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versation, before taking up our work on the briefs. On these occasions, Judge Sadler was always a genial and entertaining companion, with a keen appreciation of humor, and I like to think of him from that angle, for thus I came to know him best.

I am greatly honored by being here today as the representative of the donor of his portrait, which is to adorn the walls of your Law School, where he both studied and taught, and of which he was a member of the Board of Incorporators.

ROBERT von MOSCHZISKER.

INHERITANCE TAXATION OF CONTRACTS TO SELL FOREIGN REALTY OWNED BY A RESIDENT DECEDENT

In the recent case of *Paul's Estate, 303 Pa. 330; 154 Atl. 503,* it is interesting to note the view taken by our Supreme Court on the question of taxing the land contracts of a decedent under the inheritance tax laws of Pennsylvania (June 20, 1919, P.L. 521).

The decedent owned two pieces of land, one in New Jersey, the other in Missouri. Prior to his death he had executed contracts for the sale of both pieces of land, and parts of the purchase price had been paid. After his death, his personal representative received the balance of the purchase price and executed deeds to the purchasers. The estate was devised wholly to collaterals and the State claimed a ten per cent tax on the assessed value of the land contracts.

Beginning with the Act of June 17, 1879, P.L. 112, and continuing through all subsequent tax legislation, provision has been made that all articles of agreement for the sale of land shall be taxable as property of a decedent. No mention was specifically made in any of these statutes, however, as to the location of the land which was the subject of the contract, whether within or without the state. There is no express provision in the Transfer Act of 1919,

concerning the taxing of land contracts, but there is nothing exempting intangible personal property such as this owned by the decedent, from taxation under its provisions.

The majority of the Court, speaking through Justice Schaffer, reach the conclusion that unpaid purchase money for real estate situated in other states, evidenced by articles of agreement executed by a decedent in his lifetime, is not subject to transfer inheritance tax under the Act of 1919, where the vendor died seised of the lands and, following payment of the entire purchase money, deeds therefor were not made until after his death by his personal representative.

The reasons given for the decision were (1) that the contracts were not choses in action constituting personal property but were the mere representatives of the land itself which only the state of its situs could tax; (2) that taxes should be levied on realities only, and not fictions such as equitable conversion and "mobilia sequuntur personam"; (3) that the modern tendency is to limit inheritance taxes to the sovereignty which is the situs of the actual property.

Chief Justice Frazer and Justice Maxey dissented. There was no doubt in their minds that the land contracts were just as much taxable personal property as mortgages and bonds. This conclusion is based on several grounds.

In the first place it is pointed out that as to the land itself, all that the decedent in Pennsylvania had at the time of his death was a mere security title to the land, which is not regarded as of property value, since it is worth nothing except by way of security, can not be devised or sold (other than as a contract of indebtedness, with security therefor) as land, and hence could not be taxed in the states of the situs of the properties. The vendee in the contract has every other interest in the land through the operation of the rule of equitable conversion.

In the second place the dissenting Justices stress the fact that it is settled law in Pennsylvania that a sale of land on a contract converts the vendor's interest in land

into personalty, his interest ceases to be an interest in the land and becomes a chose in action or a solvent credit and taxable as such.

In the third place, emphasis is placed upon the fact that all taxing statutes prior to the Act of 1919, beginning with the Act of June 17, 1879, P.L. 112, and continuing on through, subjected to state inheritance tax as personal property all articles of agreement for the sale of land, without mention of its location, whether within or without the state, and there is nothing in the Act of 1919 tending to exempt intangible personal property such as that in the present case.

It is interesting to note in this connection the change in the views entertained by the Supreme Court as to the similar problem of taxing as personalty lands situated in another state when converted into personalty by a power of sale given in a testator's will. In the case of *Dalrymple's Estate* in *215 Pa. 367,* the Court speaking through Justice Mestrezat said that there was a clear and immediate conversion of the realty situated in North Dakota into personalty and it was therefore subject to the payment of a collateral inheritance tax, citing *Handley's Estate* in *181 Pa. 339.*

In *Commonwealth v. Presbyterian Hospital, 287 Pa. 49,* Justice Simpson, dealing with a situation where a decedent who was a resident of South Carolina died in Pa., owning real property in Pa., held that an equitable conversion worked by the testator's will would not relieve the property in Pa. from a transfer inheritance tax as realty. The Justice also laid down the rule that "where the tangible property is located in some other state, the tax can not be imposed by Pa. on the theory of equitable conversion from realty to personalty." In a short opinion in *Croxton's Estate, 288 Pa. 184,* Chief Justice Moschzisker affirmed without ado the conclusions reached by the court in the case just discussed. Here the testatrix had owned real estate in Ohio. The same doctrine has been asserted also in the cases of *Frick v. Pennsylvania, 268 U. S. 473* and in *Robinson's Estate, 285 Pa. 308.* The history of

the decisions in New York is almost an exact reproduction of that of the Pennsylvania cases. Since the decision of the Court of Appeals of New York in *Matter of Swift, 137 N. Y. 86, 32 N. E. 1096,* it has been settled that where there is an equitable conversion by will of realty owned by a resident testator in a sister state, such equitable conversion will not subject the property to a transfer inheritance tax. The doctrine of this case, which was based on the theory that taxation is based on facts, and not legal and equitable fictions, was extended to include an attempted tax on contracts for the sale of land in another state, in the cases of *In re Baker's Estate, 124 N. Y. S. 827* and *In re Wolcott's Estate, 157 N. Y. S. 268.*

Pennsylvania, by the decision of its Supreme Court in *Paul's Estate,* is apparently following these New York decisions, though the latter two, being lower court cases, are not mentioned anywhere in the Court's opinion. At the present time, then, it is safe to say that in Pa. where a resident testator, prior to his death had owned real property in another state, for which he had executed contracts of sale, the unpaid purchase price on those contracts at the time of his death does not constitute personal property taxable as such, an equitable conversion of the realty to personalty by the executed contracts not being enough to give Pa. the right to tax the interests as such.

A search of decided cases fails to reveal any cases other than the New York cases discussed, which are directly analogous to the case of *Paul's Estate.*

ROBERT E. KNUPP.

IMPLIED WARRANTY AS BETWEEN MANUFACTURER AND CONSUMER

There is a considerable conflict in authority as to whether an action can be maintained directly against a manufacturer of a defective article for an injury to the ultimate consumer who purchased from a middleman, and if so, whether this action should be in trespass for the tort