

The DuBois Collateral Inheritance Tax Case

The following is the opinion of Justice Sterrett, as filed at Pittsburgh on Monday, of last week, October 1st, concerning the suit of the Commonwealth vs. John E. DuBois of Clearfield county, for collateral inheritance tax due the State. The Court says: Briefly stated the question in this case is whether the Commonwealth is entitled to collateral inheritance tax on \$2,730,000 the agreed value of certain real and personal property, which belonged to John D. Bois on January 17th, 1884.

On that day Mr. DuBois executed and delivered to his nephew, John E. DuBois, a deed of conveyance under and by virtue of which it is claimed the title to said property so conveyed in the grantee, during the life of the grantor, that at the decease of the latter in May, 1885, it was not subject to collateral inheritance tax under any of the provisions of our act which declared: "All estates, real, personal and mixed, of every kind whatsoever, passing from any person who may die seized or possessed of such estate, being within this Commonwealth, either by will or under the intestate laws thereof, or any part of such estate or estates or interests therein, transferred by deed, grant, bargain or sale, made or intended to take effect in possession or enjoyment after the death of the grantor or bargainor, to any person or persons or bodies politic or corporate, in trust or otherwise, other than to the use of father, mother, husband, wife, children or legal descendants born in lawful wedlock, shall be and they are hereby made subject to a tax or duty," etc.

The only ground on which the Commonwealth can assert any right to the tax in question is that the conveyance, in the language of the Act, was "made or intended to take effect in possession or enjoyment after the death of the grantor or bargainor." If it was either made or intended to take effect, either in possession or enjoyment, after his death, it follows from the very language of the act that the Commonwealth is entitled to the tax. Conceding the conveyance was made and intended to take effect in possession before the death of the grantor, was it either made or intended to take effect in enjoyment before the happening of that event? In a clear and convincing opinion, on which we might well rest an affirmation of his decree, the learned President of the Orphan's Court held that the conveyance was not intended to take effect, nor did it in fact take effect in enjoyment until the decease of the grantor. His finding of fact to that effect was clearly warranted by the evidence; but waiving that point, and conceding, for sake of argument, that there is no competent evidence of intention debar the instrument itself, we have no doubt the conveyance fairly construed, according to the spirit and meaning of the Act above quoted, did not take effect in enjoyment until the decease of the grantor. The manifest effect of the conditions, reservations, covenants and stipulations in the deed was to clothe the grantee with the naked legal title, liable to be defeated at any time by the powers reserved to the grantor to create liabilities either ex contractu or ex delicto to the full value of the property and beyond it.

In the first place the grantee, in consideration of the conveyance, covenants and agrees to pay and fully discharge "all debts, notes, obligations, covenants, contracts, and damages of every nature and character whatsoever, whether arising or accruing from contracts or suits of said John DuBois, and all such notes, obligations, debts, damages or contracts of the said John DuBois, executed, made or incurred at any time in the future until the day of his death, by the said John DuBois; and for the full and faithful performance of this covenant, all the real estate above conveyed is hereby charged in the hands of the party of the second part, his heirs or assigns; and any and all the obligations of the above covenants, may, by the holders or the owners of the rights of action which may be or are embraced in the above covenants, be sued for and recovered off the said John DuBois by suit brought directly against him." It is further provided that in case the grantee dies before the grantor, "the deed, sale and conveyance and all the covenants therein shall be null and void, and all the property, real, personal and mixed above sold shall become fully re-vested in the said John DuBois, his heirs and assigns forever, together with all increments accruing thereon and therefrom." Again it is further expressly stipulated that the grantee is to have and hold all the property conveyed, "subject to the foregoing conditions and charged with the foregoing covenants."

According to the express terms and conditions of the conveyance, it is simply impossible that it could take effect in enjoyment, as to any of the property embraced therein, during the lifetime of the grantor. In the event of his surviving the grantee, the deed was to become null and void and everything to revert to the former. During their joint lives the grantor had the power to incur obligations to the full value of the property, for which the property itself, as well as the grantee individually was director and specifically liable. The naked legal title acquired by the grantee was the merest shadow. The grantor held a firm grasp on the entire substance

and her estate as long as he lived. In view of all this, it is idle to contend that, in any proper or statutory sense of the word "enjoyment" the conveyance in question took effect or could have been intended to take effect in enjoyment prior to the death of John DuBois. In principle the case is virtually ruled by Reish vs. Commonwealth, 106 Pa 521, and Saiber's Appeal, 110 Id. 329. In the former it was held that the right of the Commonwealth to collateral inheritance tax was not defeated by a conveyance or transfer of the title to the property, during the lifetime of the owner, nor by possession taken under such conveyance, if the enjoyment of the property conveyed is not intended to take effect till the death of the grantor. In this case we have seen the conveyance was not intended to take effect in enjoyment during the lifetime of the grantor, nor in point of fact did it, or could it do so. It is unnecessary to notice the specifications of error seriatim. As already intimated, the able and exhaustive opinion of the Court below, in which every material question is considered and correctly disposed of, relieves us from further consideration of those questions.

Decree affirmed and appeal dismissed at the costs of appellant.

Keep them in Mind of it.

When the Republican orators are blabbing about the many good things they have accomplished for the country during twenty-four years reign, Democrats should never fail to remind them that they don't forget to mention the army of tramps with which they have filled the country.

Whenever they boast of the prosperity of the country, and attribute that prosperity to their high protective war tariff, Democrats should not fail to remind them that only the rich have prospered and that at the expense of the Government and the people, by being robbed of the public lands, while the poor have scarily groan poorer.

And whenever they claim credit for the thousands of miles of new railroads they built—and claim that as evidence of the progress resulting from protection—Democrats should not fail to point them to the fact that four-fifths of these thousands of miles of railroads were built at the expense of the people—that is, out of the proceeds of the sales of the public lands, and that the government is still held responsible for many millions of dollars of the overdue obligations of these companies; and Democrats must not fail further to remind these public liars and defamers that during the fifteen years of low tariff (Free Trade, as the Republicans claim) from 1846 to 1860, almost as many miles of railroad were constructed as were in the twenty-five years under high tariff and that without one dollar's help from the government.

And when these hired hypocrites and slanderers go about the country claiming as the effect of their protective system the employment of workmen at fair wages, Democrats should never fail to point them to the streets of all the big cities filled with beggars—to our jails and our houses filled to overflowing—to the legions of tramps to be found in every city, way and byway throughout the rural districts—to the strikes and lock-outs that are constantly taking place—to the hundreds of riots and murders and shooting down of innocent workmen as if they were public enemies. And don't fail to remind them that none of these things were ever known in our country until their system of tariff monopoly got control and on the day of vengeance is near at hand to them, that injured and insulted human nature, and American manhood will submit no longer to such degradation and humiliation and public and private robbery.

Confident of Democratic Success.

"Yes," said Governor Gray, of Indiana, to a representative of the Cincinnati Enquirer, "I think we will carry Indiana. I shall do everything in my power to bring that result about. If the Republicans should by any means succeed in capturing the Electoral vote of Indiana it will be through no fault of mine. We have, however, got a hard fight, but I am confident that the Democrats will carry the State. One thing I am sure of, and that is that the Republicans could not carry the State on the issue by leaving it to the people. On that point I would be willing to stake my existence. We would carry the State by at least 8000 if the contest should be given to the people solely upon the issue. The Republicans certainly intend to make a vigorous fight, and it is probable that they will try to carry the State with a grand rush during the closing days of the campaign. They are apparently quite as confident in their ability to do so as we are. Still we have been having tremendous meetings. Those attending these meetings are exceedingly enthusiastic. I have stumped the State during every campaign for the last ten or a dozen years and have always had good crowds, but this year the crowds that I meet exceed anything that I have ever heretofore seen. Consequently, I cannot see how, in a plain, honest, fair contest, the Republicans will be able to carry Indiana."

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WAY OUT IN ALASKA.

A TENDERFOOT'S ACCOUNT OF HIS FIRST TRIP PROSPECTING.

Rosette Romance of Boundless Wealth and Magnificent Scenery—Feasted by a Hospitable Indian—His Claim to the Country—A Bad Indian and Family.

On the morning of July 9 we left Douglas City on the favorite and fast sailing canoe Hiak, Capt. Jim (both well and favorably known in Alaskan waters), for a prospecting trip in Lynn Canal. As the day was fine and the wind fair, the sail through Gastineaux, Stephens' passage and Lynn Canal was delightful, as each one is dotted with little islands, rising from the water's edge to a height of a thousand feet or more, while the mountains on the main land are thousands of feet high, with ragged peaks not unlike the teeth of an old fashioned cross cut saw, the spaces between the peaks being filled with glaciers and the peaks themselves are covered with perpetual snow. As I am a chee-chaco in the country (that's what my chums call me), everything appeared wild and picturesque, and as I burst out in exclamations of admiration every once in a while at the scenery, they would say, "Oh, shucks! that ain't nothing; you had ought to see the scenery on the Yukon."

The first night we camped on a creek about thirty miles from Juneau, where our native told us there was some quartz. We stayed and examined it, but did not think enough of it to locate it. The next day we arrived at our native's illabec (as he called it), situated at Lynn Canal, and distant about forty miles from Juneau. It is a beautiful bay, filled with many islands and teeming with fish, from the mighty whale to the tiny herring, while the woods and mountains are full of game—the small and harmless ground hog and the large and fierce brown bear.

The Indian who accompanied us is a fine specimen of his race, as he stands over six feet in his bare feet, and weighs over 300 pounds. He is a Mormon in proclivities, for he has a number of wives, who appear well satisfied with him as their lord and master, and I could see no sign of the green eyed monster. He is a bear hunter by occupation, an enthusiast in that line, and many were the stories and hair breadth escapes he related. I can well believe he is a good hunter, as his larler is well stocked with fish, flesh and fowl; his wives were brown, fat and greasy; his dogs, of which he had seven, were all in splendid condition, and that is more than he said of most Indian dogs. He told us the peculiarities of each, and showed us the many wounds they had received in the encounters with bruin. He also showed us the hole where he buried the bear's skulls in it. I inquired of him why he did so, and he told me, "Bear all same Indian; by and by he go to the happy roosting ground."

As a host he is a prince, and right royally he treated us to all kinds of game put up in Indian style. We had smoked porcupine put up in seal oil, and one of our crowd who pretends to be an epicure said it was delicious; there were seal's flippers cooked in grease, which were not dissimilar to pig's feet; baked ground hog stuffed with muskels, which gave the hog a fishy taste and improved the flavor of the muskels. His bear's head cheese was actually immense, and there were many more dishes too numerous to mention. He showed many kinds of roots and herbs good for food and medicine. He also showed his canned halibut, hocks and all of his dancing outfit. His headgear and mask cost him \$50; it was wild and uncouth, and was carved out of yellow cedar. It had a large nose like a parrot's beak, eyes made of mother of pearl, a mouth which contained the teeth of the only swash doctor on Seah's ark, and made from the hide of the Ichthyosaurus, hair made from the sea lion's whiskers. His hunting knife had some unique carving on the handle that represented some Indian myth the bears were afraid of. As a prospector, like many more following that vocation, I do not consider him a success, as we examined many places that he showed us, but could see nothing except white and barren quartz.

He had other places he wanted to show us, and we would have gone with him, but one of the party had an acute attack of inflammatory rheumatism. The native told us the extent of his territory, and said he expected white men prospecting on his domain to pay him \$2.50 per day for his knowledge and services. He said the land and water belonged to his ancestors from time immemorial, and he inquired if white men owning a similar amount of land would allow everybody on their mind the "blasted bondholders" of America and the land question that is now agitating the British empire, where lords, dukes and earls are holding hundreds of miles square that their ancestors acquired by might, while he claims his by right. The only difference I see between them and this Indian is that he will be glad to see you hunt or fish on his supposed country, while if you caught a trout in their waters or shot a pheasant in their woods you would get about five years.

So we parted with feelings of regret, promising to return if the Hoonah springs cured our companion. We ran across two men looking for fresh water. "Just think of it!" my chums exclaimed, "hunting for fresh water in Alaska! They must be pilgrims like yourself." The next camp we made was on a large stream, where we found an Indian and his family on a barren point, exposed to the elements from all points. He had to carry water nearly half a mile. We wondered why he built on such a bleak place, but he was not communicative, so we concluded he had committed some depredation on the yellow Indians, and was continually on the lookout, as a foe could not approach him without being seen.

The next day we traveled against a head wind and a terrible rain, and after getting drenched to the skin we camped. It would be very pleasant prospecting in Alaska were it not for the rain, head wind and tides, thick brush and muskitoes, and a few other little inconveniences. Then, again, if I was looking through a tourist's eyes from the deck of an ocean steamer, how romantic the majestic mountains and rivers, hundreds of miles of pine clad shores, and every now and then a bear! Then in smooth, narrow channels can be seen the mammoth whale, forging his way along nearly as fast as the steamer, and every few feet can be seen the shining silvery sides of a beautiful salmon, disporting, or trying to escape from some finny monster who is trying to catch him for a meal. I saw a seal gobbie one in less than two seconds. To me the animals on such a trip remind one of a great menagerie, without having to pay at the door, while the waters are a grand aquarium; and take it altogether, were it not for the stern reality of beans and bacon, a prospecting tour in Alaska is like visiting an ever changing panorama.—Juneau (Alaska) Mining Record.

Considering how much easier it is to tell the truth than it is to lie, we cannot help being astonished at some of the things we hear.—Somerville Journal.

THE BANANA BUSINESS.

Preparing the Soil—Putting Out the "Suckers"—Deadly Foes.

Mr. Kennedy took me in charge early, and on the wharf (on the shady side of the shed) gave me the account of the banana business that I shall try to reproduce. I cannot do better than imagine that the reader is about to settle in Jamaica to engage in raising bananas, and that I am telling him what I have learned about the industry. The land used is likely to be either an unused sugar estate, or what is known in Jamaica as "ruinate," that is, land that has stood idle so long that it has become overgrown with tall bushes and small trees. The first cost of land of the latter sort is of course much less, but the expense of clearing it is so much greater that it is doubtful whether good cultivable land is not cheaper in the end.

The ground having been cleared and plowed, banana "suckers" are set out, the distance between them depending very much upon the quality of the land. In ten to fourteen months after planting the tree has reached its full size, ten to twelve feet in height, the stalk then being about eight inches in diameter at the base, and the bunch of fruit is ready to cut for shipment. The fruit is always cut while yet green, and each stalk produces only one bunch. When the fruit is cut that is the end of that stalk, and the stalk is cut down. Fresh "suckers" are produced from the roots, however, and several of these are allowed to grow for the next crop. For the first few months a good deal of cultivation is necessary in the banana field to keep it clear of weeds, but when the stalks grow and the leaves begin to spread they effectively choke down the weeds, and little more attention is needed. From \$30 to \$50 an acre is a fair estimate of the cost of plowing, planting and cultivating for one year, but where the land has to be cleared of trees this increases the cost considerably. Once started, the plantation is good for five or six years without much further labor beyond keeping it clear of weeds at certain seasons.

But the banana planter has a deadly foe in the hurricanes and high winds that frequently sweep over the West Indies. The banana tree has very small roots and is easily knocked over. Sometimes even with nothing worse than a lively "norther" an entire plantation is destroyed in an hour, and there is nothing for it but to start over again. As to the risks and profits, Mr. Kennedy says: "From my experience I do not think the banana yields the planter a very large profit, though there are exceptions to the rule. A tropical hurricane will sweep a banana cultivation level with the ground in an hour. Besides these hurricanes, we usually have very strong winds, (norther) during the winter months, that often blow down acres of bananas. The tree is easily blown down, especially when it has a large bunch of bananas hanging from its top. Were it not for these great drawbacks, planting bananas would be a profitable investment. It is important that a planter understands the business, and knows how to work the Jamaica labor."—William Drysdale in New York Times.

Danger of Malaria in Cities.

It is a common idea that greater risk is run from this cause of disease in the country than in towns and cities, but there are strong reasons for doubting that such is the case, so far as any unhealthy influence of the country itself is concerned. If a farm house be placed in a low, swampy situation and a town in a similar locality the dwellers in the one will be no more liable to malarious diseases than the inhabitants of the other. In large cities, where the ground is being constantly turned up for the purpose of laying water and gas mains, constructing sewers or for any one of the hundred other purposes for which a continual upheaval of the pavements goes on, diseases of malarial origin will almost constantly abound. Some parts of New York city, or of Philadelphia, for instance, are nearly as full of malaria as are the worst parts of Florida. There is nothing, therefore, to be gained in this respect by a hasty return from the seashore or the mountains to the pent up atmosphere of a large town in which excavations of some kind or other are at certain seasons of the year carried on with more than usual vigor.—Dr. Wm. A. Hammond in New York World.

Mental Effects of the Weather.

It is curious to think how indifferent are some people to those atmospheric changes which so signally affect the health and temper of others. You will see one man of a rainy day, or a cold day, so transformed from good nature to acidity and bitterness that his best friends would faint out of his way—at least till the "wind changes." Those of less sensitive organization have little patience and less pity for what they cannot understand; yet this unfortunate class are not for that reason to be shut out in the cold till they "come to." A little sympathy—some cheerful topic of conversation adroitly introduced—some pleasing little personal attention at the right moment—and lo! the mental clouds disperse, and all again is sunshine.—New York Ledger.

Selling Wooden Saws.

An agent for a safe company several months ago made sales in Bad Ax, Mich. A few weeks ago an agent for another company came along, and, according to the local newspaper, by the aid of a jack knife and a gimlet proved to the safe buyers that their safe had a lining of wood, a filling of clay and a covering of thin sheet iron.—New York Sun.

The Burden of Criminal Exile.

It is manifest, I think, that when a flood of 10,000 vagrants, thieves, counterfeiter, burglars, highway robbers and murderers is poured into a colony, the class most injurious to the welfare of that colony is the liberated class. If a burglar or a thief is sent to Siberia and shut up in prison, he is no more dangerous to society there than he would be if he were imprisoned in European Russia. The place of his confinement is immaterial, because he has no opportunity to do evil. If, however, he is sent to Siberia and then turned loose, he resumes his criminal activity, and becomes at once a menace to social order and security.

For more than half a century the people of Siberia have been groaning under the heavy burden of criminal exile. More than two-thirds of all the crimes committed in the colony are committed by common felons who have been transported thither and then set at liberty, and the peasants everywhere are becoming demoralized by enforced association with thieves, burglars, counterfeiter and embezzlers from the cities of European Russia. The honest and prosperous inhabitants of the country protest, of course, against a system which liberates every year, at their very doors, an army of 7,000 worthless characters and felons. They do not object to the hard labor convicts, because the latter are shut up in jails. They do not object to the political and religious exiles, because such offenders frequently make the best of citizens. Their protests are aimed particularly at the compulsory colonists.—George Kuman in The Century.

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