. I. 431; *In re Week's Estate,* 169 Wis. 316; *In re Sandford's Estate,* 188 Iowa 853; *In re Succession John R. Ghens,* 148 La. 1017.

The question as to whether or not a state inheritance tax should be deducted before ascertaining the amount upon which the federal government could levy an inheritance tax has been before the U. S. Supreme Court and it held that the state tax should not be deducted. *New York Trust Co.* v. *Eisner,* 256 U. S. 345. But the same reason as was given for such a holding could not be applied to the question when raised from the standpoint of the state.

3. The question raised under the third question was the same in principle as was the one in the second question and what has been said in reviewing the second one will apply here.

4. The point raised by the fourth question has been before the Kentucky court prior to this decision; and the same rule was followed here as was previously established. *Sage, Exr.* v. *Commonwealth,* 244 S. W. 179, 196 Ky. 237, Oct. 27, 1922.

5. The point involved under question five has been before other courts, but the decisions seem to have been governed by the statutes of the various states. *Gould's Estate,* 46 N. Y. Supp. 506, following the statutes of that state, made no deduction for large blocks of stocks. The same question came up in *Chappell's Estate,* 136 N. Y. Supp. 271, and deductions were allowed for large blocks. The statute, for some reason, was disregarded in this latter case.

6. The Kentucky court has formerly held that interest runs from the time that a court fixes the amount of the taxes, upon the ground that before the state has fixed the amount of the taxes it would be unjust to require interest. *Commonwealth* v. *Southern Pacific Co.,* 169 Ky. 296. The principal case does not follow this rule, for the statute involved clearly imposes interest at the rate of 6%, whether or not the state has ascertained the amount to be paid. Section 4281a-4 and 4281a-5, Kentucky Statutes. In the Southern Pacific Case, *supra,* the tax was not an inheritance tax and the rule employed there is the proper one in all taxes, other than inheritance tax, for the statutes do not regulate them as it does the inheritance tax. Therefore it can not be said that the established rule was disregarded when the court ruled as it did, regarding this point in the principal case under discussion.

As a general conclusion, it can be said that the inheritance tax law of Kentucky has been very clearly construed by the principal case on many points; and where the statute did not expressly provide, the weight of authority, both in this state and the other states, has been followed.

Commonwealth v. *Bingham's Admr., et al.,* Nov. 3, 1922; and *Bingham's Admr., et al.* v. *Commonwealth,* 244 S W. (Ky.) 781, Nov. 3. 1922.

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