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court from granting bail. The dissenting justices recognized this danger. In agreement with the rule set forth, they argued that the length of sentence did not show extenuating circumstances warranting the conclusion that the trial judge had abused his sound discretion.

What length sentence the Court will consider as indicative of extenuating circumstances is left undetermined. This indefiniteness could result in a large increase in unnecessary litigation on this particular question. The proper application of the rule, which would leave within the sound discretion of the trial court the determination of whether bail is to be granted, is largely circumvented by the action of the Supreme Court. Such an attitude exhibits coercive characteristics that could have a regrettable influence on decisions of trial courts.

WILLIAM BENNETT, JR.

DOWER: NONLIABILITY FOR FEDERAL ESTATE TAX UNDER FLORIDA APPORTIONMENT STATUTE

The Florida National Bank and Trust Co. v. Fuchs, So.2d ____ (Fla. 1952)

Decedent died testate December 31, 1949. His widow dissented from the will and elected dower. The executors filed the federal estate tax return, in which they properly claimed the marital deduction in an amount equivalent to the value of assets allotted the widow as dower and certain jointly owned property that passed to her by survivorship. The total value of assets passing to the widow did not exceed fifty percent of the adjusted gross estate. The executors sought under a 1939 amendment to the probate act of 1933 to hold the widow liable for a portion of the federal estate tax. HELD, under Florida law the widow's share in the decedent's estate is not chargeable with any part of the tax.

The marital deduction[1] was created by the Revenue Act of 1948.[2] In arriving at the decedent's net estate for federal estate tax purposes the Internal Revenue Code allows as a deduction any interest in

[1] INT. REV. CODE §812 (e).

[2] §361 (a), 62 STAT. 117 (1948).

property passing from the decedent to the surviving spouse in accordance with Section 812 (e), limited by the provision that the maximum allowable deduction may not exceed fifty percent of the adjusted gross estate.[3]

The Code declares the federal estate tax to be a lien upon the decedent's gross estate,[4] but there is no provision for distributing the burden of tax among assets allotted to beneficiaries of the estate. It has been held, therefore, that the applicable state law should determine the ultimate impact of the federal estate tax.[5]

The Florida probate act of 1933[6] provided that the widow's dower should be distributed to her free from liability for decedent's debts, charges and expenses of administration, and "all estate and inheritance taxes." The Florida Court, however, in a 1936 case[7] involving the estate of a decedent who died in 1933 before the effective date of the probate act of that year,[8] held the dower liable for a ratable share of the estate tax. The decision was based on a 1931 Florida statute,[9] and the 1933 act could not, of course, have been applied. The Legislature in 1939, possibly misled by the decision in this case, enacted a statute[10] providing that dower should bear a ratable share of estate and inheritance taxes and of all costs and charges and expenses of administration. This statute was in effect in 1949 and at the time of decedent's death had not been expressly repealed or amended.

In 1949, subsequent to creation of the marital deduction by amendment of the Internal Revenue Code, the Florida Legislature, in harmony with that provision, enacted an apportionment act.[11] That act provided that in apportioning the estate tax burden there should be an allowance "for any exemptions granted by the act imposing

[3]The adjusted gross estate is computed by deducting from the value of decedent's gross estate expenses and liabilities enumerated in INT. REV. CODE §812 (b), including funeral and administration expenses, claims against decedent's estate, etc.

[4]INT. REV. CODE §827.

[5]Riggs v. Del Drago, 317 U.S. 95 (1942); Edwards v. Slocum, 264 U.S. 61 (1924); YMCA v. Davis, 264 U.S. 47 (1924).

[6]Fla. Laws 1933, c. 16103.

[7]Henderson v. Usher, 125 Fla. 709, 170 So. 846 (1936).

[8]The 1933 probate act became effective as to decedents dying after 12:01 A.M., Oct. 1, 1933. Decedent died June 21, 1933.

[9]Fla. Laws 1931, c. 14739, §19.

[10]Fla. Laws 1939, c. 18999.

[11]Fla. Laws 1949, c. 25435, now FLA. STAT. §734.041 (1951), Legis., 3 U. OF FLA. L. REV. 83 (1950).

the tax and for any deductions allowed by such act for the purpose of arriving at the value of the net estate . . . ."[12]

The Court interprets this language in the statute as exempting the portion of the estate within the limitation of the marital deduction from any share of the burden of the federal estate tax. It concludes that the 1939 act was repealed by implication.[13] The lien of the Federal Government for estate taxes would of course attach to the "exempt" property if there were not enough other assets to pay the tax. The Court's rationale is that dower and other assets passing to the widow within the marital deduction are not included in taxable net estate and do not increase the estate's federal estate tax burden, and for that reason this portion of the estate should not be called upon to pay any part of the tax.

The Court's position is supported by the 1951 amendment[14] to the 1939 act making that statute conform to the conclusion reached in the instant case. The 1951 act exempting dower from the federal estate tax nevertheless provides that when the dower interest has the effect of increasing the tax ". . . dower shall be ratably liable with the remainder of the estate for the estate taxes due . . . ."

It is true, and properly so, that in Florida dower and other property passing to the widow from her husband's estate shall not be reduced by reason of the federal estate tax so long as the total value does not exceed the allowable marital deduction. When there is such an excess it would appear that the amount of tax chargeable against the widow's portion would be that part of the total estate tax which is occasioned by the value of the property passing to the widow in excess of the marital deduction. It is interesting to note that the 1951 statute makes no provision for exonerating a husband's share for which the marital deduction is allowed.

Such a provision was unnecessary because there was no statutory provision relating to a husband's share similar to that expressly requiring the dower interest of a widow to bear a portion of the estate tax burden. In any event the language of the instant case and the 1949 statute[15] is broad enough to cover this situation, and the husband's portion will no doubt pass to him free of the tax. Likewise,

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[12]FLA. STAT. §734.041 (1951).

[13]The 1949 act, note 11 *supra,* is therefore in apparent conflict with the 1939 enactment, note 10 *supra,* and is held by implication to repeal the prior law.

[14]FLA. STAT. §731.34 (1951).

[15]FLA. STAT. §734.041 (1951).

the deduction allowed by the Internal Revenue Code for property previously taxed[16] and for charitable bequests[17] should, under the 1949 act and the opinion in the principal case, exempt from any share in the estate tax burden those to whom these classes of property pass. In view of the 1951 statute protecting the widow, these will be the chief continuing values of the decision in the instant case.

LEO WOTITZKY

EQUITY: WHEN TIME IS NOT OF THE ESSENCE OF AN OPTION TO RENEW LEASE

Dugan v. Haige, 54 So.2d 201 (Fla. 1951)

Appellants gave appellees a ten-year lease on commercial property, with a five-year renewal option exercisable upon written notice at any time prior to May 1, 1950. Notice was not given until May 19, 1950, and the lessors refused to extend the term. Lessees sought specific performance, which was granted below. On appeal, HELD, the chancellor did not abuse his discretion, because the lessors, who were not harmed by the delay, had actual notice of the lessees' intent to renew; the equities favored the lessees; and the only copy of the lease in lessees' possession provided for a term of fifteen years. Decree affirmed, Associate Justice Parks dissenting.

It is ordinarily held that time is of the essence of an option to purchase or renew a lease of realty,[1] and that provisions in the instrument concerning notice of acceptance constitute conditions precedent, with which absolute compliance is required.[2] The fact that the

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[16]INT. REV. CODE §812(c). Property previously taxed with certain limitations, is property which has been taxed within five years in the estate of a prior decedent.

[17]INT. REV. CODE §812(d).

[1]J. M. Wilcox & Co. v. Scott-Burr Stores Corp., 97 F. Supp. 792 (N.D. Tex. 1951); Cole v. Williams, 157 Fla. 851, 27 So.2d 352 (1946); Orlando Realty Bd. Corp. v. Hilpert, 93 Fla. 954, 113 So. 100 (1927); Good v. Evans, 296 Ky. 756, 178 S.W.2d 600 (1944).

[2]Raleigh Associates v. Jackson, 96 N.Y.S.2d 528 (Sup. Ct. 1950); Goldberg v. Himlyn, 121 Misc. 580, 201 N.Y. Supp. 837 (King's County Ct. 1923); Pope v. Goethe, 175 S.C. 394, 179 S.E. 319 (1934).