ment against any of the defendants in these cases would come out of the United States. It is the real party affected in all of these actions. § 8, Suits in Admiralty Act; 46 U. S. C., § 748. Cf. *Minnesota* v. *Hitchcock*, 185 U. S. 373, 387.

The analysis of the Act and the reasons on which rests our decision in *Fleet Corporation* v. *Rosenberg Bros.* apply here. Putting the United States and the Fleet Corporation on the same footing and providing remedies to be exclusive in admiralty would not serve substantially to establish uniformity if suits under the Tucker Act and in the Court of Claims be allowed against the United States and actions at law in state and federal courts be permitted against the Fleet Corporation or other agents for enforcement of the maritime causes of action covered by the Act. Such a failure of purpose on the part of the Congress is not readily to be inferred. We conclude that the remedies given by the Act are exclusive in all cases where a libel might be filed under it. As shown above, § 2 authorizes a libel *in personam* against the United States or against the Fleet Corporation in each of these cases. It follows that on disclosure—whether by pleading or proof—of the facts aforesaid, the District Court should have dismissed each case for lack of jurisdiction.

Judgments in Nos. 5, 32 and 56 reversed and causes remanded with directions to dismiss.
Judgment in No. 123 affirmed.

BREWSTER *v.* GAGE, COLLECTOR OF INTERNAL REVENUE.

CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

No. 61. Argued December 6, 1929.—Decided January 6, 1930.

1. Under the Revenue Acts of 1918 and 1921, which provide, §§ 202 (a), that for the purpose of ascertaining the gain derived or loss sustained from the sale of property "acquired" on or after March

1, 1913, the basis shall be its cost, the latter Act declaring also that in case of "property acquired by bequest, devise, or inheritance, the basis shall be the fair market price or value of such property at the time of such acquisition," the basis of calculation in the case of stocks acquired by the taxpayer as a residuary legatee and sold by him, is not their value at the date of the decree of distribution, but their value at the date of the testator's death. P. 333.

2. The right of a residuary legatee to have his share of the residue after administration, vests immediately upon the testator's death. The decree of distribution confers no new right; it merely identifies the property remaining, evidences the right of possession in the legatee, and requires its delivery by the executor or administrator. The legal title so given relates back to the date of the death. P. 334.
3. The practical interpretation of an ambiguous or doubtful statute that has been acted upon by officials charged with its administration will not be disturbed except for weighty reasons. P. 336.
4. Substantial reënactment in later Acts of a provision theretofore construed in regulations of the department charged with its administration, is persuasive evidence of legislative approval of the regulations. P. 337.
5. In § 113 (a) (5) of the Revenue Act of 1928, which defines the basis of calculating gain or loss in respect of sales of property acquired by devise, bequest or intestacy, the language, deliberately selected, so differs from that used in the earlier Acts as to indicate an intention to change the law. There is no support for the suggestion that it expressed the meaning, or was intended to govern or affect the construction, of the earlier Acts. P. 337.

30 F. (2d) 604, affirmed.

CERTIORARI, 279 U. S. 831, to review a judgment of the Circuit Court of Appeals which reversed a judgment, 25 F. (2d) 915, for Brewster in an action to recover from the Collector amounts exacted as additional income taxes.

Messrs. John W. Davis and *J. Sawyer Fitch,* with whom *Messrs. A. Broomfield* and *Charles Wright, Jr.,* were on the brief, for petitioner.

The only basis specifically mentioned in the 1918 Act for property acquired after March 1, 1913, is cost, and

in a case of this kind there is no cost in the literal sense of the word. The additional provision found in the 1921 Act, namely, § 202 (a) (3), is new and serves to make the statute clearer and more definite by specifying that the basic value of property acquired by bequest is its value when acquired. It can hardly be doubted that, whatever may be the conclusion reached under the 1921 Act, it must rationally be the proper conclusion to be reached under the 1918 Act, and it is not apprehended that the Treasury Department is of a different mind.

The narrow question to be answered is: When were the stocks which Brewster sold in 1920, 1921, and 1922 "acquired" by him within the intendment of the statutes here involved?

The "property" to which § 202 (a) (3) refers is the specific property sold by the residuary legatee. The time of "acquisition" of "such property" was the date of the order of distribution, and is to be distinguished from the acquisition of the mere right to a proper administration of the estate which vested at death. *Wulzen* v. *Board of Supervisors,* 101 Cal. 15; *Ex parte Okahara,* 191 Cal. 353; *White* v. *White,* 47 Vt. 502; *Alexander* v. *Alexander,* 85 Va. 353; *Matthieson* v. *United States,* 65 Ct. Cls. 484; *Appeal of City Bank Co.,* 1 B. T. A. 210; *Appeal of Matthieson,* 2 B. T. A. 921; *Foster* v. *Commissioner,* 7 B. T. A. 1137; *Moser* v. *Commissioner,* 12 B. T. A. 672; *McGee* v. *Commissioner,* 13 B. T. A. 1181.

The long settled common law rule, which has never been changed by any statute or decision affecting this case, is that upon a testator's death, title to personal property not specifically bequeathed, together with the possession, right to collect income therefrom and power to sell, passes to the executor or administrator and not to the residuary legatees, but indeed to the exclusion of such legatees. *United States* v. *Jones,* 236 U. S. 106; *Williams* v. *Cobb,* 242 U. S. 307; *Petersen* v. *Chemical*

Bank, 32 N. Y. 21; *Matter of Zefita,* 167 N. Y. 280; *Norton* v. *Lilley,* 210 Mass. 214; *State* v. *Circuit Court,* 177 Wis. 548; Schouler on Wills, 6th ed., § 2061; Alexander, Commentaries on Wills, Vol. 3, § 1461.

It may be freely conceded that Brewster acquired something at the date of death, for at that time he acquired a right to an honest administration of the estate and a vested right to participate eventually in the residuum if there should be any. This right is in itself property, and if he should sell it, his gain or loss would be based upon the value of such right at the time he acquired it, the date of death. But this right is not the "property," the stocks, which were distributed to him and which he sold in 1920, 1921, and 1922.

To hold that the property sold was acquired at the date of the testator's death would result in increasing or decreasing a taxpayer's income on account of changes in value of property before it is subject to the disposition and control of such taxpayer. This should not be done in the absence of clearly expressed congressional intent.

The legislative history of the statutes in question fully supports the petitioner's construction.

The broad definition of gross income found in the first income tax statute, the Revenue Act of 1913, has not been changed in any respect here significant in the numerous revenue acts enacted to this date. In each of the Acts there has been excluded from gross income and exempted from the income tax, "the value of property acquired by gift, bequest, devise, or descent." The only change whatsoever occurred in the 1926 Act, when the word "descent" was changed to "inheritance" and this change was retained in the 1928 Act. It is without significance.

In all of the revenue acts, except that of 1913, in which no specific provision is found, the general rule as to basis has been that the basis for determining gain or

loss from the sale of property is the cost of such property if it was acquired after March 1, 1913, and the value of such property at March 1, 1913, if it was acquired prior to that date.

In the 1921 Act, subparagraph (3) of § 202 (a) was added. This was for the purposes both of clarifying and harmonizing the basis provisions with § 213, which excludes "the value of property acquired by . . . bequest . . ." from taxation as income. This provision was retained and reënacted in the 1924 and 1926 Acts. If Congress intended to adopt any such construction as the Department here urges, it would certainly have employed the obvious means of doing so by providing that the basis shall be the value at the date of death. Furthermore, when the section was reënacted in 1926, the Board of Tax Appeals had decided the *Matthieson* case, *supra,* in 1925 holding that the basis is the value at the date of distribution. By the time the 1928 Act was passed, the Board, in the *Foster* case, had reiterated its position, the Court of Claims, in the *Matthieson* case, had followed the Board, and the District Court had decided this case, all contrary to the construction now asked by the Department. And when Congress came to reënact the provisions here under consideration, it spelled out its intention in a fashion that would leave no room whatsoever for doubt. This provision appears as § 113 (a) (5) of the Revenue Act of 1928.

If, as the Department contended below, petitioner's construction results in the escape from tax of income intended to be taxed, then it is impossible to explain why Congress, in the 1928 Act, opened a way of escape, contrary to its consistent policy of closing all ways of escape. The rational explanation is that Congress never intended to tax this enhancement or to allow losses measured by corresponding declines and that the 1928 Act merely provides more definitely that which it had always intended

but as to which doubt had arisen by reason of the conflicting views of the Department on the one hand and the Board of Tax Appeals, the Court of Claims, and the District Court in this case, on the other hand.

Section 113 (a) (5) of the 1928 Act deals with precisely the same subject-matter as § 202 (a) (3) of the 1921 Act, here in controversy, and the identical provisions of the 1924 and 1926 Acts. Where, from a subsequent statute *in pari materia,* it may be ascertained what meaning the law makers attached to the words of a former statute, the subsequent statute will govern the construction of the earlier statute. *United States* v. *Freeman,* 3 How. 556; *Alexander* v. *Alexandria,* 5 Cranch 1; *United States* v. *Coulby,* 251 Fed. 982; affirmed, 258 Fed. 27; *Joy Floral Co.* v. *Commissioner,* 29 F. (2d) 865.

The departmental construction is entitled to no weight in construing the statutes here involved. There has been no long continued or consistent departmental construction; in fact, there was no published departmental regulation or ruling prior to the enactment of the 1926 Act, placing any construction on § 202 (a) (3) of the 1921 Act.

The decision below is not sound; and its construction of the statute leads to inconsistencies and confusion that do not arise under the proper construction.

Solicitor General Hughes, with whom *Assistant Attorney General Youngquist,* and *Messrs. Sewall Key, Randolph C. Shaw, Clarence M. Charest,* and *W. H. Trigg* were on the brief, for respondent.

Mr. Justice Butler delivered the opinion of the Court.

Petitioner's father died testate May 20, 1918. The surrogate's court at Rochester, New York, entered a final decree April 19, 1920, pursuant to which certain stocks

were distributed to the petitioner as one of the residuary legatees. He sold some of them in 1920, 1921 and 1922. For his income tax returns, he computed profit or loss on each sale by comparing the selling price of the stock with its value at the date of the decree of distribution and paid the amounts so determined. But the Commissioner of Internal Revenue held that the values of the stock at the date of testator's death should be taken for the calculation of income, and on that basis assessed for each year an additional tax which petitioner paid under protest. He brought this action in the district court for the western district of New York to recover the amounts so exacted. The court gave judgment for him. 25 F. (2d) 915. The Circuit Court of Appeals reversed. 30 F. (2d) 604.

The taxes for 1920 are governed by the Revenue Act of 1918, 40 Stat. 1057, 1060, 1065, and those for 1921 and 1922 by the Act of 1921, 42 Stat. 227, 229, 237. As defined in these laws, gross income includes gains derived from sales of property but does not include the value of property acquired by bequest, devise or descent. § 213. Section 202(a) in each Act provides that for the purpose of ascertaining the gain derived or loss sustained from the sale of property "acquired" on or after March 1, 1913, the basis shall be its cost. This provision is made more definite in the Act of 1921 by subdivision (3). It provides that, in case of "property, acquired by bequest, devise, or inheritance, the basis shall be the fair market price or value of such property at the time of such acquisition." It is not suggested by either party that this provision changed the law or that the basis for computing the tax for 1920 under the earlier Act is not the same as that applicable for 1921 and 1922 under the later Act. It is necessary to construe the word "acquired" and the phrase "at the time of such acquisition" to determine whether the value of the stock at the time of testator's

death or its value on the date of the decree should be used in the calculation.

Upon the death of the owner, title to his real estate passes to his heirs or devisees. A different rule applies to personal property. Title to it does not vest at once in heirs or legatees. *United States* v. *Jones,* 236 U. S. 106, 112. But immediately upon the death of the owner there vests in each of them the right to his distributive share of so much as shall remain after proper administration and the right to have it delivered upon entry of the decree of distribution. *Sanders* v. *Soutter,* 136 N. Y. 97. *Vail* v. *Vail,* 49 Conn. 52. *Cook* v. *McDowell,* 52 N. J. Eq. 351. Upon acceptance of the trust there vests in the administrators or executors, as of the date of the death, title to all personal property belonging to the estate; it is taken, not for themselves, but in the right of others for the proper administration of the estate and for distribution of the residue. The decree of distribution confers no new right; it merely identifies the property remaining, evidences right of possession in the heirs or legatees and requires the administrators or executors to deliver it to them. The legal title so given relates back to the date of the death. *Foster* v. *Fifield,* 20 Pick. 67, 70. *Wager* v. *Wager,* 89 N. Y. 161, 166. *Thompson* v. *Thomas,* 30 Miss. 152, 158.

Petitioner's right later to have his share of the residue vested immediately upon testator's death. At that time petitioner became enriched by its worth which was directly related to and would increase or decline correspondingly with the value of the property. And, notwithstanding the postponement of transfer of the legal title to him, Congress unquestionably had power and reasonably might fix value at the time title passed from the decedent as the basis for determining gain or loss upon sale of the right or of the property before or after the decree of distribution. And we think that in substance it would not be incon-

sistent with the rules of law governing the descent and distribution of real and personal property of decedents to construe the words in question to mean the date of death.

Undoubtedly the basis for the ascertainment of gain or loss on the sale of real estate by an heir or devisee is its value at the time of decedent's death. That is "the time of such acquisition." The decree of distribution necessarily is later than, and has no definite relation to, the time when the real estate passes. And generally specific bequests are handed over to the legatees soon after the death of the testator and such property may be and often is sold by them prior to the entry of the decree for final distribution. In such cases gains or losses are to be calculated under these Acts on value at the time of death. No other basis is or reasonably could be suggested.

There is nothing in either of the Acts or in their legislative history to indicate a purpose to establish two bases—(1) value of real estate and specific bequests at time of death and (2) value of other property at date of decree. The rule that ambiguities in tax laws are to be resolved in favor of taxpayers has no application here because it is impossible to determine which basis would impose a greater burden. And neither construction is to be preferred on the ground that the other would raise serious question as to constitutional validity. The generality of the words used in both Acts indicates intention that the value at the time of death of the decedent was to be taken as the basis in all cases.

The Revenue Act of 1918 and subsequent Acts taxed incomes of estates during the period of the administration including profits on sales of property, and such gains are calculated on value at date of decedent's death.*

*§ 219, Revenue Act of 1918, 40 Stat. 1071; Regulations 45, Art. 343.
§ 219, Revenue Act of 1921, 42 Stat. 246; Regulations 62, Art. 343.
§ 219, Revenue Act of 1924, 43 Stat. 275; Regulations 65, Art. 343.
§ 219, Revenue Act of 1926, 44 Stat. 32; Regulations 69, Art. 343.

There appears to be no reason why gains or losses to the estate should be calculated on one basis and those to the residuary legatees on another.

Treasury Regulations under the Revenue Acts in force between 1917 and 1928 declared that value at time of the death of decedent should be taken as the basis for ascertaining profit or loss from sale of property acquired by bequest or descent since February 28, 1913. Regulations 33, Revised, paragraph 44, promulgated with reference to § 2(a), Revenue Act of 1916, provided that in computing profit or gain upon property acquired by inheritance, the basis should be appraised value at the time of decedent's death. Regulations 45, Art. 1562, promulgated with reference to § 202 of the Revenue Act of 1918 declared that "for the purpose of determining the profit or loss from the sale of property acquired by bequest, devise or descent since February 28, 1913, its value as appraised for the purpose of the federal estate tax . . . should be deemed to be its fair market value when acquired." And value at the time of death is the basis of that appraisal. § 402. 40 Stat. 1097. Regulations 62, Art. 1563, under the Act of 1921 are substantially to the same effect as the earlier regulations.

These regulations were prepared by the department charged with the duty of enforcing the Acts. The rule so established is reasonable and does no violence to the letter or spirit of the provisions construed. A reversal of that construction would be likely to produce inconvenience and result in inequality. It is the settled rule that the practical interpretation of an ambiguous or doubtful statute that has been acted upon by officials charged with its administration will not be disturbed except for weighty reasons. *Logan* v. *Davis,* 233 U. S. 613, 627. *Maryland Casualty Co.* v. *United States,* 251 U. S. 342, 349. *Swendig* v. *Washington Water Power Co.,* 265 U. S. 322, 331.

The meaning of "acquired" in § 202(a) of the Act of 1918 was not changed by and in context means the same as does the phrase "time of such acquisition" in the corresponding provision of the Act of 1921. And that phrase was continued in § 204(a) (5) of the Revenue Acts of 1924 and 1926. 43 Stat. 258. 44 Stat. 14. The regulations promulgated under that section are substantially the same as the earlier regulations. Regulations 65, Art. 1594. Regulations 69, Art. 1594. The substantial reenactment in later Acts of the provision theretofore construed by the department is persuasive evidence of legislative approval of the regulation. *National Lead Co.* v. *United States,* 252 U. S. 140, 146. *United States* v. *Cerecedo Hermanos y Compañia,* 209 U. S. 337, 339. *United States* v. *G. Falk & Brother,* 204 U. S. 143, 152. The subsequent legislation confirmed and carried forward the policy evidenced by the earlier enactments as interpreted in the regulations promulgated under them.

The Revenue Act of 1928, § 113(a) (5), expressly established value at the time of the death of the decedent as the basis of calculation in respect of sales of personal property acquired by specific bequest and of real estate acquired by general or specific devise or by intestacy, and in all other cases fixed fair market value at the time of distribution to the taxpayer as the basis. 45 Stat. 819. The deliberate selection of language so differing from that used in the earlier Acts indicates that a change of law was intended. Ordinarily, statutes establish rules for the future, and they will not be applied retrospectively unless that purpose plainly appears. *United States* v. *Magnolia Co.,* 276 U. S. 160, 162, and cases cited. There is no support for the suggestion that subdivision (5) expressed the meaning, or was intended to govern or affect the construction, of the earlier statutes.

Judgment affirmed.

81325°—30——22