



1959

## District Court Digest

North Dakota Law Review

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## DISTRICT COURT DIGEST

ESTATE TAX — DOCTRINE OF EQUITABLE CONVERSION APPLIED TO REALTY UNDER CONTRACT FOR SALE. — *In Re Ryan's Estate*, District Court of the First Judicial District, Grand Forks County, North Dakota, O. B. Burtness, District Judge.

The decedent owned a large amount of land in North Dakota. Prior to his death he contracted to sell the property to his sons for \$216,000. The vendees entered into possession of the land, taking the rents and profits therefrom, pursuant to the terms of the contract for sale. In 1953 the decedent died while a resident of Minnesota. A total of \$176,000, represented by unpaid promissory notes, remained due on the contract for the sale of the land. The promissory notes were listed as part of the decedent's gross estate in the Minnesota probate proceedings which followed his decease, and an estate tax on them was paid to the State of Minnesota. Ancillary probate proceedings were then commenced in Grand Forks County, North Dakota. The State Tax Commissioner of North Dakota contended that the unpaid balance of \$176,000 owed to the decedent at the time of his death was subject to the estate tax of North Dakota.

Judge Burtness ruled that on the execution of the contract for deed an equitable conversion occurred, and that the vendor retained only the naked legal title to the real estate as security for the payment of the purchase price, occupying substantially the position of a mortgagee. *Thompson Yards v. Bunde*, 50 N.D. 408, 196 N.W. 312 (1923); *Johnston Land Co. v. Whipple*, 60 N.D. 334, 234 N.W. 59 (1930); *The Henry S. Grinde Corp. v. Klindworth*, 77 N.D. 597, 44 N.W.2d 417 (1950); *Schaff v. Kennelly*, 61 N.W.2d 538 (N.D. 1953); *Clapp v. Tower*, 11 N.D. 556, 93 N.W. 862 (1902). The Court further held that in substance the interest retained by the vendor was a chose in action and a species of personal property rather than realty. This was made plain by the fact that promissory notes for the amount of the debt had been executed by the vendees, although in the Court's view the notes did not "add to the rights of the vendor which he already had under the terms of the contract except as further indication of the intent and legal effect of the contract."

While it has been held that where the vendor retains possession of real property his interest in it remains taxable as realty despite execution of a contract for deed, *In re Paul's Estate*, 303 Pa. 330,

154 Atl. 503 (1931), the Court found several authorities holding that where possession was surrendered to the vendee the interest retained by the vendor constituted personal property for estate tax purposes. *Dodge County v. Burns*, 89 Neb. 534, 131 N.W. 922 (1911); *In re Eilerman's Estate*, 179 Wash. 15, 35 P.2d 763 (1934). Similarly, the Supreme Court of Washington had held that where a vendor owned land outside the State of Washington, an estate tax could be imposed by the State of Washington upon his interest in the land when he died domiciled in Washington. This was on the theory the vendor's interest was personal property and hence taxable by the state of his domicil. *In re Plasterer's Estate*, 49 Wash.2d 339, 301 P.2d 539 (1956).

The Montana Supreme Court ruled in 1957, in a similar case, that the vendor's interest in Montana land subject to a contract for deed was not subject to an inheritance tax levied by the State of Montana where the vendor had become domiciled in California prior to death. *In re Briebach's Estate*, 132 Mont. 437, 318 P.2d 223 (1957). In view of these authorities, and the early adoption by this state of the doctrine of equitable conversion, the Court concluded that the decedent's interest in the land involved in the instant case was intangible personal property not subject to the North Dakota estate tax. While N.D. Rev. Code § 57-3703 (1943) provides that the value of the gross estate of a nonresident decedent shall be determined by including "all real property located within this state," "all tangible personal property having an actual situs in this state," and the decedent's "equitable interest in real estate within this state," the interest of the decedent fell within none of these statutory categories.

## DIGEST OF ATTORNEY GENERAL OPINIONS

### COUNTIES — IMPLEMENTATION OF GROUP INSURANCE BENEFITS FOR COUNTY OFFICIALS AND COUNTY EMPLOYEES

July 20, 1959

"The county commissioners are authorized and empowered to determine the wages and salaries of its employees and being that a group insurance program is in effect an increase of wages or salary for the employees it would come within the authority granted to county commissioners."

"However, because of the statute regulating the salary and wages