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Administration of Estates--Advancement--Method of Hotchpot

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ADMINISTRATION OF ESTATES — ADVANCEMENT — METHOD OF HOTCHPOT. — A father died leaving considerable real and personal property. Between the date of his death and the circuit court decree dividing the property among his children, an appreciation in property values ensued. Meantime nine out of ten of the children agreed to submit to a disinterested person the issue as to the extent of the respective advancements theretofore made. Later the tenth child refused to be bound by this arrangement. Upon reference of the cause to a commissioner in chancery, he questioned whether the findings made by the disinterested person were sound, because in many instances checks were not included which might well have been chargeable as advancements, but added, "However, your commissioner feels that he would not be justified in disturbing a settlement among the heirs as to advancements which has been agreed to by all." *Held*, that, first, the value of all property of the parent to be distributed should be ascertained as of the date of his death; second, unless the commissioner is clearly wrong the court will not disturb his findings as to the valuation of the estate; third, the court assumes the family "settlement" has no binding effect; and finally, the payments made prior to the death of the deceased, in whatever form they may have been made, are advancements. *Gaylord v. Hope Natural Gas Company.*[1]

Heretofore on the first point decided, the local rule has been ambiguous as to whether the valuation of all the estate, real and personal, to be distributed after his death should be determined as of the date of deceased's death or the date of distribution or partition.[2]

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[1] 8 S. E. (2d) 189 (W. Va. 1940).

[2] Little authority, if any, on this subject has been found. In Roberts v. Colcman, 37 W. Va. 143, 16 S. E. 482 (1892), the commissioner ascertained both the value of the estate and the amount of the advancements as of the date of the deceased's death. No issue as to the date of the fixing of the values was apparently raised. *Quaere*, as to whether the case is authority for ascertaining the value of the deceased's estate as of the date of his death rather than at some later time, such as the time of partition or distribution. In Kyle v. Konrad, 25 W. Va. 760 (1885), the valuation of the parent's estate was turned over to the commissioner to determine, but the court failed in its opinion to set any definite date for such determination to be made. The court did, however, decree that the children were to be charged with the value of the advancements as of the time when the deeds were made, with interest from the date of the death of the father. This case followed the rule laid down in the Virginia cases that advancements were to be accounted for as of the value when received. Beckwith v. Buller, 1 Wash. 224 (Va. 1793); Puryear v. Cabell, 24 Gratt. 260 (Va. 1874). No doubt the result reached in the principal case is reasonably sound, as an easily workable rule.

Secondly, the court has adopted the commissioner's valuation of the deceased's estate, holding that unless the evidence is "clearly insufficient in any reasonable view of it to support the findings of the commissioner", these latter must stand.[3] In any event if the valuation of the deceased's estate were to be made as of the date of his death (1934) consideration should have been given its fair market value, bearing in mind the unusual economic conditions of that time. An extremely low valuation was in fact made. The decision might well have been otherwise, had further consideration been given to the actual basis of assessment of land for purposes of taxation,[4] to the average opinion of responsible experts who testified,[5] and, above all, to the unusual amount of revenue which the property yielded within the four-year period after his death.[6]

As to the third point, the upper court was far from being definite.[7] Perhaps it was felt that the same result would have been achieved without reference to the alleged arrangement among the heirs, yet the instant decision might have squarely held such

[3] *Accord*, McClanahan v. McClanahan, 36 W. Va. 34, 14 S. E. 419 (1892).

[4] As to comparison of the tax assessment with the report of the appraisers, "property which was assessed for the purpose of taxation at $159,295 is appraised at $185,720" (at p. 195). For the extent to which ordinary tax assessment is representative of actual value, see BLAKEY, REPORT ON TAXATION IN WEST VIRGINIA (1930) c. 5, and NATIONAL INDUSTRIAL CONFERENCE BOARD, THE TAX PROBLEM IN WEST VIRGINIA (1925). Also see Central Realty Co. v. Board of Review, 110 W. Va. 439, 440, 158 S. E. 537 (1931).

[5] As to the divergent opinions expressed by the various experts who testified, the court, commenting regarding a suggestion to strike an average for ascertaining the fair value of the timber item, remarked, "We do not think such a method would reach a correct result in this case." (At p. 195.) One of the appraisers admitted their entire appraisal was "conservative". In any event, there was a wide discrepancy of opinion among the witnesses as to every phase of the valuation of the land, timber and minerals. Perhaps the best evidence as to the conservatism in the valuation was the later action of the commissioner in making a general increase of approximately $20,000, without specifying the items that had been undervalued.

[6] As to the estate's revenue-producting possibilities, the record in the case indicates a gross yield out of the minerals totalling more than $100,000, between October, 1934, and May, 1938. Such an income is in sharp contrast with the opinion of the appraisers to the effect that the whole value of the deceased's estate (land, timber and minerals) was but $226,000. (It might be noted that these oil and gas interests were valued for taxation at four times their annual revenue, while the appraisers reduced the figure to three times their income.)

[7] The court observed (at p. 193): ". . . there is some little confusion on this point by reason of a statement contained therein that, in his opinion, certain additional charges should have been made against various heirs, but were not made because he felt he 'would not be justified in disturbing a settlement among the heirs as to advancements which had been agreed to by all.' " The court added later in the same opinion (at p. 194): ". . . we think that the checks and papers introduced, and testimony taken before the commissioner, aside from any question of the admissions or agreement of February 24, 1935, as to these charges, will justify the commissioner's report."

a "settlement" could have no weight in determining any question as to advancements in future cases involving analogous facts. The authorities appear to be clear that such arrangement could not be binding.[8]

Finally, the present case decides that whether or not a check be denominated by the deceased as a "loan", the commissioner's finding that it was in fact an advancement would not be disturbed.[9] In other words, it seems that for the promotion of equality between the heirs, there was to be no differentiation as regards sums given the heirs, in the absence of clear evidence that the deceased conducted himself as a creditor, and that beyond question he regarded the heir as a debtor because of the transaction between them. By and large, that principle promotes a fair division of the property, even though it seems to be squarely in conflict with the usual thought that any evidence of the intent of the deceased opposed to an advancement is more or less conclusive.

The present decision is thus a most important one, to the extent that it settles as to advancements these points in the administration of estates. Both in its holding that the value of the deceased's property should be ascertained as of the date of his death and in its detailed exposition of the hotchpot method, the decision should become a leading authority in local litigation.

P. J. O'F.

CONSTITUTIONAL LAW — DELEGATION OF LEGISLATIVE POWER TO ADMINISTRATIVE BODIES OR OFFICERS. — *D* collided with *P's* airplane when landing in violation of certain air regulations fixed by the West Virginia Bureau of Aeronautics under authority of a statute[1] giving such board authority over all phases of aerial activities, with power to make such rules and regulations as they should see fit to adopt for the public safety. The board was required, however, "to adopt and enforce the provisions of the federal

[8] Without all the parties, a compromise arrangement of this sort obviously cannot stand. Campbell v. Lynch, 88 W. Va. 209, 106 S. E. 869 (1921); McAdams v. Bowen, 369 Ill. 325, 16 N. E. (2d) 732 (1938). And, in order for an investigation to conclude the parties, the disinterested party must properly take into account all of the evidence, and arrive at his finding in judicial fashion. Neill v. Flynn Lumber Co., 82 W. Va. 24, 95 S. E. 523 (1918); Rowe v. Rowe, 144 Va. 816, 130 S. E. 771 (1925).

[9] The court said (at p. 197): "The view of this case we take is that whatever these payments may have been called, they were in truth advancements, irrevocable in character; that no debt or obligation was created, and it necessarily follows that they are not subject to the statute of limitations."

[1] W. VA. CODE (Michie, 1937) c. 29, art. 2A, § 2.