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PETITION.

Filed February 28, 1928.

New Jersey Supreme Court

SAMUEL MACCLURKAN, as Administrator of the Estate of May Logan MacClurkan, *Plaintiff,* *vs.* NEWTON A. K. BUGBEE, as Comptroller of the State of New Jersey, *Defendant.*	*On Application for Writ of Certiorari.* *Petition.*

To his Honor, William S. Gummere, Chief Justice of the New Jersey Supreme Court.

The petition of Samuel MacClurkan, as administrator of the estate of May Logan MacClurkan, deceased, late of the City of Orange, County of Essex and State of New Jersey, respectfully sets forth as follows:

1. May Logan MacClurkan died intestate on March 4, 1924, a resident of Orange, Essex County, New Jersey, and letters of administration on the said estate were thereafter issued to the petitioner by the Surrogate of Essex County, and the said petitioner duly qualified as adminstrator aforesaid.

2. That in connection with the administration of said estate the petitioner filed with the Comptroller of the State of New Jersey a verified report of the assets and liabilities of the said

estate for the purpose of having the amount of transfer inheritance tax determined.

3. The petitioner included in said report a copy of a certain trust agreement dated and executed August 26, 1921, by the said May Logan MacClurkan prior to her death and while she was a resident of the State of Illinois. A copy of said trust agreement is annexed hereto and made a part hereof.

4. Under the said trust agreement the said decedent transferred her right, title and interest to certain assets, an itemized statement of which is annexed to said trust agreement, to one Frank C. Rathje, to hold the same in trust, to manage, care for and protect said trust property and collect the income therefrom and to pay the same to the said decedent during her lifetime and at her death to her surviving children, and in the event that there were no surviving children, to pay the same to her nephew Theron Logan Rathje for life, and upon his death to pay the income to the decedent's sister, Josie Logan Rathje.

5. The trust agreement also provided that the decedent had the right to revoke the same after a period of five years from its date. Her death, however, occurred within the said five years period and the trust was never revoked.

6. At the time of the transfer of the said assets under the said trust agreement, to Frank C. Rathje, the said trustee, he was a resident of the State of Illinois. The said assets have always remained in his possession and do not consist of any securities of a New Jersey corporation, nor have they ever come into the pos-

session of the petitioner as administrator aforesaid.

7. Since the death of the said decedent, there being no surviving children, the said trustee has been paying the income from the said trust estate to the said Theron Logan Rathje, who has always been a resident of the State of Illinois.

8. Although this petitioner set forth all of the aforesaid facts to the Comptroller of the State of New Jersey nevertheless the said Comptroller assessed, on September 8, 1927, a transfer inheritance tax of $5,590.52 against the said estate upon the interest of the said Theron Logan Rathje, life beneficiary under the said trust agreement.

9. On said date the said Comptroller also assessed a transfer inheritance tax amounting to $295.98 by way of compromise against said estate on the interest of the remainder-man of the said trust estate, although no provision was made in the said trust agreement for the distribution of the corpus thereof upon the termination of the life estates.

10. On November 17, 1927, the petitioner as Administrator aforesaid, paid the full amount of said tax to the Comptroller of the State of New Jersey, under protest.

11. The petitioner is informed and verily believes that the action of Newton A. K. Bugbee, as Comptroller of the State of New Jersey, in assessing the transfer inheritance tax of $5,886.50 which the petitioner as Administrator aforesaid paid under protest from the assets of said estate, is illegal and void and that the said action deprives the estate of May Logan MacClurkan, de-

ceased, of its property without due process of law and all of which is contrary to the provisions set forth in the 14th Amendment of the United States Constitution and also the Constitution of the State of New Jersey.

The petitioner therefore prays that a writ of certiorari be issued from this court, directed to Newton A. K. Bugbee, as Comptroller of the State of New Jersey, for the purpose of reviewing his action in assessing the said transfer inheritance tax and in order that the same may be set aside and declared null and void.

SAMUEL MacCLURKAN,
As Administrator of the Estate of May Logan MacClurkan as Petitioner by Haines & Chanalis, Attorneys.

Affidavit of Samuel MacClurkan.

NEW JERSEY SUPREME COURT.

SAMUEL MACCLURKAN, as Administrator of the Estate of May Logan MacClurkan, *Plaintiff,* *vs.* NEWTON A. K. BUGBEE, as Comptroller of the State of New Jersey, *Defendant.*	*On Application for Writ of Certiorari.* *Affidavit.*

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

SAMUEL MACCLURKAN, as Administrator of the Estate of May Logan MacClurkan, of full age, being duly sworn according to law, on his oath deposes and says (1) that May Logan MacClurkan, who was deponent's wife and whose maiden name was May Logan, died intestate on March 4, 1924, a resident of the City of Orange, County of Essex and State of New Jersey, and that letters of administration of said estate were thereafter issued to this deponent by the Surrogate of Essex County.

(2) That in connection with the administration of said estate this deponent filed with the Comptroller of the State of New Jersey a verified report of the assets and liabilities of the said estate for the purpose of having the amount of transfer inheritance tax determined.

(3) That deponent included in said report a copy of a certain Trust Agreement dated and executed August 26, 1921, by the said May Logan

MacClurkan prior to her death and while she was a resident of the State of Illinois. A copy of said Trust Agreement is annexed hereto and made a part hereof.

(4) Under the said Trust Agreement the said decedent transferred her right, title and interest to certain assets, an itemized statement of which is annexed to said Trust Agreement, to one Frank C. Rathje, to hold the same in trust, to manage, care for and protect said trust property and collect the income therefrom and to pay the same to the said decedent during her lifetime and at her death to her surviving children, and in the event that there were no surviving children, to pay the same to her nephew Theron Logan Rathje for life, and upon his death to pay the income to the decedent's sister, Josie Logan Rathje.

(5) The Trust Agreement also provided that the decedent had the right to revoke the same after a period of five years from its date. Her death, however, occurred within the said five years period and the trust was never revoked.

(6) At the time of the transfer of the said assets under the said Trust Agreement to Frank C. Rathje, the said Trustee, he was a resident of the State of Illinois. The said assets have always remained in his possession and do not consist of any securities of a New Jersey corporation, nor have they ever come into the possession of this deponent as Administrator aforesaid.

(7) Since the death of the said decedent, there being no surviving children, the said Trustee has been paying the income from the said Trust Estate to the said Theron Logan Rathje, who

has always been a resident of the State of Illinois.

(8) Although this deponent set forth all of the aforesaid facts to the Comptroller of the State of New Jersey, nevertheless the said Comptroller assessed, on September 8, 1927, a transfer inheritance tax of $5,590.52 against the said estate upon the interest of the said Theron Logan Rathje, life beneficiary under the said Trust Agreement.

(9) On said date the said Comptroller also assessed a transfer inheritance tax amounting to $295.98 by way of compromise against said estate on the interest of the remainder-man of the said Trust Estate, although no provision was made in the said Trust Agreement for the distribution of the corpus thereof upon the termination of the life estates.

(10) On November 17, 1927, this deponent, as Administrator aforesaid, paid the full amount of said tax to the Comptroller of the State of New Jersey, under protest.

(11) That deponent is informed and verily believes that the action of Newton A. K. Bugbee, as Comptroller of the State of New Jersey, in assessing the transfer inheritance tax of $5,886.50, which this deponent as Administrator aforesaid paid under protest from the assets of said estate, is illegal and void and that the said action deprives the Estate of May Logan MacClurkan, deceased, of its property without due process of law and all of which is contrary to the provisions set forth in the 14th Amendment of the United States Constitution.

Trust Agreement.

(12) That this deponent is the petitioner named in the foregoing petition; that he has read the contents thereof and that the same are true.

SAMUEL MacCLURKAN.

Sworn and subscribed to before me
this 31st day of January, 1928.

THERESA BERTHOLD,
Notary Public.
New York County Clerk's No. 528.

THIS INDENTURE OF TRUST

made and executed this 26th day of August, 1921, by MAY LOGAN, of CHICAGO, ILLINOIS,

WITNESSETH That said May Logan, for and in consideration of one dollar ($1.00) in hand paid, and other good and valuable considerations, the receipt of which is hereby acknowledged, does hereby transfer, assign, convey and quitclaim unto FRANK C. RATHJE, as Trustee, the following described property:

In accordance with the schedule hereto attached and made a part hereof to have and to hold the same, together with any further property or money that may hereafter be added to the Trust, upon the following Trust purposes and conditions, to wit:

During the period of Trusteeship, as hereinafter fixed, said Frank C. Rathje shall hold, manage, care for and protect said Trust property and collect the income therefrom, all in accordance with his best judgment and discretion.

Said Trustee may hold said Trust property in its present form of investment; and is also hereby

fully authorized to invest such part of same, as may, from time to time, be converted into cash, in bonds, stocks, real estate, mortgages or in any other income-producing property or securities, real or personal, either within or without the State of Illinois, that he thinks best; said Trustee to have as wide latitude in the selection and making of any investments as if he, as an individual, were the absolute owner of the Trust property, provided that not over ten thousand dollars ($10,000.00) shall be invested in any one property.

Said Trustee is hereby given full power to sell and convey any and all of said Trust property, and any re-investments thereof, from time to time, for such prices, and upon such terms as he shall see fit, either for the purpose of re-investment, or of carrying out any provision of this Trust; and, the purchaser, or purchasers, shall not be obliged to see to the application of the purchase money.

Said Trustee shall be paid.....per cent. (%) of the income collected from this Trust Estate, for his services as such Trustee.

The entire net income from said Trust property shall be paid, when collected, to May Logan during her lifetime.

Should said May Logan die leaving her surviving a child, or children, I direct that then the said net income shall be paid, as foresaid, to such child, or in equal portions to such children, until the youngest of said children from time to time surviving becomes twenty-one (21) years of age; at which time this Trust shall terminate.

In case of the death of said May Logan without leaving a child, or children, surviving her;

or, in case of the death after her death of all of her children, if any, before the youngest from time to time surviving reaches the age of twenty-one (21) years, then said net income shall be paid, as aforesaid, to my nephew, THERON LOGAN RATHJE.

Should said Theron Logan Rathje afterwards die, then the income shall revert to his mother, JOSIE LOGAN RATHJE.

No money or property, payable or distributable by my said Trustee under the provisions of this instrument, shall be pledged, assigned, transferred, sold, or in any matter encumbered, by any of the Beneficiaries hereunder, or be, in any manner, liable in the possession of said Trustee for the debts, contracts or engagements of any of said Beneficiaries.

Said Trustee may resign hereunder, giving sixty (60) days' written notice to the Beneficiaries, who, at the time of giving such notice, are in receipt of the income from said Trust Estate;

And, in case of such resignation, or inability, or death, of said Trustee, then his successor in trust shall be appointed by any Court having Chancery Jurisdiction; such successor in trust shall be clothed and invested with all the duties, rights, titles and powers, whether discretionary or otherwise, of the original Trustee.

Said May Logan hereby expressly reserves the right of substituting other securities in place of any, at any time, held by the Trustee, adding other securities to the Trust; and, also, of revoking this Indenture, and each and every trust hereby created, either in whole or in part, by notice in writing, to the Trustee, after a period has elapsed of five years from the date of this Instrument;

And, in case of such revocation, said Trust Estate, or the portion thereof as to which this Indenture may be revoked, shall be conveyed by said Trustee to said May Logan, her heirs and assigns.

IN WITNESS WHEREOF, said MAY LOGAN has hereunto set her hand and seal; and said FRANK C. RATHJE, to evidence his acceptance of this Trust, has affixed his signature, the day and year first above written.

(Signed) May Logan.
(Signed) Frank C. Rathje.

Signed in the Presence of:

(Signed) Fred H. Korthauer.
(Signed) Laura C. Brunning.

Exhibit B.

EXHIBIT "B."

INVENTORY OF SECURITIES HELD IN SAFE KEEPING FOR ACCOUNT OF FRANK C. RATHJE, TRUSTEE FOR MAE L. MacCLURKAN, AS OF NOVEMBER 1st, 1924

First	3½% U. S. Liberty Bond #7629	$5,000.00
Third	4½% U. S. Liberty Bond #16046	5,000.00
Fourth	4¼% U. S. Liberty Bond #359019	1,000.00
"	4¼% U. S. Liberty Bond #359020	1,000.00
"	4¼% U. S. Liberty Bond #359021	1,000.00
"	4¼% U. S. Liberty Bond #359022	1,000.00
Third	4¼% Liberty Loan Bond (Coupon Form) #258	1,000.00
"	4¼% Liberty Loan Bond (" ") #259	1,000.00
"	4¼% Liberty Loan Bond (" ") #260	1,000.00
"	4¼% Liberty Loan Bond (" ") #261	1,000.00
		$18,000.00

CHICAGO CITY RAILWAY COMPANY FIVE PER CENT FIRST MORTGAGE BONDS, DUE FEBRUARY 1st, 1927.

#M—163	1,000.00
#M—164	1,000.00
#M—165	1,000.00
#M—166	1,000.00
#X90	10,000.00
#X91	10,000.00
	24,000.00

PUBLIC SERVICE COMPANY OF NORTHERN ILLINOIS FIRST AND REFUNDING FIVE PER CENT GOLD BONDS (COUPON FORM) DUE OCTOBER 1st, 1956.

#6546	1,000.00
#6547	1,000.00
#6548	1,000.00
#6549	1,000.00
#6550	1,000.00
#6551	1,000.00
#6552	1,000.00
#6553	1,000.00
#6554	1,000.00
#6555	1,000.00
	10,000.00

Exhibit B.

THE HUB 5½% FIRST MORTGAGE BONDS (COUPON FORM)
DUE JANUARY 1, 1928

#1237	500.00	
#1238	500.00	
		1,000.00
Herbert M. Bergstrom 6% Principal Note due May 1st, 1928	6,000.00	
Thomas N. Barrett 6% Principal Note due November 29th, 1927	3,000.00	
Margaret M. Freely 6% Principal Note due March 25th, 1929	7,000.00	
		16,000.00
		$69,000.00

Bethlehem Steel Corp. 8% accumulative convt. Pfd. Capital Stock, in the name and endorsed by Miss Mae Logan—#N. A. 1303..	20 Shares
Montgomery Ward & Co., 7% pfd. stock in the name of and endorsed by Miss Mae Logan—Cert. #CO758 for 20 shares and Cert. #CO759 for 12 shares—Total	32 Shares
Farmers & Merchants National Bank, Webster, So. Dakota, stock certificate in the name of and endorsed by Mae Logan—#68..	10 Shares
Stewart Warner Speedometer Corporation Common Stock certificate in the name of and not endorsed by Mrs. Mae L. MacClurkan—#C8133	100 Shares
Wm. Wrigley, Jr., Company Common Stock certificate in the name of and not endorsed by Miss Mae Logan #5509 for 80 shares and #6748 for 100 Shares—Total	180 Shares

CONSENT OF WRIT.

Filed February 28, 1928.

NEW JERSEY SUPREME COURT.

SAMUEL MACCLURKAN, as Administrator of the Estate of May Logan MacClurkan, *Prosecutor,* *vs.* NEWTON A. K. BUGBEE, as Comptroller of the State of New Jersey, *Defendant.*	*On Certiorari.*

The State Comptroller consents to the issuances of the writ of certiorari in this case, without prejudice however.

EDWARD L. KATZENBACH,
Attorney-General of the State of New Jersey.

By THEO. RURODE,
Special Counsel.

WRIT OF CERTIORARI.

Issued February 25, 1928.

Returnable March 16, 1928.

NEW JERSEY, *ss.*

The State of New Jersey to Newton A. K. Bugbee, as Comptroller of the
(SEAL) State of New Jersey, GREETING:

We, being willing, for certain reasons, to be certified of a certain assessment of transfer inheritance tax amounting to $5,590.52 made by Newton A. K. Bugbee, as Comptroller of the State of New Jersey, against the estate of May Logan MacClurken, upon the interest of one Thereon Logan Rathje, a life beneficiary, under a certain trust agreement made by the said decedent in her lifetime, and do command you that you certify and send under your seal to our Justices of our Supreme Court of Judicature, at Trenton, on the 16th day of March, 1928, the record of the said assessment of transfer inheritance tax above-mentioned, together with all things touching and concerning the same, as fully and completely as they remain before you, together with this our writ, that we may cause to be done thereupon what of right and justice and according to the laws of the State of New Jersey ought to be done.

WITNESS, WILLIAM S. GUMMERE, Esquire, Chief Justice of our Supreme Court, at Trenton, this 25th day of February, in the year of Our Lord One Thousand Nine Hundred and Twenty-eight.

EDWARD J. KELLEHER,
Clerk.

HAINES & CHANALIS,
Attorneys for Prosecutor.

Writ of Certiorari.

This writ is allowed. Let it be sealed this 25th of February, 1928.

WM. S. GUMMERE,
C. J.

REASONS.

Filed March 15, 1928.

NEW JERSEY SUPREME COURT.

SAMUEL MACCLURKAN, as Administrator of the Estate of May Logan MacClurkan, *Prosecutor,* *vs.* NEWTON A. K. BUGBEE, as Comptroller of the State of New Jersey, *Defendant.*	*On Certiorari.* *Reasons.*

The said prosecutor, by his attorneys, comes and prays that the action of Newton A. K. Bugbee as Comptroller of the State of New Jersey, in assessing a transfer inheritance tax amounting to $5,590.52 against the Estate of May Logan MacClurkan upon the interest of one Theron Logan Rathje, a life beneficiary, under a certain trust agreement made by the said decedent in her lifetime, may be set aside, reversed and for nothing holden, for the following reasons:

1. All of the assets upon which was levied an assessment of transfer inheritance tax were transferred by the decedent in her lifetime under an irrevocable trust for a period of five years to a trustee residing in the State of Illinois, and while the decedent was still not a resident of New Jersey. That the said decedent died within the said five year period a resident of the State of New Jersey and while the said assets were in the possession of the said trustee. That at

Reasons.

the time of the said decedent's death, the said life beneficiary was a resident of the State of Illinois and all of the assets were located at the time of the decedent's death in the State of Illinois, and no part thereof consists of any securities of any New Jersey Corporation. Therefor the said assessment violates the first clause of Article 1, of the Constitution of the State of New Jersey, and also violates paragraph 16 of Article 1 of the Constitution of the State of New Jersey, in that it takes private property for public use without just compensation and also is in violation of the rights secured to the prosecutor by the Fourteenth Amendment to the Constitution of the United States.

2. That the said action of the said Newton A. K. Bugbee as Comptroller of the State of New Jersey is in divers other respects illegal, unjust and oppressive, and should be set aside and for nothing holden.

HAINES & CHANALIS,
Attorneys for Prosecutor.

RETURN TO WRIT.

NEW JERSEY SUPREME COURT.

SAMUEL MACCLURKAN, as Administrator of the Estate of May Logan MacClurkan, *Prosecutor,* *vs.* NEWTON A. K. BUGBEE, as Comptroller of the State of New Jersey, *Defendant.*	*On Certiorari.* *Return to Writ.*

I, NEWTON A. K. BUGBEE, pursuant to the command of the within writ and for a return thereto, do hereby annex copies of all papers relating to the transfer inheritance tax levied against Theron Logan Rathje in the matter of the estate of May Logan MacClurkan, deceased, late of Essex County, New Jersey, as within I am commanded.

Witness my hand (being an officer without seal) this 5th day of March, A. D. nineteen hundred and twenty-eight.

N. A. K. BUGBEE,
Comptroller of the Treasury of the
State of New Jersey.

Return to Writ.

STATE OF NEW JERSEY.

Department of Comptroller of the Treasury

Transfer Inheritance Tax Bureau
Trenton

Sept. 8, 1927.

Samuel MacClurken Administrator of the Estate of May Logan MacClurken late of Essex County.
Blackman, Pratt & Koehler,
61 Broadway, New York City.

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 $5,844.50

(Samuel MacClurkan $253.98)
(Theron Logan Rathje, 5,590.52)

(Stamped) Paid Nov 23 1927 Comptrollers Dept.

M. M. Ryan

N. A. K. BUGBEE,
Comptroller.

Decedent Died March 4, 1924

If paid subsequent to March 4, 1925

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

This Receipt Must Not Be Detached
OFFICE OF STATE TREASURER

$..... Trenton, N. J.....

RECEIVED from .....Dollars in settlement of account as above set forth.

Countersigned: Treasurer

Comptroller.

Return to Writ.

This tax was assessed on the value of property of decedent disclosed to the State in accordance with the statute. The State does not waive its right to any tax on property not disclosed.

STATE OF NEW JERSEY.

Department of Comptroller of the Treasury

Transfer Inheritance Tax Bureau
Trenton

Nov. 18, 1927.

Samuel MacClurken Administrator of the Estate of May Logan MacClurkan, late of Essex County.
Blackman, Pratt & Koehler,
61 Broadway, New York City.

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 $295.98
(Two hundred ninety-five dollars and ninety-eight cents)

Return to Writ.

NOTICE

This receipt is proof of payment of a compounded tax, adjusted pursuant to the provisions of Section 8, Chapter 228, Laws of 1928 as amended and supplemented.

(Stamped) Paid Nov 26 1927 Comptrollers Dept.

M. M. Ryan

N. A. K. BUGBEE,
Comptroller.

Decedent died March 4, 1924

If paid subsequent to

add interest at rate of 10% 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.

This Receipt Must Not Be Detached

OFFICE OF STATE TREASURER

$..... Trenton, N. J.....

RECEIVED from .....Dollars
in settlement of account as above set forth.

Countersigned: Treasurer

Comptroller.

This tax was assessed on the value of property of decedent disclosed to the State in accordance with the statute. The State does not waive its right to any tax on property not disclosed.

Return to Writ.

September
Twelfth
-1927-

Messrs. Blackman, Pratt and Koehler,
No. 61 Broadway,
New York, N. Y.

Gentlemen:

Enclosed is bill setting forth the Transfer Inheritance Taxes directly chargeable in re estate of May Logan MacClurkan, deceased, late of Essex County, New Jersey.

The attention of the representatives of the estate is called to the fact that the ultimate disposition of a portion thereof, having a value of $14,798.96, depends upon the happening of contingencies and that as a result it is impossible at this time to definitely determine the amount of Transfer Inheritance Taxes that may be chargeable thereon.

The contingent portion of the estate represents the remainder interest after deducting the life estate of Theron Logan Rathje, age seven years, a nephew of the decedent, in the fund created by the trust agreement executed by her under date of August 26, 1921. This remainder interest will be taxable at the rate of eight percent in the event that the principal is ultimately received by the said Theron Logan Rathje, the tax in said event being $1,183.92 and will be taxable at the rate of five percent, giving a tax of $739.95 if it should happen that the sister of the decedent receives the remainder. Considering, however, the expectancy of the life tenant the Department suggests a compromise based upon the immediate payment of the sum of $295.98.

Return to Writ.

If the suggested compromise meets with the approval of the representative of the estate, upon receipt of a letter to that effect and a check in the amount stated, the matter will be given further attention.

If, however, it is not desired at this time to presently adjust the taxes that may be chargeable on the contingent portion of the estate, it will be necessary to forward a Surety Company Bond in double the amount of taxes chargeable at the highest possible rate.

It is, of course, understood that the compromise suggested is in addition to the direct taxes assessed as set forth on the enclosed bill.

Very respectfully,
N. A. K. Bugbee
Comptroller of the Treasury,

By .....
State Supervisor of the Treasfer Inheritance Tax Bureau

CFD:U.

Return to Writ.

BLACKMAN, PRATT & KING
61 BROADWAY
NEW YORK

Edward L. Blackman
Addison S. Pratt
Frederick E. King November 17, 1927.

Walton Clark, Jr.
Thomas H. Rothwell
Comptroller of the Treasury,
Trenton, New Jersey

Re-Estate of May Logan MacClurkan.

Dear Sir:

I have your letter of the 15th inst. in the above-entitled estate. Both the administrator and I appreciate a very great deal your action in waiving the interest penalty, and I am therefore enclosing certified check to the order of the Treasurer of the State of New Jersey in the sum of $5,640.48, the amount of the balance of the inheritance tax as per the enclosed statement. Will you kindly receipt and return the same.

I am also authorized to say on behalf of Mr. Samuel MacClurkan, the administrator of the estate, that this payment is made under protest and in order to avoid the further imposition of the interest penalty, for it is his opinion that no inheritance tax is properly assessable upon the value of the property which passed under the trust deed executed by the decedent prior to her death, while she was still a resident of the State of Illinois. In order to avoid further penalties payment is now made under protest.

Would you please be so kind, when you return the receipt, as to give me the information which I requested in my letter of November 7th,

viz., a statement showing the amount determined to be the value of the proportion of the estate passing under the trust indenture and the amounts upon which the taxes assessed against Samuel MacClurkan and Theron Logan Rathje were respectively computed.

Yours very truly,

ADDISON S. PRATT (signed)

ASP/B
Encl.

Return to Writ—Assessment.

STATE OF NEW JERSEY

Department of Comptroller of the Treasury
Transfer Inheritance Tax Bureau
Assessment

Estate of May Logan MacClurkan of Essex County.
Late Resident of East Orange Date of Death—March 4, 1924

Amount of Estate	Personal $32,761.30 "B"		
	84,680.43 "C"	Total	$117,441.73
Debts, Expenses, &c.,			2,363.00
Net Estate for Distribution,			115,078.73
Exempt Interests	Exempt and Contingent		19,798.96
Taxable Interests			95,279.77
Intestate	Tax 1%—8%		$ 5,844.50

Beneficiaries and Bequests	Value of Device or Bequest	Relationship	Age	Exempt	Taxable
Personalty to Samuel MacClurkan	30,398.30	husband		5,000.	25,398.30
					253.98
Theron Logan Rathje		nephew	7		69,881.47
					5,590.52
Life Estate in Trust Fund, taxed as gift to take effect at or after death.	69,881.47				
Remainder after above life estate is contingent				14,798.96	
				19,798.96	95,279.77
					5,844.50

Return to Writ—Market Value of Securities.

STATE OF NEW JERSEY

In the Matter of the Appraisement of the Estate
of
MAY LOGAN MacCLURKAN,
Late of Essex County, Deceased.

Statement of market value on the date of the decedent's death, viz., the 4th of March, 1924, of the securities held by Frank C. Rathje, as Trustee for the decedent under Trust Indenture dated August 26, 1921, annexed to Schedule C. herein:

$5,000	First 3 ½% U. S. Liberty Bonds at 99 (the high and low prices on March 4, 1924, were 98 28/32 and 99)	$	4,950.00
	Accrued interest to date of death		38.40
$9,000	Third 4½% U. S. Liberty Bonds at 99 23/32 (the high and low prices on March 4, 1924, were 99 3/32 and 99 24/32)		8,916.75
	Accrued interest to date of death		370.81
$4,000	Fourth 4¼% U. S. Liberty Bonds at 99 7/32 (the high and low prices on March 4, 1924, were 99 and 99 7/32) ..		3,960.88
	Accrued interest to date of death		65.64

$24,000	Chicago City Railway Company 5% First Mortgage Bonds at 77 (the high and low prices on March 4, 1924, were both 77)	18,480.00
	Accrued interest to date of death	113.33
$10,000	Public Service Company of Northern Illinois First and Refunding 5% Gold Bonds at 86½ (the high and low prices on March 4, 1924, were 85½ and 86½)	8,650.00
	Accrued interest to date of death	212.49
$1,000	The Hub 5½% First Mortgage Bonds (this is an unlisted security but we are advised by the Hub that they sold at par)	1,000.00
	Accrued interest to date of death	9.62
	Herbert M. Bergstrom, 6% principal note	6,000.00
	Accrued interest to date of death	123.00
	Thomas N. Barrett, 6% principal note	3,000.00
	Accrued interest to date of death	62.50
	Margaret M. Freely, 6% principal note	7,000.00
	Accrued interest to date of death	185.50

20 shares Bethlehem Steel Corporation 8% Cumulative Preferred Capital Stock at 108 (the high and low prices on March 4, 1924, were 108)	2,160.00
32 shares Montgomery, Ward & Company 7% Preferred Stock at 109 (the high and low prices on March 4, 1924, were 108¾ and 109)	3,488.00
10 shares Farmers and Merchants National Bank of Webster, South Dakota, at $131.08 (This is an unlisted stock. According to the balance sheet of the Bank as of March 4, 1924, its capital stock was $50,000, its surplus $10,000 and its undivided profits $5,538.27, a total of $65,538.27, thus making each of its 500 shares of the value of $131.08)	1,310.80
100 shares Stewart Warner Speedometer Corporation common stock at 89¼ (the high and low prices on March 4, 1924, were 88½ and 89¼)	8,924.00
180 shares William Wrigley Jr. Company common stock at 38 (the high and low prices on March 4, 1924, were 37½ and 38	6,840.00
Total	$85,861.72

Return to Writ—Affidavit of Administrator.

STATE OF NEW JERSEY

Department of Comptroller of the Treasury

Transfer Inheritance Tax Bureau
Trenton

Resident Decedent.

In the Matter of the Estate of MAY LOGAN MACCLURKAN, (State full name of decedent) Late of Essex County.	*Affidavit of Administrator.*

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

SAMUEL MACCLURKAN, Administrator of the estate of the above-named decedent being duly sworn, depose and say :

Decedent died intestate March 4th 1924.
(Month) (Day) (Year)

Name and address of attorney or other representative to whom all correspondence should be mailed. Blackman, Pratt & Koehler, No. 61 Broadway, New York City.

That as such administrator deponent is personally familiar with the affairs of said estate, the property constituting the assets thereof and their fair market value, and with the debts, expenses and charges properly and legally allowable as deductions therefrom. That the decedent at the time of her death had no safe deposit box except a box in the Fidelity Union Trust Company of Newark, New Jersey.

That *Schedule A* attached hereto and made part hereof sets forth fully and in detail all the real property in the State of New Jersey of which decedent died seized and possessed, or in which she had any right, title or interest at the time of her death. It also sets forth a statement of the liens and encumbrances upon each parcel of real estate at the date of death, giving in the case of mortgages the amount, date, place, liber and page of record thereof. It also sets forth in the first marginal column the assessed valuation of each of said parcels and in the second marginal column the estimated market value thereof as of date of death of said decedent, and in the third marginal column the value of the decedent's equity in said property.

That *Schedule B* attached hereto and made part hereof sets forth fully and in detail all the personal property wheresoever situated owned by the decedent or in which said decedent had any right, title or interest at the time of her death. It also sets forth all of moneys left by the decedent at the time of her death, whether in her immediate possession, standing to her credit or in which she had any right, title or interest, in banks of deposit, savings banks, trust companies, or other institutions, whether individually or in trust for or jointly with any other person, giving also separately the accrued interest thereon, if any, down to the last interest day prior to decedent's death in the case of savings banks, and down to the date of decedent's death in all other cases. It also sets forth all wearing apparel, jewelry, silverware, pictures, books, works of art, household furniture, horses, carriages, automobiles, boats, and any and all other personal chattels of whatsoever kind or nature,

left by decedent, together with the fairly estimated market value thereof. It also sets forth a statement of all bonds and mortgages held by decedent and of all claims due and owing decedent at the time of her death, and of all the promissory notes or other instruments in writing for the payment of money of which she died, possessed, of whatsoever nature, with interest thereon, if any, giving the face values and estimated fair market values thereof, and if such estimated fair market values be less than the face value, setting forth in brief the reason for such depreciation as to each item. It also sets forth a statement of any and all moneys payable to the estate from life insurance policies carried by decedent. It also sets forth all the corporate stocks, bonds and accrued interest thereon to the date of decedent's death, or other investment securities owned by the decedent at the time of her death, with the market value thereof at such time, and in the case of rare and unlisted corporate securities, giving the State of incorporation of the corporation issuing the same, its capitalization, the value and nature of its assets, its liabilities, its surplus, the book value of its stocks, the dividends paid, and any other facts which may be pertinent affecting the value of said securities. It also sets forth the interest of decedent at the time of her death in any copartnership or business, stating the nature and location thereof, the total capital employed, the gross profits, expenses and net profits of the business for at least three years prior to decedent's death, and any other facts pertaining to such business as may be pertinent to a fair and just appraisal of decedent's interest in said business and good-will thereof. It also sets forth in itemized form, together with

the fair market value thereof, any other property owned or left by the decedent at the time of her death.

That *Schedule C* attached hereto and made part hereof sets forth all the property, real and personal, of which the decedent made any deed, grant, bargain, sale or gift in contemplation of her death or intended to take effect in possession or enjoyment at or after her death, or by reason thereof fell into or became part of the assets of this estate, by reversion, remainder or otherwise. It also sets forth the property, real and personal, of which the decedent made any deed, grant, bargain, sale or gift within two years prior to the date of her death and without an adequate valuable consideration. It also sets forth all the property, real and personal, which passed at decedent's death by virtue of the exercise by her of any power of appointment vested in her by the will, deed or instrument of another, together with the fair market value of each and every item thereof and a statement in brief of the sources and derivation of such power, copies of which will, deed or other instrument are herewith submitted. It also sets forth all sums by way of commissions properly and legally chargeable against such property.

That *Schedule D* attached hereto and made part hereof sets forth the valid debts due and owing by decedent at the time of her death and allowed as just and fair by the Administrator, together with any and all items claimed by the Administrator as proper deductions herein. It does not include any claims as enter into computation of decedent's interest in any copartnership or business. It also sets forth the funeral

expenses, administration expenses, counsel fees paid or estimated.

That *Schedule E* attached hereto and made part hereof sets forth the names and addresses of all persons beneficially interested in this estate, at the time of decedent's death, the nature of their respective interests, their relationship, if any, to the decedent, together with the ages at the time of decedent's death of all minors, annuitants and beneficiaries for life under decedent's Will, if any. It also contains a statement showing which of the beneficiaries named in decedent's Will, if any, died prior to decedent, the dates of their deaths, their survivors, and the relationship of such survivor to decedent.

That the deponent has made due and diligent search for property of every kind, nature and description left by the decedent, and has been able to discover only that set forth in the schedules attached hereto and made part hereof, and that no information of any other property of the decedent has come to her knowledge and that she verily believes that decedent left no property except as herein set forth. That all the sums claimed as deductions in the schedules hereto attached and made part hereof are lawful, just and fair. Deponent further says that wherever in any of the schedules the word "none" has been written in or wherever such schedule has been left blank, such word or omission is to be taken as equivalent to an affirmative allegation by deponent that the decedent left no property of the kind to which said schedule relates.

SAMUEL MacCLURKAN.

Subscribed and sworn to before me
this 12th day of June, 1925.

THERESA BERTHOLD,
Notary Public N. Y. Co. No. 610.
(Seal) N. Y. Co. Register's No. 6576.
Com. Expires March 30, 1926.

State of New Jersey
Transfer Inheritance Tax
Resident Decedent

SCHEDULE "A"

Real Property in New Jersey, with Statement of Liens and Encumbrances Upon Each Parcel at Death of Decedent

The real property located in the State of New Jersey should be described by lot and block number or street and street number or by a general description, with a reference to the record of the conveyance by which the decedent took title; also statement of encumbrances upon each parcel at death of decedent.	Assessed Value for Year of Decedent's Death	Estimated Market Value	Value of Equity	Caution (Do not write in this space)
NONE				

STATE OF NEW JERSEY
TRANSFER INHERITANCE TAX
RESIDENT DECEDENT

SCHEDULE "B"

PERSONAL PROPERTY

Cash in Hand and on Deposit, Bonds and Mortgages, Promissory Notes, Claims, Insurance, Corporate Bonds and Stocks and All Other Personal Property Wherever Situate.	Estimated Market Value	Caution (Do not write in this space)
10 shares common stock, no par value, Submarine Boat Corporation, New York, N. Y.....	$ 100.00	$ 86.25
3 shares common stock Wm. Wrigley, Jr., (a West Virginia corporation) Chicago, Ill.	112.50	112.50
5—$1,000 U. S. Liberty 4¼%—Int. 4/15 and 10/15	4,950.00	4,950.00
3—$1,000 U. S. Treasury Bonds 4¼% Int. 4/15 and 10/15	2,970.00	2,970.00
Accrued interest on foregoing bonds....	98.45	98.45
Gold and silver money.....	92.00	92.00
Balance checking account Fidelity Trust Company, Newark, N. J.....	1,329.41	1,329.41
Balance Savings Account Fidelity Trust Company, Newark, N. J.....	1,050.69	1,050.69
Balance Checking account Mutual National Bank, Chicago, Ill.....	1,726.17	1,726.17
Balance account Thomson vs. McKinnon, Chicago, Ill.	7,276.18	7,276.18
Balance checking account Northern Trust Company, Chicago, Ill.	7,488.36	7,488.36
One platinum ring—ruby and diamond..	100.00	100.00
" single stone platinum ring.....	1,000.00	1,000.00
" three stone diamond ring.....	1,200.00	1,200.00
" diamond circle brooch.....	700.00	700.00
" platinum oval fancy ring.....	300.00	300.00
" platinum and diamond dinner ring..	500.00	500.00
" enamel sautoir watch.....	200.00	200.00
" diamond wedding ring.....	150.00	150.00
" clothing, etc.	250.00	250.00
Accrued interest on trust fund.....		1,181.29
		$32,761.30

Return to Writ—Affidavit of Administrator.

State of New Jersey
Transfer Inheritance Tax
Resident Decedent

SCHEDULE "C."

All property transferred by the decedent within two years prior to the date of death without having received an adequate, valuable consideration.

All property transferred by the decedent in contemplation of death or intended to take effect in enjoyment at or after death.

All property passing by decedent's exercise of any power of appointment vested in him under the will, deed or other instrument of another.

On August 26th, 1921, and prior to her marriage, decedent, then known as May Logan, executed an indenture of trust with Frank C. Rathje as Trustee, a copy of which is hereto attached and made a part hereof, marked Exhibit A, under the terms of which decedent made certain disposition of the net income from the principal of the trust estate, both during her lifetime and thereafter, but failed to clearly state what disposition should be made of the principal of the trust after her death. In the event that it is held that the decedent failed to make a valid disposition of the principal of the trust estate after her death, then her husband and administrator, Samuel MacClurkan, became the remainderman, and upon the death of the decedent became entitled to the principal of the trust estate, subject to the income payments directed to be made to the life tenants after the death of the decedent.

An inventory of the securities constituting the principal of the said trust estate as of November

1st, 1924, is also hereto annexed, marked Exhibit B and made a part hereof.

The decedent died without leaving any children surviving her and leaving as her sole surviving heir at law and next of kin her husband and administrator, Samuel MacClurkan. The said Samuel MacClurkan was forty years of age at the date of the death of the decedent. The life tenants referred to in the trust estate, viz: Theron Logan Rathje was seven years of age, and Josie Logan Rathje was thirty-five years of age, at the time of the death of the decedent.

On December 23rd, 1924, the said Samuel MacClurkan, by an instrument, a copy of which is also hereto annexed, marked Exhibit C and made a part hereof, sold and transferred his entire interest in the said trust estate and the accumulations thereof to the said Frank C. Rathje for the consideration set forth in the said instrument.

Deponent does not know whether the principal of the said trust estate should properly be included as part of the decedent's estate, but submits the foregoing information for the consideration of, and action by, the Comptroller of the State of New Jersey.

Principal of Trust Fund $84,680.43.
(addition made by Department.)

Return to Writ—Exhibit A.

EXHIBIT "A."

THIS INDENTURE OF TRUST

made and executed this 26th day of August, 1921, by MAY LOGAN, of CHICAGO, ILLINOIS,

WITNESSETH that said May Logan, for and in consideration of one dollar ($1.00) in hand paid, and other good and valuable considerations, the receipt of which is hereby acknowledged, does hereby transfer, assign, convey and quitclaim unto FRANK C. RATHJE, as Trustee, the following described property:

In accordance with the schedule hereto attached and made a part hereof.

to have and to hold the same, together with any further property or money that may hereafter be added to the Trust, upon the following Trust purposes and conditions, to wit:

During the period of Trusteeship, as hereinafter fixed, said Frank C. Rathje shall hold, manage, care for and protect said Trust property and collect the income therefrom, all in accordance with his best judgment and discretion.

Said Trustee may hold said Trust property in its present form of investment; and, is also hereby fully authorized to invest such part of same, as may, from time to time, be converted into cash, in bonds, stocks, real estate, mortgages or in any other income-producing property or securities, real or personal, either within or without the State of Illinois, that he thinks best; said Trustee to have as wide latitude in the selection and making of any investments as if he, as an individual, were the absolute owner of the Trust property, provided that not over ten thousand dollars ($10,000.00) shall be invested in any one property.

Said Trustee is hereby given full power to sell and convey any and all of said Trust property, and any re-investments thereof, from time to time, for such prices, and upon such terms as he shall see fit, either for the purpose of re-investment, or of carrying out any provision of this Trust; and, the purchaser, or purchaser, shall not be obliged to see to the application of the purchase money.

Said Trustee shall be paid.....percent (%) of the income collected from this Trust Estate, for his services as such Trustee.

The entire net income from said Trust property shall be paid, when collected, to May Logan during her lifetime.

Should said May Logan die leaving her surviving a child, or children, I direct that then the said net income shall be paid, as aforesaid, to such child, or in equal portions to such children, until the youngest of said children from time to time surviving becomes twenty-one (21) years of age; at which time this Trust shall terminate.

In case of the death of said May Logan without leaving a child, or children, surviving her; or, in case of the death after her death of all of her children, if any, before the youngest from time to time surviving reaches the age of twenty-one (21) years, then said net income shall be paid, as aforesaid, to my nephew, THERON LOGAN RATHJE.

Should said Theron Logan Rathje afterwards die, then the income shall revert to his Mother, JOSIE LOGAN RATHJE.

No money or property, payable or distributable by my said Trustee under the provisions of this instrument, shall be pledged, assigned, transferred, sold, or in any manner encumbered, by any of the Beneficiaries hereunder, or be, in any

manner, liable in the possession of said Trustee for the debts, contracts or engagements of any of said Beneficiaries.

Said Trustee may resign hereunder, giving sixty (60) days' written notice to the Beneficiaries, who, at the time of giving such notice, are in receipt of the income from said Trust Estate;

And, in case of such resignation, or inability, or death, of said Trustee, then his successor in trust shall be appointed by any Court having Chancery Jurisdiction; such successor in trust shall be clothed and invested with all the duties, rights, title and powers, whether discretionary or otherwise, of the original Trustee.

Said May Logan hereby expressly reserves the right of substituting other securities in place of any, at any time, held by the Trustee, adding other securities to the Trust; and, also, of revoking this Indenture, and each and every trust hereby created, either in whole or in part, by notice in writing, to the Trustee, after a period has elapsed of five years from the date of this Instrument;

And, in case of such revocation, said Trust Estate, or the portion thereof as to which this Indenture may be revoked, shall be conveyed by said Trustee to said May Logan, her heirs and assigns.

In Witness Whereof, said MAY LOGAN has hereunto set her hand and seal; and said FRANK C. RATHJE, to evidence his acceptance of this Trust, has affixed his signature, the day and year first above written.

(Signed) May Logan
(Signed) Frank C. Rathje.

Signed in the Presence of:
(Signed) Fred H. Korthauer
(Signed) Laura C. Brunning

Return to Writ—Exhibit B.

EXHIBIT "B."

INVENTORY OF SECURITIES HELD IN SAFE KEEPING FOR ACCOUNT OF FRANK C. RATHJE, TRUSTEE FOR MAE L. MacCLURKAN, AS OF NOVEMBER 1st, 1924

First	3½% U. S. Liberty Bond #7629	$5,000.00
Third	4½% U. S. Liberty Bond #16046	5,000.00
Fourth	4¼% U. S. Liberty Bond #359019	1,000.00
"	4¼% U. S. Liberty Bond #359020	1,000.00
"	4¼% U. S. Liberty Bond #359021	1,000.00
"	4¼% U. S. Liberty Bond #359022	1,000.00
Third	4¼% Liberty Loan Bond (Coupon Form) #258	1,000.00
"	4¼% Liberty Loan Bond (" ") #259	1,000.00
"	4¼% Liberty Loan Bond (" ") #260	1,000.00
"	4¼% Liberty Loan Bond (" ") #261	1,000.00
		$18,000.00

CHICAGO CITY RAILWAY COMPANY FIVE PER CENT FIRST MORTGAGE BONDS, DUE FEBRUARY 1st, 1927.

#M—163	1,000.00
#M—164	1,000.00
#M—165	1,000.00
#M—166	1,000.00
#X90	10,000.00
#X91	10,000.00
	24,000.00

PUBLIC SERVICE COMPANY OF NORTHERN ILLINOIS FIRST AND REFUNDING FIVE PER CENT GOLD BONDS (COUPON FORM) DUE OCTOBER 1st, 1956.

#6546	1,000.00
#6547	1,000.00
#6548	1,000.00
#6549	1,000.00
#6550	1,000.00
#6551	1,000.00
#6552	1,000.00
#6553	1,000.00
#6554	1,000.00
#6555	1,000.00
	10,000.00

Return to Writ—Exhibit B.

THE HUB 5½% FIRST MORTGAGE BONDS (COUPON FORM)
DUE JANUARY 1, 1928

#1237	500.00	
#1238	500.00	
		1,000.00
Herbert M. Bergstrom 6% Principal Note due May 1st, 1928	6,000.00	
Thomas N. Barrett 6% Principal Note due November 29th, 1927	3,000.00	
Margaret M. Freely 6% Principal Note due March 25th, 1929	7,000.00	
		16,000.00
		$69,000.00

Bethlehem Steel Corp. 8% accumulative convt. Pfd. Capital Stock, in the name and endorsed by Miss Mae Logan—#N. A. 1303..	20 Shares
Montgomery Ward & Co., 7% pfd. stock in the name of and endorsed by Miss Mae Logan—Cert. #CO758 for 20 shares and Cert. #CO759 for 12 shares—Total	32 Shares
Farmers & Merchants National Bank, Webster, So. Dakota, stock certificate in the name of and endorsed by Mae Logan—#68..	10 Shares
Stewart Warner Speedometer Corporation Common Stock certificate in the name of and not endorsed by Mrs. Mae L. MacClurkan—#C8133	100 Shares
Wm. Wrigley, Jr., Company Common Stock certificate in the name of and not endorsed by Miss Mae Logan #5509 for 80 shares and #6748 for 100 Shares—Total	180 Shares

EXHIBIT "C."

THIS INDENTURE Made and executed this 23rd day of December, A. D. 1924, Witnesseth, That

WHEREAS, MAY LOGAN, formerly of the City of Chicago, County of Cook and State of Illinois, made and executed her certain trust agreement bearing date the 26th day of August, A. D. 1921, a copy of which is hereto attached, marked Exhibit "A" and made a part hereof, and

WHEREAS, subsequent to the execution of the said Trust Agreement, the said MAY LOGAN intermarried with one Samuel MacCLURKAN of the City of East Orange and State of New Jersey, and

WHEREAS, the said MAY LOGAN MacCLURKAN, wife of the said SAMUEL MacCLURKAN, departed this life intestate on or about the 4th day of March, A. D. 1924, in the State of New Jersey, leaving her surviving the said SAMUEL MacCLURKAN, her only heir at law and next of kin, without having revoked the said Trust Agreement in whole or in part, and

WHEREAS, FRANK C. RATHJE, the Trustee named therein, had in his possession and control as such Trustee under said Trust Agreement, certain securities, a list of which is hereto attached, marked Exhibit "B" and made a part hereof, and

WHEREAS, the said SAMUEL MacCLURKAN, the surviving husband, and the only heir at law and next of kin of the said MAY LOGAN MacCLURKAN, has or claims to have an interest in and to the said trust property

and estate, and the accumulations thereof, and claims to be the owner thereof, subject only to certain life interests as therein set forth, as well as other rights and interests, and

WHEREAS, the said FRANK C. RATHJE, as such Trustee, has deemed it to be to the best interest of the said trust estate, and to the best interest of the beneficiaries named in the said Trust Agreement, that the interest of the said SAMUEL MacCLURKAN be acquired by him and the claims, disputes and controversies arising thereunder be settled and adjusted,

NOW THEREFORE, in consideration of the sum of Forty-eight Hundred Thirty-seven and 02/100 ($4837.02) Dollars, this day paid by the said FRANK C. RATHJE, as Trustee, and in further consideration of the delivery to the undersigned of the following securities, to-wit:—

1— CHICAGO CITY RAILWAY, FIVE PER CENT FIRST MORTGAGE BONDS DUE FEBRUARY 1, 1924, OF THE PAR VALUE OF $24,000.00.

2— THIRTY-TWO SHARES OF THE PREFERRED STOCK OF MONTGOMERY WARD & COMPANY.

3— ONE HUNDRED SHARES OF THE COMMON STOCK OF STEWART-WARNER SPEEDOMETER COMPANY.

4— ONE HUNDRED AND EIGHTY SHARES OF THE COMMON STOCK OF WILLIAM WRIGLEY, JR. COMPANY,

the receipt of all of which is hereby acknowledged. The undersigned SAMUEL MacCLURKAN has sold, assigned, transferred and set over, and by these presents does sell, assign, transfer and set over unto the said FRANK C.

RATHJE, as Trustee under the said Trust Agreement, all of his right, title and interest in and to the remainder of the said trust property and estate held by him pursuant to the said Trust Agreement, together with the accumulations thereof, and the said SAMUEL MacCLURKAN does hereby vouch himself to have full power, good right, and lawful authority to make this assignment; that he will warrant and defend the same against all lawful claims and demands of all and every person or persons whomsoever, except as against THERON LOGAN RATHJE and JOSEPHINE LOGAN RATHJE, beneficiaries named in said Trust Agreement.

And the said SAMUEL MacCLURKAN by these presents, does make, constitute and appoint FRANK C. RATHJE, of the City of Chicago, County of Cook and State of Illinois, true and lawful attorney for him and in his name, place and stead to make, execute, acknowledge and deliver any instrument in writing necessary or proper for the recovery of any moneys which may become due under any of the securities held by him as Trustee, as principal or interest, and to prosecute any suit or suits at law, or in Chancery, for the recovery of the value thereof; to transfer and assign the same, or any part thereof, for any consideration deemed proper by him, and to do any and all things and execute any and all instruments in writing necessary or proper for the complete control, management and disposition thereof, giving and granting unto the said FRANK C. RATHJE full power and authority to do and perform all and every act and thing whatsoever requisite and necessary to be done in and about the premises,

as fully to all intents and purposes as the undersigned might or could do if personally present at the doing thereof, with full power of substitution and revocation, hereby ratifying and confirming all that the said attorney, or his substitute, shall lawfully do or cause to be done by virtue hereof.

IN WITNESS WHEREOF, the said SAMUEL MacCLURKAN has hereunto set his hand and seal the day and year first above written.

(Signed) Samuel MacClurkan (SEAL)

STATE OF ILLINOIS, } *ss.*
COUNTY OF COOK. }

I, RICHARD M. GUDEMAN, a NOTARY PUBLIC in and for said County, in the State aforesaid, do hereby certify that SAMUEL MacCLURKAN, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed, sealed and delivered the said instrument as his free and voluntary act and for the uses and purposes therein set forth.

GIVEN under my hand and Notarial seal this 24th day of December, A. D. 1924.

(Signed) Richard M. Gudeman,
NOTARY PUBLIC.

Dec. 31, 1924.

Return to Writ—Exhibit C.

In lieu of $24,000.00 par value of Chicago City Railway 5% First Mortgage Bonds, we received U. S. Liberty Loan Bonds (different issues), of the par value of $18,000.00 and dividend checks on the stocks delivered, aggregating $951.75.

(Signed) SAMUEL MacCLURKAN,
By Judah, Willard, Wolf & Reichmann,
his attorneys.

Return to Writ—Schedule D.

State of New Jersey
Transfer Inheritance Tax
Resident Decedent

SCHEDULE "D"

If notes, brokerage accounts or other claims are secured by collateral, describe the collateral pledged, with its value as of the date of death of the decedent and state whether or not said collateral is included among the assets disclosd in Schedule "B." If collateral is not pledged, state after each loan "no collateral pledged."

Debt or Claim of	Nature of Same	Amount	CAUTION (Do not write in this space)
.....	Funeral expenses, Transporting body....	75.00	75.00
.....	Administration expenses (estimated),...		
.....	Counsel Fees, ...	1000.00	1000.00
.....	Executor's or Administrator's Commissions, ... (Commissions must not be estimated and claimed unless a final account is to be filed with the Surrogate.)	808.87	(808.87)
(Detail Other Debts)			
Wm. A. Cunningham		123.00	123.
E. J. Murphy & Son		940.00	940.
Moury I. Ellis		75.00	75.
Charles E. Teeter		25.00	25.
St. Mary's Hospital		75.00	75.
Antitoxin		50.00	50.
			3,171.87

Return to Writ—Schedule E.

STATE OF NEW JERSEY
TRANSFER INHERITANCE TAX
RESIDENT DECEDENT.

SCHEDULE "E"

BENEFICIARIES State full names of all who have an interest, vested, contingent or otherwise, in estate.	Relationship	Survived Decedent State Yes or No	Age of Life Tenants or Annuitants at Death of Decedent	Interest of Beneficiary in Estate
Samuel MacClurkan, 7 Pine Street, New York	Husband	Yes	40	Sole next of kin and possible remainderman
Theron Logan Rathje,	Nephew	Yes	7	Life tenant
Josie Logan Rathje	Sister	Yes	35	Life tenant

Deponent further says that all the above named beneficiaries are living at this time with the exception of:—

NAMES	DATE OF DEATH	RESIDENCE
.....		
.....		
.....		

NOTICE—This page is for Departmental use only.

REPORT OF DISTRICT SUPERVISOR AND APPRAISER

To Comptroller of the Treasury,
Trenton, New Jersey:

I. PETER A. CAVICCHIA, who was by a Certificate of Appointment of the Comptroller of the Treasury of the State of New Jersey appointed an employee and appraiser, and designated District Supervisor of Transfer Inheritance Tax and Appraiser, in pursuance of the laws in relation to Transfer Inheritance Tax, do respectfully report as follows:

Name of Decedent MAY LOGAN MACCLURKAN

Late of East Orange, County of Essex, New Jersey

Date of Death March 4th, 1924.

Value of Personal Property	$117,442.73	$32,761.30	"B"
Value of Real Property	——	84,680.43	"C"
Total Estate	$117,442.73	117,441.73	
Debts, Expenses, etc.	$ 3,171.87	2,363.00	
Net Amount of Estate for Distribution	$114,270.86	$115,078.73	

All of which is respectfully submitted this 27th day of October, 1925.

PETER A. CAVICCHIA,
District Supervisor and Appraiser.

Return to Writ—Report of District Supervisor.

File No. 230488

in the

MATTER OF THE APPRAISEMENT

of the

Estate of

MAY LOGAN MacCLURKAN

Deceased

Late of East Orange
County of Essex
State of New Jersey

Report and Proceedings

NOTICE OF ARGUMENT.

Filed April 5, 1928.

NEW JERSEY SUPREME COURT.

SAMUEL MACCLURKAN, as Administrator of the Estate of May Logan MacClurkan, *Prosecutor,* *vs.* NEWTON A. K. BUGBEE, as Comptroller of the State of New Jersey, *Defendant.*	*On Certiorari.* *Notice of Argument.*

TAKE NOTICE of the argument of the above-entitled cause before his Honor, William S. Gummere, Chief Justice of the New Jersey Supreme Court, holden at the Essex County Court House in the City of Newark, in and for the County of Essex and State of New Jersey, on Saturday, April 7, 1928, at ten o'clock in the forenoon, or as soon thereafter as the said Court can attend to the same.

Dated, March 27, 1928.

Yours respectfully,

HAINES & CHANALIS,
Attorneys.

To Hon. Edwin L. Katzenbach, Attorney-General of the State of New Jersey.

STIPULATION.

NEW JERSEY SUPREME COURT.

SAMUEL MACCLURKAN, as Administrator of the Estate of May Logan MacClurkan, *Prosecutor,* *vs.* NEWTON A. K. BUGBEE, as Comptroller of the State of New Jersey, *Defendant.*	*On Certiorari.* *Stipulation.*

It is stipulated between the parties in the above-entitled cause by their respective counsel, as follows:

That the notice of motion to argue the said writ of certiorari before his Honor, William S. Gummere, Chief Justice of the New Jersey Supreme Court, be and is hereby discontinued, without prejudice, and that instead it is agreed that the argument of the said writ of certiorari be made before the New Jersey Supreme Court at the State House, Trenton, during the October term, 1928.

HAINES & CHANALIS,
Attorneys for Prosecutor.

RICHARD C. PLUMER,
Special Assistant Attorney-General,
Attorney for Defendant.

STIPULATION OF FACTS.

NEW JERSEY SUPREME COURT.

SAMUEL MACCLURKAN, as Administrator of the Estate of May Logan MacClurkan, *Prosecutor,* *vs.* NEWTON A. K. BUGBEE, as Comptroller of the State of New Jersey, *Defendant.*	*On Writ of Certiorari.* *Stipulation of Facts.*

The following facts are hereby stipulated and proof thereof is hereby waived:

1. May Logan MacClurkan died intestate on the 4th day of March, 1924, a resident of East Orange, Essex County, New Jersey.

2. On the 21st day of March, 1924, letters of administration upon her estate were issued by the Surrogate of Essex County to Samuel MacClurkan, her husband, and he thereafter duly qualified as such administrator.

3. On the 26th day of August, 1921, and prior to her marriage with the said Samuel MacClurkan, the said May Logan MacClurkan, who was then known as May Logan, executed and delivered to Frank C. Rathje a certain indenture of trust, a copy of which is contained in the return to the writ of certiorari herein, and at the same time delivered to the said Frank C. Rathje, as trustee, the securities contained in the schedule

attached to the said indenture of trust and constituting the corpus thereof.

4. On the said 26th day of August, 1921, the said May Logan was a resident of the State of Illinois and did not become a resident of the State of New Jersey until her subsequent marriage to the said Samuel MacClurkan.

5. On the said 26th day of August, 1921, the said Frank C. Rathje was also a resident of the State of Illinois and has ever since been a resident of the State of Illinois.

6. The securities constituting the corpus of the said trust and so delivered to the said Frank C. Rathje, as trustee, were delivered to him in the State of Illinois and have ever since their delivery remained in the State of Illinois.

7. The securities so delivered to the said Frank C. Rathje consisted entirely of United States bonds, stocks and bonds of corporations organized under the laws of states other than the State of New Jersey, stock in a national bank organized under the acts of Congress of the United States, and notes of individuals, residents of states other than New Jersey, secured by mortgages upon property in states other than New Jersey, and none of them consisted of either stocks or bonds in corporations organized under the laws of the State of New Jersey or notes of residents of the State of New Jersey or mortgages upon property in the State of New Jersey or physical property located in the State of New Jersey.

8. The securities so delivered as aforesaid, constituting the corpus of the said trust, have

never come into the possession of the administrator of the said May Logan MacClurkan.

9. The said Frank G. Rathje, as trustee, paid to the decedent during her lifetime, in accordance with the terms of the said trust indenture, the income from the said trust property, and after her death paid the income therefrom to her nephew, Theron Logan Rathje.

10. The said Theron Logan Rathje and his mother, Josie Logan Rathje, were on the said 26th day of August, 1921, residents of the State of Illinois and have ever since been residents of the State of Illinois.

11. In the month of June, 1925, the said Samuel MacClurkan, as administrator of the said May Logan MacClurkan, filed with the defendant, as Comptroller of the Treasury of the State of New Jersey his verified report of the assets and liabilities of the said estate, containing a list of all the property of which the said May Logan MacClurkan died seized and possessed or in which she had any right, title or interest at the time of her death, and attached to Schedule C of the said report a copy of the said indenture of trust, together with a list or inventory of the securities constituting the corpus of the trust, and in said Schedule C stated that he "does not know whether the principal of the said trust estate should properly be included as part of the decedent's estate, but submits the foregoing information for the consideration of an action by the Comptroller of the State of New Jersey." A copy of the said report is contained in the return to the writ of certiorari herein.

12. On the 8th day of September, 1927, the defendant, as Comptroller of the State of New Jersey, assessed a transfer inheritance tax in the sum of five thousand five hundred ninety dollars and fifty-two cents ($5,590.52) upon the life estate of the said Theron Logan Rathje in the said trust as a gift to take effect at or after death, and on the 18th day of November, 1927, assessed a transfer inheritance tax in the sum of two hundred ninety-five dollars and ninety-eight cents ($295.98) as a compounded tax upon the remainder estate after the said life estate in the said trust fund.

13. On the 23rd day of November, 1927, the said Samuel MacClurkan, as administrator of the said May Logan MacClurkan, paid to the defendant, as Comptroller of the State of New Jersey the said sum of $5,590.52 and $295.98, under protest, the said protest being contained in a letter from Blackman, Pratt & King, attorneys for the said administrator, addressed to the defendant, dated November 17, 1927, a copy of which letter is hereto annexed, marked "Exhibit A" and made a part hereof.

14. At no time between the date of the delivery to the said Frank G. Rathje of the securities constituting the corpus of the said trust and the date of the death of the said May L. MacClurkan, did any of such securities consist of either stocks or bonds in corporations organized under the laws of the State of New Jersey, or notes of residents of the State of New Jersey, or mortgages upon property in the State of New Jersey, or

physical property located in the State of New Jersey.

Dated, May , 1928.

HAINES & CHANALIS,
Attorneys for Prosecutor.

RICHARD C. PLUMER,
For the Attorney-General,
Attorney for Defendant.

SCHEDULE "A."

November 17, 1927.

Comptroller of the Treasury,
Trenton, N. J.

Re: Estate of May Logan MacClurkan

Dear Sir:

I have your letter of the 15th inst. in the above entitled estate. Both the administrator and I appreciate a very great deal your action in waiving the interest penalty, and I am therefore enclosing certified check to the order of the Treasurer of the State of New Jersey in the sum of $5,640.48, the amount of the balance of the inheritance tax as per the enclosed statement. Will you kindly receipt and return the same.

I am also authorized to say on behalf of Mr. Samuel MacClurkan, the administrator of the estate, that this payment is made under protest and in order to avoid the further imposition of the interest penalty, for it is his opinion that no inheritance tax is properly assessable upon the value of the property which passed under the trust deed executed by the decedent prior to her

death, while she was still a resident of the State of Illinois. In order to avoid further penalties payment is now made under protest.

Would you please be so kind, when you return the receipt, as to give me the information which I requested in my letter of November 7th, viz., a statement showing the amount determined to be the value of the proportion of the estate passing under the trust indenture and the amounts upon which the taxes assessed against Samuel MacClurkan and Theron Logan Rathje were respectively computed.

Yours very truly,

Addison S. Pratt.

ASP/B
Encl.

RULE FOR JUDGMENT.

Entered December 24, 1928.

NEW JERSEY SUPREME COURT.

October Term, 1928.

No. 250.

SAMUEL MACCLURKAN, administrator, &c., *Prosecutor,* *vs.* NEWTON A. K. BUGBEE, Comptroller, &c., *Defendant.*	*On Certiorari.* *Rule for Judgment.*

The Court having inspected the return to the writ of certiorari issued in this cause, considered the reasons assigned for reversal of the assessment under review and having heard the argument of counsel for the respective parties thereon

It is ORDERED, that the assessment of transfer inheritance taxes be and the same hereby is in all things affirmed and the writ of certiorari is dismissed.

On motion of

EDWARD L. KATZENBACH,
Attorney General of New Jersey,
Attorney for Defendant.

A true copy.

FRED L. BLOODGOOD,
Clerk.

NOTICE AND GROUNDS OF APPEAL.

Filed April 4, 1929.

NEW JERSEY SUPREME COURT.

SAMUEL MACCLURKAN, as administrator of the estate of May Logan MacClurkan, *Prosecutor-Appellant,* *vs.* NEWTON A. K. BUGBEE, as Comptroller of the State of New Jersey, *Defendant-Appellee.*	*On Certiorari.* *Notice and Grounds of Appeal from Judgment of Supreme Court.*

To Honorable Edward L. Katzenbach, Attorney General of the State of New Jersey:

SIR:

PLEASE TAKE NOTICE, that the prosecutor, the appellant, appeals to the Court of Errors and Appeals from the whole of the judgment entered in the above-stated cause on December 24, 1928, on the following grounds:

(1) Because the Supreme Court erred in rendering judgment for the defendant-appellee and not for the prosecutor-appellant, in affirming the assessment of transfer inheritance taxes made by Newton A. K. Bugbee, as Comptroller of the State of New Jersey, against the estate of May Logan MacClurkan, deceased, and in dismissing the writ of certiorari.

HAINES & CHANALIS,
Attorneys for and of Counsel
with Prosecutor-Appellant.

Notice and Grounds of Appeal.

Service of within notice and grounds of appeal is hereby acknowledged this 27th day of March, 1929.

W. A. STEVENS,
Attorney General of N. J.,
Attorney for and of Counsel
with Defendant-Appellee.

NOTICE OF ARGUMENT.

Filed April 17, 1929.

NEW JERSEY COURT OF ERRORS AND APPEALS.

SAMUEL MACCLURKAN, as administrator of the estate of May Logan MacClurkan, *Prosecutor-Appellant,* *vs.* NEWTON A. K. BUGBEE, as Comptroller of the State of New Jersey, *Defendant-Appellee.*	*On Certiorari.* *On Appeal from New Jersey Supreme Court.* *Notice of Argument.*

To Honorable William A. Stevens, Attorney General of New Jersey:

SIR:

PLEASE TAKE NOTICE, that the argument of the appeal in this cause from the New Jersey Supreme Court will be moved before the Court of Errors and Appeals on the 21st day of May, 1929, at the State House in Trenton, in and for the County of Mercer, at 10 o'clock in the forenoon or as soon thereafter as said Court can attend to the same.

Dated April 4, 1929.

Respectfully yours,

HAINES & CHANALIS.

Submitted October Term, 1928; decided December 6, 1928, before Justices Minturn, Black and Campbell.

Notice of Argument.

Service of within notice of argument is hereby acknowledged this 8th day of April, 1929.

W. A. STEVENS,
Attorney General of New Jersey,
Attorney for and of Counsel with Defendant.

OPINION.

Filed December 6, 1928.

NEW JERSEY SUPREME COURT.

No. 250. October Term, 1928.

SAMUEL MACCLURKAN, Administrator, &c., *Prosecutor,* *vs.* NEWTON A. K. BUGBEE, Comptroller, &c., *Defendant.*	*On Certiorari.*

Submitted October Term, 1928; decided December 6, 1928.

1.

Mary Logan MacClurkan died intestate on the 4th of March, 1924; a resident of East Orange, New Jersey. On the 26th of August, 1921, she as Mary Logan, being a resident of the State of Illinois executed and delivered a trust deed accompanied by a delivery of the securities to Frank C. Rathje, as trustee, under which, she was to receive the entire net income for her life, reserving a right to revoke the same. Held, under the Statute P. L. 1909, p. 325; as amended by P. L. 1922, p. 293; the transfer of the trust property by the trust deed dated August 26, 1921, was a taxable transfer and subject to the Statute of New Jersey. Held, also, that by reason of the death of Mary Logan MacClurkan on March 4, 1924, a resident of New Jersey, the

State of New Jersey acquired jurisdiction to assess the tax on such trust property.

2.

The domicile of the donor and the law at the time of the death of the donor determines the power of the State to tax the securities covered by the trust agreement under the Statute.

Before Justices Minturn, Black and Campbell.

For the prosecutor, Messrs. Haines & Chanalis and Addison S. Pratt.

For the defendant, Edward L. Katzenbach, Attorney-General of New Jersey, and Richard C. Plumer, Assistant Attorney-General.

The opinion of the Court was delivered by Black, *J.*

The certiorari in this case was allowed to review a transfer inheritance tax of $5,590.52 assessed by the Comptroller of the Treasury, against the Estate of Mary Logan MacClurkan, deceased, late of East Orange, Essex County, N. J. The controversy arises by reason of the inclusion, as a part of the taxable estate by the Comptroller, of certain trust property alleged by him to have been transferred to take effect in beneficial possession or enjoyment, at or after, the death of the donor. The whole problem for solution resolves itself into the one question, as to whether the transfer of property by a trust deed dated August 26, 1921, was a taxable transfer. The essential facts out of which the controversy arises are these, as revealed by an agreed state of facts:

Mary Logan MacClurkan died intestate on the 4th of March, 1924, a resident of East Orange,

New Jersey. On the 26th day of August, 1921, and prior to her marriage with Samuel MacClurkan, then known as Mary Logan, and at that time a resident of the State of Illinois, executed and delivered to Frank C. Rathje, also, a resident of the State of Illinois, a certain indenture of trust, and at the same time delivered to him, Frank C. Rathje, as trustee, securities consisting entirely of United States bonds, stocks and bonds of corporations organized under the laws of states other than the State of New Jersey; stock in a national bank organized under the Acts of Congress; notes of individuals not residents of New Jersey, and secured by mortgages upon property not in New Jersey. The securities so delivered to Frank C. Rathje, as trustee, were delivered to him in the State of Illinois and have ever since their delivery remained in that State. Frank C. Rathje, as trustee, paid to the decedent Mary Logan MacClurkan during her lifetime, in accordance with the terms of the trust indenture, the entire income from such trust property, and after her death he paid the income therefrom to her nephew, Theron Logan Rathje, who was on the 26th day of August, 1921, and ever since has been a resident of the State of Illinois. The decedent reserved the right of revoking the indenture of trust and each and every trust thereby created. On September 8, 1927, the Comptroller of New Jersey assessed a transfer inheritance tax of $5,590.52 against the life estate upon the interest of the said Theron Logan Rathje, life beneficiary under the trust agreement, as a gift to take effect at or after death under the Statute. This is the only item of the assessment under review by the certiorari. On November 18, 1927, he also assessed

a transfer inheritance tax of $295.98, as a compounded tax, upon the remainder estate, after the said life estate, in the said trust fund, but this item of the tax is not under review.

The prosecutor resists the payment of the tax on the ground, that the State of New Jersey never had jurisdiction of the property, which has been made subject to a succession tax in this case, because, it is argued the property never had a situs in New Jersey, either actually or constructively. Hence, the tax is illegal, in that, its imposition violates the first clause of Article One (1) and paragraph sixteen (16) of the Constitution of New Jersey, *i. e.,* taking private property for public use without just compensation, and it also violates the Fourteenth Amendment to the Constitution of the United States. The due process clause. Citing with other cases Wachovia Bank, &c. Co. *v.* Doughton, 272 U. S. 567; Walker *v.* Treasurer, &c. General, 221 Mass. 600.

But as the Attorney-General, in the brief, points out, in each of these cases there is involved the right of the State to tax the exercise of a power of appointment in the estate of the donee, who died a resident, but wherein, the donor was a non-resident and all the trust property was beyond the State. It is a settled rule of law, that appointed property passes, not as a part of the estate of the donee but of the donor. The appoinee takes not under the will of the donee but under the will of the donor of that power. Hoyt *v.* Hannoch, 65 N. J. L. Eq. 688; United States x. Field, 255 U. S. 257.

So, that it is apparent in this class of cases, that if the State lacks jurisdiction of the trust property, there is no ground upon which to rest

the tax. This line of cases is, therefore, not analogous to the instant case, since, here, the decedent was the owner of the property placed in trust and by the terms of that trust was receiving the beneficial possession or enjoyment thereof until death, a condition, which clearly brings the transfer within the States of New Jersey. The decedent, Mary Logan MacClurkan, at the time of her death, was a resident of New Jersey and therefore clearly subject to the State's jurisdiction.

The legal basis for the assessment of a tax of $5,590.25 rests upon these legal principles.

First: The law in effect when the donor dies and not the law at the date of the trust deed controls. Carter *v.* Bugbee, 91 N. J. L. 438; affirmed 92 N. J. L. 390.

Mary Logan MacClurkan died May 4, 1924, so that, the Statute P. L. 1909, p. 325, as amended by P. L. 1922, p. 293, Chap. 174, controls. Section one (1), subsection three (3) of the Act, as amended, by the Act P. L. 1922, p. 293, provides: "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 there- " 'from, in trust or otherwise, to persons or cor- " 'porations, except as hereinafter provided, in " 'the following cases.' * * *

"Third: When the transfer is of property "made by a resident, * * * by deed, grant, "bargain, sale or gift * * * intended to take "effect in possession or enjoyment at or after "such death." * * * Under this Statute transfers intended to take effect in possession or enjoyment after death are taxable by the terms of the statute. A transfer of property is "in-

"tended to take effect in possession or enjoy-
"ment at or after death" when the donor reserves to herself the income therefrom during her life. Carter *v.* Bugbee, 91 N. J. L. 438; affirmed 92 N. J. L. 390; American Board of Commissioners *v.* Bugbee, 98 N. J. L. 84; affirmed 101 N. J. L. 214.

The trustee in this case was to pay over all the net income accruing from the trust property to the donor during her life.

The corpus of the trust consisted exclusively of Federal and Corporate bonds and shares of stock. This type of property is intangible and therefore taxable by the State of the domicile of the deceased.

In Re Hartmans Estate, 70 N. J. Eq. 664; Eidman *v.* Martinez, 184 U. S. 578; Blodgett *v.* Silbermann, 48 Sup. Ct. Rep. 410; 7 L. Ed. 470.

It has been repeatedly held, that the States have the power to tax the residents thereof, for personal property owned by them, but located elsewhere. For a collection of cases see Taxation in New Jersey, Secs. 193, 194; 3 Ed., 26 R. C. L. p. 273, Sec. 241; 37 Cycl., pp. 947, 952; Bristol *v.* Washington County, 177 U. S. 133.

Second: The domicile of the decedent, and not that of the trustee or cestui que trust, i. e. the beneficiary, determines the right to tax. If the testator is a resident, it is not important, where the beneficiaries may reside. Gleason *v.* Otis on Inheritance Taxation, 4th Ed., p. 460; Matter of Green, 153 N. Y. 223.

So, the residence of the donor, at the date of the death and not at the time of the transfer, controls the liability for a transfer tax. Carter *v.* Bugbee, 91 N. J. L. 438; affirmed 92 N. J. L.

390. American Board of Commissioners *v.* Bugbee, 98 N. J. L. 84; affirmed 101 N. J. L. 214.

The tax brought under review by the certiorari is affirmed, and the writ of certiorari dismissed.

New Jersey Court of Errors and Appeals

SAMUEL MACCLURKAN, as Administrator of the Estate of MAY LOGAN MACCLURKAN, Prosecutor-Appellant, vs. NEWTON A. K. BUGBEE, as Comptroller of the State of New Jersey, Defendant-Appellee.	On Appeal From the New Jersey Supreme Court.

Brief on Behalf of Prosecutor-Appellant.

Agreed Statement of Facts.

The following facts are hereby stipulated and proof thereof is hereby waived:

1. May Logan MacClurkan died intestate on the 4th day of March, 1924, a resident of East Orange, Essex County, New Jersey.

2. On the 21st day of March, 1924, letters of administration upon her estate were issued by the Surrogate of Essex County to Samuel MacClurkan, her husband, and he thereafter duly qualified as such administrator.

3. On the 26th day of August, 1921, and prior to her marriage with the said Samuel MacClurkan, the said May Logan MacClurkan, who was then known as May Logan, executed and delivered to Frank C. Rathje a certain indenture of trust, a copy of which is contained in the return to the writ of certiorari herein (S. C., page 40), and at the same time delivered to the said Frank C. Rathje, as trustee, the securities contained in the schedule attached to the said indenture of trust and constituting the corpus thereof (S. C., page 43).

4. On the said 26th day of August, 1921, the said May Logan was a resident of the State of Illinois and did not become a resident of New Jersey until her subsequent marriage to the said Samuel MacClurkan.

5. On the said 26th day of August, 1921, the said Frank C. Rathje was also a resident of the State of Illinois and has ever since been a resident of the State of Illinois.

6. The securities constituting the corpus of the said trust and so delivered to the said Frank C. Rathje, as trustee, were delivered to him in the State of Illinois and have ever since their delivery remained in the State of Illinois.

7. The securities so delivered to the said Frank C. Rathje, consisted entirely of United States bonds, stocks and bonds of corporations organized under the laws of states other than the State of New Jersey, stock in a national bank organized under the acts of Congress of the United States, and notes of individuals, resi-

dents of states other than New Jersey, secured by mortgages upon property in states other than New Jersey, and none of them consisted of either stocks or bonds in corporations organized under the laws of the State of New Jersey or notes of residents of the State of New Jersey or mortgages upon property in the State of New Jersey or physical property located in the State of New Jersey.

8. The securities so delivered as aforesaid, constituting the corpus of the said trust, have never come into the possession of the administator of the said May Logan MacClurkan.

9. The said Frank C. Rathje, as trustee, paid to the decedent during her lifetime, in accordance with the terms of the said trust indenture, the income from the said trust property, and after her death paid the income therefrom to her nephew, Theron Logan Rathje.

10. The said Theron Logan Rathje and his mother, Josie Logan Rathje, were on the said 26th day of August, 1921, residents of the State of Illinois and have ever since been residents of the State of Illinois.

11. In the month of June, 1925, the said Samuel MacClurkan, as administrator of the said May Logan MacClurkan, filed with the defendant as Comptroller of the Treasury of the State of New Jersey his verified report (S. C., page 31), of the assets and liabilities of the said estate, containing a list of all the property of which the said May Logan MacClurkan died seized and possessed or in which she had any

right, title or interest at the time of her death, and attached to Schedule C (S. C., page 38) of the said report a copy of the said indenture of trust, together with a list or inventory of the securities constituting the corpus of the trust, and in said Schedule C stated that he "does not know whether the principal of the said trust estate should properly be included as part of the decedent's estate, but submits the foregoing information for the consideration of and action by the Comptroller of the State of New Jersey." A copy of the said report is contained in the return to the writ of certiorari herein.

12. On the 8th day of September, 1927, the defendant, as Comptroller of the State of New Jersey, assessed a transfer inheritance tax in the sum of five thousand five hundred ninety dollars and fifty-two cents ($5,590.52) upon the life estate of the said Theron Logan Rathje in the said trust as a gift to take effect at or after death, and on the 18th day of November, 1927, assessed a transfer inheritance tax in the sum of two hundred ninety-five dollars and ninety-eight cents ($295.98) as a compounded tax upon the remainder estate after the said life estate in the said trust fund.

13. On the 23rd day of November, 1927, the said Samuel MacClurkan, as administrator of the said May Logan MacClurkan, paid to the defendant, as Comptroller of the State of New Jersey the said sum of $5,590.52 and $295.98, under protest, the said protest being contained in a letter from Blackman, Pratt & King, attorneys for the said administrator, addressed to the defendant, dated November 17, 1927 (S. C., page 25).

14. At no time between the date of the delivery to the said Frank C. Rathje of the securities constituting the corpus of the said trust and the date of the death of the said May L. MacClurkan, did any of such securities consist of either stocks or bonds in corporations organized under the laws of the State of New Jersey, or notes of residents of the State of New Jersey, or mortgages upon property in the State of New Jersey, or physical property located in the State of New Jersey.

The Court below in its opinion (S. C., page 70) erroneously stated that the said May Logan MacClurkan had reserved the right of revocation. The said Trust deed reserved to the said May Logan MacClurkan the right of revocation after a period of five years from its date had elapsed (S. C., page 10). But, as she died before the expiration of this period, we respectfully submit that it was the same as though no power of revocation had been reserved.

ARGUMENT.

The State of New Jersey at the time of the execution of the Trust deed had no jurisdiction over either the person of the grantor or the property conveyed. The title to the property, irrevocable for five years, passed at that time to the Trustee and its devolution depended solely upon the terms of the Trust deed and not upon any statute or right conferred by the laws of New Jersey. The succession tax imposed upon the transfer is, therefore, illegal, because it violates the first clause of Article I and Paragraph 16 of Article I of the New Jersey Constitution, and also contravenes the due process clause of the Fourteenth Amendment to the United States Constitution.

The deed of trust in question (S. C., p. 40) was executed by the decedent while she was a resident of Illinois. The trustee was also a resident of Illinois. The property constituting the corpus of the trust consisted of stocks, bonds and mortgages of persons and corporations, none of which were residents of the State of New Jersey. None of the property delivered under the trust deed had its situs at any time, either actually or constructively, in the State of New Jersey. The title to the property immediately vested in the trustee, who was given absolute power over its management, the decedent reserving to herself only the income for life. The trust deed was irrevocable for a period of five years from its date, during which period the decedent died. The right of the re-

maindermen, *i. e.,* the beneficiaries in the trust deed, to the possession and enjoyment of the estate upon the death of the grantor depended solely upon the terms of the trust deed and not in any manner upon any statute or right conferred by the laws of New Jersey. The beneficiaries therefore received title to the estate which has been taxed, not from the decedent but from the trustee, and not by any right created or conferred by the laws of the State of New Jersey.

Under such circumstances, it is respectfully submitted that the State of New Jersey had no power to impose a succession tax upon the property transferred by the trust deed. In fact, it has been so held by the courts of New York in a case where the facts were almost exactly the same, viz., the case of *Estate of Edmund Dwight,* New York Law Journal, October 18, 1911, affirmed without opinion in 140 App. Div. 912, where Surrogate Fowler said:

> "The decedent was a resident of Massachusetts. On September 24, 1894, he executed a deed of trust by which he transferred certain property therein mentioned to a trustee, with directions to pay a certain part of the income to himself during life, and upon his death to pay the income to certain individuals named in the deed, or in the event of the death of either of the said individuals to pay the principal to their issue, and if they should have no issue, to pay it to the survivors of certain individuals named therein. When the deed of trust was executed all of the property constituting the corpus of the trust fund was in the State of Massachusetts, and none of it was actually or constructively in the State of New York. Subsequently to the execution

of the deed, but before the death of the decedent herein, the trustee sold a part of the property mentioned in the deed of trust, and with the proceeds purchased certain shares of stock in New York corporations. These shares of stock were held by the trustee at the date of decedent's death and constituted part of the corpus of the trust fund. The appraiser designated to appraise this estate reported the value of these shares of stock held by the trustee in New York corporations as taxable, and from the order entered upon that report the substituted trustees now appeal. The transfer tax is a tax imposed upon a particular method of acquisition of property mentioned in the statute; it is not a property tax (*Matter of Vanderbilt,* 172 N. Y. 69, *Magoun* v. *Illinois Trust & Savings Bank,* 170 U. S. 283), and the basis of the power to tax is the actual dominion over the subject of taxation at the time the tax is to be imposed or jurisdiction over the person of decedent (*Matter of Swift,* 137 N. Y. 77; *Matter of Hull,* 111 App. Div. 322, aff'd. 186 N. Y. 585). At the time the deed of trust was executed by the decedent herein neither the person of the grantor nor the property mentioned in the deed was within the jurisdiction of the State of New York. The rights of the various individuals mentioned in the deed to any part of the income or to any part of the corpus of the trust fund were derived from the deed of trust and were governed by the provisions of that instrument. They were not created or in any way affected by the laws of this State. It is immaterial whether the interests of the final beneficiaries were vested or contingent at the time the deed of trust was executed, as any interests to which they are or may be entitled accrued by virtue of the provisions of the deed of trust and not because of any privilege granted by the State of

> New York. Therefore, as the transfer of the property constituting the corpus of the trust fund was effected by a deed of trust executed in a foreign State, and as the State of New York had no jurisdiction over the person who executed the deed, nor dominion over the property when transferred by that instrument, and as none of the rights of the individuals mentioned in the deed accrued by reason of any privilege granted by the State of New York, this State cannot impose a tax upon such a transfer.''

The United States Supreme Court and courts in other jurisdictions have uniformly held, in holding certain transfer inheritance taxes to be invalid, that a state may not subject to taxation things wholly beyond its jurisdiction or control.

In the case of *Wachovia Trust Co.* v. *Doughton,* 272 U. S. 567, one Haynes died a resident of Massachusetts, leaving a will, under which he left to a Massachusetts corporation the residue of his estate, in trust, the income from one-half to be paid to his daughter so long as she should live and at her death to be transferred to such person or persons and in such proportions as she should by will appoint or, in the event that she should fail to exercise the power of appointment and should leave issue surviving her, then to such issue by right of representation. After her father's death the daughter married one Taylor, and became a resident of North Carolina and died leaving an infant child and leaving a will, which was probated in North Carolina and in which she directed that the property over which she had power of appointment under her father's will should be di-

vided between her husband and her child. The State of North Carolina assessed a transfer tax upon the value of the property which passed under this appointment and the Supreme Court of North Carolina upheld the tax on the ground that the exercise of the power of appointment was made by the permission of, and under the direct protection of, its laws and that enforcement of the tax would not offend the Fourteenth Amendment. The Supreme Court, however, reversed the North Carolina Court, saying, per McReynolds, *J.*, at page 575:

> "We think the assets of the trust estate established by the will of Haynes had no *situs,* actual or constructive, in North Carolina. The exercise of the power of appointment was subject to the laws of Massachusetts and nothing relative thereto was done by permission of the State where Mrs. Taylor happened to have her domicile. No right exercised by the donee was conferred on her by North Carolina. A State may not subject to taxation things wholly beyond her jurisdiction or control. *Frick* v. *Pennsylvania,* 268 U. S. 473."

In the case of *Frick* v. *Pennsylvania,* 268 U. S. 473, cited in this case, the decedent at his death was domiciled in Pennsylvania. His estate, besides real and personal property in Pennsylvania, included tangible personalty having an actual *situs* in New York and Massachusetts, on the transfer of which the State of Pennsylvania imposed a tax. The United States Supreme Court held that the imposition of such a tax was illegal in that it contravened the due process clause of the Fourteenth Amendment to the Constitution of the United States. Mr.

Justice VanDevanter, who wrote the opinion for the Court, said on page 492:

> "The Pennsylvania statute is a tax law, not an escheat law. This is made plain by its terms and by the opinion of the state court. The tax which it imposes is not a property tax but one laid on the transfer of property on the death of the owner. This distinction is stressed by counsel for the state. But to impose either tax the state must have jurisdiction over the thing that is taxed, and to impose either without such jurisdiction is mere extortion and in contravention of due process of law. Here the tax was imposed on the transfer of tangible personalty having an actual *situs* in other states,—New York and Massachusetts. This property, by reason of its character and *situs,* was wholly under the jurisdiction of those states and in no way under the jurisdiction of Pennsylvania. True, its owner was domiciled in Pennsylvania, but this neither brought it under the jurisdiction of that state nor subtracted anything from the jurisdiction of New York and Massachusetts."

In the case of *Walker* v. *Treasurer & Receiver General,* 221 Mass. 600, one James Boyd died in 1849, a resident of Maryland, leaving a will in which he left his residuary estate in trust to Maryland trustees to pay the income to his widow during her lifetime and upon her death to pay the principal to her heirs or to such persons as she might by will designate. She remarried, becoming Mrs. Barnard, and died in 1911, a resident of Massachusetts, leaving a will in which she left the trust fund to a Maryland trustee upon certain trusts. The corpus of the original trust fund was at all times personal property held continuously in the State of Mary-

land. The Court held that upon the death of the widow the fund was not subject to the Massachusetts succession tax laid upon the privilege of passing title to property, because the property was not the property of the donee, but of the donor, of the power, and the appointees took, not as legatees of the donee, but as grantees or donees of Boyd or the trustees who were his representatives. Rugg, *Ch. J.*, said at page 602:

> "It is an implied condition of all statutes relating to taxation that they have no extra territorial effect. They can apply in the nature of things only to property within the jurisdiction of the sovereign State enacting the legislation, either actually through physical location or constructively through control over the person of one essentially connected therewith. * * * In the instant case the property was actually in the State of Maryland. Its title was vested in the trustee resident there. Both its physical and constructive situs is in the State of Maryland. Massachusetts has no control either of the property or its owner. An excise tax may be upheld upon the succession to property where a direct property tax might not be sustained. But in such cases it can stand as a lawful exercise of the taxing power only when some necessary incident of the transfer of title depends for its efficiency upon the law of the State levying the tax. Under our own Constitution the 'commodity' which may be taxed in the absence of corporeal jurisdiction over the property itself is the privilege of passing title under the sanction and protection of our law. *Attorney General* v. *Barney,* 211 Mass. 134; *Bliss* v. *Bliss, ante,* 201; *Keeney* v. *New York,* 222 U. S. 525, 537; *Wheeler* v. *New York,* 233 U. S. 435. The antithesis of the

> proposition is that where the property is not physically within the jurisdiction of the taxing power and its complete succession may be accomplished without invoking any privilege or sanction conferred by its laws, then there is nothing to which taxation can attach. If the property in Maryland had belonged to Mrs. Bernard, it would have been subject to the tax. *Frothingham* v. *Shaw*, 175 Mass. 59. But it did not belong to her. She had no title to it. She simply had the power of disposition if she chose to exercise it. This power does not constitute it her property."

and at page 604:

> "It follows that no privilege by which the property passes, whether by exercise of the power or by failure to exercise it, is conferred by the law of this Commonwealth. Hence, no commodity exists here on which the tax can be levied. By resort to the courts of Maryland, all questions as to the succession of this trust estate will be determined without invoking the law of Massachusetts. That will be settled without dependence upon the moral support or actual assistance of our laws. *Bliss* v. *Bliss*, *ante*, 201. The circumstance that the will has been set up in this Commonwealth is not of controlling significance."

The Court below recognizes the rule that the appointee takes the appointed property, not under the will of the donee of the power, but under the will of the donor of the power (S. C., page 71) and that the State of the domicile of the donee cannot impose a transfer tax upon the passing of the property under the exercise of the power unless the property itself is also within the State. It therefore held that these cases were not analogous. But, we respectfully sub-

mit, it overlooked the reason underlying the rule, viz: That the passing of the title does not depend at all upon any privilege granted by the laws of the State of the donee, but solely upon the laws of the State of the donor. If, for example, the passing of the title depended upon the laws of the State of the donee, as in the case of realty within the State, then the State could lawfully impose a transfer tax upon the exercise of the power. Therefore, it is respectfully submitted, these cases are analogous to the case at bar, for here the passing of the title to the Trust property depends solely upon the terms of the Trust deed and the laws of Illinois, as none of the property was ever located in New Jersey. The fact that the grantor receives the income during her lifetime is of no consequence, for if the right to impose a transfer tax exists, it would apply no matter who was entitled to the income during the lifetime of the grantor.

In the case of *Houston's Estate,* 276 Pa. St. 330, Marian F. Houston executed in 1918 an irrevocable deed of trust to a trust company of certain securities by which she reserved the income therefrom to herself for life with remainder over. She died in 1921. The State claimed the right to tax the estate of the remainderman at the rates prescribed by the Acts of 1919 and 1921, but the Court held it taxable at the rate in effect in 1918, following *Oliver's Estate,* 273 Pa. St. 400. The Court said:

> "The grantor in the deed parted with her title before the passage of either of these acts of assembly. She reserved no right of revocation, nor did she retain the right of control, for her power exercisable jointly with the trustee to change invest-

> ments is a very different thing; the terms of the trust were unchangeable. * * * As soon as the deed was executed, Freeman had a vested right in the property, only defeasable in case of his death (which has not occurred), when it would pass under his will, and his prospective right would have passed by his assignment to others: *Sherrill's Estate,* 15 W. N. C. 470; *S. C. Wickersham's Appeal,* 18 W. N. C. 36.
>
> "A further argument is based on the provision in the deed that the settlor had the right to add to the corpus of the trust, but this has nothing to do with the question, however it might be, if she had reserved the right to withdraw some of the assets. Had she added to the corpus, her transfer of fresh assets would be simply equivalent to making a new assignment of them in trust. This clause in the deed was obviously inserted in order to save the trouble of drawing another deed, but did not in any way affect the rights which had already passed."

An exhaustive examination has failed to disclose any case in New Jersey which has dealt with the precise question involved in this case.

The case of *Bullen* v. *Wisconsin,* 240 U. S. 625, is not an authority to the contrary of our position, for the reason that in that case Bullen, who had conveyed certain personal property to the Northern Trust Company of Chicago, Ill., upon certain trusts, was a resident of Wisconsin at the date of the execution of the trust deed, and for the further reason that the trust instrument expressly reserved to him the right to direct and control the disposition of the trust propery and to revoke the trust at any time. The Supreme Court therefore held that the State of Wisconsin had the right to assess an

inheritance tax upon the whole fund as upon a transfer intended to take effect in enjoyment after the donor's death, for the reason that his reserved power of disposition over the trust fund was equivalent to a fee for the purposes of the taxing statute.

Nor is there anything contrary to our position in the cases of *Carter* v. *Bugbee,* 92 N. J. L. 390 (106 Atl. 412), *American Board of Commissioners for Foreign Missions* v. *Bugbee,* 98 N. J. L. 84 (118 Atl. 700), *Congregational Home Missionary Society* v. *Bugbee,* 101 N. J. L. 214 (127 Atl. 192), and *Moore* v. *Bugbee,* 3 N. J. Misc. 435 (128 Atl. 679). In all these cases, except the *Carter* case, the donors were residents of the State of New Jersey and the property conveyed was either real property in New Jersey or money, notes and mortgages. It was therefore properly held that an inheritance tax could be imposed upon such transfers, even though the law imposing the tax was not enacted until after the dates of execution of the deeds, and even though the legal title to the property transferred vested in the trustees as of the dates of the deeds.

In the *Carter* case, the donor was a resident of Pennsylanvia. In 1911 he executed an absolute and irrevocable deed by which he conveyed to trustees, among other securities, certain stocks of New Jersey corporations, in trust, to collect and pay over the income to him during his lifetime and upon his death to pay over certain specified portions of the corpus to certain designated persons "if he (or she) shall survive the settlor," with remainders over in case any of them should not survive him. He died in 1917. In 1914 the State of New Jersey

had passed a law imposing a tax upon the transfer of any shares of stock in New Jersey corporations made by a non-resident by deed, etc., made in contemplation of death or intended to take effect in possession or enjoyment after death. Therefore, it was properly held that the tax was valid, because of the fact that the property was within the control of the State, being stocks of New Jersey corporations.

Nor are cases holding that, where the donor has reserved the power of revocation, the right to impose a tax and the rate of tax depend upon the law in force at the date of the death of the donor instead of at the date of the execution of the deed, contrary to our position, for here the trust deed was irrevocable for five years after the date of its execution, during which period the donor died. Where no power of revocation is reserved in the trust deed, it is universally held, we believe, that the law in force at the date of the deed and not at the date of death controls.

> *Matter of Webber,* 151 App. Div. 539;
> *Matter of Agnew, N. Y. Law Journal,*
> Dec. 13, 1913.

In the *Webber* case, the Court said at pages 540-541:

> "When the trust deed was made and delivered, without reserving any right to change the same, the right of succession became fixed, and it is this right of succession, and not the property, which is the subject of this tax. (*Matter of Swift,* 137 N. Y. 77, 88.) The law in effect at the time the right of succession became fixed is the law which

> governs in a case of this kind, and the question as to when the beneficiaries actually come into the enjoyment of the fund is of no consequence. The beneficiaries under this trust deed took their rights as of the date of the delivery of the deed; their rights were fully established, subject to the contingencies provided therein, and those who should finally take became entitled thereto upon the payment of the tax provided for the transfer at the date of the delivery of the deed. * * * The deed became operative immediately upon its delivery with the intention of vesting title in the trustees for the purposes of the trust, which provided for the final distribution of the property, and only the benefits were postponed to the happening of a particular event, and the law of that contract must be determined by the law as it existed when the deed became effective."

The Court below in its opinion (S. C., pages 72-73) held that, as the decedent was "the owner of the property placed in Trust" and by the terms of the Trust deed, "was receiving the beneficial possession or enjoyment thereof until death," and was a resident of New Jersey at the time of her death although not at the time of the transfer under the Trust deed, the succession tax was lawfully imposed. But, we respectfully submit that the said conclusion overlooks the real question in the case, namely the right of the State of New Jersey to impose a succession tax upon the alleged passing of title to property, the real passing of title to which had taken place several years before, at a time when admittedly the State of New Jersey had no jurisdiction in the premises and was irrevocable. How the State of New Jersey could

possess the right to impose a succession tax upon property, the title to which had passed long before under an irrevocable Trust deed, merely because the grantor of the Trust deed later became a resident of New Jersey and was such at the time of her death is not explained. This is what differentiates the case at Bar from the case of *Carter* v. *Bugbee,* (91 N. J. L. 438, 92 N. J. L. 390) cited as controlling authority by the Court below, for the decision in that case was expressly put upon the ground that the remainder there involved was contingent and the Court expressly admitted the force of the contention that, if the remainder had been vested, the State would have had no power to impose the tax.

The invalidity of the tax in this case becomes more apparent upon consideration of the fact that, although the Estate upon which the transfer tax was imposed had never been in the Administrator's possession and was at all times beyond his control and the control of the State of New Jersey, nevertheless he is obligated to pay the tax, amounting to $5,590.52, out of the funds of the Estate in his possession which rightfully belong to the next of kin of the decedent, who are other persons than the beneficiaries under the trust deed.

The rule is so well settled as to need no citation of authority that all tax statutes must be construed strictly in favor of the citizen or taxpayer and against the taxing power. The statute in question here provides that a tax shall be imposed upon the transfer of any property, or of any interest therein or income therefrom, in trust or otherwise, in the following cases:

> "THIRD. When the transfer is of property made by a resident * * * by deed, grant,

> bargain, sale or gift * * * intended to take effect in possession or enjoyment at or after such death."

But the statute does not define the word "resident" which, in this connection, is capable of at least three applications:

> 1. That the tax is imposed when the transfer was made by a person who was a resident at the time of the making of the deed and also a resident at the time of death.
>
> 2. That the tax is imposed when the transfer was made by a person who was a resident at the time of the making of the deed, regardless of his residence at the time of death.
>
> 3. That the tax is imposed when the transfer was made by a person who was a resident at the time of death, regardless of his residence at the time of the making of the deed.

In the first case, there is no question about the authority of the State to impose the tax. It is the second and third cases which create doubt. In the Court below the Attorney General pointed out the practical difficulty inherent upon attempting to enforce the tax in the second case and argued that the act could not be so construed.

The case at bar comes within the third class. Because of the fact that the grantor, who was a non-resident at the time of the making of the deed, subsequently became a resident of the State of New Jersey, the State here claimed the right, as it, of course, had the power, to collect the tax, but its unfairness is evidenced by the facts in this case, and, as the remainder estate

became vested at the time of the delivery of the trust deed in Illinois, when the grantor was a non-resident of New Jersey, the statute should be applied strictly in favor of the taxpayer and not in favor of the State.

For the above reasons, it is respectfully urged that the decision of the court below should be reversed and the action of Newton A. K. Bugbee, as Comptroller of the State of New Jersey, in assessing the said transfer tax should be set aside and for nothing holden and should be held to be unconstitutional, illegal, unjust and oppressive.

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New Jersey Court of Errors and Appeals

SAMUEL MACCLURKAN, as Administrator of the Estate of MAY LOGAN MACCLURKAN, *Prosecutor-Appellant,* v. NEWTON A. K. BUGBEE, as Comptroller of the State of New Jersey, *Defendant-Appellee.*	On Certiorari. On Appeal.

BRIEF OF ATTORNEY GENERAL OF NEW JERSEY, ATTORNEY FOR DEFENDANT-APPELLEE

This is an appeal to review a judgment of the Supreme Court affirming a certain Transfer Inheritance Tax assessment by the Comptroller of the Treasury in the matter of the estate of May Logan MacClurkan, deceased, late of East Orange, Essex County, New Jersey. (R. 68.) The controversy arises by reason of the inclusion, as a part of the taxable estate, of certain trust property determined by the Comptroller to have been transferred to take effect in beneficial possession and enjoyment at or after the death of the donor.

Statement of Facts

May Logan MacClurkan died, intestate, a resident of East Orange, Essex County, New Jersey, March 4, 1924. Letters of administration were duly issued by the Surrogate of Essex County to Samuel MacClurkan, her husband, under date of March 21, 1924. (R. 1.)

As such administrator, Samuel MacClurkan filed the usual form of transfer inheritance tax affidavit with the Comptroller of the Treasury during the month of June, 1925. (R. 31-52.) Schedules "A" and "B" annexed to the affidavit of the administrator established the fact that the decedent left no real property within the State and that her personal estate totaled $32,761.30, consisting of stocks, bonds, bank accounts, jewelry and clothing. (R. 36, 37.)

Schedule "C" (R. 38), which calls for a disclosure of all transfers whether in contemplation of death *or intended to take effect in enjoyment at or after death,* sets forth facts relative to a certain transfer, in trust, by the decedent under date of August 26, 1921.

It appears that on that date, May Logan MacClurkan (then May Logan) executed an indenture of trust (R. 40-42) with Frank C. Rathje as trustee, under the terms of which decedent provided that the property be held in trust by said Frank C. Rathje and that the income arising therefrom should be paid to May Logan, the donor, during the term of her life and upon her death, leaving issue, the net income should be paid to such issue until the youngest thereof became twenty-one years of age at which time the trust should terminate. The indenture further provided that should she die without issue or should the issue surviving her all die before reaching the age of twenty-one years then to pay said net income to her nephew, Theron Logan Rathje, an infant of the age of seven years at the time of her death. After the death of Theron Logan Rathje the income to revert to his mother, Josie Logan Rathje. No specific provision is made anywhere in the instrument for disposition of the corpus of the trust either upon the donor's death, with or without issue, or upon the death of the nephew, although she did make the following direction (R. 42.):

"Said May Logan hereby expressly reserves the right of substituting other securities in place of any, at any time, held by the trustee, adding other securities to the Trust; *and, also, of revoking this Indenture, and each and every trust hereby created, either in whole or in part, by notice in writing, to the Trustee, after a period has elapsed of five years from the date of this instrument;*

And, in case of such revocation, said trust estate, or the portion thereof as to which this Indenture may be revoked, shall be conveyed by said Trustee to said May Logan, her heirs and assigns."

(Italics Appellee's.)

It is alleged by appellant, and not disputed by appellee, that May Logan, at the time of the creation of this trust (August 26, 1921), was a resident of the State of Illinois; that all of the trust property was physically present there; that the trustee and successive beneficiaries were all residents of Illinois, and, that the property so transferred by the donor did not include any shares of stock of corporations organized under the laws of the State of New Jersey or of any national banking association located in the State of New Jersey (Stipulation of facts, R. 56-61).

Subsequent to the creation of this trust the decedent married with Samuel MacClurkan and prior to the date of her death became a resident of the State of New Jersey. As of the date of death the trust property was of a fair market value of $84,680.43. (R. 39.—28, 30.)

The decedent died without issue. She was survived by her husband, Samuel MacClurkan, a sister, Josie L. Rathje, and a nephew, Theron Logan Rathje. (R. 51.) Subsequent to the death of the decedent a controversy arose between the husband and the trustee as to the rights of the estate of decedent in the corpus of the trust after the termi-

nation of the life estates provided for therein. It will be recalled that the indenture failed to provide therefor. This difference was finally settled between the husband and the trustee through an agreement dated December 23, 1924 (R. 45-48) whereby the husband received, in settlement of all rights which he might have, cash and securities as follows (R. 46):

	Market Value As of Date of Death of Decedent
1. Chicago, City Rwy., 5% Mtge. Bonds due Feb. 1, 1924, of par value of $24,000	$18,480.00
2. 42 shares of Pfd. stock of Montgomery, Ward & Co.	3,488.00
3. 100 shares of Com. stock of Stewart, Warner Speedometer Co.	8,924.00
4. 180 shares of Com. stock of William Wrigley, Jr., Co.	6,840.00
5. Cash	4,837.02
Total	$42,569.02

With this state of facts before him, the comptroller assessed a transfer inheritance tax against the husband, in the amount of $253.98, based on the value of the net personal estate, exclusive of any trust property passing to him under the intestate laws, valued at $30,398.30, after allowing an exemption of $5,000. (R. 27.)

The comptroller further concluded that the transfer of the corpus of the trust was one intended to take effect in beneficial possession and enjoyment at or after the death of the donor and was therefore taxable. He found that the value of the life estate of Theron Logan Rathje, the nephew,

under the trust, was $69,881.47, based on his expectancy at the age of seven years, using the American Experience Table of Mortality at 5%. The benefits passing to the nephew were taxed at the rate of 8% resulting in a tax of $5,590.52. (R. 27.) The remainder of the trust fund, after deducting the life estate, amounted to only $14,798.96 and the comptroller was unable at the time of the assessment to determine the amount of tax chargeable on the transfer thereof since it will be remembered that the disposition of the corpus of the trust was contingent. He did, however, suggest a compromise tax on this portion of the trust in the sum of $295.98, which was accepted by the representative of the estate and paid.

Point at Issue

The only question to be determined is whether the transfer of property by the trust indenture of August 26, 1921, is taxable under the laws of the State of New Jersey as one intended to take effect in beneficial possession and enjoyment at or after the death of the donor.

Appellant, in his reasons for reversal before the Supreme Court (R. 17, 18), says that the transfer cannot be taxed because:

(A) The donor at the time of the creation of the trust was a resident of the State of Illinois.

(B) The life beneficiary of the trust was a resident of the State of Illinois.

(C) The trustee was a resident of the State of Illinois.

(D) All of the assets comprising the corpus of the trust were physically located in the State of Illinois and that no part thereof consisted of securities of New Jersey corporations.

The taxation of the transfer under these circumstances is claimed by appellant to be in violation of Article 1, paragraph 16, of the constitution of the State of New Jersey, and the Fourteenth Amendment of the United States Constitution. (R. 18.)

There is no dispute as to the fact that the decedent, at the time of her death, was a legal resident of the State of New Jersey.

ARGUMENT

POINT I

Transfers Intended to Take Effect in Beneficial Possession and Enjoyment After Death Are By Statute Taxable

The law in effect at the time of death determines what transfers are taxable, rates of tax, exemptions, etc.

In re Dupignac, 96 *N. J. Eq.* 284.
Price v. *Edwards,* 88 *N. J. Law* 582.
Hartman's Estate, 70 *N. J. Eq.* 664.
In re Strong's Estate, 17 *N. J. L. J.* 234.
Randolph on N. J. Inh. Tax Laws, p. 19.

Since May Logan MacClurkan died May 4, 1924, Chapter 228, Laws of 1909, as amended by Chapter 174, Laws of 1922 (effective March 11, 1922) prevails. Section 1, subsection 3, of the act as amended by the 1922 laws, provides:

> "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, * * * by deed, grant, bargain, sale or gift * * * intended to take effect in possession or enjoyment at or after such death * * *."

In fact the provision as now set forth in subsection 3 will be found in the first collateral inheritance tax act passed by this State in 1892. (Chap. 122, Laws 1892.)

A transfer of property is "intended to take effect in possession or enjoyment at or after death" when the donor reserves to himself the income therefrom during his life;

> *Carter* v. *Bugbee,* 91 *N. J. Law* 438; *aff'd* 92 *N. J. Law* 390.
>
> *In re Honeyman,* 98 *N. J. Eq.* 638.
>
> *American Bd. of Comm'r's, etc.,* v. *Bugbee,* 98 *N. J. Law* 84.
>
> *Farmers' Loan & Trust Co., Ex'r of Muller,* v. *Bugbee,* 6 *N. J. Misc. Rep.* 415.

or a specified amount yearly which in effect is equivalent to the income therefrom;

> *In re Harvey,* 129 *Atl. Rep.* 393; 2 *N. J. Misc. Rep.* 247.
>
> *Aff'd sub nom. Moore* v. *Bugbee,* 128 *Atl. Rep.* 679; 3 *N. J. Misc.* 435; *aff'd* 135 *Atl. Rep.* 919.

or reserves the power to himself to revoke the trust at will.

> *In re Fosdick,* 6 *N. J. Adv. Rep.* 28; 139 *Atl. Rep.* 318.

Vice Ordinary Buchanan, *In re Honeyman, supra,* aptly states the point as follows:

> "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. Law* 438; *affirmed* 92 *N. J. Law* 390."

That the trust indenture in the case *sub judice* is of this type is clear. The trustee was to pay over all income accruing from the trust property to the donor during her life. This constituted a reservation of the beneficial possession and enjoyment of the trust property. This phase of the case is too patent to require further argument. The case is well within the rule applied in:

Carter v. *Bugbee, supra.*

Am. Board of Comm'rs, etc., v. *Bugbee, supra.*

Farmers' Loan and Trust Co., Ex. of Muller v. *Bugbee, supra.*

POINT II

Law In Effect When Donor Dies and Not As Of Date of Execution of Deed Controls

It is the statute in effect when the donor dies that controls the right of the State to a tax in such matters.

Carter v. *Bugbee,* 91 *N. J. Law* 438; *aff'd* 92 *N. J. Law* 390.

And this is so whether the remainders be vested or contingent.

American Board of Comm'rs, v. *Bugbee,* 98 *N. J. Law* 84.

Congregational Home Missionary Soc. v. *Bugbee,* 101 *N. J. Law* 214.

In re Harvey, 129 *Atl. Rep.* 393.

Aff'd Moore v. *Bugbee,* 128 *Atl. Rep.* 679; *aff'd* 135 *Atl. Rep.* 919.

Farmers' Loan and Trust Co. v. *Bugbee,* 6 *N. J. Misc. Rep.* 415.

It is respectfully submitted that this phase of the case is *stare decisis* in this State.

The application of this principle to the present case cannot possibly operate to deprive appellant of his property without due process of law, contrary to the State and Federal constitutions, since under the terms of the trust deed there were no vested estates created. Upon the death of the creator the income was to be paid to her children, if any, until they attained the age of 21 years and in the absence of children, then to a nephew, if living, for his life. The interests of the beneficiaries under each of these provisions were purely contingent since they had to survive the creator to take. The estate of the nephew—the decedent having died without issue—took effect in title, possession and enjoyment only upon the death of the donor and could therefore be taxed constitutionally.

Carter v. *Bugbee, supra.*

Since it will be remembered that the deed made no disposition of the remainder, of course, no objection on this score can be raised.

POINT III

Transfer of Corpus of Trust Consisting Entirely of Intangible Personal Property is Taxable by State of Domicil of Deceased

The *corpus* of the trust, both as of the date of its creation and the date of death of the donor, consisted exclusively of Federal and Corporate bonds and shares of stock. This type of property is intangible and therefore taxable by the State of domicil of the deceased. The rule, *mobilia sequuntur personam,* has always prevailed in this State:

In re Strong's Estate, 17 *N. J. L. J.* 234.
In re Hartman's Estate, 70 *N. J. Eq.* 664.

and is generally applied throughout the country.

Blodgett v. *Silberman,* 277 *U. S.* 1; 48 *Sup. Ct. Rep.* 410; 72 *L. Ed.* 470.
Adolph Pilger v. *U. S. Steel Corp. Public Trustee et al.,* 6 *N. J. A. R.* 777.
Cornett's Ex'rs. v. *Commonwealth,* 105 *S. E.* 230.

Perhaps no case has ever had a more profound effect upon inheritance taxation than the recent decision of the United States Supreme Court in matter of *Blodgett* v. *Silberman, supra.* This case passed upon practically every type of chose in action and determined that they were all intangible personal property and taxable by the State of domicil. Included in the property there under review were:

(a) An interest in a non-resident partnership.

(b) Certificates of stock physically located outside of the State of domicil.

(c) Corporate bonds and U. S. Treasury certificates of indebtedness.

(d) An account with a New York banking house.

all physically within the State of New York, the decedent being a resident of the State of Connecticut.

The United States Supreme Court by this case has now definitely settled the rule that personal property of this nature is *intangible* and therefore taxable by the State of domicil of the deceased, thereby putting to rest any uncertainties which might have arisen under its previous decision in the case of *Frick* v. *Penna.* (268 *U. S.* 473), wherein it was held that *tangible* personalty, such as paintings, furniture, etc., was not taxable by the State of domicil if it had its physical *situs* elsewhere.

Justice Black, in his opinion in the case *sub judice,* says: (R. 73.)

> "It has been repeatedly held, that the states have the power to tax the residents thereof, for personal property owned by them, but located elsewhere. For a collection of cases see *Taxation in New Jersey, Secs.* 193, 194; 3 *Ed.,* 26 *R. C. L., p.* 273, *Sec.* 241; 37 *Cyc. pp.* 947, 952; *Bristol* v. *Washington County,* 177 *U. S.* 133."

POINT IV

Domicil of Decedent and Not of Trustee or Cestui Que Trust Determines Right of State to Tax

The mere fact that the trustee of the fund and the beneficiaries entitled to the enjoyment of the income after the death of decedent are nonresidents of the State of New Jersey can have no bearing on the right of this State to a tax.

Matter of Green, 153 *N. Y.* 223.

Trust Co. of Norfolk v. *Commonwealth,* 145 *S. E.* 325.

Line's Estate, 155 *Pa.* 378, 391; 26 *Atl.* 728.

In re Fulham, 96 *Vt.* 308, 318.

Gleason & Otis, on Inheritance Taxation, p. 460 (*4th Ed.*).

Speaking of the effect of the domicil of the *beneficiary, Gleason & Otis* (p. 460), says:

> "But if the testator is a resident it is not important where the beneficiaries may reside."

As to the domicil of the *trustee* attention is respectfully called to the opinion of the Special Court of Appeals of Virginia in the case of *Trust Co. of Norfolk* v. *Commonwealth, supra* (p. 329):

> "On the other hand, it is held in the case of a trust settlement by deed in which the donor reserves the right to revoke the trust during his lifetime, as in the instant case, the domiciliary state of the donor may impose a succession tax upon the trust fund on the death of the donor, as the establishment of the trust then becomes irrevocable, although the trustee, holding possession of the intangibles constituting the trust fund, is not a resident of the State in which the donor and beneficiaries are domiciled. * * *."

The reason for such a rule is at once apparent if the nature of the tax is considered. The power to impose a tax in the case of a resident decedent is founded on the control which the State has over the transmission of a decedent's property, whether by will, the intestate laws or by deed, grant, bargain or sale when made in contemplation of death or intended to take effect at or after death. Since the State has control of the descent and distribution of property of the deceased, it necessarily follows that it has the right to impose a tax on the privilege of exercising that right. It is a tax on the right to transmit property from the dead to the living founded on the State's control of the deceased in the case of a resident and of his property within the limits of the State in the case of a non-resident.

Neilson v. *Russell,* 76 *N. J. Law* 27, 655.
Eastwood v. *Russell,* 81 *N. J. Law* 672.
Hopper v. *Edwards,* 88 *N. J. Law* 471.
Maxwell v. *Edwards,* 89 *N. J. Law* 446; *aff'd* 250 *U. S.* 525.
In re Dellinger, 94 *N. J. Eq.* 409.

Obviously, the residence of the trustee or the beneficiaries has no bearing upon the taxability of the transfers, since it is not at all necessary that the State have jurisdiction over them. It is the cus-

tody of the decedent in the case of a resident that confers the power to tax.

POINT V

Residence of Donor at Date of Death and Not at Time of Transfer Controls Liability of Transfer to a Tax

In discussing this point it is quite important that we keep in mind the cardinal rule that the law in effect at the time of death and not at the time of transfer must control.

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

American B'd of Comm'rs, etc. v. *Bugbee,* 98 *N. J. L.* 84.

Congregational, etc., Society v. *Bugbee,* 101 *N. J. L.* 214.

In re Harvey, 129 *Atl. Rep.* 393.

Aff'd sub nom. Moore v. *Bugbee,* 128 *Atl. Rep.* 679; 135 *Atl. Rep.* 919.

Farmers' Loan & Trust, Ex'rs of Muller, v. *Bugbee,* 6 *N. J. M. R.* 415.

In re Dupignac, 96 *N. J. Eq.* 284.

Price v. *Edwards,* 88 *N. J. Law* 582.

Hartman's Estate, 70 *N. J. Eq.* 664.

Let us refer, for just a moment, to the title of the statute (Chapter 228, Laws of 1909) under which the comptroller made his assessment in this case. It is designated:

> "An Act to tax the transfer of property of resident and non-resident *decedents* * * *."

It operates on *decedents'* estates by imposing a tax upon the transfer of property by will, the intestate laws and by gift, deed, grant, bargain and sale in certain cases. It imposes a tax on transfers of property from the dead to the living. The act does not operate until death.

> "* * * tax laws of this nature in all countries rest in their essence upon the principle that death is the generating source from which the particular taxing power takes its being. * * *."
>
> *Knowlton* v. *Moore,* 178 *U. S.* 41, 56.

In fact, death must be proved before the power to initiate a tax proceeding arises. (*Kite's Estate,* 187 *N. W.* 585.) It is obvious that the New Jersey statute cannot operate upon transfers between the living. *Gleason and Otis on Inheritance Taxation* (*4th Ed.*), *p.* 267 says:

> "9. *The transfer takes place at death.*
>
> * * * * * *
>
> "It is not a transfer between the living that is taxed, but a transfer from the dead hand to the living hand; and therefore. it is the doctrine, subject to certain limitations and exceptions (see Part B7) that the transfer which is the subject of the tax takes place at death."

Appellant urges that we must determine the taxability of the transfer *sub judice* as of the date of the execution of the deed and that since May Logan MacClurkan was a resident of Chicago, Illinois, as of the date of the execution of the trust indenture it must necessarily result that the transfer is exempt.

The point is certainly a novel one. At the very outset appellant is confronted with the well-established rule in this State that it is the act in effect at the time of death which must control the question of taxation.

Aside from this, let us consider the practical application of appellant's rule. If the tax attaches as of the date of the transfer, then it must necessarily follow that the comptroller is bound, if cognizant of the fact, to assess a tax immediately upon the execution of a transfer if it be of a taxable nature. This, even though no estate of a

decedent be before him. The files of the comptroller disclose many transfers which may some day become taxable, but he has never been of the opinion that he may reach out at this time and collect such a tax because the donor is still living. He feels conclusively bound by the title of the act which initiates the tax proceeding only upon decedents' estates and not upon living donors. The latter would be more in the form of a gift tax such as the Federal government had. New York has been held to have a transfer, as well as an inheritance, tax act and that the State might, if it desired, and had knowledge thereof, levy a tax upon a transfer at the instant of the execution of the deed. (*Matter of Hodges,* 215 *N. Y.* 447.) But our act cannot be so construed in view of the limitations placed upon it by its very title.

As far as your respondent is aware, however, and notwithstanding the possibilities as alleged, even under the New York act, no State has ever attempted to reach out and tax a transfer between living persons under authority of an inheritance tax act. No one has ever suggested that New Jersey could anticipate the death of the donor and tax a transfer by him before his decease. The very form and wording of the statute surely would make such a stand absurd. The act asserts itself the moment death occurs; never before.

Not only the title, but the whole scheme of section one of the statute shows the intention that the act shall operate only upon death in accordance with the circumstances as they then exist. The first subsection provides for a tax when the transfer is by will or the intestate laws of property owned by a resident of the State. The second subsection similarly operates when the decedent is a nonresident but dies possessed of New Jersey property. Surely there can be no transfer by will or the intestate laws until death occurs. These are instruments of the law which operate only when

death ensues. The third subsection operates on transfers which, though made during lifetime, are in fact of a mortuary nature; a provision of the law intended to prevent evasion, as all tax laws must have, if they would be anything more than a mere gesture. The section taxes transfers in contemplation of death and also those intended to take effect in possession or enjoyment at or after death. But even here "death" is the very source of the taxing power.

If this were not so let us pause for a moment and see what would be the result. A hypothetical case will serve to illustrate the difficulties of the taxing authorities if the tax attached as of the date of the transfer. Let us suppose that "A" created a trust by agreement dated January 1, 1928, whereby he placed property of the value of $100,000 in the hands of a trustee to pay the income to himself for life and upon his death to pay the *corpus* over to his children. Such an agreement is a perfect illustration of a taxable transfer, but notwithstanding this fact there would be no justification whatsoever for an immediate assessment by the comptroller. The reasons are so patent as to suggest themselves. In the first place there would be absolutely no evidence that the transfer would in fact pass in beneficial possession and enjoyment at or after the death of the donor. He might see fit to waive his right to the income long before death and direct that it be paid to the remaindermen, in which event they would be in full posesssion and enjoyment of the trust property while he was living. Again, the trust property might be entirely destroyed many years before the donor's death, in which event it would be difficult to see how there would be any passing of property in beneficial possession and enjoyment at or after his death. The act taxing such transfers might be abolished, or the beneficiaries taxable as of the date of the deed might be

entirely exempt as of the date of death of the donor. Certainly it must be apparent that the taxing officer's task under such an interpretation of the act would be a difficult one.

It will be instructive if we consider briefly the converse of appellant's case. Let us assume that May Logan MacClurkan was a resident of New Jersey at the time of the transfer in 1921 and then moved to Illinois and died there in 1926. Would any one suggest that New Jersey would be entitled to an inheritance tax under such circumstances. There would be no transfer by a *resident decedent* intended to take effect at death because Mrs. MacClurkan would have been a *nonresident decedent.* There would have been no basis for an immediate assessment upon the execution of the trust agreement because there would have been no way of determining at that time whether any transfer of property would in fact pass in beneficial possession and enjoyment at or after her death. Further, how would the State be able to collect its tax in such a case. The tax, by section five of the act, is due and payable only upon death. If at that time May Logan MacClurkan was a resident of Illinois and all of the property located there, the State's assessment would be a mere formality, productive of no beneficial result. All of these objections are overcome when the act is applied in accordance with its plain wording and intent.

The decedent at death was a resident of New Jersey and ample of her property located here, from which the administrator could obtain funds with which to pay the State's claim.

As the matter now stands, appellant does not urge that Illinois has taxed this transfer as though it were made by a resident of that State based on the argument that donor, as of the date of the indenture, was a resident of Illinois and that the transfer was therefore one made by a resident. If a tax was assessed at all by Illinois it was based

upon the custody which it had over the *corpus* of the trust and not because of any jurisdiction over the donor at the time of transfer. In fact, the fair assumption is that the taxing authorities of Illinois do not even know of the donor's death. And, why should they unless they be interested to the extent of a nonresident tax, a matter which, of course, has no place in the present discussion unless to prove more convincingly that if she were taxed as a *nonresident* of Illinois, that is all the more reason why she should be taxed as a resident of New Jersey.

The rule established by our Supreme Court and Court of Errors and Appeals, that the act in effect as of the date of death controls the liability to tax is a just one under which all difficulties in the instant matter vanish. It is apparent from the facts of the case that no hardship results from the application of such a rule. There is no vested remainder to be diminished by the tax since it will be recalled that the deed made no attempt to dispose of the *corpus* at all. Neither can there be any constitutional objection to the tax upon the life estates as provided for by the trust since it was only by surviving the donor that such an estate could have any beneficial value. It was the death of the donor which brought those estates into existence and gave them their value. Such an interest vesting only upon the death of the donor is clearly taxable and not subject to a constitutional objection. *Carter* v. *Bugbee, supra; In re Garcia's Estate,* 170 *N. Y. Supp.* 980.

Samuel MacClurkan, the husband, under the terms of the settlement agreement dated December 23, 1924 (R. 45-48) came into possession of ample trust property to satisfy whatever tax is due the State so that there is no unjust burden cast upon him as administrator of the estate of his wife, or upon the property of the wife to be received by him as her sole heir under the intestate laws.

THE OPINION OF THE SUPREME COURT

The opinion of the Supreme Court, affirming the Inheritance Tax assessment by the Comptroller, was delivered by Justice Black (R. 68-74). The Supreme Court apparently had no difficulty whatsoever in sustaining the assessment since the opinion directly meets every issue raised by appellant and disposes of them in a very thorough and conclusive manner.

The salient features of the case were determined as follows:

(a) Decedent was the owner of the property placed in trust.

(b) The transfer was one intended to take effect at or after death since the decedent reserved until death the beneficial possession and enjoyment of the corpus.

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

American Board of Comm'rs v. *Bugbee,* 98 *N. J. L.* 84; *aff'd* 101 *N. J. L.* 214.

(c) Law in effect when donor dies and not the law at the date of the trust deed controls.

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

(d) The corpus of the trust comprised only intangible personal property and therefore taxable by the state of domicil of the deceased.

In re Hartman's Estate, 70 *N. J. Eq.* 664.

Eidman v. *Martinez,* 184 *U. S.* 578.

Blodgett v. *Silberman,* 48 *Sup. Ct. Rep.* 410; 72 *L. Ed.* 470.

Taxation in N. J. (3 *Ed.*) *Secs.* 193, 194.

(e) Domicil of decedent and not that of the trustee or *cestui que trust* determines the right to tax.

Matter of Green, 153 *N. Y.* 223.

Gleason and Otis on Inheritance Taxation (4th Ed.), p. 460.

(f) Residence of donor, at date of death and not at time of the transfer controls the liability for a transfer tax.

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

American Board of Comm'rs v. *Bugbee,* 98 *N. J. L.* 84; *aff'd* 101 *N. J. L.* 214.

REPLY TO CONTENTIONS OF APPELLANT

Appellant cites the cases of *Wachovia Trust Company* v. *Doughton,* 272 *U. S.* 567, and *Walker* v. *Treasurer & Receiver General,* 221 *Mass.* 600, to sustain his contention that the State lacks jurisdiction of the subject matter of this trust. But each of these cases involves the right of the State to tax the exercise of a power of appointment in the estate of the donee of the power who died a resident but where the donor was a nonresident and all the trust property was beyond the State. It is a well-settled rule of law that appointed property passes, not as a part of the estate of the donee, but of the donor and that the appointees take, not under the will of the donee, but under the will of the donor of the power.

Hoyt v. *Hancock,* 65 *N. J. Eq.* 688.

United States v. *Field,* 255 *U. S.* 257.

And, the law of the domicil of the donor of the power controls in all matters pertaining to the effectual disposition of the appointed property.

Farnum v. *Pennsylvania Co.,* 87 *N. J. Eq.* 108.

Pearce v. *Lederer,* 262 *Fed.* 993; *aff'd* 266 *Fed.* 497.

so that it is apparent in this class of case that if the State lacks jurisdiction of the trust property there

is no ground upon which to rest the tax since it has no jurisdiction over the nonresident creator of the power, and custody of the donee makes no difference. This line of cases is therefore not analogous to the instant matter, since here the decedent was the owner of the property placed in trust and by the terms of that trust was receiving the beneficial possession and enjoyment of such property until death, a condition which clearly brings the transfer within the statute and the decedent at the time of death was a resident of New Jersey and clearly subject to its jurisdiction. The Supreme Court, in the matter *sub judice*, had no difficulty in distinguishing this class of cases as is evidenced by the following excerpt from the opinion as delivered by Justice Black:

> "But as the Attorney-General, in the brief, points out, in each of these cases there is involved the right of the State to tax the exercise of a power of appointment in the estate of the *donee,* who died a resident, but wherein, the donor was a non-resident and all the trust property was beyond the State. It is a settled rule of law, that appointed property passes, not as a part of the estate of the donee but of the donor. The appointee takes not under the will of the donee but under the will of the donor of that power. *Hoyt* v. *Hancock,* 65 *N. J. Eq.* 688; *United States* v. *Field,* 255 *U. S.* 257."

The *Matter of Edmund Dwight, N. Y. L. J.,* October 18, 1911, is also relied upon by appellant. But this case has no application to the instant matter since there the decedent was a nonresident of the State of New York and the only problem was whether there was property within the State of New York in order to sustain a nonresident tax. The very basis for the levy of taxes against nonresidents, of course, is jurisdiction of their property and this jurisdiction admittedly must be ac-

tual and not constructive. While in the case of a resident the foundation for the tax is jurisdiction of the decedent, and property, even though beyond the State's borders, if intangible, is taxable.

Blodgett v. *Silberman,* 72 *U. S. Sup. Ct.* (*L. Ed.*) 470; 277 *U. S.* 1.

Obviously *Frick* v. *Pennsylvania,* 268 *U. S.* 473, has no application here, since that case is confined solely to the taxation of tangible personalty such as furniture, art collections, etc., while in the present matter the *corpus* of the trust is composed of stocks, bonds, etc., such as held intangible and taxable at the domicil of the decedent by the United Supreme Court in *Blodgett* v. *Silberman, supra.*

It is respectfully submitted that each and every one of the conclusions reached by the Supreme Court is supported by sound reasoning and ample authority and the judgment under review should therefore be affirmed.

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