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Argument for Petitioner.

the court below, which fully sustains respondent's contention here, renders it unnecessary to discuss the matter at greater length. We think that opinion should be sustained. It finds ample support in *Hoeper v. Tax Commission*, 284 U.S. 206, 215; *Heiner v. Donnan*, 285 U.S. 312, 326; and other decisions of this court.

DUPONT v. COMMISSIONER OF INTERNAL
REVENUE.

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

No. 791. Argued May 10, 1933.—Decided May 29, 1933.

1. Section 219 (h) of the Revenue Acts of 1924 and 1926, taxing incomes of trust funds as income of the settlor, when applied to payment of premiums on policies insuring his life for the benefit of the trust beneficiaries,—held valid under *Burnet v. Wells*, *ante*, p. 670. P. 687.
 2. One who conveys securities in trust to keep up insurance on his life for the benefit of others, but reserves the right to retake the securities at the end of a stated period if he survives, retains such an interest in the securities, apart from his interest in having the premiums paid, that the income from the securities applied to the premiums during the trust period may constitutionally be taxed as his own. P. 688.
- 63 F. (2d) 44, affirmed.

CERTIORARI* to review a judgment which affirmed a decision, 20 B.T.A. 482, sustaining an assessment on income.

Mr. J. S. Y. Ivins, with whom *Messrs. Kingman Brewster, Percy W. Phillips*, and *Richard B. Barker* were on the brief, for petitioner.

Petitioner, at the time of the enactment of the Revenue Act of 1924, and throughout the taxable years in-

* See Table of Cases Reported in this Volume.

volved, had no interest in the corpus or income of the trusts, and had no interest in the life insurance policies. The transfer of the policies was not temporary, but permanent and absolute. *Coolidge v. Long*, 282 U.S. 582, 602.

The collection of the tax would be unconstitutional. *Hoeper v. Tax Comm'n*, 284 U.S. 206; *Heiner v. Donnan*, 285 U.S. 312; *Knowlton v. Moore*, 178 U.S. 41; *Hartman v. Greenhow*, 106 U.S. 642.

Petitioner relieved himself from a moral obligation to carry insurance for the beneficiaries; but he did this by making a gift and parting with the beneficial ownership of the policies (permanently) and of the corpus of the trust fund (for the period of the trust). The fallacy of the argument that relief from a moral obligation constitutes taxable income can be readily seen by applying it to other situations.

Hoeper v. Wisconsin Tax Comm'n, 284 U.S. 206, was not decided upon the ground that the principal which yielded Mrs. Hoeper's income had never been the property of Mr. Hoeper, but upon the ground that it was not his property at the time when it yielded the income which was the subject of the tax. Present ownership of the corpus (or a power of disposition thereof equivalent to ownership) may be a basis for the taxation of income, but past ownership of a corpus is not more a proper basis for taxation of income than it would be for the inclusion of the corpus in the taxable estate of a decedent.

The fact that the settlor had a reversion in the corpus does not render him taxable on the income during the prior term. *Nail v. Commissioner*, 27 B.T.A. 33. The trustee was, for the term of the trust, unquestionably the owner of both corpus and income for the uses mentioned in the trust agreement. *United States v. Looney*, 29 F. (2d) 884, 885.

The extension of the trust from December 18, 1926, was similar to the creation of a new trust.

Mr. Erwin N. Griswold, with whom *Solicitor General Thacher*, *Miss Helen R. Carloss*, and *Mr. Sewall Key* were on the brief, for respondent.

MR. JUSTICE CARDOZO delivered the opinion of the Court.

This case, like *Burnet v. Wells*, decided today, *ante*, p. 670, requires us to determine whether § 219 (h) of the Revenue Acts of 1924 and 1926 is consistent with the Fifth Amendment in its application to trusts for the payment of premiums on policies of insurance.

On September 18, 1923, the petitioner, Du Pont, created nine trusts for the benefit of his wife and children, transferring to the trustee thereby two policies of insurance on his life, and shares of stock in a corporation, the income to be used to keep the policies in force. The trusts were to last for three years, during which term they were to be irrevocable. At the end of the term, they might be extended for a like period at the option of the settlor, and successively thereafter. Two such notices were given, with the result that in 1924, 1925, and 1926, the taxable years involved in this proceeding, the trusts were still in being.

The deeds make provision for the disposition of the policies and separate provision for the disposition of the shares.

As to the policies, the provision is that if the trusts shall be terminated before the petitioner's death, all interest in the policies shall vest in certain named beneficiaries. The petitioner is not one of these, nor has he any power to change them. If the petitioner shall die while the trusts are still in force, the trustee is to collect the insurance, and to hold the proceeds in trust for the use of the beneficiaries named in the agreements.

As to the shares of stock, the provision is that if the trusts shall be terminated before the petitioner's death, the shares and any income not paid out shall be transferred to the petitioner. If, however, he shall die while the trusts are still in force, the shares are to be divided among the children or their issue.

The Commissioner of Internal Revenue, following the command of § 219 (h) of the applicable statutes (Revenue Acts of 1924 and 1926; c. 234, 43 Stat. 253; 26 U.S. Code, § 960; c. 27, 44 Stat. 9; 26 U.S. Code App., § 960) made a deficiency assessment by adding to the taxpayer's income the amount expended by the trustee in the preservation of the policies. The Board of Tax Appeals sustained the assessment, 20 B.T.A. 482, and the Court of Appeals for the Third Circuit affirmed. 63 F. (2d) 44. A writ of certiorari was granted by this court.

The case is ruled by our judgment in *Burnet v. Wells*, ante, p. 670, upholding the validity of the contested statute. If the income of such a trust may be taxed to the grantor though he has retained to himself no reversionary interest in the principal of the trust, *a fortiori* that result must follow where he has made a grant of the estate for a short term of years, reserving the reversion when the term is at an end.

The provisions of these deeds would require a determination in favor of the Government, though *Burnet v. Wells* had been decided the other way. "A statute may be invalid as applied to one state of facts and yet valid as applied to another." *Dahnke-Walker Co. v. Bondurant*, 257 U.S. 282, 289. Here the grantor did not divest himself of title in any permanent or definitive way, did not strip himself of every interest in the subject matter of the trust estate. During a term of three years, the trustee was to apply the income to the preservation of the policies, and while thus applying the income was to hold the prin-

cipal intact for return to the grantor unless instructed to retain it longer. The situation in its legal effect would not be greatly different if the trusts had been created for a month or from day to day. One who retains for himself so many of the attributes of ownership is not the victim of despotic power when for the purpose of taxation he is treated as owner altogether.

The judgment is

Affirmed.

MR. JUSTICE VAN DEVANTER, MR. JUSTICE McREYNOLDS, MR. JUSTICE SUTHERLAND and MR. JUSTICE BUTLER concur upon the reasons stated in the last paragraph.

SINCLAIR REFINING CO. v. JENKINS PETROLEUM PROCESS CO.

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

No. 752. Argued May 11, 12, 1933.—Decided May 29, 1933.

1. A bill of discovery will lie in a federal court to aid in proving damages of the plaintiff in an action on the law side, if the complication of accounts or other practical impediments make it necessary that the evidence be sifted in advance of the jury trial. P. 693.
 2. Granting of this remedy is discretionary; and the party against whom it is sought will be protected from impertinent intrusion into his business affairs. P. 696.
 3. In the present case discovery was sought in good faith and on probable cause, and the defendant was properly protected by a decree limiting the discovery in advance of trial to general facts, but providing that the bill be retained for fuller inspection of records, etc., without delay, in case of need. P. 697.
 4. In an action at law to recover the damages resulting from the breach of a contract to assign an application for a patent, the use made by the defendant of the patented device, after the breach of contract, may be considered in appraising the value of the invention as of the time of the breach. P. 697.
- 62 F. (2d) 663, affirmed.