unloading a vessel are entitled to recover under it, even though without remedy under local compensation laws. See § 3 (a) [33 U. S. C. A., § 903 (a)].

MR. JUSTICE HOLMES and MR. JUSTICE BRANDEIS concur.

MAY ET AL., EXECUTORS, *v.* HEINER, COLLECTOR OF INTERNAL REVENUE.

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

No. 311. Argued March 7, 1930.—Decided April 14, 1930.

1. A transfer in trust by a grantor since deceased, under which the income was payable to decedent's husband during his lifetime and after his death to the decedent during her lifetime, with remainder over to her children, *held* not made in contemplation of or intended to take effect in possession or enjoyment at or after death, within the legal significance of those words, and that, therefore, the corpus of the trust should not be included in the value of the gross estate of the decedent for purposes of estate tax under § 402 (c) of the Revenue Act of 1918. P. 243.
2. The estate tax of the Revenue Act of 1918, § 401, imposes an excise upon the transfer of an estate upon the death of the owner. P. 244.

32 F. (2d) 1017, reversed.

CERTIORARI, 280 U. S. 542, to review a judgment of the Circuit Court of Appeals which affirmed a judgment of the District Court, 25 F. (2d) 1004, sustaining a federal estate tax.

Mr. Charles H. Sachs, with whom *Mr. Louis Caplan* was on the brief, for petitioners.

The transfer in this case was effective to pass the title to the property and the economic benefits to be derived therefrom immediately when it was made, on October 1, 1917.

The only interest which decedent had in the property at the time of her death was her contingent life estate.

If neither the value of the life estates, nor that of the remainders, was required to be included in the gross estate in the *Reinecke* case, 278 U. S. 339, notwithstanding the fact that the remainders were intended to take effect in possession or enjoyment at or after settlor's death, the value of the life estate given here to the settlor's husband, and the value of the remainder given to her children, should not be included in the gross estate. The circumstance that in this case there was the possibility of a life estate in favor of settlor intervening does not detract from the finality and irrevocability of the estates given to others. In principle, there is no difference between the gift of a life estate to A, with remainder to B, and a gift of a life estate to A, a life estate to Z, if the latter survives A, and the remainder to B.

A tax attaches only in those cases where there is a shifting of the economic use and benefit of property upon the death of the settlor, and the tax is measured by the value of the economic benefits which pass from the settlor to his successor by the settlor's death. *Chase Nat'l Bank* v. *United States,* 278 U. S. 327; *Carnill* v. *McCaughn,* 30 F. (2d) 696; *Nichols* v. *Bradley,* 27 F. (2d) 47.

If the Revenue Act of 1918, according to a correct construction, purports to authorize the tax here imposed, it is unconstitutional. *Nichols* v. *Coolidge,* 274 U. S. 531.

Assistant Attorney General Youngquist, with whom *Attorney General Mitchell* and *Messrs. Sewall Key* and *J. Louis Monarch,* Special Assistants to the Attorney General, were on the brief, for respondent.

Congress has power, under the Constitution, to impose, and by the Act of 1918 has imposed, an estate tax measured by the value of property irrevocably transferred by a decedent in his lifetime, but subject to a reservation to the decedent of a life estate therein. *Y. M. C. A.* v.

Davis, 264 U. S. 47; *Chase Nat'l Bank* v. *United States,* 278 U. S. 327.

The general characteristics of a testamentary disposition, putting aside matters of form, are that the property go over at the death of the testator, and that during his lifetime he have the possession, enjoyment, or control. It has been frequently held that a trust under which the settlor receives the income of property during life, and upon his death the corpus is distributed to designated beneficiaries, involves a transfer to such beneficiaries intended to take effect in possession or enjoyment at or after the settlor's death, and is subject to an inheritance tax. The fact that the corpus of the trust estate is irrevocably vested at the time the trust is created is held to be immaterial, as neither possession nor enjoyment within the meaning of the law takes effect until the death of the settlor. *McCaughn* v. *Girard Trust Co.,* 11 F. (2d) 520; *Reed* v. *Howbert,* 8 F. (2d) 641; *Una Libby Kaufman,* 5 B. T. A. 31; *Matter of Green,* 153 N. Y. 223; *Crocker* v. *Shaw,* 174 Mass. 266; *Carter* v. *Bugbee,* 91 N. J. L. 438; *Todd's Estate, (No. 2),* 237 Pa. 466. See also *Tips* v. *Bass,* 21 F. (2d) 460. This principle is recognized generally. See Gleason & Otis, Inheritance Taxation, 2d ed., p. 125 *et seq.*

Carnill v. *McCaughn,* 30 F. (2d) 696, is to the contrary. *Cf.* also *Frew* v. *Bowers,* 12 F. (2d) 625; *Boyd* v. *United States,* 34 F. (2d) 488. *Carnill* v. *McCaughn* is now pending in the Circuit Court of Appeals for the Third Circuit. In deciding it the District Court held that the decisions of this Court in *Nichols* v. *Coolidge,* 274 U. S. 531; *Reinecke* v. *Northern Trust Co.,* 278 U. S. 339; and *Chase Nat'l Bank* v. *United States,* 278 U. S. 327, have modified the doctrine relied upon by the Circuit Court of Appeals for the Third Circuit in the present case and in *McCaughn* v. *Girard Trust Co., supra.*

The right to enjoy the income is what gives property value, and the reservation of that right is equivalent to the continued ownership of the property. The cessation by death of such a present right to receive income constitutes a taxable transfer.

The imposition of the tax is not affected by the fact that the property transferred was subjected by the transferor to a further reservation of a life estate therein in favor of her husband. If the husband's life interest continued beyond her death, the reservation would continue during his lifetime. But in either case her death would relieve the trust from the burden of her reserved life interest; and in either case the trust was intended to and did as to the children " take effect in possession or enjoyment at or after " her death.

In any event, we contend that the termination by death of a contingent life estate will support the tax, which is one imposed upon " an interest which closed by reason of death." *Y. M. C. A.* v. *Davis,* 264 U. S. 47; *Edwards* v. *Slocum,* 264 U. S. 1. The right of the decedent to receive the income of this trust for life in the event she survives her husband is a right which may postpone the enjoyment by the remaindermen of the economic benefits of the property transferred. The termination of this right by the death of the decedent, freeing the remainder of the possibility of its exercise, is a transfer within the meaning of the statute, properly measured by the value of the property thus relieved of the burden.

This transfer comprised the right to receive the income which is " that which gives value to property." *Pollock* v. *Farmers' Loan & T. Co.,* 158 U. S. 601. Accordingly, the tax was properly reckoned upon the value of the corpus of the trust relieved of the burden of the settlor's life estate, just as the tax in *Reinecke* v. *Northern Trust*

Co., supra, was held to be rightly imposed on the transfers of the corpus of the two trusts.

The taxable transfer was completed upon the settlor's death in 1920, and the imposition of the tax by the Revenue Act of 1918 involves no question of retroactivity.

Mr. Arthur W. Machen, Jr., filed a brief on behalf of Safe Deposit & Trust Company of Baltimore, as *amicus curiæ,* by special leave of Court.

Mr. Ward Loveless filed a brief as *amicus curiæ,* by special leave of Court.

Mr. Justice McReynolds delivered the opinion of the Court.

By a written instrument dated October 1st, 1917, Pauline May, wife of Barney May, " transferred, set over and assigned " to him and others, as trustees, (with power to change the investments) certain described securities—bonds, notes, corporate stocks, and money—in trust, to collect the income therefrom and after discharging taxes, expenses, etc., to pay the balance " to Barney May during his lifetime, and after his decease, to Pauline May during her lifetime, and after her decease, all the property in said Trust, in whatever form or shape it may be, shall, after the expenses of the Trust have been deducted or paid, be distributed equally among " her four children, their distributees, or appointees.

Mrs. May died March 25, 1920. Thereafter the Commissioner of Internal Revenue, purporting to proceed under authority of the Revenue Act of 1918, Title IV, 40 Stat. 1057, 1096, 1097, demanded that her executors pay additional taxes reckoned upon the value of the property held under the above-described trust instrument. Having paid the required sum, the executors—petitioners here—asked that it be refunded. By order of February

20, 1924, the Commissioner denied their request. In support of this action he said—

"This trust was included in decedent's gross estate on final audit and review on the ground that it was intended to take effect in possession or enjoyment at or after death. In this case the principal of the trust fund could not take effect in possession until the death of the decedent. According to the provisions of the trust agreement, if the decedent's husband died before her, the income was to be paid to her until her death. The gift of the principal, therefore, could not take effect during the decedent's lifetime. This case comes literally within the terms of the statute, and it has been held by a number of courts in different States that such a transfer as this is taxable, these cases being decided under statutes using the same language as is contained in the Federal Estate Tax Law."

Seeking to enforce their claim the executors sued the Collector in the District Court, Western District of Pennsylvania; judgment in his favor was affirmed by the Circuit Court of Appeals. The matter is here upon certiorari.

The record fails clearly to disclose whether or no Mrs. May survived her husband. Apparently she did not. But this is not of special importance since the refund should have been allowed in either event.

The transfer of October 1st, 1917, was not made in contemplation of death within the legal significance of those words. It was not testamentary in character and was beyond recall by the decedent. At the death of Mrs. May no interest in the property held under the trust deed passed from her to the living; title thereto had been definitely fixed by the trust deed. The interest therein which she possessed immediately prior to her death was obliterated by that event.

Section 401, Revenue Act of 1918, lays a charge "upon the transfer of the net estate of every decedent dying after the passage of this Act," and Section 402 directs that "the value of the gross estate of the decedent shall be determined by including the value at the time of his death of all property, real or personal, tangible or intangible, wherever situated . . . (c) to the extent of any interest therein of which the decedent has at any time made a transfer, or with respect to which he has at any time created a trust, in contemplation of or intended to take effect in possession or enjoyment at or after his death . . ."

The statute imposes "an excise upon the transfer of an estate upon death of the owner." *Y. M. C. A.* v. *Davis,* 264 U. S. 47, 50; *Nichols* v. *Coolidge,* 274 U. S. 531, 537.

In *Reinecke* v. *Northern Trust Co.,* 278 U. S. 339, 347, 348, the estate tax prescribed by the Revenue Act of 1918, Sec. 402 (c), and carried into the Act of 1921, 42 Stat. 278, as Sec. 402 (c) thereof, was under consideration. This Court said—

"In its plan and scope the tax is one imposed on transfers at death or made in contemplation of death and is measured by the value at death of the interest which is transferred. . . . One may freely give his property to another by absolute gift without subjecting himself or his estate to a tax, but we are asked to say that this statute means that he may not make a gift *inter vivos,* equally absolute and complete, without subjecting it to a tax if the gift takes the form of a life estate in one with remainder over to another at or after the donor's death. It would require plain and compelling language to justify so incongruous a result and we think it is wanting in the present statute. . . .

"In the light of the general purpose of the statute and the language of § 401 explicitly imposing the tax on net

estates of decedents, we think it at least doubtful whether the trusts or interests in a trust intended to be reached by the phrase in § 402 (c) 'to take effect in possession or enjoyment at or after his death,' include any others than those passing from the possession, enjoyment or control of the donor at his death and so taxable as transfers at death under § 401. That doubt must be resolved in favor of the taxpayer. . . ."

The judgment of the Circuit Court of Appeals is erroneous and must be reversed. The cause will be remanded to the District Court for further proceedings in conformity with this opinion.

Reversed.

LUCAS, COMMISSIONER OF INTERNAL REVENUE, *v.* THE PILLIOD LUMBER COMPANY.

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

No. 356. Argued January 14, 1930.—Decided April 14, 1930.

1. The five-year period of limitations prescribed by the Revenue Act of 1924, § 277 (a) (2), limiting the time within which after the filing of a return taxes under the Revenue Act of 1918 might be determined and assessed, does not begin to run from the time of the filing of a "tentative return," nor from the time of the filing of a return not verified by the proper corporate officers as required by § 239 of the Act of 1918. P. 247.
2. A statute of limitations runs against the Government only when it assents and upon the conditions prescribed. P. 249.
3. The requirement of § 239 of the Revenue Act of 1918 that returns of corporations shall be sworn to as specified, is not subject to waiver. *Id.*

33 F. (2d) 245, reversed.

CERTIORARI, 280 U. S. 544, to review a decree of the Circuit Court of Appeals which reversed a decision of the Board of Tax Appeals, 7 B. T. A. 591, sustaining an as-