

value of the unfinished buildings and their value as it would have been if completed in accordance with the agreement—see *Kidd v. McCormick*, *supra*, p. 398—but exceeding neither the amount due on its debt nor the amount of the bond.

It appears from the findings that this difference would be about \$26,000, while the amount now due petitioner is \$14,973.98, together with interest thereon from August 13, 1928. It follows that the judgments of the courts below must be reversed and the cause remanded to the district court with directions to enter judgment for the last named sum.

Reversed.

GRISWOLD ET AL., EXECUTORS, *v.* HELVERING,
COMMISSIONER OF INTERNAL REVENUE.

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

No. 38. Argued October 19, 20, 1933.—Decided November 6, 1933.

1. Section 402 of the Revenue Act of 1921 provides that, in determining the value of the gross estate of a decedent for the purpose of the federal estate tax, there shall be included the value at the time of his death of all property "to the extent of the interest therein held jointly or as tenants by the entirety by the decedent and any other person." *Held*, the inclusion, in the gross estate of a decedent who died while the provision of this section was in effect, of one-half the value of property held by him and his wife as joint tenants, though the tenancy was created prior to the effective date of the statute, was not a retroactive application of the statute. P. 58.
 2. The cessation at death of decedent's interest in, and control over, half of property held with another as joint tenants presented a proper occasion for the imposition of a tax. *Gwinn v. Commissioner*, 287 U.S. 224. P. 58.
- 62 F. (2d) 591, affirmed.

CERTIORARI, 289 U.S. 722, to review a judgment affirming a decision of the Board of Tax Appeals, 23 B.T.A. 635, redetermining a deficiency in estate tax.

Mr. Wm. N. Haddad argued the cause, and *Mr. Walter T. Fisher* filed a brief, for petitioners.

Mr. Erwin N. Griswold, with whom *Solicitor General Biggs* and *Messrs. Sewall Key* and *Wm. Cutler Thompson* were on the brief, for respondent.

MR. JUSTICE SUTHERLAND delivered the opinion of the Court.

Section 402 of the Revenue Act of 1921, c. 136, 42 Stat. 227, 277, 278, imposing an inheritance tax, provides,

"Sec. 402. 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, . . .

"(d) To the extent of the interest therein held jointly or as tenants in the entirety by the decedent and any other person, . . ."

The decedent died in 1923, while the foregoing provision was in effect. At the time of his death he and his wife held as joint tenants certain real estate in Illinois, title to which vested in them by conveyance on October 5, 1909. The commissioner valued this real estate at \$90,000, and included the whole of it in the value of decedent's gross estate as being within the reach of § 402 (d). Upon appeal to the Board of Tax Appeals, that tribunal, disapproving in part the commissioner's determination, held that the value of only decedent's one-half of the property could be included for the purposes of the tax. 23 B.T.A. 635. The circuit court of appeals affirmed. 62 F. (2d) 591.

Whether this application of the statute gives it a retroactive effect is the sole question here involved; and with that we find no difficulty. Under the statute the death of decedent is the event in respect of which the tax is laid. It is the existence of the joint tenancy at that time, and not its creation at the earlier date, which furnishes the basis for the tax. By the judgment under review, only half of the value, that is to say, the value of decedent's interest, has been included, leaving the survivor's interest unaffected. After the creation of the joint tenancy, and until his death, decedent retained his interest in, and control over, half of the property. Cessation of that interest and control at death presented the proper occasion for the imposition of a tax. See *Gwinn v. Commissioner*, 287 U.S. 224, and cases cited. And since that is all that is sought to be reached by the tax here in question, the complaint that the statute has been given a retroactive application obviously is without substance. The statute as applied does not lay a tax in respect of an event already past, but in respect of one yet to happen.

Petitioners insist that *Knox v. McElligott*, 258 U.S. 546, is to the contrary, but, clearly, it is not. There the tax return included the value of decedent's one-half of the jointly owned property, but did not include the value of the half which had been owned and enjoyed by the surviving joint tenant. Nevertheless, the commissioner undertook to impose a tax in respect of the value of this latter half as well. This court held that to do so was to apply the statute retroactively, and that this, under the circumstances of that case, could not be done. It did not hold, or intend to hold, that the statute was retroactive in so far as the value of the decedent's half of the joint estate was concerned. That question was not there involved. It is the only question here.

Judgment affirmed.