Marquette Law Review

Volume 17
Issue 2 *February 1933*

Article 10

Inheritance Tax - Gifts - Deed Absolute

Lester Wogahn

as a minimum price at which the property must be bid in at the sale. If the sale price is less than that amount the court may refuse to confirm the sale. This practice has heretofore been followed in the forced sales of large corporate assets where it is impossible to arrive at a fair price by competitive bidding. See *Northern Pacific Railway Co.* v. *Boyd,* 228 U.S. 482, 33 Sup.Ct. 544. The theory is that there can be from the nature of the case no competitive bidding. The court in this case takes judicial notice that this economic emergency has rendered any semblance of competitive bidding at even a sale of a $2,000 mortgage solely a matter of abstract legal theory. This economic upheaval has exterminated that species of humanity commonly known as an auction bidder desiring to purchase, with money to back up his desires.

Third: The court may upon application for confirmation, if it has not theretofore established an upset price, determine such price before confirmation and then require such upset or fair price be credited upon the mortgage judgment. If such fair price discharges the judgment there is no need for a deficiency judgment. When this course is adopted the plaintiff should be given the option to accept or reject the arrnagement. If he rejects it a new sale should be ordered.

And so the relief that the oppressed farm and home owners of Wisconsin have hoped and prayed for has come to pass. Once again the people of Wisconsin can rest secure in the assurance that their supreme court is ever awake to the needs of the people of this state in their unceasing efforts to create on the shores of the Great Lakes a haven of political and economic freedom and equality.

C. J. SCHLOEMER.

INHERITANCE TAX—GIFTS—DEED ABSOLUTE—In the case of *In re Ogden's Estate,* —— Wis. ——, 244 N.W. 571, a gift of real estate was made by a deed absolute from the father to his daughter. He died some 3 years 7 months later. There was an oral understanding that the father should enjoy all right to the income of the property. The trial court held that the gift of the real property in question was subject to a state inheritance tax because intended to take effect in possession and enjoyment at or after donor's death. An appeal resulted in an affirmation of the judgment, the Supreme Court holding—"The gift was not completed, and the use and enjoyment never passed to the donee until the donor died, and so long as this privilege could not be exercised by the donee, it is subject to the tax."

The Wisconsin court in so ruling follows innumerable cases decided likewise in the United States. In our analysis we must remember that there is a distinction between gifts made in contemplation of death and

gifts to take effect at or after death. A gift made within the statutory period in contemplation of death will be taxable[1] and will not be discussed here. Our question is to determine the effect of reserving the right to income from or use of property transferred directly to the donee.

In order to evade the payment of an inheritance tax the donor of the property reserves the right to enjoyment, profits, and all benefits to himself, giving the title to such property immediately to the donee. Clearly the above is an evasion of the inheritance statute. "The policy of the law will not permit the defeat of the provisions of the inheritance laws by such reservations; in order that such conveyance be non-taxable there must be such conveyance as parts with possession, title and enjoyment in the grantors lifetime.[2] A pure and simple gift inter vivos giving up all right to the property is non-taxable but if within the statutory period a presumption is raised unless the contrary is shown. (72.01 [3].)

The law interpreting the statutes is well settled in the United States, holding that a transfer or conveyance directly to the intended donee but reserving some control over the property in the form of possession, profits and enjoyment during his life falls within the meaning of transfers "intended to take effect in possession and enjoyment" at or after death of the grantor; such transfer is beyond doubt the very type of transfer the statute intended to reach and therefor taxable.[3]

In conclusion citing from 14 Minn. Law Review at 461, "Summing up briefly the factors involved in this type of problem, there can be no taxable interest if the right to enjoyment to profits and possession have been given up immediately to the donee and the donor has retained no beneficial interest for himself and also in general, there is no taxable interest if the donor vests the benefits and profits in a third person to take effect immediately."

LESTER WOGAHN

CONTRACTS—STATUTE OF FRAUDS—MORAL CONSIDERATION—*Elbinger* v. *Capitol and Teutonia Co.* ____Wis.____, 242 NW 568. The plaintiff, Elbinger, and his associate, being real estate brokers, orally

[1] 72.01 (3) Transfers in contemplation of death. Every gift made within two years (amended to 6 years, 1931 Stats.) prior to the death of the grantor of a material part of his estate and without adequate consideration, shall, unless shown to the contrary, be deemed to be made in contemplation of death.

[2] *Reish* v. *Tax Comm.* (1884) 106 Pa. 521.

[3] *In re Potter* (1922) 188 Cal. 55, 204 Pac. 826; *Harber* v. *Whelchel* (1923) 156 Ga. 601, 119 S.E. 695; See also article by Prof. Fottschaeffer in 14 Minn. Law Rev. 453.