

# Income--Sale of Trust Assets (Hartford-Connecticut Trust Company et al. v. Easton, etc., 36 F.2d \_\_\_\_\_ (2nd Cir. 1930))

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two bases, (1) value of real property and specific bequests at the time of death, and (2) value of other property at the date of decree.

The Revenue Act of 1928 expressly established value at the time of death of the decedent as the basis of calculation in respect to sales of personal property acquired by specific bequest and of real estate acquired by general or specific bequest or by intestacy, and in all other cases fixed fair market value at the time of distribution to the tax-payer as the basis.<sup>6</sup> The deliberate selection of language so differing from that used in the earlier acts indicates that a change of law was intended. Ordinarily, statutes establish rules for the future and they will not be applied retroactively unless that purpose plainly appears.<sup>7</sup>

B. E. D.

INCOME—SALE OF TRUST ASSETS.—This case arose from a demurrer to a complaint at law instituted by the plaintiff to recover income taxes paid under protest. A resident of the state of Connecticut, Sumner, by his will named the plaintiff as trustee of the residue of his estate to pay the income to his wife during her life, remainder to certain charities. There was a clause in the will empowering the trustee to pay over to, or for the benefit of, the wife any part of the principal of the trust fund which it might deem necessary or advisable for her comfortable maintenance and support. In 1926 some of the securities forming part of the trust fund were sold by the plaintiff and a profit realized. The question before the Court was whether this profit should be considered as income of the estate during the widow's life. *Held*, judgment affirmed. *Hartford-Connecticut Trust Company et al. v. Easton, etc.*, 36 F. (2nd) (C. C. A. 2nd, 1930).

The power granted to the trustee under the will was limited, the limitation being that the widow was to receive no part of the principal of the trust fund unless, in the opinion of the plaintiff, it should be deemed necessary for her comfortable maintenance and support. The evidence showed that the widow lived in a modest way considering the income from her husband's estate and her own resources. Her standard of living, her tastes, and her character were such that at no time was there any reasonable possibility that the plaintiff, as trustee, would deem it necessary or advisable to use any part of the principal for her comfortable maintenance and support. It has been held by the courts of Connecticut that where the income from property is given to a husband for life, and the necessary power "if he should want for his support, to sell any part or the whole of it for his maintenance," that the word "want" is to be construed as meaning "need" and the test is whether the husband is

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<sup>6</sup> Rev. Act of 1928, Sec. 113 (a), Subd. 5.

<sup>7</sup> U. S. v. *Magnolia Co.*, 276 U. S. 160, 162 (1928).

in actual need regardless of his expectation or opinion.<sup>1</sup> In a similar case it was held that a widow was limited to what was requisite for her comfortable maintenance and support, and that so long as she acted reasonably and in good faith, the amount to be appropriated from the principal must be left to her own discretion, but if wasteful or unreasonable, she might be restrained by a court of equity upon the complaint of any of the remaindermen.<sup>2</sup> Subsequently in a case in which the widow had the use and income of the property for life with the privilege of expending "so much of the principal as she may find necessary for her comfortable maintenance and support," the Court held that the widow was the sole judge of what was necessary, and so long as she exercised her opinion in that respect in good faith, she could not be questioned by a remainderman or by a court; for mere extravagance or wastefulness in expenditure of principal for her own support did not amount to bad faith.<sup>3</sup> The Court recognized as law, the principle laid down in the prior cases, but thought that the attendant circumstances in the case before them created a distinction. No such circumstances were present in this case to necessitate such a departure.

B. E. D.

INHERITANCE—TRANSFER TAX—CONSTITUTIONAL LAW—CONFLICTS.—Plaintiff's testator, a resident of New York, died August 4, 1927. Included in his estate was a certificate of stock of the defendant, a domestic corporation which is also incorporated under the laws of Pennsylvania and other states. Plaintiff presented the certificate to the defendant at a transfer office in New York and requested that it be transferred on the corporate books. Defendant believing the certificate to be subject to the payment of a tax under the laws of Pennsylvania, declined to make the transfer without proof of payment or waiver thereof by the Commonwealth. A declaratory judgment was obtained by the plaintiff subjecting the defendant to a duty to transfer the certificate without exacting proof of payment of the tax or waiver thereof. Defendant appealed. *Held*, judgment reversed. Inasmuch as the Supreme Court of Pennsylvania has already declared that the Commonwealth should continue to exact transfer taxes from estates of New York decedents who died between July 1, 1925 and March 12, 1928, our reciprocity statute being of no effect in that jurisdiction during the period specified, defendant was justified in demanding proof of payment of the tax or waiver thereof. *City Bank Farmers' Trust Co. v. New York Central Co.*, 253 N. Y. 49 (1930).

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<sup>1</sup> *Hull v. Culver*, 34 Conn. 403 (1867).

<sup>2</sup> *Little v. Geer*, 69 Conn. 411 (1897).

<sup>3</sup> *Reed v. Reed*, 80 Conn. 401 (1908).