assured, his expectation of life, and the cost of carrying the insurance, with interest thereon, as well as upon the amount of the debt. . . . The rule we now announce may not be the best, but we have not been able to find a better, after a most careful and anxious consideration of the question." The case was twice argued, and the conclusion reached must be regarded as final.

Such is the doctrine, upon the third point under discussion, as developed by the Supreme Court of Pennsylvania. The writer is not aware that the precise question mooted in Ulrich *v.* Reinoehl has been passed upon in any other jurisdiction. The Pennsylvania decision must, therefore, be regarded as in some sense a statement of the general rule of American law upon the subject.

The principal case, it will be noted, recognizes the principles above developed with respect to the nature of the creditor's interest, the time at which it must subsist, and the amount of it. It is a valuable addition to the line of cases cited, inasmuch as it decides that the existence of the interest and the amount of it must be affirmatively proved by the alleged creditor, who will not be permitted to recover merely upon the strength of a recital of the fact of the debt in the policy.

GEORGE WHARTON PEPPER.

DEPARTMENT OF WILLS, EXECUTORS, ADMINISTRATORS.

EDITOR-IN-CHIEF,

HON. WILLIAM N. ASHMAN.[1]

Assisted by

HOWARD W. PAGE MAURICE G. BELKNAP.

WILLIAMSON'S ESTATE. SUPREME COURT OF PENNSYLVANIA.

Collateral Inheritance Tax—Conversion of Land Outside of State.

The real estate of testator lying in other States, which he has directed his executors to sell, and the proceeds from which he has given to persons and objects in this State, are converted by the direction to sell, and are subject to the collateral inheritance tax. Miller *v.* Commonwealth, 111 Pa., 321, applied. MITCHELL, J., dissented.

The material points of the will were as follows: "Item 13. I will and direct that the sum of three hundred thousand dollars shall be paid by my executors to The Pennsylvania Company for Insurances

[1] Owing to the absence of Judge ASHMAN it was impossible to submit this Annotation to him. The general editors are therefore solely responsible for it.

on Lives and Granting Annuities of the city of Philadelphia, as a trustee and in special trust as follows, that after paying all proper legal charges and expenses, said trustee shall pay the net income of said fund on the first day of November in each year to the following-named charitable institutions and associations of the city of Philadelphia, which income they shall expend for the charitable uses and purposes for which such institutions or associations were established; it being understood that my executors in their discretion may pay to said trustee said three hundred thousand dollars in money or good interest-bearing securities, or productive real estate at a fair valuation to be affixed by the executors, or in good dividend-paying stocks considered safe by them, as is further provided in items sixteen and seventeen, to the provisions of which this fund is made subject. . . .

"Item 14. The rest, residue and remainder of my estate, real, personal and mixed, wherever situated, vested, contingent or future, after satisfying the foregoing bequests, as such remainder shall be realized and converted into proper securities by my executors as provided in item seventeenth of this will, shall be by them transferred and delivered to The Pennsylvania Company for Insurances on Lives and Granting Annuities, of this city, which company shall hold the same as a trustee and in special trust . . . [for private beneficiaries.]

"Item 17. . . . And the executors shall make up the trust fund provided for by item thirteenth for the benefit of the charities therein named, by handing over to said trustee such securities and investments as they shall think best, or they may convey to the trustee in fee simple any of my improved real estate, wherever situated, to be held in trust for the uses and purposes in said thirteenth item specified, at prices which shall be fairly affixed and determined by the executors. And the rest, residue and remainder of my estate, consisting of bank and other stocks, loans, lands and tenements, ground rents and all real, personal and mixed property of every description, and wherever situated in this State and elsewhere, and by whatever title held, whether vested, contingent, present, or future, which may belong to me at the time of my decease, I direct my executors to sell and convert into money (excepting only such personal investments which they may deem suitable to enter into the trust provided for in item fourteenth) and then reinvest the same in such bonds, loans or other investments (excepting capital stocks of corporations or other companies only) as the executors may deem best for the benefit and advantage of the residuary trust provided for in the fourteenth item of this will, and as such residuary portions of my estate shall be so converted and reinvested by the executors, they will from time to time hand over to the said trustee, to be by it held and disposed of as in the fourteenth item provided, . . . And the net proceeds of all such sales, as well as all rents and income derived from any part of said property, shall constitute a part of my residuary estate, and be invested as hereinbefore expressed. . . . And I direct that my executors shall apply the proceeds of sales of real estate equally, and in like manner with the proceeds of sales of personal estate in payment of all or any of the bequests and legacies given by me. . . ."

STATEMENT OF THE CASE.

The Commonwealth claimed the collateral inheritance tax upon the proceeds of the sale of lands in other States, upon the ground that the direction to sell in the seventeenth item worked a conversion of such lands. The auditing judge allowed the claim, and on his adjudication being confirmed by the Orphans' Court the trustee took this appeal.

OPINION BY WILLIAMS, J.—The lands of the testator lying in other States which he directed his executors to sell, and the proceeds from which he gave to persons and objects in this State, are converted by the direction to sell. The fund being distributable here, is subject to the collateral inheritance tax under the rule stated in Miller *v.* The Commonwealth, 111 Pa., 321.

MITCHELL, J.—I am unable to concur in the part of this judgment which holds that the real estate in other States was subject to collateral inheritance tax. I cannot see that a technical conversion gave this State any jurisdiction for taxing purposes, under a statute not taxing the legatee personally but the property passing from the testator.

COLLATERAL INHERITANCE TAX—CONVERSION OF LAND OUTSIDE OF STATE.[1]

To one unfamiliar with the more recent decisions in England and Pennsylvania upon this subject, nothing would seem more singular than the doctrine of the principal case, that a purely notional conversion—originally conceived in equity merely as a useful fiction, the better to carry out the intentions of the testator in adjusting the relative rights of his beneficiaries—should have the effect of changing the situs of property for the purpose of taxation. That the position may be distinctly understood, it may be well to state that the Supreme Court of Pennsylvania has expressly held that the collateral inheritance tax is a "direct tax upon the thing devised in the hands of the devisee," as distinguished from a mere succession tax or personal liability imposed upon collaterals, taking under the will or by the intestate laws in respect to the property so acquired, and hence lands beyond the jurisdiction are not subject to such taxation, even though the devisee be a Pennsylvania corporation, and an act expressly framed with a view to reaching such property transcends the legislative power: Bittinger's Estate, 129 Pa., 338; see also Com. *v.* Cole, 52 Pa., 468.

Therefore the soundness of the

[1] Collateral inheritance on the property of non-resident owners, *supra* (April), p. 364.

position depends solely upon whether the doctrine of equitable conversion can be invoked to change the situs of property for the purpose of taxation.

That such application of the doctrine is somewhat of a novelty, and can only be justified as a legitimate extension of its underlying principle must, we think, be conceded. "The conversion of property from one species to another by the will of a testator," says Judge HARE in his note to Ackroyd *v.* Smithson, 1 Lead. Cas. Eq. (4th ed.), 1197, takes place only *for the purposes of the will;* and so far as those purposes do not extend, or in so far as any of them do not take effect in fact or in law, the property is considered as remaining in its former condition as it was in the hands of the testator, and passes accordingly." And unquestionably, when the above was written, now some thirty years ago, it correctly expressed the general opinion of both bench and bar upon the subject. Thus, in Newby *v.* Skinner, 1 Dev. & B. Eq., 488, it was held that legacies payable out of the proceeds of land directed to be sold abate with specific devises and not with general legacies, GASTON, J., saying: "It is sought in this case to subject to the payment of debts the proceeds of the land devised to the daughters, because by the direction of the testator to sell the land, he turned it, in the contemplation of a court of equity, into personalty and made it a part of his general personal estate. This position, to the extent to which it is pressed, is untenable. The real estate directed to be sold was, at the time of the testator's death, land. By the will it was to remain land until sold, and it was directed to be sold only for the convenience of division between devisees. It was impressed with the character of personalty so far as was necessary to effectuate the testator's purpose, but no further. Every person taking an interest, under a will, in the produce of land directed to be sold, is in truth a devisee, and not a legatee."

See also Hilton *v.* Hilton, 3 McArth., 70.

So, in Gibbs *v* Ougier, 12 Ves., 413, it was held by Sir W. GRANT that a direction to sell land for specific purposes did not have the effect of letting in simple contract creditors. In his work on "Equity —Jurisprudence," ¶ 792, Judge STORY says that the maxim that equity regards things as done which ought to be done, only applies "in favor of those who have a right to pray that they might be done," and in Walker *v* Denne, 2 Ves. Jr., 185, Lord ROSSLYN said that even had the direction been imperative, to convert for the Crown so as to enable it to take by escheat money directed to be laid out in land, would be a "very great stretch." In Matson *v.* Swift, 8 Beav., 368, 375, Lord LANGDALE held that the proceeds of land paid to decedent's executors under a deed of trust directing the land to be sold, the proceeds applied to certain specified debts and surplus paid to his executors, administrators and assigns, "without any claim in equity," in favor of the heir, notwithstanding it remained actually unconverted at his death, were not subject to probate duty, saying in regard to the doctrine of "conversion out and out:" "That expression is strictly applicable to a conversion which the Court has jurisdiction to make, and will make

only by enforcing equities and executing trusts, which it declares or imputes, for the purpose of carrying into effect the intentions, expressed or implied, of the owner of the land. In the cases supposed, the real estate is not, in fact, altered at the time of the owner's death, and equity considers not what might have been done, but what ought to be done, and will declare or act upon the trusts which are required for the purpose of making actual conversion, at the instance only of those who show themselves entitled to the benefit of such trusts. And we may reasonably ask the question, whether after a conveyance of land in trust to sell, or after valid contracts for the sale of land and the death of the legal owner, the Crown can be entitled for its own purposes only, to enforce the equities between the parties? If the parties should release each other, could the Crown, for purposes merely fiscal, not in the contemplation of any party, and not required to fulfill the intention of any party, be entitled to the benefit of trusts, which are declared or acted upon only for the purpose of giving effect to the intentions of the parties? Supposing the conversion not to have been actually made, and not to be required for the purposes of the deed, and supposing any equities which may have existed among persons interested in the estate to have been waived or satisfied, I am of opinion that the Crown would not be entitled to enforce those equities for its own purposes."

A similar decision was made by WIGRAM, V. C., about the same time, in Custance *v.* Bradshaw, 4 Hare, 324, and upon the authority of these cases the Exchequer and Exchequer Chamber refused to apply the doctrine of equitable conversion to the converse case of money directed to be laid out in land and held the fund subject to legacy duty: De Lancey's Succession, L. R., 4 Ex., 345, 358; S. C., L. R., 5 Ex., 102, 104.

It must also, we conceive, be conceded that the doctrine of the principal case, as set forth in the syllabus, is open to very grave objections upon broader and less technical grounds. As was well said by GRAY, J., in Swift's Est., 32 (N. Y. Ct. App)., N. E. Rep., 1098 (1893): "The basis of the power to tax is the fact of an actual dominion over the subject of taxation at the time the tax is to be imposed. The effect of this special tax is to take from the property a portion, or a percentage of it, for the use of the State; and I think it quite immaterial whether the tax can be precisely classified with a taxation of property or not. It is not a tax upon persons. It is called a tax upon the succession to the ownership of property; still it relates to and subjects the property itself, and when that is without the jurisdiction of the State, inasmuch as the succession is not of property within the dominion of the State, succession to it cannot be said to occur by permission of the State. As to lands, this is clearly the case, and rights in or power over them are derived from or through the laws of the foreign State or country. As to goods and chattels it is true; for their transmission abroad is subject to the permission of, and regulated by, the laws of the State or country where actually situated. Jurisdiction over them belongs to the courts of that State or country

for all purposes of policy, or of administration in the interests of its citizens or of those having enforceable rights, and their surrender or transmission is upon principles of comity. When succession to the ownership of property is by permission of the State, then the permission can relate only to property over which the State has dominion, and as to which it grants the privilege or permission. . . . Neither the doctrine of equitable conversion of lands, nor any fiction of situs of movables, can have any bearing upon the question under advisement. The question of the jurisdiction of the State to tax is one of fact, and cannot turn upon theories or fictions, which, as it has been observed, have no place in a well-adjusted system of taxation."

See also Cooley Taxation (2d ed.), P. 5, 19, 159.

Moreover, it may well be said that property beyond the jurisdiction may also be taxed by the State of actual situs. The doctrine of the principal case, therefore, subjects such property to double taxation, and for that reason, if for no other, should be avoided. Furthermore, if the doctrine of equitable conversion can be invoked by the State, there would seem to be no sound reason why it may not be invoked by the executors to exempt the estate from the tax. Could a testator exempt his personal estate from taxation by an imperative direction to his executors to sell and invest the proceeds in real estate beyond the jurisdiction? Would the State admit, in such case, that the gift was realty beyond its jurisdiction? If so, it would seem to be true, as suggested by RANSOM, Sur., in Swift's Appeal, 16 N. Y., Supp. 195, that, "to support the application of the doctrine of equitable conversion in determining the extent of liability to this tax, it must be held to have been the intention of the legislature to permit testator to determine for himself whether the devolution of title should be subject or exempt."

Such are some of the objections to the doctrine set forth in the syllabus of the principal case: nevertheless, however, it is submitted that both Miller *v.* Com., 111 Pa., 321, and Williamson's Estate, were well decided, and that the true principle to be deduced therefrom is consistent alike with equity and common sense.

In Miller *v.* Com., 111 Pa., 322, the testator, after certain specific devises and bequests, devised and bequeathed all the rest and residue of his property, real, personal, and mixed, to his executors to sell, and after paying debts and funeral expenses therefrom, to divide the residue as thereafter directed. It was held that the value of lands in Virginia and Kentucky, which formed a part of the residuary estate, and of which testator died seised, should be included in the appraisement.

So in the principal case the proceeds of sales of both real and personal property derived from any part of the property, together with all rents and income, are indiscriminately blended, and by the express provisions of the will are to constitute a part of the residuary estate. The distinguishing characteristic of both wills is an imperative direction to convert, not for the payment of particular legacies, or for any other particular purpose, but for the general purposes of administration.

In Miller *v.* Com., this is apparent from the direction to pay all debts, funeral expenses, and legacies from the mixed fund; in the principal case it appears from the provision that the proceeds of realty shall be considered a part of the residuary estate, and as such be applied indiscriminately with other personalty to the payment of legacies.

By such direction the testator must be taken to have intended a conversion out and out, or, in other words, to give the proceeds of his realty the quality of personalty, not merely for the particular purposes of the will, but to all intents and purposes. It is submitted that it by no means follows from the decision that a direction to sell land beyond the jurisdiction, and divide the proceeds between A, B and C, would subject their legacies to the tax. The sole purpose of such a direction would be the convenience of division. In such case to accomplish the object of the testator, it would not be necessary for the executor to transmit the proceeds to the State of domicile, nor if so transmitted would it be either necessary or desirable to include them in their general accounts. Under such a direction the executors always deal with the proceeds of the realty by virtue of the special power rather than as forming a part of the general personal estate. Such an extension of the principle of Miller *v.* Com. would be unwarranted by the decision, and open to every objection that can be urged against invoking the doctrine of equitable conversion for the purpose of changing the situs of property for fiscal objects. To reason from Miller *v.* Com., and the principal case to such a doctrine, would be to reason from a case in which the conversion was for all intents and purposes to one in which it was limited to a particular purpose. It is, therefore, submitted that the real principle of these cases is not, as stated in the syllabus to Miller *v.* Com., 111 Pa., 321: Where a testator domiciled in this Commonwealth devises land situated without the Commonwealth to be sold to pay pecuniary legacies, the legacy will pass to the legatee as money and subject to the law of the testator's domicile, and hence will be subject to the collateral inheritance tax.

But may be more accurately stated thus: Where a testator directs his real estate outside the State to be sold, and the proceeds blended with his general personal estate so as to constitute a common fund for the general purposes of administration, such realty will be held to have been converted into personalty for all purposes, and as such subject to the collateral inheritance tax. As thus stated, it is believed that the doctrine is free from objection, and is sustained by the English authorities.

In Att.-Gen. *v.* Holford, 10 Price, 426, it was held by the Exchequer that a devise of real and personal property to trustees to sell the same, the proceeds to be deemed a part of testator's residuary estate, and "go in aid, if necessary, of the rest of his property" in discharge of pecuniary legacies subjected the realty to legacy duty although it remained unsold, THOMPSON, C. B., expressly placing the decision upon the ground that the direction to sell worked a conversion "out and out" or for all purposes. His words are: "This is not a bequest of the property in question,

directing it to be sold with a view solely to the payment of debts, but it is directed to be sold in all events, and to be turned into money. The profits arising therefrom were, by the will, to go in aid of the rest of his property, if necessary, in discharge of his pecuniary legacies; but it is not directed to be sold for that purpose merely, but generally to be sold, and the money to go as residue of his personal estate."

To the same effect is Williamson *v.* Advocate-Gen., 10 Cl. & F., where the fund was held subject to legacy duty upon the ground that a like direction worked a conversion for all purposes, Lord BROUGHAM saying, p. 116: "I think that in every respect it (the estate) was money. In respect of the succession it would go, not to the heir, but to the next of kin. If so, it was money in respect of revenue, and was liable to the payment of the duty." In Att.-Gen. *v.* Lomas, L. R. 9, Ex. 29, it was held that under a direction to convert real and personal property to form a mixed fund to pay debts, funeral and testamentary expenses and legacies, the residue to be held on certain trusts which failed, that portion of the proceeds of realty which passed to testator's heir by reason of the failure of the trusts, was subject to probate duty upon the ground that by the creation of a mixed fund the whole was "stamped with the character of money."

Upon the same principle it has been held that as under the decisions of the Court of Chancery, partnership real estate is to be regarded as personalty for all purposes, the interest of a deceased partner therein is subject to legacy duty even though the land remain unsold or is beyond the jurisdiction: Forbes *v.* Steven, L. R., 10 Eq., 178; Stokes *v.* Dacroz, 62 L., N. S., 176; Att.-Gen. *v.* Hubbuck, L. R., Q. B., 488. It had already been held in Att.-Gen. *v.* Brunning, 8 H. L. Cas., 243, that money received by executors *virtute officii* under a contract of sale made by their testator was subject to probate duty. In Att.-Gen. *v.* Ailesbury, L. R., 12 App. Cas., 672, it was held upon the principle of these cases that the value of lands purchased with the money of a lunatic by his committees under an order of the Lords Justices having jurisdiction in lunacy, which provided that the land should be held in trust for his executors, administrators and assigns, and should "to all intents and purposes be considered as part of the personal estate," was subject to probate duty.

In view of these decisions, it is submitted that Watson *v.* Swift, 8 Beav., 368, Custance *v.* Bradshaw, 4 Hare, 324, and DeLancey's succession, in so far as they sustain the position that there may be a conversion out and out, or for all purposes except fiscal, or as it has been put by Lord Justice JAMES, "a conversion for every one except for the crown" must be regarded as overruled: Att.-Gen. *v.* Ailesbury, L. R. 12, App. Cas., 696; Forbes *v.* Steven, L. R., 10 Eq., 192.

On the other hand it seems equally clear that unless the conversion is out and out the Crown has no claim. Indeed, in Williamson *v.* Advocate-Gen., 10 Cl. & F., 15, 16, Lord BROUGHAM seems to have been of opinion that the Crown's right to probate and legacy duty depended upon the conversion being sufficiently complete to ex-

clude the rule in Ackroyd *v.* Smithson, 1 Lead. Cas. Eq., 1171.

It has since been held, however, that the conversion is sufficiently complete when the proceeds of the real and personal property are to be indiscriminately blended for the purpose of creating a single fund for administration even though the heir be entitled to the undisposed of interest under Ackroyd *v.* Smithson in case some of the trusts fail; for the creation of a mixed fund for this purpose made it a duty to sell in all events and stamped the whole "with the character of money," and as such it passed to the heir's administrators: Att.-Gen. *v.* Lomas, L. R., 9 Ex., 29.

Therefore, the corrected statement of the principle of Miller *v.* Com., and Williamson's Estate, as distinguished from the statement contained in the syllabi, is sustained by the most approved English authorities.

Furthermore, it should be observed that this restricted application of the doctrine of equitable conversion to the situs of property for taxation, while technically correct, is free from most of the objections that may be justly urged against its application to cases in which the conversion is for special or particular purposes. To the objection that the situs of property for the purpose of taxation should be one of fact, not of fiction, it may well be replied that the doctrine of equitable conversion once properly invoked for the purpose of converting the land out and out it becomes personal property for all purposes, and the actual situs, therefore, yields to the situs of domicile. Moreover, without regard to the doctrine that the actual situs of personal property yields to the situs of domicile, it may well be said that the testator, by directing the proceeds of the sale to be blended with his residuary personal estate for the general purposes of administration, has rendered it necessary for the executors to transmit them to his domicile, and has thereby relieved the Court from all difficulty in enforcing its decree.

If it be said that this assumes that jurisdiction depends upon the situs of property at the time of decree instead of at death (Drayton's App., 61 Pa., 172), it may be replied that as it would be the duty of the executors to convert and transmit equity may well regard that as done which ought to be done, and consider the proceeds at the situs of domicile at the time of testator's decease. The objection that the construction adopted might lead to taxation at both the actual and legal situs is sufficiently answered by the suggestion that the existence of such a possibility affords no ground for altering the construction if otherwise sound. Double taxation necessarily results from the doctrine adopted in nearly all the States, that for the purpose of taxation personal property beyond the jurisdiction belonging to residents is governed by the situs of domicile, while property within the jurisdiction belonging to non-residents is governed by its actual situs: 32 Am. L. Reg., 370.

If it be objected that if the doctrine of equitable conversion applies to subject to the tax land beyond the jurisdiction directed to be converted into money, the converse proposition must be equally true; and money directed to be laid out in land beyond the jurisdiction should be exempt, it may be said that while this would seem