

UNITED STATES v. KELLEY'S ADM'RS.<sup>1</sup>

(Circuit Court, E. D. Pennsylvania, October 16, 1886.)

## INTERNAL REVENUE—LEGACY AND SUCCESSION TAXES—ACT OF CONGRESS OF JUNE 30, 1864.

The act of congress of June 30, 1864, under which the tax in this case was claimed, provided that such tax or duty shall be due and payable whenever the party on whose "distributive share" of an estate the tax is charged "shall be entitled to the possession or enjoyment thereof." The testator died in 1866. The administrator's account was settled in 1873, when the distributees' shares were ascertained and adjudged to be paid to them. The law imposing the tax claimed was repealed in 1870. *Held*, that, as the tax could not be demanded before the repeal of the act of congress imposing it, no right to the tax ever accrued to the United States.

Writ of Error to the District Court. See 27 Fed. Rep. 542.

This was an action brought by the United States to recover legacy taxes imposed by the act of congress of June 30, 1864.

*John K. Valentine*, Dist. Atty., for the United States.

*Samuel Gustine Thompson*, for defendants in error.

MCKENNAN, J. By the act of congress under which the tax in this case is claimed, it is provided that such tax or duty shall be due and payable whenever the party on whose "distributive share" of an estate the tax is charged "shall be entitled to the possession or enjoyment thereof." And hence it has been decided in *Mason v. Sargent*, 104 U. S. 693, that "the right does not accrue until the duty can be demanded; that is, when it is made payable." In Pennsylvania, although the heirs of a decedent are entitled to an ultimate share of his personal property, yet the legal title to all such property is vested in his administrator until an account of the administration is settled, and the balance shown by it is paid over to the heirs. Hence the heirs have only an interest in the estate of the decedent which is not *eo nomine*, and does not become a distributive share until the fund for division among the heirs is ascertained by a settlement of the administration account, and a decree is rendered by the court for its divisible payment to the heirs,—not until then is a distributive character impressed upon the fund, and are their distributive shares recoverable by the heirs.

In the present case, Philip F. Kelly, of whom the defendants were administrators, died in November, 1866. His estate was in course of administration until January, 1873, when an account was settled, and the amount distributable among the heirs was ascertained and adjudged to be paid to them. Then, and not before, they were entitled to their proportion of their distributive shares, and then only was the tax upon them deemed payable by the terms of the act. But as the law imposing it was repealed before this, to-wit, in 1870, the

<sup>1</sup> Reported by C. B. Taylor, Esq., of the Philadelphia bar.

right to the tax did not accrue, because the tax could not be demanded before the repeal of the act. *Mason v. Sargent, supra.*

It follows, therefore, that the judgment of the court below was right, and it is accordingly affirmed.

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UNITED STATES *v.* TRUCK'S ADM'X.<sup>1</sup>

(Circuit Court, E. D. Pennsylvania. October 16, 1886.)

INTERNAL REVENUE — LEGACY AND SUCCESSION TAXES — ACT OF CONGRESS OF JUNE 30, 1864.

A common-law action cannot be maintained to enforce the payment of legacy and succession taxes imposed by the act of congress of June 30, 1864. That act provides a remedy which the United States must pursue where the tax has not been paid.

Writ of Error to the District Court. See 27 Fed. Rep. 541.

This was an action brought by the United States to recover legacy taxes imposed by the act of congress of June 30, 1864.

*John K. Valentine*, Dist. Atty., for the United States.

*Bernard Gilpin*, for defendant in error.

McKENNAN, J. The long delay which has attended the assertion of the claim set up in this case, and the apparent injustice of subjecting a trustee to personal liability for it, who has long since paid out the trust fund in her hands, under a judicial decree, ought to protect her from such liability, unless the right of the government to recover is entirely clear.

The only question which it is necessary to consider is the primary one, can the United States, in view of the provisions of the act of congress imposing the tax claimed, maintain an action at common law to recover it from the defendant? It was decided by the court below that it could not. It is a rule of the common law, that where a statute creates a right, and provides a particular remedy for its enforcement, the remedy is generally exclusive of all common-law remedies. But it has been held that this rule is not applicable to the United States, unless it is expressly made so by the statute under which the claim is made. *Savings Bank v. U. S.*, 19 Wall. 237. By the act of 1862, and its supplements and substitutes a tax was imposed upon successions. This tax was made a lien or charge upon the property bequeathed or to be distributed, and it was made the duty of the executor, administrator, or trustee to pay it; and, in case of his refusal or neglect to pay it, it is provided that "proceedings shall be commenced before any court of the United States, in the

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