

involving similar questions are fully reviewed. We cannot say that the Circuit Court erred in the conclusion reached.

Third. Since the Herrin bank was without power to make the pledge of bonds here in question, its receiver is entitled to recover them unconditionally in order that they may be administered for the benefit of the general creditors of the bank. See *Texas & Pacific Ry. Co. v. Pottorff*, *ante*, p. 245.

Affirmed.

UNITED STATES *v.* PROVIDENT TRUST CO.,
ADMINISTRATOR.

CERTIORARI TO THE COURT OF CLAIMS.

No. 224. Argued January 11, 12, 1934.—Decided February 5, 1934.

1. In determining the value of a devise to charities of a remainder contingent upon the death without issue of a female life tenant in order that such value may be deducted from gross income in computing the federal estate tax, it is permissible to prove that before the death of the testator the life tenant became incapable of having issue, as the result of a surgical operation by which her procreative organs were removed. P. 281.
 2. The ancient rule that a woman is conclusively presumed to be capable of bearing children as long as she lives, was, like other irrebuttable presumptions, a rule of expediency or policy, based upon the belief that to permit proof of the facts would result in injuries of greater consequence than the predominance of truth over error in the cases to which it applied. P. 281.
 3. Applicability of this presumption remains a proper subject of judicial inquiry in the light of modern knowledge and experience. Pp. 282, 285.
 4. Application of a conclusive presumption of possibility of issue in the present case would be subversive of the policy of the estate tax statute to encourage bequests to charitable organizations. P. 286.
- 77 Ct. Cls. 37; 2 F.Supp. 472, affirmed.

CERTIORARI, 290 U.S. 614, to review a judgment allowing a claim for overpayment of federal estate tax.

Solicitor General Biggs, with whom *Assistant Attorney General Wideman* and *Mr. Paul A. Sweeney* were on the brief, for the United States.

The amount subject to tax is to be ascertained as of the date of the decedent's death. *Ithaca Trust Co. v. United States*, 279 U.S. 151. No deduction will be allowed for a charitable bequest dependent upon a condition unfulfilled at that date. *Humes v. United States*, 276 U.S. 487; Regulations 37, Art. 56.

By the overwhelming weight of authority in the United States, evidence is not admissible to show that a woman, after reaching adult age, is incapable of bearing children. Whether the courts use the words "conclusive presumption of law," "presumption of law," or some other expression, the result is the same, the rule being one of substantive law rather than one governing the burden of proof or the duty of going forward with evidence.

The following cases involved the rule against perpetuities, holding that remoteness could not be avoided by allegation, agreement or proof that a woman was, by reason of age, incapable of bearing children: *White v. Allen*, 76 Conn. 185; *Taylor v. Crosson*, 11 Del. Ch. 145; *Reasoner v. Herman*, 191 Ind. 642; *Beall v. Wilson*, 146 Ky. 646; *Brown v. Columbia Finance & Trust Co.*, 123 Ky. 775; *Tyler v. Fidelity & Columbia Trust Co.*, 158 Ky. 280; *U. S. Fidelity & G. Co. v. Douglas' Trustee*, 134 Ky. 374; *Lovering v. Lovering*, 129 Mass. 97; *Gettins v. Grand Rapids Trust Co.*, 249 Mich. 238; *Rozell v. Rozell*, 217 Mich. 324; *Loud v. St. Louis Union Trust Co.*, 298 Mo. 148; *Graves v. Graves*, 94 N.J.Eq. 268; *Stout v. Stout*, 44 N.J.Eq. 479.

The following involved determination of title and the right to distribution or partition under wills and deeds. Presumption in favor of child-bearing capacity held conclusive: *Bowen v. Frank*, 179 Ark. 1004; *Williams v. Frierson*, 150 Ga. 797; *Dustin v. Brown*, 297 Ill.

499; *Hill v. Sangamon Loan & Trust Co.*, 295 Ill. 619; *Hill v. Spencer*, 196 Ill. 65; *Burrell v. Jean*, 196 Ind. 187; *Futrell v. Futrell's Executor*, 224 Ky. 814; *Rand v. Smith*, 153 Ky. 516; *Williams v. Armiger & Bro.*, 129 Md. 222; *Riley v. Riley*, 92 N.J.Eq. 465; *Gowen's Appeal*, 106 Pa. 288; *In re Sterrett's Estate*, 300 Pa. 116; *Bigley v. Watson*, 98 Tenn. 353; *Frank v. Frank*, 153 Tenn. 215; *Jordan v. Jordan*, 145 Tenn. 378.

The presumption was regarded as conclusive, except as otherwise noted, in the following cases involving the termination of trusts: *Fletcher v. Los Angeles T. & S. Bank*, 182 Cal. 177; *DuPont v. DuPont*, 159 Atl. 841; *Byers v. Beddow*, 106 Fla. 166; *In re Dougan*, 139 Ga. 351; *Allen v. Allen's Trustee*, 141 Ky. 689; *Bailey's Trustee v. Bailey*, 30 Ky.L.Rep. 127; *May v. Hardinsburg Bank & T. Co.*, 150 Ky. 136; *Quigley's Trustee v. Quigley*, 161 Ky. 85; *In re Ricard's Estate*, 97 Md. 608; *Towle v. Delano*, 144 Mass. 95; *Application of Smith*, 94 N.J.Eq. 1; *Bowlin v. R.I. Hospital Trust Co.*, 31 R.I. 289; *Bearden v. White*, 42 S.W. 476; *Garner v. Dowling*, 58 Tenn. 48; *Read v. Fite*, 8 Humph. 328; *Reeves v. Simpson*, 182 S.W. 68; *Carney v. Kain*, 40 W.Va. 758.

In the following cases it has been held that the presumption in favor of issue made it impossible for a vendor to convey clear title, and specific performance was denied: *Weberpals v. Jenny*, 300 Ill. 145; *Aulick v. Summers*, 186 Ky. 810; *Azarch v. Smith*, 222 Ky. 566; *Brown v. Owsley*, 198 Ky. 344; *Rozier v. Graham*, 146 Mo. 352; *Shuford v. Brady*, 169 N.C. 224; *List v. Rodney*, 83 Pa. 483.

The following involved suits under Acts providing for sale of land under special circumstances: *In re Apgar*, 37 N.J.Eq. 501, reversed on other grounds, *sub nom. Apgar v. Apgar*, 38 N.J.Eq. 549; *In re Clement*, 57 Atl. 724; *Westhafer v. Koons*, 144 Pa. 26.

In the following cases the presumption was discussed in connection with the determination of the intent of a testator: *Ansonia Nat. Bank v. Kunkel*, 105 Conn. 744; *Oleson v. Somogyi*, 93 N.J.Eq. 506; *Flora v. Anderson*, 67 Fed. 182.

The presumption was also discussed in *Sims v. Birden*, 197 Ala. 690; *State v. Lash*, 16 N.J.Eq. 380.

See also 48 L.R.A. (N.S.) 865; 67 A.L.R. 538; 23 Col.L. Rev. 50.

In England the same rule has been strictly enforced in cases involving the rule against perpetuities (*Jee v. Audley*, 1 Cox Ch. Cas. 324; *Griffiths v. Deloitte*, [1926] Ch. 56), but in distributing estates the courts have been more liberal when the proof of incapacity seemed persuasive and distribution would deprive no living person of a possible interest. *In re White*, [1901] 1 Ch. 570; *Carr v. Carr*, 106 L.T.Rep. 753. Cf. *Perkin v. Bland*, 122 L.T.Rep. 181.

With relatively few exceptions, the courts have regarded the principle as so firmly established that departures from precedent should be prohibited, if only for the sake of certainty and uniformity. See *In re Dougan*, 139 Ga. 351, 355.

The cases holding that evidence can be admitted to show that a woman is in fact incapable of having issue are few. *Johnson v. Beauchamp*, 5 Dana 70, has not been followed in Kentucky. See *May v. Bank of Hardinsburg*, 150 Ky. 136. *Male v. Williams*, 48 N.J.Eq. 33; *Riley v. Riley*, 92 N.J.Eq. 465; *Gowen's Appeal*, 106 Pa. 288; *List v. Rodney*, 83 Pa. 483; *Sterrett's Estate*, 300 Pa. 116; *Miller v. Macomb*, 26 Wend. 229; *Bacot v. Fessenden*, 130 App. Div. 819; and *Whitney v. Groo*, 40 App.D.C. 496, were cases involving specific performance of contracts for the sale of real estate. It can be inferred in all of them that the courts concluded that the possibil-

ity of issue being born to a woman long past the age for child-bearing was too remote to render unmarketable the title offered by the vendor.

There are two cases in which the capacity of a woman to bear children has arisen in connection with tax matters—*Farrington v. Commissioner*, 30 F. (2d) 915, cert. den., 279 U.S. 873; and *Guaranty Trust Co. v. Commissioner*, 27 B.T.A. 550, now pending on appeal to the Circuit Court of Appeals for the Second Circuit. Both involved the federal estate tax, and in both the presumption of capacity was held to be conclusive and irrebuttable. See also *Pennsylvania Co. v. Brown*, E.D.Penna., decided July 18, 1933, reported in Prentice-Hall Federal Tax Service, 1933, Vol. 1A, par. 1761.

The reasons usually given for excluding evidence of the incapacity of a woman to bear children are: (1) that the age at which ability to procreate ceases can not be ascertained with any degree of certainty; (2) that the subject is one of such delicacy that it should not be investigated in judicial proceedings; (3) that consideration of such evidence might encourage the performance of surgical operations to prevent birth of issue; and (4) that the prevailing rule tends to eliminate confusion in titles to property. See *Hill v. Sangamon Loan & Trust Co.*, 295 Ill. 619, 621-622.

It happens that the great majority of the cases wherein the presumption has been held conclusive involved only old age or the physiological changes incident thereto, but the rule makes no distinction between incapacity due to age and incapacity due to artificial causes. In two cases testimony has been offered to show that the capacity to bear children had been terminated by medical treatment. Both involved the same surgical operation as was proved here (hysterectomy), and in both the evidence was held inadmissible. *Byers v. Beddow*, 106 Fla. 166; *Guaranty Trust Co. v. Commissioner*, 27 B.T.A. 550.

Courts may well be reluctant to permit inquiry into matters so steeped in uncertainty as the efficacy of the various methods used to destroy child-bearing capacity.

The rule which has survived for many years should not be discarded upon a showing of hardship in individual cases.

Mr. Joseph Carson, with whom *Mr. George M. Morris* was on the brief, for respondent.

Modern medical knowledge and scientific certainty have made the rule contended for by the United States obsolete and inapplicable in this case.

No legal writer before Littleton refers to the rule. Littleton's *Tenures* (1592 ed.), fol. 8; Coke on Littleton, 28; 2 Blackstone's *Commentaries*, 125. The comments of these writers are made in connection with estates tail for the purpose of showing that a fee tail general can not become a fee tail with possibility of issue extinct and that a fee tail special arises only upon the death of one of the spouses. They appear to be the product of logicians in tenure and have an extremely remote, if any, connection with a federal estate tax dispute arising under modern American statutes. Cf. *United States v. Provident Trust Co.*, 281 U.S. 497.

In the then state of medicine and surgery, it was impossible to determine as a fact that either the male or female was incapable of procreation,—hence the rule.

The modernity of medical knowledge is emphasized by the fact that of all the cases cited involving incapacity of a woman to bear children, it appears that only three involved surgical operations. *Byers v. Beddow*, 106 Fla. 166; *Guaranty Trust Co. v. Commissioner*, 27 B.T.A. 550; and the present case. The absence of such cases makes it evident that the chief practical difficulty in the cases which have heretofore come before the courts has been the inconclusiveness of the evidence offered.

That the rule has rested on ignorance and uncertainty and not on knowledge, will best be demonstrated by reading the cases cited by petitioner. In every case the character of the evidence tending to show incapacity appears to have been considered, and the judgments of the courts will be seen in large measure to have been formed from the facts appearing in the evidence offered. Uncertain as to the impossibility of issue from the evidence presented, the courts have fallen back on the ancient formula as a safer guide. See *Hill v. Sangamon Loan & Trust Co.*, 295 Ill. 619; *Bowlin v. R.I. Hospital Trust Co.*, 31 R.I. 289.

Nevertheless courts in the United States have frequently recognized incapacity to bear children where the evidence was less conclusive than here. *Whitney v. Groo*, 40 App.D.C. 496; *Johnson v. Beauchamp*, 5 Dana 70; *Male v. Williams*, 48 N.J.Eq. 33; *Gowen's Appeal*, 106 Pa. 288; *Bacot v. Fessenden*, 130 App. Div. 819; *Ansonia National Bank v. Kunkel*, 105 Conn. 744. See also *Apgar v. Apgar*, 38 N.J.Eq. 549; *In re Staheli*, 78 N.J.Eq. 74, 77. And the British courts have, except where the property interests of living persons would be adversely affected, regularly admitted such evidence. *Mackenzie v. King*, 17 L.J. Ch. N.S. 488 (1848); *In re White*, 1 Ch. 570 (1901); *Leng v. Hodges*, Jac. 585 (1822); *Edwards v. Tuck*, 3 De G. M. & G. 39 (1853); *Brown v. Pringle*, 4 Hare 124 (1845); *Haynes v. Haynes*, 35 L.J. Ch. 303 (1866). Moreover, in the field of law pertaining to damages for personal injury, it appears to be the universal rule that evidence will be received to show that the injury destroyed the power to have issue. This Court has in fact so held. *Denver & R. G. Ry. v. Harris*, 122 U.S. 597. See also *Normile v. Wheeling T. Co.*, 57 W.Va. 132; Sedgwick on Damages, 9th ed., vol. 1, § 41a; *Partridge v. Boston & M. R. Co.*, 184 Fed. 211; *Alabama G. S. R. Co. v. Hill*, 93 Ala. 514.

Petitioner relies upon a presumption, the product of the artificial reasoning necessary to round out an intricate medieval concept. With the appearance of modern abdominal surgery the ancient presumption has become a demonstrable fiction—a bar to the truth—to be continued only if overwhelmingly desirable in the public interest. No such desirability exists here.

None of the reasons underlying the frequent refusal of the courts to hold that a woman is incapable of bearing children are applicable here.

Without the evidence as to incapacity the true value of the estate for tax purposes can not be computed.

The wisdom, as a matter of public policy, of admitting evidence concerning the impossibility of issue, is not involved where the question to which the evidence goes is one of valuation by a party (the Government) not directly concerned with anything more than the size of the testator's estate under the statute. It was the province of the court to pass upon the weight of all evidence pertinent to value.

It is the purpose of the statute to encourage charitable bequests (*Edwards v. Slocum*, 264 U.S. 61), and to require no more certainty in the evidence of value than is generally found in "human affairs" (*Ithaca Trust Co. v. United States*, 279 U.S. 151).

MR. JUSTICE SUTHERLAND delivered the opinion of the Court.

The Provident Trust Company is the administrator, with will annexed, of the estate of the deceased, who died in 1921, leaving a will thereafter duly admitted to probate. Subsequent to the filing of the federal estate tax return, the Commissioner of Internal Revenue imposed an additional estate tax, amounting with interest to something over \$21,000. The trust company paid the amount and filed a claim for refund of \$18,404.05, on the ground

that under the provisions of the will the value of the residuary estate, less the value of the life estate of the daughter of deceased, should have been but was not allowed as a deduction from the gross estate. The commissioner rejected the claim and this action was brought.

The will, after making certain bequests, devised the remainder of the estate to the trust company, in trust to pay the income thereof to deceased's daughter during her natural life, and upon her death to her lawful issue; and further provided that upon the death of the daughter without issue, the testator's residuary estate should be distributed among designated charitable institutions and societies—all belonging to that class of organizations, bequests to which are deductible from the gross estate under the provisions of § 403 (a) (3) of the Revenue Act of 1918, c. 18, 40 Stat. 1057, 1098. At the time of deceased's death, the daughter was fifty years of age. She had been in poor health and under a physician's care; and on February 9, 1914, upon medical advice, an operation was performed removing her uterus, Fallopian tubes, and both ovaries. The court below specifically found—"The operation and removal of the organs were necessary to prevent further impairment of her health. After the operation she could not have become pregnant nor could she have given birth to a child. She died on March 12, 1927, unmarried, and without ever having given birth to a child." Following her death, a state orphans' court awarded the residue of the estate, subject to payment of transfer or inheritance taxes which might be due, to the charitable organizations named in the will.

Upon the foregoing facts, the court below held that respondent was entitled to recover, and accordingly awarded judgment in the sum of \$17,204.66. 77 Ct. Cls. 37; 2 F.Supp. 472.

Section 403 (a) (3), *supra*, so far as it is pertinent here, provides that for the purpose of determining the value of the net estate to be taxed there shall be deducted from the value of the gross estate—" (3) The amount of all bequests, . . . to or for the use of any corporation organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes," Article 53, Treasury Regulations 37, declares that the amount of the deduction in such case is the value at the date of decedent's death of the remainder interest in the money or property which is devised or bequeathed to charity. Compare *Ithaca Trust Co. v. United States*, 279 U.S. 151. It follows that in making a deduction for that interest, the value thereof must be determined from data available at the time of the death of decedent. Compare *Humes v. United States*, 276 U.S. 487, 494.

The government contended in the court below, as it contends here, that, in view of the restriction in respect of issue contained in the will, the value could not be thus determined, since the law, without regard to the fact, conclusively presumes that a woman is capable of bearing children as long as she lives; and that this presumption controls where the organs of reproduction have been completely removed and inability to bear children admits of no valid dispute, no less than where the question turns upon the circumstance of age alone, or upon conflicting evidence or medical opinions. The lower court held otherwise for the reason that the facts established, as of the date of decedent's death, forbade any other conclusion than that the daughter was incapable of bearing children, and a presumption to the contrary could not be indulged.

The rule in respect of irrebuttable presumptions rests upon grounds of expediency or policy so compelling in character as to override the generally fundamental re-

quirement of our system of law that questions of fact must be resolved according to the proof. Mr. Best, writing more than ninety years ago when the force of the rule was more strictly regarded than it has come to be since, said that modern courts of justice (that is to say, the courts of that day) were slow to recognize presumptions as irrebuttable, and were disposed to restrict rather than extend the number.

"Many presumptions," he says, "which, in earlier times, were deemed absolute and irrebuttable, have, by the opinion of later judges, acting on more enlarged experience, either been ranged among *praesumptiones juris tantum*, or considered as presumptions of fact, to be made at the discretion of a jury. . . . By an arbitrary rule, to preclude a party from adducing evidence which, if received, would compel a decision in his favour, is an act which can only be justified by the clearest expediency and soundest policy; and it must be confessed that there are several presumptions still retained in this class which never ought to have found their way into it, and which, it is to be feared, often operate seriously to the defeat of justice." Best, *Presumptions of Law and Fact* (London, 1844), § 18.

Certainly the world has gained in experience since that was written; and the binding effect, in respect of particular situations, of the ancient rule precluding proof of facts to the end of avoiding supposed injurious results thought to be of greater consequence than the predominance of truth over error, still remains a proper subject of judicial inquiry to be made and resolved in the light of such further experience and knowledge. Compare *Funk v. United States*, 290 U.S. 371.

The foregoing observations are peculiarly apposite to the phase of the subject now under review; for, as suggested by counsel for respondent, the presumption here

involved had its origin at a time when medical knowledge was meager, and many centuries before the discovery of anaesthetics and, consequently, before surgical operations of the kind here involved became practicable. It was not until a comparatively recent period, therefore, that the effect of such an operation was disclosed to observation, and the incontrovertible fact recognized that a woman subjected thereto was permanently incapable of bearing children.

The government argues that the rule is one of substantive law and evidence to overcome it is inadmissible. Whether in particular instances so-called irrebuttable presumptions are, in a more accurate sense, rules of substantive law rather than true presumptions, is a matter in respect of which a good deal has been said by modern commentators on the law of evidence. 2 Chamberlayne on Evidence, §§ 1086, 1087, 1159, *et seq.*; 5 Wigmore on Evidence, 2d ed., § 2492. Compare *Heiner v. Donnan*, 285 U.S. 312, 328-329; 2 Thayer, Evidence, 351-352, 540-541, 545-546. But it is unnecessary to consider that interesting distinction, since, as will appear, the presumption in question in this instance must be dealt with as open to rebuttal and, therefore, in any aspect of the matter, as a true presumption.

The presumption generally has been held to be conclusive when the element of age alone is involved, albeit Lord Coke's view that the law seeth no impossibility of issue, even though both husband and wife be an hundred years old (Coke on Littleton, 551; 2 Blackstone Commentaries 125), if now asserted for the first time, might well be put aside as a rhetorical extravagance. But the presumption, even where age alone is involved, has not been universally upheld as conclusive or applied under all circumstances. It has been followed to a greater extent in this country than in England, though even here

exceptional cases are to be found;¹ and in England such cases are very numerous.² It does not seem necessary to review the decisions in either jurisdiction. It is enough to say that the English courts have treated the rule as possessing a considerable degree of flexibility and have refused to give it a conclusive effect in a large number of cases; while the American courts, adhering to a more rigid view, have applied the rule more generally. See extended note, 67 A.L.R. 538, *et seq.*, where the decisions are classified and digested. Few cases have arisen where elements other than, or in addition to, that of age were present, and the conclusive character of the rule in such cases is by no means established. Thus in *Hill v. Spencer*, 196 Ill. 65, 70; 63 N.E. 614, the Supreme Court of Illinois held meaningless an allegation that a woman was past the age of childbearing, but was careful to add, "unless more than a mere matter of age is stated in the bill." See *Denver & R. G. Ry. v. Harris*, *supra*, note 1. And speaking generally this court has said, *Lincoln v. French*, 105 U.S. 614, 616-617—"But all presumptions as to matters of fact, capable of ocular or tangible proof, such as the execution of a deed, are in their nature disputable. No conclusive character attaches to them. They may always be rebutted and overthrown."

The basis for the interposition of an irrebuttable presumption is embodied in the general statement of Mr.

¹ *Male v. Williams*, 48 N.J.Eq. 33, 36; 21 Atl. 854; *Ansonia National Bank v. Kunkel*, 105 Conn. 744, 753; 136 Atl. 588; *Moore's Executor v. Beauchamp*, 5 Dana (Ky.) 70, 72; *Bacot's Case*, MS. (N.J.), cited in note to *Apgar's Case*, 37 N.J.Eq. 502; *Apgar v. Apgar*, 38 N.J.Eq. 549, 552; *Carney v. Kain*, 40 W.Va. 758, 811; 23 S.E. 650. And in *Denver & R. G. Ry. v. Harris*, 122 U.S. 597, 608, a personal injury case, this court sustained without question the admission of evidence that the injured person had been rendered impotent as a result of the physical injury.

² See note to *Apgar's Case*, *supra*, note 1.

Wigmore, quoted by the court below, that evidence of certain kinds of facts is excluded "because its admission would injure some other cause more than it would help the cause of truth, and because the avoidance of that injury is considered of more consequence than the possible harm to the cause of truth." 1 Wigmore on Evidence, 2d ed., § 11. Relating this obviously correct view to the presumption here invoked, not only do we perceive no grounds of expediency or policy that call for its hard and fast application to a particular physical condition, when ignorance has been supplanted by knowledge so as to put beyond the range of doubt the destructive effect of that condition upon the capacity for childbearing, but we conclude affirmatively that the policy of the statute under review as applied to the case in hand is quite to the contrary.

The important point to be emphasized is that the question arises with respect to a surgical operation, the inevitably destructive effect of which upon the power of procreation is established by tangible and irrefutable proof. Moreover, the case does not involve the rule against perpetuities, the devolution of property, the rights or title of living persons in or to property, or any other situation such as constituted the background of practically all the decisions which have sustained the conclusiveness of the presumption. We have for consideration simply a statutory provision exempting from a prescribed tax the value of all bequests, etc., made to or for the use of charitable organizations and those which are akin, plainly evincing a legislative policy to encourage such bequests. *Edwards v. Slocum*, 264 U.S. 61, 63. And, in that view, we well may assume that Congress could not have meant to leave its aim to be diverted by a purely arbitrary presumption, which, whether applicable or not to *sustain* another or different policy, would deny the

truth and *subvert* the policy of this particular legislation. Compare *Humes v. United States*, *supra*, at p. 494.

The sole question to be considered is—What is the value of the interest to be saved from the tax? That is a practical question, not concluded by the presumption invoked but to be determined by ascertaining in terms of money what the property constituting that interest would bring in the market, subject to such uncertainty as ordinarily attaches to such an inquiry. See *Ithaca Trust Co. v. United States*, *supra*. Thus stated, the birth of a child to the daughter of the deceased after his death was so plainly impossible that, as a practical matter, the hazard disappears from the problem. Certainly, in the light of our present accurate knowledge in respect of the subject, if the interest had been offered for sale in the open market during the daughter's lifetime, a suggestion of the possibility of such an event would have been ignored by every intelligent bidder as utterly destitute of reason.

The judgment of the court below is

Affirmed.

ALABAMA *v.* ARIZONA ET AL.

No. —, original. Argued January 9, 1934.—Decided
February 5, 1934.

1. A bill by a State seeking to enjoin five other States from enforcing their statutes against open market sale of products of prison labor, upon the ground that such statutes, and an Act of Congress purporting to divest such products of their interstate character, operate unconstitutionally to deprive the complainant of its interstate markets for goods produced in its prison farms and factories,—*held* multifarious. *Bitterman v. Louisville & N. R. Co.*, 207 U.S. 205. P. 290.
2. This Court may not be called on to give advisory opinions or to pronounce declaratory judgments. P. 291.
3. Application by a State for leave to file a bill to enjoin other States from enforcing their laws will not be granted unless the facts alleged