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rather than for the payment of money. The court did not realize that any such construction must result in rendering the instruments non-negotiable for they do not then possess the essential attribute of being payable in money. In reading this opinion it must be remembered that it was rendered by the same court which was soon to hold the Legal Tender Act unconstitutional as applied to prior existing contracts. *Hepburn v. Griswold* (1870) 8 Wallace 603. This decision was overruled in the *Legal Tender Cases* (1871) 12 Wall. 457. Since *Juilliard v. Greenman* (1884) 11 U. S. 421, the power of the United States even in times of peace to issue legal tender paper money cannot be doubted.

In the instant case the New York court distinguishes *Bronson v. Rodes* by pointing out that it applied to a situation in which two types of money were legally in circulation, while this is now no longer true. The Court chiefly relied on the very recent English case of *In Re Societies Intercommunale Belge d'Electricite-Fiest v. The Company* (Ch. Div. 1932) 174 Law Times 367, aff'd (Ct. of App. 1933) 148 Times Law Reports 344. This is unfortunate. In the first place the gold clause in that case was so badly drawn that the courts could and did construe it not to require payment in gold as a mere matter of construction of the language used. Secondly, the English Parliament is not hampered by any constitutional restrictions on its powers.

Under the law as it existed at the time the principal case was decided, it would seem that the New York Court could have obtained very nearly the same result by treating this as a case where performance of the terms of a contract was made impossible by subsequent legislation, giving the obligee a mere right to damages. Restatement of the Law of Contracts sec. 458. This right to damages would be valueless, since there was no legal use to which the gold might be put by which it would command more than the stipulated parity in paper money.

Congress has recently regularized this situation by passing a joint resolution specifically providing that paper money may be tendered in payment of all public and private debts whether or not they are so worded as to require payment in gold alone. However much one may quarrel with the economic wisdom or ethical morality of such a policy of national repudiation of contract rights, its legality would seem clear. The clause forbidding the impairment of the obligation of contracts only restricts state action. The due process clause of the Fifth Amendment cannot restrict Congress in the reasonable exercise of its powers granted by the Constitution. G. W. S., '33.

INTERNAL REVENUE—INCOME TAX—LIFE INSURANCE TRUSTS.—The settlor took out several policies of life insurance in favor of trustees. These trustees were to hold the proceeds of the policies for named beneficiaries. At the same time the settlor transferred certain securities to the trustees which they were to use as far as necessary to pay the premiums on the insurance policies and to distribute, in their discretion, any surplus to the beneficiaries of the policies. The trusts were irrevocable and no part of the proceeds of the policies could become part of the estate of the settlor. The settlor had waived all his rights to change the beneficiary of the policy. Subsequent to the creation of these trusts Congress enacted a statute which purported to require the settlor of such trusts to include in his taxable income the income which actually was collected by the trustees. Revenue Act of 1924 sec. 219 (h); Revenue Act of 1926 sec. 219 (h) (a substantially similar provision is contained in the Revenue Act of 1932 sec. 167). The taxpayer contended that such a statute as applied to an irrevocable trust under which the taxpayer could receive no financial benefit was contrary to due process of law as guaranteed by the Fifth Amendment. *Held:* Congress may validly impose such a tax. *Wells v. Burnett* (1933) 53 S. Ct. 528.

The opinion for the majority of the Court was written by Justice Cardozo. It frankly admits that in matters of taxation the technicalities of legal title are not to be regarded. This declaration is familiar law. It has recently been applied in the cases allowing the inclusion in the income of the settlor of the income of a trust in which the settlor has a power of revocation either alone or in conjunction with some one who is not a beneficiary. *Corliss v. Bowers* (1930) 281 U. S. 376; *Reinecke v. Smith* (1933) 53 S. Ct. 570 (where the trust was created prior to the passage of the statute imposing the tax). Justice Cardozo considers that the statute was a justified attempt to prevent evasion of taxes. This was doubtless its purpose, as is shown by the report of the Senate committee in favor of its adoption. The opinion stresses the fact that the settlor could sue on the policy if the insurance company failed to carry out its terms, and calls it a "social duty" of the head of the family to take insurance for the benefit of his immediate family (forgetting that one of the beneficiaries of the trust was not so close a relation).

Justices Sutherland, Van Deventer, McReynolds and Butler dissented on the ground that the creation of the trust amounted to a completed gift, stripping the donor of all right in the property or the income from it and that it had been held that it was contrary to due process to impose a tax on the donor of a gift when the gift had been made prior to the passage of the statute. *Nichols v. Coolidge* (1927) 274 U. S. 518; *Blodgett v. Holden* (1927) 275 U. S. 142; *Untermeyer v. Anderson* (1928) 276 U. S. 440; cf. *Burnett v. Guggenheim* (1933) 288 U. S. 280 (holding that the gift took place when a power of revocation was waived rather than when the original deed was executed).

The Supreme Court has allowed the inclusion in the income of the taxpayer of sums which he actually received but by private contract was bound to divide after receipt with his wife. *Lucas v. Earl* (1930) 281 U. S. 111; *Burnett v. Leininger* (1932) 285 U. S. 136. But these cases may be distinguished from the principal case in that in the principal case the taxpayer never did receive any legal or equitable title to the money.

The reliance upon the doctrine of evasion of taxes is questionable. It would result in forcing the donor to pay income taxes on the future income of all gifts he might make to his family, for doubtless one motive in making these is often to reduce the income tax that the donor must pay when he is accustomed to spend the income for the benefit of the donee. Yet, the Supreme Court has recently invalidated a Wisconsin statute which attempted to force the husband to include in his taxable income sums paid to the wife, who would not then have to pay any tax upon her income. *Hoeper v. Tax Commission* (1931) 284 U. S. 206. Certainly the relationship between husband and wife is the closest relationship known to the law. It has been recognized that the due process clause restricts attempts to prevent evasion of taxes.

Heiner v. Donnan (1932) 285 U. S. 312 (holding invalid the conclusive presumption that all gifts made within two years before death were made in contemplation of death and hence that the property involved should be included in the estate of the decedent for the purposes of the Federal Estate Tax).

The court's views concerning the desirability of life insurance will no doubt please the salesman of life insurance but it would seem strange that they should determine fundamental principles of constitutional law. The reliance upon the power of the insured to sue on the policy seems to be a mere use of a legal technicality which the court has just said does not control in matters of taxation. In any event it could be obviated in all future cases by having some other person who has an insurable interest in the settlor's life take out the policy. Cf. Vance on Insurance (2nd ed. 1930) 147-164.

However much we may quarrel with the decision in the principal case, there can be little doubt of the correctness of the decision of the court in the companion case of *Du Pont v. Burnett* (1933) 53 S. Ct. 528. This involved the same statutory clause but in creating the trusts the settlor had reserved a right of revocation and hence the case could have been decided on the same basis as *Corliss v. Bowers* and *Reinecke v. Smith,* above (the four justices who dissented in the Wells case concurred specially in the Du Pont case).

It is to be hoped that the decision in the principal case will either be overruled or limited to its precise facts. It would seem that the logical conclusion for the decision is to allow the taxation to one person of income actually received by another in all cases in which Congress may think this necessary to prevent evasion no matter how little legal or economic title the taxpayer may have in the income involved.

G. W. S., '33.

CONTRACTS—DEALINGS IN FUTURES—GAMBLING.—A broker took orders in Missouri to buy and sell grain on the Chicago and Minneapolis exchanges, and now sues for balance due. On the District Court's findings that, although defendant's orders were executed on these exchanges, they were merely cloaks for gambling between plaintiff and defendant, no actual deliveries being intended, *held,* the transactions between plaintiff and defendant were wholly executed in Missouri and hence governed by R. S. Mo. (1929) secs. 4316-4323 and void; also that the Federal Grain Futures Act (7 U. S. C. Ch. 1) although in addition to, does not supersede state statutes directed against dealing in grain futures. Justices Butler, Stone and Cardozo agree with the latter but dissent from the former ruling. *Dickson v. Uhlmann Grain Co.* (1932) 53 S. Ct. 362.

Although supported by authorities elsewhere it is difficult to reconcile the first part of the majority opinion with the main channel of Missouri law in accordance with which it purports to decide. Even apart from Missouri rulings brokerage contracts usually are governed by the law of the place where the orders are executed. *Samson Bros. & Co. v. Turner* (1921) 277 F. 680; *Wilhite v. Houston* (1912) 200 F. 390. There are cases contra. *Bartlett v. Collins* (1901) 109 Wis. 477, 85 N. W. 703; and *Burrus v. Witcover* (1912) 158 N. C. 384, 74 S. E. 11, decided on basis that comity need not extend to a contract against the public policy of the state in which it is sought to be enforced. In Missouri, however, a strong line of decisions enforces the law of