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COMMUNITY PROPERTY-CONSTITUTIONALITY OF THE PENNSYLVANIA COMMUNITY PROPERTY ACT

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RECENT DECISIONS

COMMUNITY PROPERTY—CONSTITUTIONALITY OF THE PENNSYLVANIA COMMUNITY PROPERTY ACT—After the effective date of the Pennsylvania Community Property Act the husband used income from his separate property [1] to pay part of an advance installment on a life insurance policy acquired before the act. He afterward assigned the policy to the plaintiff. The insurance company refused to recognize the validity of the assignment without the wife's consent on the basis that the income from separate property became community property so as to give the wife an interest in the policy. The Pennsylvania Community Property Act provided, inter alia, that: (1) the separate property of each spouse shall consist of that property held before marriage or before the effective date of the act, whichever is later, and property acquired afterward by gift, devise, or bequest;[2] (2) that all property acquired during marriage shall be community property except that which is separate property;[3] (3) that each spouse shall have management and control of his or her separate property as well as that portion of community property consisting of fruits of his or her separate property.[4] The act also gave extensive rights of control over other community property to the husband,[5] and an earlier statute denied suits by one spouse against the other except in proceedings to obtain separate property or for divorce.[6] In a friendly suit to contest the validity of the Community Property Act the plaintiff sought an injunction requiring the insurance company to recognize his ownership. *Held*, the entire act is unconstitutional, and the injunction should be granted. *Willcox v. Penn Mutual Life Insurance Co.*, (Pa. 1947) 55 A. (2d) 521.

The court interpreted the statute to mean that the proceeds of separate property were to become part of the marital community [7] and that so interpreted, the act was unconstitutional as a deprivation of property [8] not justified

[1] The advance payment consisted of sums from three sources: income from a trust created by the husband's father in a will many years before, a dividend received after the effective date of the act on stock held previously, and cash acquired before the effective date of the act.

[2] Pa. Laws (1947) No. 550, §§ 1,2; Pa. Leg. Serv. (Purdon, 1947) p. 1499.

[3] Pa. Laws (1947) No. 550, § 3; Pa. Leg. Serv. (Purdon, 1947) p. 1499.

[4] Pa. Laws (1947) No. 550, § 4; Pa. Leg. Serv. (Purdon, 1947) p. 1499.

[5] Ibid.

[6] 48 Pa. Ann. Stat. (Purdon, 1930) § 111.

[7] While such is the situation under Spanish law, only Idaho, Louisiana, Oklahoma, and Texas follow the Spanish precedent; see 1 DE FUNIAK, PRINCIPLES OF COMMUNITY PROPERTY, §§ 71, 77 (1943). The Pennsylvania provisions were copied from the Oklahoma statute, Okla. Stat. (Supp. 1947) tit. 32, §§ 68, 69. The Commissioner of Internal Revenue originally ruled that under the Pennsylvania act income from separate property would be treated as separate property, Latta and Gemmill, "Observations on Some Pennsylvania Community Property Problems," 96 UNIV. PA. L. REV. 20 at 23, note 18 (1947). This was later reversed. See 1947 P-H FED. TAX SERV., Vol. 5, § 76,289.

[8] The court cited both the "due process" clause of the Fourteenth Amendment of the Federal Constitution and an analogous provision in the Declaration of Rights of the Constitution of Pennsylvania, Pa. Ann. Stat. (Purdon, 1930) Const. p. 37.

by the control of the state over the marital relationship.[9] While the court might have struck down only this portion of the act,[10] it concluded that in as much as the purpose of the act in reducing taxation [11] might then be defeated in an occasional instance [12] the entire act must fail.[13] As alternative grounds for its holding the court pointed out that the wife had no real interest in the community property because not only could the husband exercise complete control over the property [14] but his creditors could reach that portion of it which was held in his

[9] The court distinguished cases in which it has been held that the state could alter interests of a spouse in regard to property acquired after marriage; see, Randall v. Krieger, 23 Wall. (90 U.S.) 137 (1874); Baker's Executors v. Kilgore, 145 U.S. 487, 12 S. Ct. 943 (1892); Ferry v. Spokane, P. & S. R. Co., 258 U.S. 314, 42 S. Ct. 358 (1922), 20 A.L.R. 1326 at 1330 (1922). The basis of the distinction is that the Pennsylvania statute attempts to regulate property rights acquired independent of the marriage relationship. A somewhat analagous problem has arisen in California in regard to legislative attempts to alter "vested" community property interests, Boyd v. Oser, 23 Cal. (2d) 613, 145 P. (2d) 312 (1944), noted in 32 CAL. L. REV. 187 (1944); see, Armstrong, " 'Prospective Application' of Changes in Community Property Control—Rule of Property or Constitutional Necessity?" 33 CAL. L. REV. 476 (1945). Perhaps an additional consideration is an aversion to allowing the marriage relationship to be dictated by federal tax policy.

[10] Pennsylvania has a general severability statute, 46 Pa. Ann. Stat. (Purdon, 1941) § 555.

[11] "The purpose of the recent legislation is primarily to effect savings on Federal Income Tax," from the statement of the governor in approving the bill. Latta and Gemmill, "Observations on Some Pennsylvania Community Property Problems," 96 UNIV. PA. L. REV. 20 at 21 note 10 (1947).

[12] There would be an increase in total tax payment by husband and wife if the income from the separate property of one were greater than one-half of the community earnings of the other and the income from the separate property could not be split.

[13] A suggested alternative which the court did not consider is that the act could be construed so that only the income from separate property acquired *after* marriage would be community property; see, Latta and Gemmill, "Observations on Some Pennsylvania Community Property Problems," 96 UNIV. PA. L. REV. 20 at 24 (1947).

[14] Note 5, supra. Under the Spanish law the husband could not make a gift of community property so as to defraud the wife nor could he waste it in debauchery or dissolute living, 1 DE FUNIAK, PRINCIPLES OF COMMUNITY PROPERTY, §§ 119, 120, 121 (1943). Most community property states have reached a similar conclusion by statute, 1 DE FUNIAK, PRINCIPLES OF COMMUNITY PROPERTY, § 122 (1947); and Washington by judicial decision reached the conclusion that the wife's consent is necessary to make a gift of community property, Occidental Life Insurance Co. v. Powers, 192 Wash. 475, 74 P. (2d) 27 (1937). Apparently the Pennsylvania court was unwilling to view the statute in light of this background, for "many lawyers trained in common law, and viewing the matter in the light of common law concepts, seem to feel that if the husband, under the Spanish community property system, had 'control,' i.e., the administration of the community property, he must have been the virtual owner of the property; that the wife, accordingly, was not an owner in any real sense. What they seem to fail to comprehend is that the management of the common property placed in the husband was an administrative duty only, in other words, administration of the common property, and not in any sense the equivalent of the common law 'control' by the husband of the wife's property. . . ." 1 DE FUNIAK, PRINCIPLES OF COMMUNITY PROPERTY, § 102 (1943). But certainly in tax cases great weight has been attached to the husband's control of the community as a basis for taxing him

name,[15] and a statute prevented the wife from suing the husband for illegal use of the community;[16] for these reasons the statute was held to be so vague and inconsistent as to be incapable of enforcement. By relying on basic Spanish community property concepts and its developments in the Western states most of these uncertainties could have been resolved, but evidently the court was loath to accept this drastic innovation without more specific provision.[17] Consequently the case indicates that it would behoove other states interested in community property legislation to consider carefully provisions for the division of the income from separate property[18] and to provide specifically with regard to the management and control of the community property.

Richard J. Archer

on the entire community income, United States v. Robbins, 269 U.S. 315 at 327, 328, 46 S.Ct. 148 (1926). But see Poe v. Seaborn, 282 U.S. 101 at 111, 112, 51 S.Ct. 58 (1930), which approved the Washington statute because of the wife's present interest regardless of the husband's control; similarly, Commissioner of Internal Revenue v. Cadwaller, (C.C.A. 9th, 1942) 127 F. (2d) 547 at 549. The dissent in the latter case is an excellent recapitulation of federal decisions on this problem.

[15] Pa. Laws (1917) No. 550, §§ 7, 8; Pa. Leg. Serv. (Purdon, 1947) p. 1500. De Funiak deprecates such provisions which exist in the statutes of other community property states as amounting "to an absolute denial of the basic principles of community property since it is equivalent to the assertion that the property is not community property, but is entirely the property of the husband," 1 DE FUNIAK, PRINCIPLES OF COMMUNITY PROPERTY, § 162 (1943). Probably such provisions are for the protection of third persons.

[16] Note 6, supra, commented on in 38 DICK. L. REV. 270 (1934). The court might have found that "separate property" as used in this act enabling the wife to sue was used in a "broad and comprehensive sense," Morrish v. Morrish, 262 Pa. 192 at 198, 105 A. 83 (1918); so as to allow a suit for recovery of community property. But in Wakefield v. Wakefield, 149 Pa. Super. 9, 25 A. (2d) 841 (1942), the court denied the right of the wife to sue for a share in rents of property held as tenants by the entirety with her husband.

[17] The Pennsylvania statute is patterned on the Oklahoma statute, Okla. Stat. (Cum. Supp. 1947) tit. 32. Apparently there are no cases involving the Oklahoma act. For a discussion of the Pennsylvania act see, Latta and Gemmill, "Observations on Some Pennsylvania Community Property Problems," 96 UNIV. PA. L. REV. 20 (1947); Goodrich and Coleman, "Pennsylvania Marital Communities and Common Law Neighbors," 96 UNIV. PA. L. REV. 1 (1947), discussing interesting conflict of laws aspects of the act. The Nebraska Community Property Act also follows the Oklahoma pattern, Neb. Laws (1947) c. 156.

[18] It should be noted that the Michigan legislature, though doubtless motivated by a desire to reduce taxes, did not include a provision for division of the proceeds from separate property in its community property act. Mich. Laws (1947) No. 317, §§ 1(a), 2(a). Hence, the first ground for invalidity of the Pennsylvania act would not apply to the Michigan Act.