# INDEX.

MacCrellish & Quigley Co., Printers, Trenton, N. J.

# New Jersey Supreme Court.

## NOTICE AND GROUND OF APPEAL.

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| NEWTON A. K. BUGBEE, COMPTROLLER OF THE STATE OF NEW JERSEY, *Prosecutor,* *vs.* THE BOARD OF FOREIGN MISSIONS OF THE PRESBYTERIAN CHURCH IN THE UNITED STATES OF AMERICA, *Defendant.* | On Certiorari. Suit No. 2. |

(*Filed March 25, 1926.*)

*To Messrs. Whiting & Moore, Attorneys for Defendant:*

Take notice that the Prosecutor appeals to the Court of Errors and Appeals from the whole of the judgment entered in this case, on the following ground:

1. The Supreme Court erred in giving judgment for the defendant instead of for the Prosecutor.

Dated March 10, 1926.

E. L. KATZENBACH,
Attorney-General of New Jersey,
*Attorney for Prosecutor,*

## WRIT OF CERTIORARI.

(*Filed August 31, 1925.*)

NEW JERSEY, *ss.*

[SEAL.] The State of New Jersey to Edwin Robert Walker, Ordinary of the State of New Jersey, GREETING:

We being willing for certain reasons to be certified of a certain decree made by you the said Edwin Robert Walker, Ordinary of the State of New Jersey, on June 18, 1925, setting aside an assessment of transfer inheritance taxes against the estate of William E. Honeyman, deceased, late of the Borough of North Plainfield, in the County of Somerset and State of New Jersey, theretofore made by Newton A. K. Bugbee, Comptroller of the Treasury of the State of New Jersey, in a certain proceeding before you on appeal from the said assessment, do command that the said order or decree made by you, as aforesaid, together with the affidavit of appeal theretofore presented to you by the Board of Foreign Missions of the Presbyterian Church in the United States of America, the answer filed thereto, the notice of appeal and all other papers, documents and matters touching and concerning the said appeal, and all proceedings therein, as fully as the same remain before you or under your control, you certify and send to our Supreme Court of Judicature, at Trenton, on the sixth day of October, one thousand nine hundred and twenty-five, together with this writ, that we may cause to be done what of right and according to law ought to be done.

Witness, William S. Gummere, Esquire, Chief Justice of our Supreme Court of Judicature, at Trenton, this

thirty-first day of July, one thousand nine hundred and twenty-five.

EDWARD J. KELLEHER,
*Clerk.*

EDWARD L. KATZENBACH,
*Attorney General of New Jersey.*

I allow this writ. Let it be sealed.

THOMAS W. TRENHCARD, *J. S. C.*

Dated July 31, 1925.

In obedience to the command of this writ to me directed, I, Edwin Robert Walker, Ordinary or Surrogate General and Judge of the Prerogative Court of the State of New Jersey, do hereby certify and send to the Honorable Justices of the Supreme Court within mentioned, the order or decree made by me on the Eighteenth day of June, nineteen hundred twenty-five, by virtue of the powers conferred upon me by an act entitled "An Act to tax the transfer of property of resident and non-resident decedents by devise, bequest, descent, distribution by statute, gift, deed, grant, bargain and sale in certain cases," approved April 20, 1909, and the supplements and amendments thereto, in a certain proceeding before me on appeal from an assessment theretofore made by the Comptroller of the Treasury of the State of New Jersey, entitled "In the matter of the Estate of William E. Honeyman, Deceased;" together also with the petition of appeal theretofore presented to me by The Board of Foreign Missions of the Presbyterian Church in the United States of America, and the answer of the Comptroller of the Treasury of the State of New Jersey to said petition of appeal, and all other proceedings and matters touching and concerning said petition of appeal and the proceedings thereunder, as fully as the same remain before me or under my control, as by the transcript of the same under my hand and seal of the

Prerogative Court certified and annexed, more fully appears.

E. R. WALKER,
*Ordinary.*

Dated August 27th, 1925.

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## NOTICE.

NEW JERSEY PREROGATIVE COURT.

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|---|---|
| IN THE MATTER OF THE ESTATE OF WILLIAM E. HONEYMAN, *Deceased.* | On Appeal from the Appraisement and Assessment of the Comptroller of the Treasury of the State of New Jersey. |

*To Newton A. K. Bugbee, Comptroller of the Treasury of the State of New Jersey:*

Please take notice, that the Board of Foreign Missions of the Presbyterian Church in the United States of America, hereby appeals from the appraisement and assessment of the above estate made by you and from the tax levied thereon to the Ordinary of the State of New Jersey, and that annexed thereto is a copy of the petition of appeal filed by the said petitioner with the said Ordinary.

Dated, October 28th, 1924.

WHITING AND MOORE (Signed),
*Proctors for Appellant.*

# PETITION OF APPEAL.

NEW JERSEY PREROGATIVE COURT.

| | |
|---|---|
| IN THE MATTER OF THE ESTATE OF WILLIAM E. HONEYMAN, *Deceased.* | On Appeal from the Appraisement and Assessment of the Comptroller of the Treasury of the State of New Jersey. |

*To the Honorable Edwin Robert Walker, Ordinary of the State of New Jersey:*

The petition of the Board of Foreign Missions of the Presbyterian Church in the United States of America, a corporation duly organized and existing under the laws of the State of New York, respectfully shows:

1. That William E. Honeyman, the above named deceased, being a resident of North Plainfield, in the County of Somerset and State of New Jersey, died on or about April 1st, 1918, leaving a last will and testament which was duly admitted to probate by the Surrogate of the County of Somerset on or about April 16th, 1918.

2. On or about December 3d, 1912, said William E. Honeyman entered into a written agreement with said Board of Foreign Missions of the Presbyterian Church in the United States of America, whereby said William E. Honeyman made a donation of $3,000.00 to said Board and paid said sum to said board, and said Board received the same as an absolute gift to be devoted to the general uses and purposes of said Board, and in consideration thereof said Board agreed that so long as the said William E. Honeyman should live, but no longer, it would pay to him the annual sum of $180.00, and in the event of the death of the said William E. Honeyman,

should his wife, Harriet L. Honeyman, survive him, it would pay to her the annual sum of $180.00 during her lifetime.

3. On or about November 26th, 1912, said William E. Honeyman entered into a written agreement with said Board of Foreign Missions of the Presbyterian Church in the United States of America, whereby said William E. Honeyman made a donation of $2,000.00 to said Board and paid said sum to said Board, and said Board received the same as an absolute gift to be devoted to the general uses and purposes of said Board, and in consideration thereof said Board agreed that so long as the said William E. Honeyman should live, but no longer, it would pay to him the annual sum of $120.00, and in the event of the death of the said William E. Honeyman, should his wife, Harriet L. Honeyman, survive him, it would pay to her the annual sum of $120.00 during her lifetime.

4. On or about January 21st, 1913, said William E. Honeyman entered into a written agreement with said Board of Foreign Missions of the Presbyterian Church in the United States of America, whereby said William E. Honeyman made a donation of $1,000.00 to said Board and paid said sum to said Board, and said Board received the same as an absolute gift to be devoted to the general uses and purposes of said Board, and in consideration thereof said Board agreed that so long as the said William E. Honeyman should live, but no longer, it would pay to him the annual sum of $60.00 and in the event of the death of the said William E. Honeyman, should his wife, Harriet L. Honeyman, survive him, it would pay to her the annual sum of $60.00 during her lifetime.

5. The said Harriet L. Honeyman, wife of said William E. Honeyman, died on April 4th, 1923.

6. The title of the Board of Foreign Missions of the Presbyterian Church in the United States of America to said respective donations became vested and absolute upon the execution of said respective agreements, and

said William E. Honeyman had no further right, title or interest in or to the same.

7. Said transfers from said William E. Honeyman to the said Board of Foreign Missions of the Presbyterian Church in the United States of America were not made in contemplation of the death of the said William E. Honeyman, or intended to take effect in possession or enjoyment at or after such death.

8. After the death of the said William E. Honeyman his estate and property were appraised for the purpose of assessing a transfer inheritance tax upon the same pursuant to statute, and on August 30th, 1924, the Comptroller of the Treasury of the State of New Jersey did assess a tax upon the said estate in the sum of $498.92.

9. The said Comptroller included in said appraisement the following sums transferred to said Board of Foreign Missions of the Presbyterian Church in the United States of America in accordance with the agreements above referred to, that is to say:

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|---|---|
| As per agreement dated November 26th, 1912, rem. of $2,000.00 at death of widow, | $1,481.03 |
| As per agreement dated December 3, 1912, rem. of $3,000.00 at death of widow, | 2,221.55 |
| As per agreement dated January 21st, 1913, rem. of $1,000.00 at death of widow, | 740.52 |
| Total, | $4,443.10 |

and assessed upon said sums a transfer inheritance tax of $222.16.

10. Petitioner charges that the inclusion in the estate of decedent, subject to the transfer inheritance tax, of said sums of $1,481.03, $2,221.55 and $740.52 as above set forth, and the assessment of said tax of $222.16 against said transfers to petitioner, was and is erroneous

and that none of said sums transferred to petitioner as aforesaid should have been included in appraising the estate of said deceased.

11. Petitioner hereby appeals from so much of the determination, appraisement and assessment so as aforesaid made by the said Comptroller as includes and assesses a tax upon the transfers made by decedent in his lifetime to petitioner, as above set forth, and respectfully prays that the Ordinary hear and determine the matter of the legality of the said appraisal and assessment and the questions in relation thereto herein set forth, and that said assessment be vacated and set aside, and such other and further relief granted as may be just.

12. The grounds of the said appeal and the questions upon which petitioner prays the determination of this court are:

(a) The Comptroller erred in including in the taxable property of said estate said sums of $1,481.03, $2,221.55 and $740.52 transferred by decedent to petitioner as above set forth, for the reason that the transfers thereof were not made in contemplation of the death of said William E. Honeyman, or intended to take effect in possession or enjoyment at or after such death.

(b) The Comptroller erred in including in the taxable property of said estate said sums of $1,481.03, $2,221.55 and $740.52 transferred by decedent to petitioner, as above set forth, for the reason that petitioner acquired absolute title to said sums by virtue of said transfers for its own uses and purposes, and said William E. Honeyman, at the time of his death, had no right, title or interest in or to the same, or any of them.

(c) The Comptroller erred in including in the taxable property of said estate said sums of $1,481.03, $2,221.55 and $740.52, transferred by decedent to petitioner, as above set forth, for the reason that said transfers were made more than two years prior to the death

of said William E. Honeyman, and for an adequate valuable consideration.

(d) The Comptroller erred in including in the taxable property of said estate said sums of $1,481.03, $2,221.55 and $740.52, transferred by decedent to petitioner, as above set forth, for the reason that at the time of the death of the said William E. Honeyman the said sums were not subject to said tax under the laws of this State.

Your petitioner is dissatisfied with the said appraisement and assessment of the said Comptroller and therefore prays that the same may be reviewed by the Ordinary of this State and reversed and corrected.

BOARD OF FOREIGN MISSIONS OF THE PRESBYTERIAN CHURCH IN THE UNITED STATES OF AMERICA,

By C. A. STEELE,
*Asst. Treas.*

WHITING AND MOORE,
*Proctors for and of Counsel with Petitioner.*

STATE OF NEW YORK,
COUNTY OF NEW YORK, } *ss.*

Clarence A. Steele being duly sworn according to law, on his oath says that he is the Assistant Treasurer of the Board of Foreign Missions of the Presbyterian Church in the United States of America, the petitioner named in the foregoing petition of appeal; that he has read the foregoing petition of appeal and knows the contents thereof and that the same is true to the best of his knowledge, information and belief.

C. A. STEELE.

Subscribed and sworn to before me this 28th day of October, 1924.

W. FURNEY JEFFREYS,
*A Master in Chancery of New Jersey.*

## ANSWER.

NEW JERSEY PREROGATIVE COURT.

| | |
|---|---|
| IN THE MATTER OF THE ESTATE OF WILLIAM E. HONEYMAN, *Deceased.* | On Appeal from the Appraisement and Assessment of the Comptroller of the Treasury of the State of New Jersey. |

ANSWER OF THE COMPTROLLER OF THE TREASURY OF THE STATE OF NEW JERSEY TO THE PETITION OF APPEAL OF THE BOARD OF FOREIGN MISSIONS OF THE PRESBYTERIAN CHURCH IN THE UNITED STATES OF AMERICA, A CORPORATION DULY ORGANIZED AND EXISTING UNDER THE LAWS OF THE STATE OF NEW YORK.

This Defendant, answering, says:

1. The facts set forth in paragraph one are admitted.

2. The allegations contained in paragraph two are admitted, with the exception that the Defendant denies that the donation to the Board was to be received by it as an absolute gift. Answering, Defendant says that the deed of trust referred to in said paragraph specifically provided that said sum was to become an absolute gift, subject, however, to the agreement on the part of the said Board as thereinafter expressed.

3. The allegations contained in paragraph three are admitted, with the exception that the Defendant denies that the donation to the Board was to be received by it as an absolute gift. Answering, Defendant says that the deed of trust referred to in said paragraph specifically provided that said sum was to become an absolute gift, subject, however, to the agreement on the part of the said Board as thereinafter expressed.

4. The allegations contained in paragraph four are admitted, with the exception that the Defendant denies that the donation to the Board was to be received by it as an absolute gift. Answering, Defendant says that the deed of trust referred to in said paragraph specifically provided that said sum was to become an absolute gift, subject, however, to the agreement on the part of the said Board as thereinafter expressed.

5. Paragraph five is admitted.

6. Defendant denies the allegations contained in paragraph six. Defendant, answering, says that the respective donations were vested, subject, however, to the agreement on the part of the Board as specifically expressed in the instruments. Defendant alleges that the agreement on the part of the Board, as expressed in the trust instruments, provided for the payment to the said William E. Honeyman, as long as he shall live, of a specified amount annually, which was equivalent to a reservation in the said William E. Honeyman of the income from said property during his lifetime.

7. Defendant admits, as alleged in paragraph seven, that the transfers from said William E. Honeyman to the said Board of Foreign Missions of the Presbyterian Church in the United States of America, were not made in contemplation of death of the said William E. Honeymen. Defendant, further answering, denies that said transfers were not intended to take effect in beneficial possession or enjoyment at or after the death of William E. Honeyman, as alleged.

8. The facts set forth in paragraph eight are admitted.

9. The facts set forth in paragraph nine are admitted.

10. Defendant denies that any error has been committed in the inclusion in the estate of the decedent, subject to the transfer inheritance tax, of the sums of $1,481.03, $2,221.55 and $740.52, and that the assessment of said tax amounting to $222.16 is also erroneous.

11. Defendant, answering paragraph eleven, says that the appraisement and assessment has been properly completed, and that the same should be affirmed.

12. Defendant, answering, with reference to the allegations contained in paragraph 12 (a) denies that any error has been committed, and denies that the transfers involved were not made to take effect in beneficial possession and enjoyment at or after death of donor.

And Defendant, further answering, with reference to the allegations contained in 12 (b), denies that the petitioner acquired absolute title to said sums by virtue of said transfers from said William E. Honeyman, and that no right, title or interest in the same or any of them remained in the said William E. Honeyman at the time of his death. On the contrary, defendant, answering, says that said transfers were made upon condition, as expressed in the trust instruments, that said gift should become absolute, subject to the agreement on the part of the Board as expressed in each of said instruments. The agreement of the Board in each case provided for the payment to the said William E. Honeyman during his life, of a sum, which, it is contended, is equivalent to the income from the property covered by each of the trust instruments. Defendant further alleges that on the death of William E. Honeyman and Harriet L. Honeyman, his wife, the beneficial possession and enjoyment of all the property covered by the trust instruments passed to the Board of Foreign Missions of the Presbyterian Church in the United States of America, and that such property was so transferred to take effect in beneficial possession and enjoyment on the death of the said William E. Honeyman.

Defendant, further answering, as to the allegations contained in 12 (c) denies that said transfers were made for an adequate valuable consideration, but on the contrary contends that said transfers were purely donative in character and for which no adequate valuable consideration passed between the parties thereto.

Defendant, further answering, as to the allegations contained in 12 (d) denies that the transfers to the said Board of Foreign Missions of the Presbyterian Church in the United States of America were not subject to a tax at the time of the death of the said William E. Honeyman under the transfer tax laws of this State, but on the contrary alleges that transfers of the nature here involved are subject to the provisions of Paragraph 1, Subsection 3, of Chapter 228, Laws of 1909, as amended; Chapter 151, Laws of 1914.

And Defendant prays that the said assessment and appraisement, and levy of tax as made by him may be in all respects affirmed.

EDWARD L. KATZENBACH (Signed),
Attorney-General of New Jersey,
*Solicitor of Defendant.*

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## STIPULATION.

NEW JERSEY PREROGATIVE COURT.

| | |
|---|---|
| IN THE MATTER OF THE ESTATE OF WILLIAM E. HONEYMAN, *Deceased.* | On Appeal of Board of Foreign Missions of the Presbyterian Church in the United States of America, from the Appraisement and Assessment of the Comptroller of the Treasury of the State of New Jersey. |

It is hereby stipulated and agreed between the parties hereto that the State Comptroller, instead of making a full return of all the papers in the above cases, as it appears from the records in his office, shall only submit the following as a return:

1. Copy of bill covering the taxes assessed.

2. Copy of analysis showing the basis of the tax.

3. Copy of agreement dated November 26, 1912, between William E. Honeyman, party of the first part and the Board of Foreign Missions of the Presbyterian Church in the United States of America, party of the second part.

4. Copy of agreement dated December 3, 1912, between William E. Honeyman, party of the first part and the Board of Foreign Missions of the Presbyterian Church in the United States of America, party of the second part.

5. Copy of agreement dated January 21, 1913, between William E. Honeyman, party of the first part, and the Board of Foreign Missions of the Presbyterian Church in the United States of America, party of the second part.

It is further agreed between the parties hereto that any other papers constituting a part of the records in the office of the Comptroller of the Treasury will be submitted to the Court upon demand.

We hereby agree to the above stipulation.

WHITING & MOORE (Signed),
*Attorney for Appellant.*

EDWARD L. KATZENBACH (Signed)
Attorney-General of New Jersey,
*Attorney for Defendant.*

STATE OF NEW JERSEY
DEPARTMENT OF COMPTROLLER OF THE TREASURY
TRANSFER INHERITANCE TAX BUREAU
TRENTON

August 30, 1924.

Harriet L. Honeyman, Executrix of the Estate of William L. Honeyman, late of Somerset County, and The Plainfield Trust Co., Plainfield, N. J.

You are hereby notified that there is due the State of New Jersey by the above-named estate a transfer inheritance tax assessed pursuant to the laws pertaining thereto, amounting to $.....

| | |
|---|---|
| Tax, as per corrected assessment, ..... | $498.92 |
| Amt. paid 1/6/19, ..... | 44.59 |
| Balance due, ..... | $454.33 |

| | |
|---|---|
| Ellis W. Hedges, ..... | $44.59 |
| Harriet L. Honeyman, ..... | 10.02 |
| Board of Foreign Missions, Pres. Church, U. S. A., ..... | 222.16 |
| Board of Home Missions, Pres. Church, U. S. A., ..... | 222.15 |

N. A. K. BUGBEE,
*Comptroller.*

Decedent died April 1, 1918.

If paid subsequent to April 1, 1919, add interest at rate of 10 per cent per annum from said date to date of payment.

Return this statement to this office with certified check for amount due. Make checks payable to Treasurer, State of New Jersey.

STATE OF NEW JERSEY
DEPARTMENT OF COMPTROLLER OF THE TREASURY
TRANSFER INHERITANCE TAX BUREAU

ASSESSMENT

Estate of William E. Honeyman, of Somerset County. Late resident of North Plainfield Borough, Date of Death, April 1, 1918.

| | | | |
|---|---|---|---|
| Amount of Estate | Personal | $12,488.80 | |
| | $12,000.00 Transferred in trust, ..... | | |
| | Real, none, ..... | Total, | $24,488.80 |
| Debts, Expenses, &c., ..... | | | 282.40 |
| Net Estate for Distribution, Including transfers made in lifetime, ..... | | | $24,206.40 |
| Exempt Interests, ..... | | | 13,426.36 |
| Taxable Interests, ..... | | | 10,780.04 |
| Will Tax, 1 and 5 per cent, ..... | | | 498.92 |

| BENEFICIARIES AND BEQUESTS | VALUE OF DEVISE OR BEQUEST | RELATIONSHIP | AGE | EXEMPT | TAXABLE |
|---|---|---|---|---|---|
| Ellis W. Hedges, ..... | | cousin | | | $891.88 |
| Cash, ..... | $500.00 | | | | 44.59 |
| Cash amounting to $500.00 at death of widow, ..... | 391.88 | | | | |
| Total, ..... | $891.88 | | | | |
| Carrie L. Straham, ..... | | none | | $300.00 | |
| Cash, ..... | $300.00 | | | | |
| Harriet L. Honeyman, ..... | | wife | 76 | 5,000.00 | 1,001.96 |
| Books, etc., ..... | 38.00 | | | | 10.02 |
| Cash, ..... | 500.00 | | | | |
| Life int, in residue, and at death $500.00 as above to Ellis W. Hedges, and balance of remainder as below indicated, ..... | 2,350.16 | | | | |
| Life annuity of $120.00 as per agreement with Board of Foreign Missions, Pres. Church, U. S. A., dated 11/26/12, ..... | 518.97 | | | | |
| Life annuity of $180.00 as per agreement with Board of Foreign Missions, Pres. Church, U. S. A., dated 12/3/12, ..... | 778.45 | | | | |
| Life annuity of $60.00 as per the agreement with the Board of Foreign Missions, Pres. Church, U. S. A., dated 1/11/13, ..... | 259.48 | | | | |
| Life annuity of $180.00 as per the agreement with Board of Home Missions of the Pres. Church, U. S. A., dated 11/19/12, | 778.45 | | | | |
| Life annuity of $120.00 as per the agreement with the Board of Home Missions, Pres. Church, U. S. A., dated 11/19/12, ..... | 518.97 | | | | |

| BENEFICIARIES AND BEQUESTS | VALUE OF DEVISE OR BEQUEST | RELATIONSHIP | AGE | EXEMPT | TAXABLE |
|---|---|---|---|---|---|
| Life annuity of $60.00 as per the agreement with the Board of Home Missions, Pres. Church, U. S. A., dated 1/14/13, ..... | 259.48 | | | | |
| Total, ..... | $6,001.96 | | | | |
| Board of Foreign Missions, Pres. Church, U. S. A., as per agreement dated 11/26/12, rem. of $2,000.00 at death of widow, ..... | $1,481.03 | | | | 4,443.10<br>222.16 |
| As per agreement dated 12/3/12, rem. of $3,000.00 at death of widow, ..... | 2,221.55 | | | | |
| As per agreement dated 1/21/13, rem. of $1,000.00 at death of widow, ..... | 740.52 | | | | |
| Total, ..... | $4,443.10 | | | | |
| Board of Home Missions, Pres. Church, U. S. A., as per agreement dated 11/19/12, rem. of $3,000.00 at death of widow, ..... | $2,221.55 | | | | 4,443.10<br>222.15 |
| As per agreement dated 11/19/12, rem. of $2,000.00 at death of widow, ..... | 1,481.03 | | | | |
| As per agreement dated 11/14/13, rem. of $1,000.00 at death of widow, ..... | 740.52 | | | | |
| Total, ..... | $4,443.10 | | | | |
| Charles W. Honeyman, .... ½ rem. at death of widow, | | brother | | 4,063.18 | |
| Alice H. Honeyman, ..... ½ rem. at death of widow, | | sister | | 4,063.18 | |
| | | | | $13,426.36 | $10,780.04 |
| | | | | | $498.92 |

Corrected assessment made necessary by reason of filing of data indicating that decedent made certain transfers during his lifetime which are taxable, etc.

This Agreement, made and entered into this twenty-sixth day of November in the year nineteen hundred and twelve.

Between—William E. Honeyman, of Plainfield, in the County of Somerset and State of New Jersey, party of the first part, and the Board of Foreign Missions of the Presbyterian Church in the U. S. A., party of the second part

Witnesseth: The said William E. Honeyman desiring to make a donation of Two thousand ($2,000.00) Dollars, to the said Board, hereby pays to it, and the Board receives that sum as an absolute gift (subject only to the agreement on the part of the said Board hereinafter expressed), to be devoted to the general uses and purposes of the Board.

And, in consideration thereof the Board agrees, that so long as the said William E. Honeyman shall live, but no longer, it will pay to him the annual sum of One Hundred and Twenty ($120.00) Dollars as follows: Eleven dollars and 67/100 dollars ($11.67) on the first day of January next, and sixty dollars ($60.00) at the expiration of each six months thereafter.

And, in the event of the death of the said William E. Honeyman, should his wife, Harriet L. Honeyman, survive, him, an annual payment of One Hundred and Twenty ($120.00) dollars to be made to her during her lifetime.

Such payment shall be made at the office of the Board in the City of New York upon reasonable demand, or, at the option of the said William E. Honeyman, they shall be remitted to him in any ordinary or usual way as instructed, and within ten days after instructions received from him.

In Witness Whereof, The Board of Foreign Missions has caused this instrument to be signed by its Treasurer and hath hereto set its seal, [L. S.] and the said William E. Honeyman hath hereto set his hand and seal the day and year first above written.

THE BOARD OF FOREIGN MISSIONS OF THE PRESBYTERIAN CHURCH IN THE U. S. A.

JOSEPH H. DAY,
*Treasurer.*

WILLIAM E. HONEYMAN.

Witness:
P. B. GUERNSEY.
Signed in Duplicate,
P. B. GUERNSEY.

This Agreement, made and entered into this third day of December in the year Nineteen hundred and twelve.

Between—William E. Honeyman, of Plainfield, in the County of Somerset and State of New Jersey, party of the first part, and The Board of Foreign Missions of the Presbyterian Church in the U. S. A., party of the second part

Witnesseth, the said William E. Honeyman desiring to make a donation of Three thousand ($3,000.00) dollars, to the said Board, hereby pays to it, and the Board received that sum as an absolute gift (subject only to the agreement on the part of the said Board hereinafter expressed), to be devoted to the general uses and purposes of the Board.

And, in consideration thereof the Board agrees, that so long as the said William E. Honeyman shall live, but no longer, it will pay him the annual sum of One Hundred and Eighty ($180.00) Dollars as follows: Fourteen dollars ($14.00) on the first day of January next and Ninety dollars ($90.00) at the expiration of each six months thereafter.

And, In the event of the death of the said William E. Honeyman, should his wife, Harriet L. Honeyman, survive him, an annual payment of One Hundred and Eighty ($180.00) Dollars per annum to be made to her during her lifetime.

Such Payments shall be made at the office of the Board in the City of New York upon reasonable demand, or, at the option of the said William E. Honeyman, they shall be remitted to him in any ordinary or usual way as instructed, and within ten days after instructions received from him.

In Witness Whereof, The Board of Foreign Missions has caused this instrument to be signed by its Treasurer and hath hereto set its seal, [L. S.] and the said William E. Honeyman hath hereto set his hand and seal the day and year first above written.

THE BOARD OF FOREIGN MISSIONS OF THE PRESBYTERIAN CHURCH IN THE U. S. A.

JOSEPH H. DAY,
*Treasurer.*

W. E. HONEYMAN.

Witnesses:
CAROLINE BAHR.
Signed in Duplicate,
CAROLINE BAHR.

This Agreement, made and entered into this twenty-first day of January in the year nineteen hundred and thirteen.

Between—William E. Honeyman, of Plainfield, in the County of Somerset and State of New Jersey, party of the first part, and The Board of Foreign Missions of the Presbyterian Church in the U. S. A., party of the second part

Witnesseth, the said William E. Honeyman desiring to make a donation of One thousand ($1,000.00)

Dollars, to the said Board, hereby pays to it, and the Board received that sum as an absolute gift (subject only to the agreement on the part of the said Board hereinafter expressed), to be devoted to the general uses and purposes of the Board.

And, in consideration thereof the Board agrees, that so long as the said William E. Honeyman shall live, but no longer, it will pay to him the annual sum of Sixty ($60.00) dollars as follows: Twenty-six and 66/100 ($26.66) Dollars on the first day of July next and Thirty ($30.00) Dollars at the expiration of each six months thereafter.

And, in the event of the death of the said William E. Honeyman, should his wife, Harriet L. Honeyman, survive him, an annual payment of Sixty ($60.00) Dollars to be made to her during her lifetime.

Such Payments shall be made at the office of the Board in the City of New York upon reasonable demand, or, at the option of the said William E. Honeyman, they shall be remitted to him in any ordinary or usual way as instructed, and within ten days after instructions received from him.

In Witness Whereof, The Board of Foreign Missions has caused this instrument to be signed by its Treasurer and hath hereto set its seal, [L. S.] and the said William E. Honeyman hath hereto set his hand and seal the day and year first above written.

THE BOARD OF FOREIGN MISSIONS
OF THE PRESBYTERIAN CHURCH
IN THE U. S. A.

[L. S.] JOSEPH H. DAY,
*Treasurer.*

W. E. HONEYMAN.

Witness:
CAROLINE BAHR.

Signed in Duplicate,

## CONCLUSIONS.

NEW JERSEY PREROGATIVE COURT.

| | |
|---|---|
| IN RE ESTATE OF WILLIAM E. HONEYMAN, *Deceased.* | On Appeal from Transfer Tax Assessment. |

Messrs. Whiting & Moore, for Appellants.

Mr. Edward L. Katzenbach, Attorney-General, for Respondent.

BUCHANAN, *V. O.*

William E. Honeyman, a resident of this State, died April 1st, 1918. From the assessment of transfer tax in respect of his estate, made by the Comptroller, separate appeals have been taken by the Board of Home Missions of the Presbyterian Church and the Board of Foreign Missions of the Presbyterian Church. A single issue is involved, identical in both appeals, which have therefore been heard together.

About five years before his death, decedent gave or transferred to each appellant the aggregate sum of $6,000.00—each in three separate amounts and transactions, and on separate dates, covering a period of some two months. In each transaction the donee, as and in consideration for the transfer, agreed to pay a specified annual sum to the donor during his life and to his wife for her life, if she survived him. This specified annual payment in each case amounted to six per cent. of the donor's gift. Each transaction was evidenced by a written agreement reciting that the Board received the sum "as an absolute gift, subject only to the agreement" by the Board to pay the annual sum mentioned.

The Comptroller has held these several gifts taxable under Section I, sub-section 3 of the Transfer Inherit-

ance Tax Act (*Comp. Stat. N. J., p.* 5301, and amendments), as a transfer intended to take effect in possession or enjoyment at or after the death of the transferor. The sole issue on these appeals is as to whether or not such ruling was erroneous. Concededly the tax is not sustainable on any other ground. Concededly also if the transfers are taxable, the computations and assessments have been correctly made.

A transfer by a deed of trust under which the trustee is to pay the income from the corpus to the donor during his life and to pay the corpus to certain persons at the death of the donor is a transfer "intended to take effect in possession or enjoyment at or after the death" of the transferor, and therefore taxable. *Carter* v. *Bugbee,* 91 *N. J. L.* 438; *aff'd* 92 *N. J. L.* 390.

So also where the transfer is for the benefit of the transferee, but with the provision that the transferee shall pay to the transferor for life the income (or a portion thereof) from the property transferred. *Am. Board &c.* v. *Bugbee,* 98 *N. J. L.* 84; *aff'd in Congregational &c. Society* v. *Bugbee,* 3 *N. J. Adv. Rep.* 335.

And this is so whether the provision whereby the beneficial enjoyment is reserved to the donor,—or rather is withheld from the donee until the death of the donor,—is contained in the instrument of transfer, or is evidenced in some other way. The question is not of the form but of the substance of the transaction. So the transfer was held taxable in *Reish, Admr. Commonwealth,* 106 *Pa. St.* 521, where it was evident from the condition of a bond given by the donee to the donor, that the transaction in fact consisted of a gift or transfer with an agreement that the donee should pay to the donor during his life a portion of the income from the property transferred. So also in *Re Estate of Harvey,* 2 *N. J. Misc.* 247, where the donor transferred a residence which the donee contemporaneously agreed to let the donor occupy rent free during his life, and where the donor have $25,000.00 in each, on which sum the donee contemporaneously agreed to pay the donee five

per cent. interest during his life,—(obviously a loan at interest for the donor's life and a gift at his death).

Based upon these cases (and similar adjudications in other jurisdictions) an argument by analogy is readily erected, that any transfer in a transaction whereof the net substance and result is that the transferor is provided with an income for life equal to, or greater than, the income which he could have derived by way of annual income from the property transferred by him (if he had kept it instead of transferring it) is a transfer coming under the terms of the statute and taxable. But is such an argument sound?

It must be conceded of course that an absolute outright gift (not made in contemplation of death) is not made taxable by the statute. It must equally be conceded that a transfer for which consideration is received by the transferor is not *per se* taxable under the statute, —whether such consideration be equal to, greater or less than, the value of the thing transferred. Nor does it matter that it be the intent and expectation of the transferor in such a case, that he will be as well off, or better off, for the rest of his life, as the result of such transaction. No one will contend that the ordinary sale and conveyance of a house would be taxable because the grantor intends and believes that the consideration received by him will be equally or more advantageous for him for the rest of his life than a retention of the house,—nor because the result of the transaction leaves the grantee worse off, or no better off, during the grantor's life, than if the transaction had not been made.

It must necessarily be true that since a transfer (absolute, outright and immediate) is not *per se* taxable whether by way of gift or for adequate or excessive consideration, then such a transfer for consideration less in value than the thing transferred is not *per se* taxable:—as, for instance, if a father should convey to his son a large residence worth $50,000. in exchange for a small residence worth only $10,000. This would be true whether the transaction was intended and regarded

by the parties as a sale for adequate consideration (where, for instance, contemplated public improvements rendered it probable that the $10,000. house would in the course of a few years increase enormously in value and the father desired to have the possibility of such larger profit while the son preferred to have the smaller but certain profit), or whether the transaction was in substance a gift of $40,000. by the father to the son. If an actual gift of a $40,000. property by the father to the son would not be taxable, it would not become taxable merely because it took the form of a transfer of a $50,000. property in exchange for a $10,000. property.

In such a case can it make any difference what the form or nature of the property transferred, or the consideration received, may be? If the exchange of the two residences be not taxable, why should a payment of $50,000. in money in exchange for $10,000. in money be taxable? Or a payment of $50,000. in money in exchange for any thing, whatever it might be, worth $10,000? Would the transfer be taxable if the son, in exchange for the $50,000. house (or in exchange for $50,000. in cash), purchased from a life insurance company for $10,000. its policy or contract whereby it promised the father to pay to the father for the rest of his life an annual sum which was in fact equal in amount to the annual interest (at legal or usual rate) on $50,000? And if the transfer would be taxable under those circumstances, would it become taxable if instead of purchasing such annuity from a life insurance company, the son gave to the father his own promise to pay him such annuity?

The answers to all these questions must be in the negative,—unless by the terms of the statute such transfers are made taxable.

The criterion set up by the statute is this: Is the transfer one which is intended not to take effect in possession or in enjoyment until the transferor's death. If so, it is taxable; otherwise, not. The statute does not say that the transaction is taxable if it is such that the

result thereof is to leave the transferor with an annual income for life equal to or greater than the annual income which he would or could have derived from the property transferred had he retained it,—nor if it be such that the result thereof is to impose upon the transferee an annual expense for the life of the transferor equal to or greater than the annual income derivable by the transferee from the property transferred. Hence it must be immaterial whether or not either or both these results are accomplished by the transaction, provided the transaction be not one comprising a transfer intended not to take effect in possession or enjoyment until after the transferor's death.

In the present case, if the decedent having $12,000. which he desired to give to these two donees provided he could in some way assure himself of an annual income for life equal to that which he could get from the $12,000. if he did not give it away, had therefore himself purchased from a life insurance company an annuity payable to himself of $720. per year (equal to 6% on the $12,000), at a cost of say $4,000. and had then given the $8,000. balance to the two appellants,—no one I think, will contend that the gift would have been taxable. Precisely the same result, both as affecting the donor and the donees, would be obtained if the donees had bought the annuity for the donor and exchanged it for the $12,000; and as I have already indicated, it seems clear that the transaction in that form would still not be taxable. By two other forms or methods the same net financial results ensue to both parties: (1), where the donees give their own promise to pay the annuity to the donor, in exchange for the $12,000; and (2) where the donees agree to pay to the donor for his life the income derived from the $12,000. In the latter case,—(2)—it is settled that the transfer is taxable. What is the dividing line? And on which side does case (1) fall? The distinction, I think, rests on whether or not the donor retains, or rather whether the donee is deprived of, an interest of some kind, whether as to

principal or income or both, in the very property transferred, until the donor's death. Even though immediate possession pass to the donee, if the donor (or some third party) is to receive interest on the sum transferred, or the income,—or part of the income,—arising from the property transferred or from other property which the donee might substitute in place thereof (the same corpus though changed in form) or a sum equal to the whole or a part of income arising from such corpus (the same income though in another form),—in any such case the intent is clear that the enjoyment (in whole or in part) of the thing transferred is intended not to take effect until the donor's death. But where the enjoyment of the thing transferred is in no wise delayed until the donor's death, notwithstanding that the donee's entire net income may be in no wise increased, or may be even diminished, until the donor's death, the transfer is not taxable.

Judged by this standard, then, where a transfer is made, immediate as to title and possession, it is not taxable unless there is some condition, reservation or provision by which some interest in, or identifiably tied up with, the very thing transferred, is reserved from the donee until the donor's death.

In the case at bar, the transfer to the donee is immediate and absolute. There is no restriction or encumbrance on what the donee may do with the thing transferred from the very moment of the transfer. The promise of the donee to pay to the donor for life an annual sum which is in fact equal to 6% of the value of the thing transferred is entirely separate from and independent of the thing actually transferred. Whatever may hereafter happen to the thing transferred,—whether it be by investment and reinvestment increased, or diminished, or entirely lost,—whether the income received therefrom by the donee increases or decreases or vanishes,—in no wise varies or affects the obligation of the donee under its promise or contract.

The agreements evidencing the several transactions each recite that the gift is paid and received "as an

absolute gift (subject only to the agreement on the part of the said Board hereinafter expressed),"—to wit, the agreement to pay the annuity. Respondent contends that this language indicates or effects a condition or reservation of interest in the subject matter of the gift. I do not so construe it. The natural meaning,—and hence the intent of the parties thereby,—seems to me to be that the parenthetical clause qualifies the word "Gift": it is intended to explain that a gift was intended as to the value of the thing transferred in excess of the value of the annuity promised in consideration.

I conclude therefore that the gifts under review,—with the exception of one thereof, hereinafter noted,—are not taxable under our statute. A similar result was reached in *Re Edgerton's estate,* 54 *N. Y. Supp.* 700.

One of the gifts,—that of $2,000. made November 19th, 1912, to the Board of Home Missions,—differs from the others in this respect: the agreement as to this gift is that it is "to be devoted to such uses and purposes as are hereinafter provided" and among the specified purposes is the payment of the annual sum of $120. to the donor for life. This gift I think clearly comes within the statute and is taxable; and appellants indeed do not strongly argue otherwise.

In the appeal of the Board of Foreign Missions the assessment must be set aside absolutely.

In the appeal of the Board of Home Missions the assessment must be sustained as to the gift of $2,000. of November 19th, 1912, but set aside absolutely as to the remainder.

## ORDER.

NEW JERSEY PREROGATIVE COURT.

| | |
|---|---|
| IN THE MATTER OF THE ESTATE OF WILLIAM E. HONEYMAN, *Deceased.* | On Appeal from the Appraisement and Assessment of the Comptroller of the Treasury of the State of New Jersey. |

The Board of Foreign Missions of the Presbyterian Church in the United States of America having duly appealed to the Ordinary from the appraisement and assessment of the Transfer Inheritance tax in respect of the above estate made by the Comptroller of the Treasury in so far as it included in said appraisement the following sums transferred by the said William E. Honeyman in his lifetime to said Board of Foreign Missions of the Presbyterian Church in the United States of America, that is to say:

| | |
|---|---|
| As per agreement dated November 26th, 1912, rem. of $2,000.00 at death of widow, | $1,481.03 |
| As per agreement dated December 3, 1912, rem. of $3,000.00 at death of widow, | 2,221.55 |
| As per agreement dated January 21st, 1913, rem. of $1,000.00 at death of widow, | 740.52 |
| | $4,443.10 |

and in so far as it assessed a tax of $222.16 on said transfers, and the matter having come on to be heard, and the court having considered the record and the

briefs of counsel, It is on this eighteenth day of June, 1925, on motion of Whiting & Moore, Proctors for and of counsel with said appellant,

Ordered, Adjudged and Decreed that the appraisement and assessment as aforesaid made by said Comptroller in this matter, be and it is hereby vacated and set aside in so far as it includes said sums transferred to said Board of Foreign Missions of the Presbyterian Church in the United States of America, that is to say:

| | |
|---|---|
| As per agreement dated November 26th, 1912, rem. of $2,000.00 at death of widow, | $1,481.03 |
| As per agreement dated December 3, 1912, rem. of $3,000.00 at death of widow, | 2,221.55 |
| As per agreement dated January 21st, 1913, rem. of $1,000.00 at death of widow, | 740.52 |
| | $4,443.10 |

and that the said assessment of tax upon said transfers be and it is hereby vacated and set aside;

And it is Further Ordered that the appeal bond filed in this matter by the said Board of Foreign Missions of the Presbyterian Church in the United States of America, be and it is hereby canceled and discharged.

Respectfully advised,

E. R. WALKER,
*Ordinary.*

(Signed) MALCOLM A. BUCHANAN,
*V. O.*

## REASONS.

NEW JERSEY SUPREME COURT.

NEWTON A. K. BUGBEE, COMPTROLLER OF THE STATE OF NEW JERSEY,
*Prosecutor,*
*vs.*
THE BOARD OF FOREIGN MISSIONS OF THE PRESBYTERIAN CHURCH IN THE UNITED STATES OF AMERICA,
*Defendant.*
} On Certiorari.

(*Filed September 8, 1925.*)

To Messrs. Whiting and Moore, Attorneys of Defendant.

Please Take Notice that the following are the reasons which will be relied upon by the prosecutor upon the argument of the above cause:

1. The property passing pursuant to three separate trust agreements, the first dated November 26th, 1912, in the amount of $2,000.00; the second dated December 3d, 1912, in the amount of $3,000.00; and the third dated January 21st, 1913, in the amount of $1,000.00 between William E. Honeyman and the Board of Foreign Missions of the Presbyterian Church in the United States of America was intended as a transfer of property to take effect in beneficial possession or enjoyment at or after the death of the donor and therefore subject to a tax under the provisions of the Transfer Inheritance Tax Act of this State, in effect as of the date of death of the donor.

2. The order or decree of the Ordinary of the State of New Jersey to the effect that the transfers pursuant to

the said three separate trust agreements were not intended as transfers to take effect in beneficial possession and enjoyment after death is contrary to law.

EDWARD L. KATZENBACH,
Attorney General of New Jersey,
*Attorney of Prosecutor.*

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## RULE FOR JUDGMENT.

NEW JERSEY SUPREME COURT.

| | |
|---|---|
| NEWTON A. K. BUGBEE, COMPTROLLER OF THE STATE OF NEW JERSEY, *Prosecutor,* *vs.* THE BOARD OF FOREIGN MISSIONS OF THE PRESBYTERIAN CHURCH IN THE UNITED STATES OF AMERICA, *Defendant.* | On Certiorari. Suit No. 2. |

The above-entitled cause having been argued before this Court, and the Court having considered the record and briefs submitted on behalf of the respective parties, and having examined the decree made by Edwin Robert Walker, Ordinary of the State of New Jersey, on June 18, 1925, setting aside the assessment of transfer inheritance tax against the Estate of William E. Honeyman, deceased, late of the Borough of North Plainfield, in the County of Somerset, in the State of New Jersey, heretofore made by Newton A. K. Bugbee, Comptroller of the Treasury of the State of New Jersey, and the records and documents in said matter removed by the writ in this cause, and having duly considered the reasons filed, and finding no error in said decree; it is

Ordered that said decree made as aforesaid in this matter by Edwin Robert Walker, Ordinary of the State of New Jersey, on June 18, 1925, be and it is affirmed.

Entered March 10, 1926.

On motion of

WHITING & MOORE,

*Attorneys of Defendant.*

## OPINION.

(*Filed January 29, 1926.*)

NEW JERSEY SUPREME COURT.
Nos. 237 and 238. October Term, 1925.

NEWTON A. K. BUGBEE,
COMPTROLLER, &C.,
*Prosecutor,*

*v.*

THE BOARD OF FOREIGN MISSIONS OF THE PRESBYTERIAN CHURCH,
*Defendant.*

No. 238
Suit No. 2.

Argued October 8th, 1925; Decided January 28th, 1926.

Before Justices Parker, Minturn and Black.

For the Prosecutor: Edward L. Katzenbach, Harry R. Coulomb, Attorney-General and Assistant Attorney-General.

PER CURIAM:

The question involved in these cases is whether the several gifts of William E. Honeyman during his life are taxable under section one, subdivision three, of the transfer *Inheritance Tax Act,* 4 *Comp. Sts. of N. J., p.* 5301, as amended: 2 *Cumul. Supp., p.* 3573.

Five years before the death of William E. Honeyman he gave and transferred to each defendant the aggregate sum of $6,000.00 each in three separate amounts and transactions, and on separate dates covering a period of two months. On an appeal from the assessments, the cases were heard by V. O. Buchanan; he advised a decree that the assessments made against the Board of Foreign Missions should be set aside absolutely, that the assessments made against the Board of Home Missions

should be sustained as to the gift of $2,000.00 made November 19, 1912, but set aside absolutely as to the remainder.

The Vice-Ordinary prepared and filed a learned and persuasive opinion covering the points involved in both cases. We think the decree of the Prerogative Court in each case should be affirmed for the reasons stated by the learned Vice-Ordinary in the opinion filed.

MacCrellish & Quigley Co., Printers, Trenton, N. J

# NEW JERSEY
# Court of Errors and Appeals.

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| NEWTON A. K. BUGBEE, COMPTROLLER OF THE STATE OF NEW JERSEY,<br>*Prosecutor-Appellant.*<br>*v.*<br>THE BOARD OF HOME MISSIONS OF THE PRESBYTERIAN CHURCH IN THE UNITED STATES OF AMERICA,<br>*Defendant-Appellee.* | On Certiorari,<br>On Appeal from<br>Supreme Court.<br>Suit No. 1. |

| | |
|---|---|
| NEWTON A. K. BUGBEE, COMPTROLLER OF THE STATE OF NEW JERSEY,<br>*Prosecutor-Appellant.*<br>*v.*<br>THE BOARD OF FOREIGN MISSIONS OF THE PRESBYTERIAN CHURCH IN THE UNITED STATES OF AMERICA,<br>*Defendant-Appellee.* | On Certiorari,<br>On Appeal from<br>Supreme Court.<br>Suit No. 2. |

## BRIEF OF THE ATTORNEY-GENERAL FOR PROSECUTOR-APPELLANT.

### SUIT NO. 1.

This is an appeal by Newton A. K. Bugbee, Prosecutor in Certiorari, from a judgment of the Supreme Court

(Parker, Minturn and Black, J.J.) affirming an order or decree of the Prerogative Court made by Honorable Edwin Robert Walker, Ordinary and Surrogate-General of the said Court, on the 18th day of June, 1925, which order set aside and vacated a certain Transfer Inheritance Tax amounting to $148.10 assessed by the said Comptroller of the Treasury against the Board of Home Missions of the Presbyterian Church, on the transfer of property pursuant to the following agreements:

| | |
|---|---|
| As per agreement dated November 19, 1912, rem. of $3,000 at death of widow ..... | $2,221.55 |
| As per agreement dated January 14, 1913, rem. of $1,000 at death of widow, ..... | 740.52 |
| | $2,962.07 |

and sustained and affirmed the tax against the said Board of Home Missions of the Presbyterian Church, in the amount of $74.05 on the transfer of certain property pursuant to the following agreement:

| | |
|---|---|
| As per agreement dated November 19, 1912, rem. of $2,000 at death of widow, ..... | $1,481.03 |

## SUIT NO. 2.

This is an appeal by Newton A. K. Bugbee, Prosecutor in Certiorari, from a judgment of the Supreme Court (Parker, Minturn and Black, J.J.) affirming an order or decree of the Prerogative Court made by Honorable Edwin Robert Walker, Ordinary and Surrogate-General of the said Court, on the 18th day of June, 1925, which order set aside and vacated a certain Transfer Inheritance Tax amounting to $222.16 assessed by the said Comptroller of the Treasury against the Board of Foreign Missions of the Presbyterian Church, on the transfer of property pursuant to the following agreements:

| | |
|---|---|
| As per agreement dated November 26, 1912, rem. of $2,000 at death of widow, ..... | $1,481.03 |
| As per agreement dated December 3, 1912, rem. of $3,000 at death of widow, ..... | 2,221.55 |
| As per agreement dated January 21, 1913, rem. of $3,000 at death of widow, ..... | 740.52 |
| | $4,443.10 |

Since both suits present but a single question of law, they are argued together and submitted by one brief.

## POINT OF LAW.

The sole question raised by these two cases is whether the transfers of property by the several agreements between the decedent and the donees were intended to take effect in beneficial possession and enjoyment at or after death and therefore taxable under the Transfer Inheritance Tax Statute of this State, Chapter 228, Laws of 1909, as amended by Chapter 151, Laws of 1914.

## STATEMENT OF FACTS.

William E. Honeyman died a resident of Somerset County, April 1, 1918, leaving a net estate of approximately $12,000, exclusive of certain personal property transferred by him during his life to the Boards of *Home* and *Foreign* Missions of the Presbyterian Church. (State of Case No. 1, p. 18; State of Case No. 2, p. 16.)

The decedent, several years prior to his death, made six separate transfers of property at various dates. Three of these transfers were made to the *Board of Home Missions* and three to the *Board of Foreign Missions* of the Presbyterian Church. The respective dates

of the transfers and the amount of each transfer is stated as follows:

| | |
|---|---|
| Board of Home Missions — November 19, 1912, | $3,000 |
| Board of Home Missions—Original transfer on November 19, 1912. Agreement revoked and amended by an agreement dated November 28, 1916, | 2,000 |
| Board of Home Missions—January 14, 1913, | 1,000 |
| | $6,000 |

For complete copies of above agreements see State of Case, No. 1, pp. 21, 22, 23, 24, 25, 26.

| | |
|---|---|
| Board of Foreign Missions — November 26, 1912, | $2,000 |
| Board of Foreign Missions—December 3, 1912, | 3,000 |
| Board of Foreign Missions—January 21, 1913, | 1,000 |
| | $6,000 |

For complete copies of above agreements see State of Case, No. 2, pp. 19, 20, 21, 22.

So far as the record shows, each of these transfers was in the form of cash.

In the case of the transfers to the *Board of Home Missions,* the said Board on its part, in consideration of the transfers, agree to pay to the said William E. Honeyman, the donor, or Harriet L. Honeyman, his wife, or to the survivor of them, fixed yearly sums, equivalent in each case to a six per cent. income on the property transferred.

In the case of the *Board of Home Missions,* the Comptroller assessed a transfer inheritance tax upon the present value of the remainder interests passing to said Board under each of the respective agreements

after deducting the value of the life interest of the widow. This is more fully set forth in the copy of the analysis of the tax forming a part of the record. (State of Case, No. 1, pp. 18, 19.) The three remainders, after deducting the life estate of the widow, have a total value of $4,443.10, chargeable with a tax at the rate of five per cent., amounting to $222.15. State of Case, No. 1, p. 8.)

In the case of the transfers to the *Board of Foreign Missions,* the said Board on its part, in consideration of the transfers, agreed to pay to the said William E. Honeyman, the donor, as long as he should live, fixed yearly sums, equivalent in each case to a six per cent. income on the property transferred, and further, upon the death of the said William E. Honeyman, if his wife, Harriet L. Honeyman, should survive him, to continue the annual payments to her during the term of her natural life.

In the case of the *Board of Foreign Missions* the Comptroller assessed a transfer inheritance tax upon the present value of the remainder interests passing to said Board under each of the respective agreements after deducting the value of the life interest of the widow. This is more fully set forth in the copy of the analysis of the tax forming a part of the record. (State of Case, No. 2, pp. 16, 17, 18.) The three remainder interests, after deducting the life estate of the widow, have a total value of $4,443.10, chargeable with a tax at the rate of five per cent., amounting to $222.16. (State of Case, No. 2, p. 7.)

## ARGUMENT.

### POINT I.

**The Transfers Under all of the Agreements are Subject to the Provisions of the Transfer Inheritance Tax Act in Effect as of the Date of Death of the Decedent as Transfers Intended to take Effect in Beneficial Possession and Enjoyment at or After Death.**

Chapter 228, Laws of 1909, as amended; Chapter 151, Laws of 1914, regulating the assessment of Transfer Inheritance Taxes, provides as follows:

> "1. A tax shall be and is hereby imposed upon the transfer of any property, real or personal, of the value of five hundred dollars or over, or of any interest therein or income therefrom, in trust or otherwise, to persons or corporations, except as hereinafter provided, in the following cases:
>
> * * * * * * *
>
> Third. When the transfer is of property made by a resident, or is of real property within this State, or of goods, wares and merchandise within this State, or of shares of stock of corporations of this State or of national banking associations located in this State, made by a non-resident, by deed, grant, bargain, sale or gift made in contemplation of the death of the grantor, vendor or donor, or intended to take effect in possession or enjoyment at or after such death."

The Comptroller of the Treasury, in the present matter, after a careful consideration of the provisions of the several agreements, concluded that said transfers were intended by the parties to take effect in beneficial possession and enjoyment only upon the death of the donor, and that said transfers were, therefore, squarely within the provisions of subdivision 3, section 1, of the Transfer Inheritance Tax Act, in effect at the date of death of the decedent.

Attention is particularly directed to the provisions of the several trust agreements, all of which are substantially the same.

In the case of the agreements between the decedent and the *Board of Home Missions,* two (dated November 19, 1912; January 14, 1913; State of Case, No. 1, pp. 21 and 25, 26) contained the following provisions:

> "Witnesseth: The said Rev. William E. Honeyman, desiring to make a donation of three thousand dollars ($3,000) to the said Board,

hereby pays to it, and the Board receives that sum as an absolute gift (subject only to the agreement on the part of the Board hereinafter expressed), to be devoted to the general uses and purposes of the Board of Home Missions of the Presbyterian Church. And, in consideration thereof, the Board hereby agrees that so long as said Rev. William E. Honeyman, or Harriet L. Honeyman, his wife, shall live (with the proviso hereinafter mentioned), but no longer, it will pay to them or the survivor of them the annual sum of one hundred eighty dollars ($180), in semi-annual payments."

The third agreement between the decedent and the *Board of Home Missions,* dated November 19, 1912, as amended by agreement dated November 28, 1916, contained the following provisions:

"Witnesseth: The said Rev. William E. Honeyman, desiring to make a donation of two thousand dollars ($2,000) to the said Board, hereby pays to it and the Board receives that sum as an absolute gift (subject only to the agreement on the part of the Board hereinafter expressed), to be devoted to such uses and purposes as are hereinafter provided; and, in consideration thereof, the Board hereby agrees, that so long as said Rev. William E. Honeyman, or Harriet L. Honeyman, his wife, shall live (with the proviso hereinafter mentioned), but no longer, it will pay to them or the survivor of them the annual sum of one hundred twenty dollars ($120), in semi-annual payments, as follows."

Each of the agreements between the decedent and the *Board of Foreign Missions* contained the following provisions:

"Witnesseth: The said William E. Honeyman, desiring to make a donation of two thousand dollars ($2,000), to the said Board, hereby pays to it and the Board receives that sum as

> an absolute gift (subject only to the agreement on the part of the said Board hereinafter expressed), to be devoted to the general uses and purposes of the Board. And, in consideration thereof the Board agrees that so long as the said William E. Honeyman shall live, but no longer, it will pay to him the annual sum of one hundred and twenty dollars ($120), as follows:
>
> * * * * * * *
>
> And, in the event of the death of the said William E. Honeyman, should his wife, Harriet L. Honeyman, survive him, an annual payment of one hundred and twenty dollars ($120) to be made to her during her lifetime."

While the transfers are stated by the trust agreements to be absolute gifts, it will be noted under each of the agreements that said gifts are "(subject only to the agreement on the part of the Board hereinafter expressed)." It is respectfully submitted that the agreement upon the part of the Board as mentioned in each case was to pay the decedent a sum equivalent to an annual income of six per cent on the property transferred.

This is not a case involving absolute transfers by a donor during his lifetime whereby he releases all right to and interest in the property conveyed. In the present matter the decedent, so long as he should live and upon his death his wife, if she should survive him, was to receive a sum substantially equivalent to the income on the property transferred. Certainly the beneficial possession and enjoyment of the property could not pass to the donees so long as the decedent or his wife was living. The beneficial possession and enjoyment of the property was deferred until the death of the survivor of these two persons. It cannot be contended that the respective Boards were entitled to the beneficial enjoyment of this property when they continued to pay out as much as they received.

This question has been before the courts of this State in several instances:

*Matter of Carter* v. *Bugbee*, 91 *N. J. Law, page* 438; affirmed, 92 *N. J. Law, page* 390.

*American Board of Commissioners for Foreign Missions* v. *N. A. K. Bugbee, etc.*, 98 *N. J. Law, page* 84; affirmed, *Congregational Home Missionary Society* v. *N. A. K. Bugbee, etc.*, 127 *Atl. Rep., page* 192 (*3 N. J. Adv. Rep., page* 335).

*Matter of the Estate of Charles E. W. Harvey, deceased, 2 N. J. Misc. Rep., page* 247; affirmed *3 N. J. Misc. Rep., page* 435.

*Matter of Bottomley, 92 N. J. Equity, page* 202.

Similar cases have been passed upon by the courts of many of the other States, of which the following are a few:

*Reish, Adm.*, v. *Commonwealth of Pa.*, 106 *Pa. St. Rep., page* 521.

*Todd's Estate, 237 Pa. St. Rep., page* 466.

*Matter of Cornell*, 170 *N. Y. Rep., page* 423.

*Matter of Brandreth*, 169 *N. Y. Rep., page* 437.

*Matter of Kenny*, 194 *N. Y. Rep., page* 281.

*In re Dobson's Estate*, 132 *N. Y. Supp., page* 472.

*In re Spring*, 136 *N. Y. Supp., page* 174.

*Matter of Seaman*, 147 *N. Y. Rep., page* 69.

*Crocker* v. *Shaw*, 174 *Mass., page* 266.

*Re Riddle*, 19 *Phila., page* 105.

*In re Jones*, 120 *N. Y. Supp., page* 862.

*People* v. *Kelly*, 218 *Ill., page* 509.

The appellants in the present matter contend that since the title to the property under each of the respective agreements vested absolutely as of the date of the transfer there can be no tax assessed thereon as of the date of the death of the donor. This exact point has been passed upon in this State by the Prerogative Court, the Supreme Court and the Court of Errors and Appeals, and in each instance it has been held that the transfers

were subject to the provisions of the Inheritance Tax Act as intended to pass property in beneficial possession and enjoyment at the death of the settlor, regardless as to whether or not the transfer of title in the first instance was absolute or revocable:

*Carter* v. *Bugbee,* 91 *N. J. Law, page* 438; affirmed 92 *N. J. Law, page* 390.

*American Board of Commissioners for Foreign Missions* v. *N. A. K. Bugbee, etc.,* 98 *N. J. Law, page* 84; affirmed, *Congregational Home Missionary Society* v. *N. A. K. Bugbee, etc.,* 127 *Atl. Rep., page* 192 (3 *N. J. Ad. Rep., page* 335.)

*Matter of the Estate of Charles E. W. Harvey, deceased,* 2 *N. J. Misc. Rep., page* 247; affirmed 3 *N. J. Misc. Rep., page* 435.

In the matter of *Carter* v. *Bugbee,* 91 *N. J. Law, page* 438, the first case to come before the courts of this State involving an agreement of this nature, the Supreme Court determined that where a certain trust deed, executed in 1911, conveyed personal property to a trustee with a direction to pay the income to the donor during his lifetime and after his death to pay the *corpus* in designated proportions to certain persons, there was a transfer to take effect in beneficial possession and enjoyment at or after the death of the donor, and that such transfer did not take effect when the trust deed was executed and delivered, but only at the death of the donor. Following the New York decisions in the *Matter of Green, Matter of Brandreth,* and *Matter of Cornell,* the Supreme Court arrived at the following conclusion:

> "Thus, it seems to have been settled by the Court of Appeals of New York that such a remainder, after a life estate, given by a trust deed, is subject to the transfer tax which the law imposes when the right to its possession or enjoyment matures. The statutes of both States make a distinction between property passing by will, and property passing by deed intended to take

effect in possession or enjoyment after the death of the settlor, the latter referring to a gift *causa mortis* having the effect, by a different method, of a will or intestacy. A will takes effect at the death of the testator, and all estates which it creates then become fixed and subject to such taxes as are then imposable by law, and the rights of legatees thereunder have a status not to be altered for the purpose of taxation, but are subjected to any change in the law made after the execution of the will and before testator's death, and a trust deed which *donatio causa mortis,* produces the same result by another method, is governed by the same rule. See also *Crocker* v. *Shaw,* 174 *Mass., 266.*" * * *

"In the case under review we have a deed in which the remainders are intended to take effect in possession or enjoyment at or after the death of the settlor, which is within the words of the last clause of section 3 of the statute. It was also made in contemplation of death, because the gifts were not effective until that event happened, and thus within the terms of the next preceding sentence or clause. We are of opinion that the transfers contemplated by the statute did not take effect until the death of the settlor, and are subject to the transfer tax imposed by the statute then in force."

This case was affirmed by the Court of Errors and Appeals. (*Matter of Carter* v. *Bugbee, 92 N. J. Law, page* 390.)

The next case before the upper courts was the *Matter of American Board of Commissioners for Foreign Missions* v. *N. A. K. Bugbee, etc., 98 N. J. Law, page* 84. In that case a certiorari was taken to review the legality of an assessment by the Comptroller of the Treasury, and the Supreme Court again followed its previous ruling as laid down in the *Matter of Carter* v. *Bugbee, supra.* The case involved a deed of trust whereby the

decedent conveyed *absolutely* the legal title to certain personal property to the American Board of Commissioners for Foreign Missions with the provision that two-thirds of the annual income of the investments was to be paid to Mr. and Mrs. Kenney, and after the decease of either of these persons, there should be paid to the survivor one-half of the income, and upon the death of the survivor the fund was to be held as a permanent fund to be invested and reinvested for the benefit of the American Board.

The appellants in that case contended that the property assigned to the Board *vested absolutely in it as of the dates of the deeds of trust, since the deeds were irrevocable and in no manner contingent or defeasible.* The Court in disposing of this question stated that it was quite obvious that the deeds of trust were no more than transfers to the prosecutor of the mere naked legal title to the property in which the donor expressly reserved and postponed the happening of an actual transfer of the full possession and enjoyment of the property until the death of himself and his wife. The Court also laid down the rule that the date of death of the donor and not the date of the execution of the deeds was to control as to the time when the tax should be imposed. Mr. Justice Kalisch, speaking for the Court (98 Law, at page 85), said:

> "It is quite obvious that the deeds of trust were no more than transfers to the prosecutor of the mere naked legal title to the property, in which the donor expressly reserved and postponed the happening of an actual transfer of the full possession or enjoyment of the property by the prosecutor till after the death of himself and his wife. This is clearly expressed in the resolution of acceptance, where it appears that the donation was to become the absolute property of the prosecutor only when it had fulfilled the condition upon which the donation was made.

"We think the facts of this case fall clearly within and are controlled by the principle enunciated in *Carter* v. *Bugbee,* 91 *N. J. Law* 438; 92 *Id.* 390.

"The second and only other reason urged by counsel of prosecutor against the validity of the assessment is that at the time of the execution of the deeds of trust the statute did not impose a transfer inheritance tax upon property passing to benevolent and charitable institutions and organizations. As we hold that the absolute transfers of the property took place at the time of the death of the donor and his wife, and not at the time of the execution of the deeds of trust, it becomes manifest that the objection made is without legal force."

In the *American Board Case,* as here, the legal title to the property vested in the donee on the execution of the deeds, but the Court determined that this was not sufficient to take the transfer beyond the statute. The Court held that it was the reservation by the donor of the income from the property that brought the transfer within the statute. This case on appeal to the Court of Errors and Appeals was unanimously affirmed. (*Congregational Home Missionary Society* v. *Bugbee,* 127 *Atl. Rep., p.* 192; 3 *N. J. Adv. Rep., p.* 335.)

The decedent's rights in the present case were as great, if not greater, after the transfer of the legal title, as they were before, and the donee, while vested with the legal title, was not entitled to the beneficial possession and enjoyment of the property since there was specifically reserved to the donor a yearly sum which was equivalent to the income from the property. It is this reservation by the donor which brings the transfer within the provisions of the act. When a string has been attached by the donor to the thing given, by means of which he can draw back to himself the income from the property transferred, he has made a transfer of property which can only take effect in enjoyment after his death.

All of the points at issue have been directly raised and passed upon by the Supreme Court in the matter of:

*William Douglas Moore, as executor of the Last Will and Testament of Charles E. W. Harvey, deceased,* v. *Newton A. K. Bugbee, etc.,* 3 *N. J. Misc. Rep., page* 435.

Affirming *Matter of Estate of Charles E. W. Harvey,* 2 *N. J. Misc. Rep., page* 247.

In that case, the decedent, Charles E. W. Harvey, transferred absolutely to the Board of Trustees of the Moravian College and Theological Seminary of Bethlehem, Pa., certain real property and the sum of $25,000 in cash, upon the agreement that said Board of Trustees would cause to be paid to the donor interest on the said sum of $25,000 from the date of payment at the rate of five per cent yer annum during his natural life, and permit the donor to occupy the real property as long as he should live—rent free. The provision of the agreement, with respect to the cash donation, was not to pay the donor the income from the fund transferred, but to pay him five per cent interest on said fund. That is exactly what is provided in all of the present agreements. The income from the property transferred is not reserved to the decedent, but a sum in each instance which amounts to income at the rate of six per cent on the property so transferred. There seems to be no distinction between a reservation to the donor of a yearly sum, which in fact is equivalent to interest at a rate of six per cent, and a provision which directs that six per cent yearly shall be paid upon the property transferred. Either provision would constitute a reservation of the beneficial enjoyment of the property.

It is the substance and effect of the entire transaction which is to be considered and not the mere legal form thereof.

*Matter of Orvis,* 223 *N. Y. Rep., page* 1.

*Matter of Reish, Adm.,* v. *Commonwealth of Pa.,* 106 *Pa. St. Rep., page* 521.

*Matter of Brandreth,* 169 *N. Y. Rep., page* 437.

*In re Dobson's Estate,* 132 *N. Y. Supp., page* 472.

*Matter of Hall,* 119 *Atl. Rep., page* 669.

In the *Matter of Orvis* the Court said:

"The taxability does not depend upon fraud or an attempt to evade the statute; nor does it depend upon the purpose or inducement of the transfer; nor does it depend upon the form given the transfer. The law searches out the reality and is not halted or controlled by the form. (*Matter of Gould,* 156 *N. Y.* 423.) The measure determining the liability or freedom from liability to the tax is the nature, the essence, the effect of the transfer. If, in truth, it, in effect, bestows, under statutory conditions, a bounty or benefaction and is not a transfer for money's worth, it is taxable."

In the *Matter of Reish* the Court said:

"It is true the obligation of the bond was not inserted as a condition or reservation in the deed, it was in form a mere personal obligation; but this contention does not involve a technical question of title nor of lien, the whole matter depends upon a single fact, whether or not the transfer was made or intended to take effect, in enjoyment at the death of the grantor. The policy of the law will not permit the owner of an estate to defeat the plain provisions of the collateral inheritance law by any device which secures to him, for life, the income, profits and enjoyment thereof; it must be by such a conveyance as parts with the possession, the title, and the enjoyment in the grantor's lifetime."

In passing upon the question as to what constitutes a reservation of income in property transferred, Vice Ordinary Buchanan, in the *Matter of the Estate of Charles E. W. Harvey, supra,* said:

> "Until testator's death he himself retained the beneficial enjoyment of the property. So also with the $25,000. He retained the beneficial enjoyment of that during his lifetime, for by the terms of the agreement the donee was to pay him 'interest' on that very sum of $25,000 during his life, at five per cent. (which is the generally accepted ordinary rate for safe investment income)."

The facts as before the Court in the *Harvey Case* show that the $25,000 fund had been transferred to the donee on April 17, 1907, and that this fund had been expended by the donee in the erection and equipment of certain buildings, the purpose for which the transfer was made. So that in fact, at the time of the decedent's death, the original fund of $25,000 was not being continued in trust by the donee and the income from that identical fund paid to Charles E. W. Harvey, the donor. The donor was entitled to receive under the provisions of the agreement the sum of $1,250 yearly, or five per cent. of the sum of $25,000. This reservation to the donor, the Court held, was equivalent to the income from the property as long as he lived, and that, therefore, the beneficial possession and enjoyment of the *corpus* did not pass until the death of the donor.

This establishes a logical interpretation of the act and affords a workable rule. Certainly there should be no distinction between a case reserving to the donor a specified sum, in fact equivalent to a fixed rate of interest, and a case in which a specified rate is stated. The actual result is the same, and as held by the Prerogative Court in the *Harvey Matter,* if the reservation is substantially equivalent to the income from the property, the transfer should be held taxable. As said by Vice Ordinary Buchanan in the *Matter of Bottomley, 92 N. J. Equity, page 202, at page 207*:

> "The statute makes taxable a gift 'intended to take effect in possession or enjoyment' at or after the death of donor. It is difficult to see how

there could be much enjoyment by the donee of this gift, while he continued to pay out as much as he received therefrom."

In the present case, upon the death of the survivor of the donor and his wife, the *Boards of Home and Foreign Missions* came into beneficial possession and enjoyment of the property transferred, and not until then. They were paying out the income to the donor and his wife as fast as it was received, and for this reason they certainly were not in beneficial possession and enjoyment of the property. Enjoyment of the funds takes effect only upon the death of the survivor of the decedent and his wife, and it is respectfully submitted that the transfer thereof is made subject to the provisions of the Inheritance Tax Act of this State.

The provisions of the several agreements in the present case bring them clearly within the principles as established by the cases of *American Board of Commissioners for Foreign Missions* v. *N. A. K. Bugbee, etc.; Congregational Home Missionary Society, etc.,* v. *Bugbee; Matter of Estate of Charles E. W. Harvey, deceased,* and *Moore* v. *Bugbee, Supra.*

## POINT II.

### The Conclusions of the Vice-Ordinary.

Vice-Ordinary Buchanan, in disposing of the present case found, of the six agreements, that five were not subject to the provisions of the statute and that one was. The five agreements held not to be covered by the statute are as follows:

| | |
|---|---|
| Board of Home Missions—November 19, 1912, | $3,000 |
| Board of Home Missions—January 14, 1913, | 1,000 |
| Board of Foreign Missions—November 26, 1912, | 2,000 |

| | |
|---|---|
| Board of Foreign Missions—December 3, 1912, ..... | 3,000 |
| Board of Foreign Missions—January 21, 1913, ..... | 1,000 |
| | $10,000 |

The agreement held subject to the statute is:

| | |
|---|---|
| Board of Home Missions — Original dated as of November 19, 1912—Revoked and amended by an agreement dated November 28, 1916, ..... | $2,000 |

By reason of the fact that all of the agreements appear to be substantially the same, it is difficult to understand how the Vice-Ordinary determined that five of said agreements were not taxable and on the other hand that one of the agreements was taxable. It is urged upon the part of the prosecutor that all of the agreements are identical in their ultimate purpose and are therefore either all taxable or all exempt.

In closing his opinion holding that the gift by the decedent made on November 19, 1912, in the amount of $2,000, to the Board of Home Missions was subject to the provisions of the Act, the Vice-Ordinary said (State of Case, No. 1, page 35):

> "The agreement as to this gift is that it is to be devoted to such uses and purposes as are hereinafter provided, and among the specified purposes is the payment of the annual sum of $120 to the donor for life."

This reasoning appears to be technical and contrary to the widely established and generally accepted interpretation of the statute that transactions of this kind are to be determined not by their form and legal technicalities, but upon the substance and practical result of the entire transaction.

> *Matter of Orvis, 223 N. Y. Rep., page* 1.
>
> *Matter of Reish, Adm.,* v. *Commonwealth of Pa.,* 106 *Pa. St. Rep., page* 521.

*Matter of Brandreth,* 169 *N. Y. Rep., page* 437.

*In re Dobson's Estate,* 132 *N. Y. Supp., page* 472.

*Matter of Hall,* 119 *Atl. Rep., page* 669.

In fact, the Vice-Ordinary at the very outset of his opinion (State of Case, No. 1, p. 28, folio 10) said:

> "The question is not of the form, but of the substance of the transaction."

From a practical standpoint it cannot be seen how there is any substantial difference between any of the transfers; each represents a gift on the part of the decedent to the donee with the proviso that he should be paid a sum equivalent to interest at the rate of six per cent. per annum upon the property so transferred.

The reason for the variance in the language of the single deed of trust is quite obvious. It will be recalled that this trust was covered by two instruments, the first of which was dated November 19, 1912. The second (an amendment of the original) was dated November 28, 1916. The original deed (dated November 19, 1912) contained the following language:

> "Witnesseth: The said Rev. William E. Honeyman, desiring to make a donation of two thousand dollars ($2,000) to the said Board, hereby pays to it, and the Board receives that sum as an absolute gift (subject only to the agreement on the part of the Board hereinafter expressed), *to be devoted to such uses and purposes as are hereinafter provided."* * * *
>
> (Underlining by prosecutor.)

Further along in the deed it is provided that the fund shall be invested as a permanent fund for the use of the Woman's Board of Home Missions, towards, first, a Scholarship in the New Jersey Academy, at Logan, Utah, and thereafter, should the Academy be discontinued, then for such school work of a similar character as the Woman's Board might direct.

It will therefore be noted that this trust fund was not for the "general uses and purposes of the Board of Home Missions" as was the case in everyone of the other five transfers, but on the other hand was for a *specific purpose* set forth in the body of the agreement, hence the application of the words "to such uses and purposes as are hereinafter provided."

When amending this deed in 1916 they retained the form and phraseology of the original but eliminated all provisions for the Woman's Board and the Academy, leaving the fund for the "general uses and purposes of the Board of Home Missions." It can therefore be easily seen that the words referred to by the Vice-Ordinary as being sufficient to sustain the tax are entirely superficial and without any substantial effect so far as the actual carrying out of the agreement is concerned. It does seem to your prosecutor that the Vice-Ordinary has permitted *form* to override *substance* and *effect,* contrary to the apparently well-established rule of construction in cases of this kind.

In passing upon the nontaxability of the other five agreements the Court discussed the case from many angles. At this particular point it might be noted, however, that no attempt was made to distinguish the state of facts existing in the present case from those in the *Matter of the Estate of Charles E. W. Harvey, 2 N. J. Misc. Rep., page* 247; *aff'd. Moore, etc.,* v. *Bugbee,* 3 *N. J. Misc. Rep., page* 435. As has hereinbefore been pointed out, this is one of the cases relied upon by the prosecutor for sustaining the assessment under review.

The Court does make mention, however, of the *Matter of Harvey.* (State of Case, No. 1, p. 28.) In speaking briefly of that case the Court said that the donor gave $25,000 in cash with the contemporaneous agreement that the donee was to pay the donor five per cent interest during his life, which the Court states, was only "obviously a loan at interest for the donor's life and a gift at his death." Exception to this statement must be taken. The gift of $25,000 in cash in the

*Harvey Case* was an outright donation upon the part of the donor to the Moravian College. This donation was accepted, and in fact, within a very short time, was expended for a library building for the use of the college. It could not, under any circumstances, be determined a loan for the donor's life with a gift at his death. The gift, as was conceded by the Comptroller in the *Matter of Harvey,* was absolute at the time of the drawing of the agreement, but it was contended, and finally sustained by the Court, that the transfer of the actual beneficial possession and enjoyment of the property was postponed until the donor's death and therefore within the provisions of the Transfer Inheritance Tax Act of this State.

In order that the striking similarity of the *Harvey Case* to the present one may be shown, a comparison of the trust agreement in the former case with one of the agreements in the case *sub judice* will be made:

### Harvey Case.

"This agreement, in duplicate, made and entered into this 17th day of April, A. D. nineteen hundred and seven (1907), between Charles E. W. Harvey, of the Borough of Glen Ridge, N. J., party of the first part, and the board of Trustees of the Moravian College and Theological Seminary, of Bethlehem, Pa., party of the second part;

"Whereas, The party of the first part and his late brother, John Cennick Harvey, were desirous of erecting and equipping a new wing or addition to the present buildings of the abovenamed College Seminary, at Bethlehem, Pa., as and for a library, and to this end heretofore submitted a proposition outlining their plans generally, which the party of the second part approved and accepted,

* * *

### Present Case.

"This agreement, made and entered into the nineteenth day of November in the year nineteen hundred and twelve, between the Rev. William E. Honeyman, of Plainfield in the County of Union and State of New Jersey, of the first part, and the Board of Home Missions of the Presbyterian Church in the United States of America, of the second part.

"Witnesseth: The said Rev. William E. Honeyman, desiring to make a donation of three thousand dollars ($3,000) to the said Board receives that sum as an absolute gift (subject only to the agreement on the part of the Board hereinafter expressed), to be devoted to the general uses and purposes of the Board of Home Missions of the Presbyterian Church.

"Now, therefore, in consideration of the premises and of the sum of one dollar paid by the party of the first part to the party of the second part, the receipt whereof is hereby acknowledged, and of the covenants and agreements herein contained, it is mutually covenanted and agreed by and between the parties hereto as follows, to wit:

"First: The party of the first part shall pay or cause to be paid to the party of the second part, within sixty days upon the execution hereof, the sum of twenty-five thousand dollars ($25,000).

"Second: The party of the second part shall pay or cause to be paid to the party of the first, interest on the said sum of twenty-five thousand dollars, from the date of payment and receipt thereof as aforesaid, at and after the rate of five (5) per cent per annum, payable quarterly on the first days of July, October, January and April in each and every year, during the natural life of the party of the first part, and upon his death such interest shall wholly cease and determine.

* * *

"Sixth: The party of the second part shall forthwith upon the receipt of the said sum of twenty-five thousand dollars, or sooner if in their judgment advisable, begin and diligently prosecute the erection of a new college building, at the southerly end thereof, to be known as the Harvey Memorial Library, and to equip the same with furnishings, shelving, etc., all substantially as proposed and shown in the plans, drawings and speci-

"And, in consideration thereof, the Board hereby agrees that so long as said Rev. William E. Honeyman or Harriet L. Honeyman his wife, shall live (with the proviso hereinafter mentioned), but no longer, it will pay to them or the survivor of them the annual sum of one hundred and eighty dollars ($180)," * * *

fications heretofore made and prepared by A. W. Leh, architect, and shall use and expend in such erection and construction the said Harvey Memorial Library Fund, to an amount approximately of said sum of $25,000.

"Seventh: It is understood that it is the desire and purpose of the party of the first part that the said Harvey Memorial Library shall be erected and completed and its usefulness added to the efficiency of the college and seminary as soon as may be, and, if possible, during the lifetime of the party of the first part."

Careful comparison of the principal provisions of the two agreements shows very clearly their likeness. Mr. Harvey (the donor) during his lifetime made an absolute, irrevocable transfer of twenty-five thousand dollars ($25,000) to the Moravian College, which amount was to be received by it and immediately expended for the erection of a library. The building was, as a matter of fact, erected many years before Mr. Harvey's death. The College on its part was to pay Mr. Harvey interest on the sum of twenty-five thousand dollars ($25,000) at the rate of five (5) per cent. per annum during his natural life. This was substantially a reservation by the donor of the income from the property transferred, as was held by the courts in that case.

In the present suit the donor, in each instance, transferred specified sums to the Boards of Home and Foreign Missions as an absolute, irrevocable gift, and the Boards on their part agreed to pay the donor a stipulated sum on the funds transferred, which, in each instance, was figured upon the basis of interest at the rate of six per centum per annum, during the term of his natural life. Transfers, both in the Harvey case and the present one, were absolute. The title to the fund and the right of possession thereof passed immediately in

each instance. The sum of twenty-five thousand dollars ($25,000) transferred in the former was lost sight of immediately upon its application in the erection of the library. Likewise, in the instant case the sums transferred were merged with the general funds of the corporation, lost sight of as a separate transfer, and, so far as the decedent was concerned, forever beyond his reach. Nevertheless, he was entitled, under the agreement, to receive a sum equivalent to the income on the fund transferred. Just where there is any substantial difference between the form of the trust agreements in the present case and in the *Matter of Harvey,* or where there is any substantial difference in the facts existing in either case, is not clear to your prosecutor. It seems certain that the reservation by the donor, in both of these cases, of the income from the fund transferred, brings said transfers squarely within the provisions of the Transfer Inheritance Tax Act of this State. That human desire which seeks to fasten a string to the intended gift, is the one thing, if exercised, that in substance reserves the beneficial possession and enjoyment of the property transferred to the donor and, therefore, subjects it to the tax.

After referring to many cases holding the transfers taxable, the Court says (State of Case, No. 1, p. 29):

> "Based upon these cases (and similar adjudications in other jurisdictions) an argument by analogy is readily erected, that any transfer in a transaction whereof the net substance and result is that the transferor is provided with an income for life equal to, or greater than, the income which he could have derived by way of annual income from the property transferred by him (if he had kept it instead of transferring it) is a transfer coming under the terms of the statute and taxable."

Following this statement is the query: "But is such an argument sound?"

The Court says that it must be conceded that a transfer for which consideration is received by the transferor is not *per se* taxable under the statute, whether such consideration be equal to, greater or *less* than the value of the thing transferred.

It is urged upon the part of the prosecutor that the mere existence of consideration is not sufficient to take a transfer beyond the statute. The consideration must be *adequate*.

*Matter of Hall*, 94 *N. J. Eq., page* 398.
*In re Bottomley*, 92 *N. J. Eq., page* 202.

To use the Vice-Ordinary's own words in the *Matter of Hall*, supra:

> "It is the essential character of the transaction which is to be looked at, not the mere legal form thereof. * * * Appellants would scarcely contend that a transfer made in contemplation of death or to take effect at death, consisting in an exchange, with due legal formality, whereby decedent conveyed to the beneficiary securities worth $100,000 in return for a building lot worth $500, would not be taxable."

In the course of the opinion reference is made to a conveyance by a father to his son of "a residence worth $50,000 in exchange for a small residence worth only $10,000." It is not clearly understood just how this example is in any way connected with the present case. In fact, it is conceded that such a transaction would not be taxable; provided, of course, that the same was not carried out in contemplation of the death of the father, or with a reservation to him during his lifetime of an interest in the property so conveyed. In fact, transfers fully concluded during the lifetime of the donor have never in any instance been subject to the provisions of the Inheritance Tax Act and could not be so reached under the act unless, as above stated, there was the element of contemplation of death upon the part of the donor, or a reservation of a substantial interest in the property conveyed until his death.

The Vice-Ordinary, in speaking of the criterion set up by the statute, says that it does not declare that a transaction is taxable "if it is such that the result thereof is to leave the transferor with an annual income for life equal to or greater than the income which he would or could have derived from the property transferred had he retained it."

Exception to this declaration of the Court must also be taken by the prosecutor. It is contended upon the part of the prosecutor that many transfers whereby the donors thereof received an annual income for life equal to the income upon the property transferred have been held in numerous cases, not only in this jurisdiction, but throughout the country, to be intended to take effect in beneficial possession or enjoyment only at death and therefore within the terms of the statute.

*Matter of Carter* v. *Bugbee, supra.*

*Matter of American Board of Commissioners for Foreign Missions* v. *N. A. K. Bugbee, supra.*

*Congregational Home Missionary Society* v. *Bugbee, supra.*

*Matter of Charles E. W. Harvey, supra.*

and numerous other cases of other jurisdictions more fully referred to hereinbefore.

The statute, which provides for the taxing of all transfers of property by deed, grant, bargain, sale, etc., which are intended to take effect in beneficial possession or enjoyment at or after the death of the donor, has been firmly established by the above cases to refer to those transactions wherein the donor makes a gift of property, reserving to himself the income or its equivalent during his natural life.

The Court states the proposition that in the present matter the decedent could have taken $4,000 and purchased an annuity from a life insurance company payable to himself and then turn the $8,000 over to the donees, in which event he contends, and rightly, that there would be no tax. As to this the prosecutor agrees; but that is not what was done. Under the proposition

as outlined by the Court there are two separate and very distinct transactions—one is a purchase for valuable consideration and the other is a *gift,* neither of which would be taxable, providing, of course, the donor was not in contemplation of death when he made the *gift.* In the first transaction the decedent for full valuable consideration would contract with an insurance company for the purchase of an annuity, no element of a gift whatsoever being involved. In the second transaction (the transfer of the $8,000), there would be an absolute gift by the donor, which likewise could not be reached by the act unless made under circumstances as above referred to. However, that is not what was done in the present matter, as is shown by the state of facts.

The Vice-Ordinary urges that the transfer to the donee in the present matter was immediate and absolute. This is readily conceded by the prosecutor, but it cannot be seen how such fact can in any manner affect the situation in view of the decisions of the Supreme Court and the Court of Errors and Appeals in the *Matter of American Board of Commissioners for Foreign Missions; affirmed on appeal, Congregational Home Missionary Society, etc.,* v. *N. A. K. Bugbee; Matter of Moore* v. *Bugbee, supra.*

The Vice-Ordinary states that the promise of the donee to pay the donor for life an annual sum, which is in fact equal to six per cent. of the value of the thing transferred, is entirely separate from and independent of the thing actually transferred. As hereinbefore urged, the transfer by the donor to the donee and the payment back by the donees of interest at the rate of six per cent. per annum upon the value of the property transferred is only one transaction and should be so considered.

*Matter of Reish, Adm.,* v. *Commonwealth of Pa.,* 106 *Pa. St., page* 521.

*Matter of Brandreth,* 169 *New York, page* 437.

*In re Dobson's Estate,* 132 *N. Y. Supp., page* 472.

In the *Matter of Reish,* supra, the Court said:

"* * * The deed and the bond were contemporaneous, the execution and delivery of both constituted a single transaction; the deed was absolute, it contained no condition, it was without reservation; but the bond, although in the form of a mere personal obligation, was in effect, we think, as regards the collateral inheritance tax, a postponement of the time of enjoyment, a reservation of the income and profits of the property during the lifetime of the grantor.

"* * * It is true, the obligation of the bond was not inserted as a condition or reservation in the deed, it was in form a mere personal obligation; but this contention does not involve a technical question of title nor of lien, the whole matter depends upon the single fact whether or not the transfer was made or intended to take effect in enjoyment at the death of the grantor."

See also statement of the Court in *Matter of Brandreth, supra.*

"* * * The two instruments, the transfer of the stock to the daughters and the grant of the dividends and the right to vote from the daughters to their father being executed at the same time, must be construed together as a single agreement. * * * The effect of these instruments was to transfer to the daughters the remainder of the stock after the donor's death, reserving to the latter an estate for life."

To the same effect is the decision *In re Dobson's Estate, supra.*

"It seems clear that the deed and lease, having been executed and delivered on the same day pursuant to agreement therefor, constitute one transaction and must be considered as a single agreement."

The assessment by the Comptroller of the Treasury in the *Harvey Case* was sustained by the Prerogative Court and the conclusions of that Court upheld on certiorari. The assessment in the present case has been set aside by the same courts, although, it is respectfully submitted, the cases, both in form and substance, are identical. Surely but one conclusion can come from identical statements of fact.

In summarizing it it respectfully urged that the facts existing in the present matter are in every detail like those in the *Matter of Estate of Charles E. W. Harvey; affirmed, Moore* v. *Bugbee, supra,* a case upon which the prosecutor relies for sustaining the assessment of tax.

**For the Reasons Set Forth Above it is Respectfully Urged that the Judgments Below, Affirming the Decrees of the Prerogative Court in the two Cases now at Issue, be Reversed.**

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# New Jersey Court of Errors and Appeals

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| NEWTON A. K. BUGBEE, Comptroller of the State of New Jersey, *Prosecutor-Appellant,* *vs.* THE BOARD OF HOME MISSIONS OF THE PRESBYTERIAN CHURCH, in the United States of America, *Defendant-Appellee.* | *On Certiorari.* *On Appeal.* *Suit No. 1.* |
| NEWTON A. K. BUGBEE, Comptroller of the State of New Jersey, *Prosecutor-Appellant,* *vs.* THE BOARD OF FOREIGN MISSIONS OF THE PRESBYTERIAN CHURCH, in the United States of America, *Defendant-Appellee.* | *On Certiorari.* *On Appeal.* *Suit No. 2.* |

## BRIEF ON BEHALF OF DEFENDANTS-APPELLEES.

### Statement of Facts.

William E. Honeyman died April 1, 1918, a resident of Plainfield, New Jersey. In his lifetime he made certain agreements with the Missionary Boards above referred to, copies of which are printed at pages 21, 22, 24 and 25 of Suit No. 1, and at pages 19, 20 and 21 of Suit No. 2. The question in controversy is whether or not the moneys received by said Boards, by

virtue of these agreements, is taxable under the Inheritance Tax laws of this State.

With the exceptions hereinafter referred to, the agreements are substantially the same in form. By the terms of the respective agreements, Mr. Honeyman made donations of specified sums of money to the Boards and in consideration of such donations the Boards agreed to make to Mr. Honeyman, during his life, certain specified annual payments, and in the event of his death, should his wife, Harriet L. Honeyman, survive him, the same annual payments were to be made to her during her lifetime. It is the contention of the Comptroller that these sums of money given by Mr. Honeyman to the two Boards are taxable on the theory that the respective transfers were intended to take effect in possession or enjoyment at or after Mr. Honeyman's death. The contention of the Missionary Boards is, that the possession and enjoyment of the respective funds passed immediately at the time of the execution of the respective documents.

As above stated, all of the agreements in question are in substantially the same form, except two. The following is a specimen of the language used (p. 19, Suit No. 2):

> "WITNESSETH: The said William E. Honeyman desiring to make a donation of Two Thousand ($2,000.) Dollars, to the said Board, hereby pays to it, and the Board receives that sum as an absolute gift (subject only to the agreement on the part of the said board hereinafter expressed), to be devoted to the general uses and purposes of the Board."

An agreement on the part of the Board to make annual payments of specified sums of money then follows. The two agreements above

referred to differ from this specimen form in the following particulars: The agreement dated November 19, 1912 (p. 22, Suit No. 1), provides for the payment of $2,000 to the Board of Home Missions "to be devoted to such uses and purposes as are hereinafter provided." The agreement then provides for the payment of $120 annually to Mr. Honeyman or his wife during their lives, and upon the death of both, the investment of the said money as a permanent fund, the interest on which was to be paid to the Woman's Board of Home Missions. This agreement was cancelled by the agreement dated November 28, 1916 (p. 24, Suit No. 1), the only change being that under the second agreement the $2,000 is to be retained by the Board of Home Missions instead of being invested as a permanent fund for the benefit of the Woman's Board of Home Missions. The agreement of November 28, 1916, contains the language "to be devoted to such uses and purposes as are hereinafter provided."

The provision of the Inheritance Tax Law which is in question in this case is as follows:

> "1. A tax shall be and is hereby imposed upon the transfer of any property, real or personal, of the value of five hundred dollars or over, or of any interest therein or income therefrom, in trust or otherwise, to persons or corporations, except as hereinafter provided in the following cases:
>
> Third. When the transfer is of property made by a resident, or if of real property within this state, or of goods, wares and merchandise within this state, or of shares of stock of corporations of this state, or of national banking associations located in this state, made by a non-resident, by deed, grant, bargain, sale or gift made in contemplation of the death of the grantor, vendor or donor, or intended to take effect, in pos-

session or enjoyment at or after such death."

P. L. 1914, page 267.

The Comptroller of the Treasury admits that the transfers to the Board of Home Missions and to the Board of Foreign Missions were not made in contemplation of the death of the said William E. Honeyman. See paragraph 7 of the answer to the petition of the Board of Foreign Missions (p. 11, Suit No. 2) and paragraph 8 of the answer to the petition of the Board of Home Missions (p. 13, Suit No. 1).

The question to be determined is whether or not such transfers were made to take effect in possession or enjoyment at or after the death of William E. Honeyman.

## ARGUMENT.

### POINT I.

**Our New Jersey Inheritance Tax Law is a copy of the New York Statute of 1892, and the construction of the New York Act by the Courts of New York will be held to have been adopted with the Act.**

*Carter* v. *Bugbee,* 91 N. J. L. 438, 92 N. J. L. 390;

*Neilson* v. *Russell,* 76 N. J. L. 655.

The law must be construed strictly against the government and the burden of proving the transfer taxable is on the State.

*In re Reynolds,* 163 N. Y. Supp. at 809.

## POINT II.

**The tax here in question is not a tax on property, but a tax on the transfer of property.**

It is the privilege of disposing of property at or after the death of the grantor or testator which is taxed, though the amount of the tax is determined by the value of the property transferred.

*In re Kenney's Estate,* 194 N. Y. 281, 87 N. E. 428;

In same case, 222 U. S. 525, 38 L. R. A. (U. S.) 1139;

*Crocker* v. *Shaw,* 174 Mass. 266, 54 N. E. 549.

It is the vesting of the property in possession and enjoyment on the death of the grantor that renders it liable to the tax.

*Crocker* v. *Shaw, supra.*

If both the possession and the enjoyment of the property passed from the control of Mr. Honeyman prior to his death, the transfer is not liable to this tax.

## POINT III.

**Both the possession and enjoyment of the property passed from the control of Mr. Honeyman prior to his death.**

As above pointed out, the various agreements involved in this case are in substantially the same form except for the two agreements above referred to. One agreement only, therefore, will be referred to for the present, namely, the agreement with the Board of Home Missions dated November 19, 1912 (p. 21, Suit No. 1). This agreement provides that the sum of $3,000 shall

be paid to the Board as an absolute gift, subject only to the agreement to pay the donor and his wife, not any part of the gift or its income, but simply the annual sum of $180. In no event was William E. Honeyman entitled to revoke the gift. Nothing further remained to be done to vest the title and beneficial enjoyment of the fund in the Board. The Board is free to dispose of the property in any manner it sees fit. It agrees to pay $180 a year to the donor and his wife while they live. It is bound to do this whether or not the income from the gift is sufficient for that purpose. This $180 it may obtain from any source whatever. No control over the principal is retained by the donor; no trust is attached to it. There is no requirement that it shall be invested in securities specified, or that it shall be invested at all. The gift then became absolute on the date of the agreement, namely, November 19, 1912. The agreement to pay $180 a year to the donor and his wife is merely an arrangement for an annuity; it is not taxable under the Inheritance Tax Law.

*In re Thorn,* 44 App. Div. 8; 60 N. Y. Supp. 419; appeal dismissed in 162 N. Y. 238; 56 N. E. 625;

*In re Edgerton,* 54 N. Y. Supp. 700; affirmed 158 N. Y. 671; 35 N. Y. App. Div. 125; 52 N. E. 1124;

*In re Hess,* 96 N. Y. Supp. 990; affirmed 187 N. Y. 554;

*Gleason & Otis,* page 94;

*Re Lamb,* 117 N. W. (Iowa) 1118; 18 L. R. A. (N. S.) 226;

*Wolf* v. *Comptroller,* 105 Atl. 871 (N. J. Prerog. Ct.).

There are a number of decisions, both in this State and in New York State, holding certain

transfers taxable in cases where the donor reserved to himself control over the fund during his life and retained the income from the sum for his own benefit. Such cases in this State are:

*Carter* v. *Bugbee,* 91 N. J. L. 438; affirmed 92 N. J. L. 390;

*American Board of Commissioners for Foreign Missions* v. *Bugbee,* 98 N. J. L. 84; affirmed in *Congregational Home Missionary Soc.* v. *Bugbee,* 3 N. J. Adv. Rep. 192; 127 Atl. Rep. 192;

*In re Harvey,* 2 N. J. Misc. Rep. 247; affirmed 3 N. J. Misc. Rep. 435.

And in New York State:

*The Matter of Brandreth,* 169 N. Y. 437;
*Matter of Cornell,* 170 N. Y. 423.

These cases are readily distinguishable from the case now before the Court.

In *Carter* v. *Bugbee, supra,* the property in question was conveyed upon trust to pay to the donor the income during his life, and at his death to pay the *corpus* to the persons designated. It was properly held that the gift to the beneficiaries did not become effective until the death of the settlor.

In *American Board of Commissioners for Foreign Missions* v. *Bugbee, supra,* the gift was made upon condition that two-thirds of the annual income from the investment of the gift be paid to the donors for life, and it was required that the money be invested in the manner designated in the agreement. Some control was retained even after death, for the fund was required to be held as a permanent fund to be invested and reinvested. As stated by Mr. Justice Kalisch, who wrote the opinion for the Su-

preme Court (98 N. J. L. at p. 85), which was affirmed *per curiam* (127 Atl. 192), "It is quite obvious that the deeds of trust were no more than transfers to the prosecutor of the mere naked legal title to the property, in which the donor expressly reserved and postponed the happening of an actual transfer of the full possession or enjoyment of the property by the prosecutor till after the death of himself and his wife."

In the case at bar there is no postponement whatever of the full possession and enjoyment of the gift. The annual payments are wholly disassociated from it, and are not even interest upon it.

In the case of *In re Harvey, supra,* the donee was to pay the donor five per cent. interest for life on the sum of money given and to rent him the real estate for life rent free, with the privilege of subleasing for his own benefit. Obviously the donor retained beneficial enjoyment of the real property until death and the court rightfully held that the gift was taxable. As for the provision to pay interest on the transfer of the money, the argument is not so strong, but the distinction is that in the Harvey case the donor reserved for life five per cent. interest, *as such,* on the fund. In the case at bar there is no reservation of interest. The annuity is not expressed as interest and is not interest, but is a separate and distinct payment of a fixed annuity regardless of the earning or investment or disbursement of the gift or any income that may result therefrom. If this is not a distinction, the Harvey case purporting to tax a reservation of interest is unsound.

The Harvey case did not reach the Court of Errors and Appeals, and the statement of the

Attorney-General in his brief for prosecutor-appellant, at the bottom of page 9 of said brief, may be misleading.

The opinion of our Prerogative Court in *Wolf* v. *Comptroller, supra* (105 Atl. 871), is enlightening on the question of reservation of interest, but unfortunately this case is not discussed in the Attorney-General's brief here. The case at bar is stronger than the Wolf case. We reserve no interest and make no designation of investment.

It will be noted that in the two New York cases last above cited the court drew distinctions which seem to indicate that the decision would have been otherwise if the facts had been such as exist in the present case. For example, Judge Cullen in *The Matter of Cornell,* at page 426, said: "The agreement of the donee was not to support the donor, *nor to pay him a specified sum,* nor *an amount equal* to the income or interest realized by the securities, but to pay that income and interest *as such.*"

Under the agreement with the Board of Home Missions, dated November 28, 1916 (p. 24, Suit No. 1), cancelling the agreement of November 19, 1912 (p. 22, Suit No. 1), $2,000 was given to the Board, "to be devoted to such uses and purposes as are hereinafter provided." The agreement then proceeds to provide for the payment of an annuity to Mr. Honeyman and his wife. It may therefore well be that this agreement should be construed so as to charge the annuity against the $2,000 paid to the Board, thus giving the donor the benefit of an interest in the fund. If this is the proper construction of the agreement we must concede that the Comptroller was right in taxing this $2,000. All of the other agreements, however, expressly pro-

vide that the funds in question are given to the Board, "to be devoted to the general uses and purposes of the Board, etc."

On page 17 of the Attorney-General's brief it is erroneously stated that the Boards "were paying out the income to the donor and his wife as fast as it was received." There is no proof whatever to that effect, or of what the income was, or that there was any income from the gifts or any investment of the funds. Certain it is that no investment was required and the entire gifts could have been disbursed for the uses and purposes of the Boards the day they were received.

It therefore clearly appears that the principal fund is to be enjoyed by the Board immediately and that the donor retained no interest in or charge upon it. Except for the gift of $2,000 under the agreement with the Board of Home Missions dated November 28, 1916, there is no connection whatever between the gifts which are described as absolute and the annual payments to the donor for life. As above stated, these annuities could come from any source whatever and no control of the gift was retained by the donor.

We respectfully submit that with the exception of the $2,000 gift above referred to, the transfers involved in this case are not liable to the transfer inheritance taxes assessed against them, and the decrees of the Prerogative Court and the judgments of the Supreme Court should therefore be affirmed.

Respectfully submitted,

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BORDEN D. WHITING,
Of Counsel.