Inheritance and Succession Taxes

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THESIS

INHERITANCE AND SUCCESSION TAXES

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INTRODUCTION.

The almost total lack of a systematic treatise on the subject of Inheritance and Succession Taxes in English and inaccessibility of those admirable treatises in French and German caused me to select this subject, which, upon careful investigation, proved to be a great deal broader than I had anticipated and which my limited amount of time and space would allow me to treat exhaustively in every particular.

The position and objections of the different political economists being so varied, although readily susceptible of classification, caused me to simply designate the trend of their opinions, objections and arguments.

The lack of time and space made it necessary that I should leave out my proposed chapter on "The trend of legislation on this subject". This necessarily limited Chapter IV. to the decisions of the New York courts.
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CHAPTER 1.

Inheritance and Succession Tax may be defined generally to be a burden imposed on all property whether real or personal, passing to certain persons by will, by intestate law, or by deed or instrument inter vivos, intended to take effect at or after the death of the testator.

The oldest evidence we have of the existence of an inheritance tax is a papyrus which was found in Egypt and relates that one Hermias was sentenced to pay a heavy penalty for failing to pay the tax upon succeeding to his father's house. Another papyrus, which might be construed as evidence of an attempt to avoid the payment of such a tax, records the sale of property by an old man to his sons for a nominal sum.

The origin of inheritance and succession taxes has usually been attributed to the Emperor Augustus, who is known to have established such a tax in the year 6 A.D. which, in connection with the excise tax, was used to establish a permanent military.

Exemptions from the tax were allowed for funeral expenses and when it was under a certain value or amount, most probably of 50 or 100 pieces of gold (which sum was
only fixed by conjecture). The near relations on the father's side were also exempt but those on the mother's side, called the Cognati, were not according to the law of the twelve tables, called to the succession. This harsh institution was gradually undermined by humanity and finally abolished by Justinian.

It is impossible to state the exact time that the Roman inheritance tax was repealed but we have evidence of its existence as late as the reign of Gordian III. and it had disappeared before the Code of Justinian, so it is probable that it was repealed either by Justinian or Diocletian. (Gibbon, Hist. of Decline and Fall of the Roman Empire, Bk. V., Chap. VI.)

When the Emperor Augustus submitted the plan of the inheritance tax to the Senate he said that he had found a draft of such a tax among the private papers of Julius Caesar and apparently it had been his intention to lay such a tax. As the Romans were well acquainted with the financial systems of Egypt about that time, it is safe to presume that they borrowed this system of taxation from the Egyptians.

During the Middle Ages the only representation of
the inheritance tax that existed was the relief of heriot of feudal tenure together with some charges of a similar nature. There seems to be no historical connection traceable between these and the old inheritance tax which existed in Rome and her provinces. In many countries you can trace a direct historical connection between these and their present system of inheritance and succession taxes. In England there seems to be no historical connection between the relief and heriot of feudal tenure and either the present system of inheritance and succession taxes which exist in England or the old Roman inheritance taxes.

England borrowed the idea of stamp taxes from Holland and the original Stamp Act of 1694 contained a provision for a tax of five shillings on probates and letter of administration in the case of estates over 20 pounds. Four years later it was doubled; and in 1779 it was graduated from 10 to 15 shillings according to the value of the estate. In 1780 Lord North introduced a tax on receipts for legacies and distributive shares and which was afterward increased and something approximating a n ad-valorem scale introduced, and discriminations were made in favor of the widow, children and grandchildren. The
tax was evaded by omitting to use receipts until 1796 when it was made a tax on the transfer itself and the taking and giving of receipts was made compulsory and executors and administrators were made personally liable for its payment.

British legislation for two centuries has resulted in a complicated system of five distinct but allied taxes, known collectively as "Death duties", a name said to have been given them by Mr. Gladstone, and separately as the probate, account, legacy, succession, and estate duties.

(a) The "probate duty" is a name commonly applied to a stamp tax paid on the affidavit required to be delivered before the issue of probate or letters of administration.

(b) The "account duty" is merely supplementary to the "probate duty" and is now included in the official definition of the latter. It is levied at the same rate as the probate duty and its purpose is to prevent the invasion of the probate duty by gifts causa mortis, joint in-

(a) 44 Vic. Chap. 12.
(b) 51 & 52 Vic. Chaps. 41 Sec. 21, Chaps. 60 Sec. 5.
vestments etc. It applies to all gifts of personal property unless made in good faith twelve months before the death of the donor.

(a) The legacy duty is payable out of the individual share of the personal property when they come into the possession of the legatee or next of kin.

(b) The succession is to realty, lease holders and settled property, what the legacy duty is to personal property.

(c) The estate duty is an additional tax on personal estate exceeding ten thousand pounds in value. It was enacted in 1888 and, according to the bill, is to expire in 1896. The real character of this tax is to increase the progressive character of death duties as a whole.

Early in the history of the American Union suggestions were made looking to the establishment of inheritance taxes of various kinds, and in 1794 a stamp tax was recommended to Congress by a special revenue committee. In 1794 a stamp duty was levied on receipts for legacies and shares of personal estate when the amount was more than $50. The widow, children and grand-children were

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(a) 55 Geo. III. Chap. 184; 44 Vic. Chap. 12.
(b) 51 Vic. Chap. VIII. part 4.
(c) 52 Vic. Chap. VII.
exempt. This tax was repealed just four years after taking effect (July 1, 1802).

There was no Federal inheritance tax from 1802 until the great revenue act of July 1, 1862. (Stat. at Large XII. 485, 485) Which imposed what was known as "the legacy tax" on the devolution of personal property and stamp taxes on the probate of wills and letters of administration. In 1864 this tax was increased and the "legacy tax" was supplemented by a succession tax on real estate. The legacy and succession taxes were practically a dead letter up to the year 1866 as no penalty had been prescribed for the failure of the executor or administrator to furnish the statements required of them. The penalty which was imposed in 1866 (U. S. Stat. at Large, XIII. 285, 287) caused the revenue from these taxes to be increased to a considerable extent. Even then according to the report of Mr. the government did not receive one half the amount it should have received. The legacy and succession taxes were repealed in 1870 (U. S. Stat. at Large, XVI, 256) and in 1872 the probate and administration tax was repealed with all the other stamp taxes by the act of June 6, 1872 (U. S. Stat. at Large XVII., 256).
The New York inheritance tax, although of recent adoption, has come to be of more importance than that of any other American Commonwealth. It was introduced in 1885 and amendments of greater or less importance have been made at nearly every subsequent session of the legislature. In 1887, by Chap. 713, a practically new law was enacted as an amendment to the one of 1885. Chap. 399 of the Laws of 1892, entitled "An act in relation to taxable transfers of property" is a complete revision of all the previous statutes and may be well considered as a "model" inheritance tax act.
CHAPTER 11.

The system of inheritance and succession taxes has been almost universally approved of by economists, especially because it takes out of the pockets of the people very little over and above what it brings into the public treasury. Second, it is levied at a time when it is most likely to be convenient for the contributor to pay it.

The principal objection to this system of taxation is that it falls upon capital and thereby tends to diminish the funds destined for the maintenance of productive labor and thereby the future production of the country is diminished.

The desire of every man to keep his station in life and to maintain his wealth at the height which it has once attained, occasions most taxes to be paid out of income and it should be the policy of governments to lay such taxes as will inevitably fall on income. It is claimed that this policy has been neglected by enacting this system of taxation. "If a legacy of 1000 pounds be subject to a tax of 100 pounds, the legatee considers his

(a) R. T. Ely, Taxation in American States and cities, p/318
legacy as only 900 pounds and feels no particular motive to save the 100 pounds duty from his expenditure and thus the capital of the country is diminished; but if he was required to pay a tax of 100 pounds instead upon wine, horses, income or servants, he would have diminished, or rather not have increased, his expenditure by that sum, and thereby the capital of the country would have been unimpaired.

On the other hand it is argued that there is no tax which is not partly paid from that which otherwise would have been saved. No tax, the amount of which, if remitted, would be wholly employed in increased expenditures, and as part whatever laid by as an addition to capital".

All taxes, therefore, are in some sense partly paid out of capital. In a poor country it is impossible to lay any tax which will not impede the increase of national wealth. In a country where capital abounds, the spirit of accumulation is strong and so this effect of taxation is not felt. The argument can not apply to any country which has a national debt and devotes a portion of the revenue received to the payment of the debt, since the produce of the tax, thus applied, still remains capital

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and is only transferred from the tax payer to the fund holder.

(a) Wealth of Nations, Adam Smith, Vol. II., 453.
(b) Ricardo's Works, by McCulloch, 89.
(c) Prin. of Pol. Econ. J. S. Mill, Bk. V. Chap. 11. Sec. 7.
CHAPTER IV.

The power of the legislature over the subject of taxation, except as limited by constitutional restrictions, is unbounded. It would be natural, therefore, that this should be the point and grounds upon which it would be attacked. This system has been upheld as constitutional by every court, both Federal and State, in which this point has been raised.

The tax was contested on the grounds of unconstitutionality in New York in "The Matter of McPherson", 104 N. Y., 306. The grounds taken were (1) That it was interfering with an absolute right, (2) That it was imposing a special tax on the devolution of property and, (3) That it imposed an arbitrary tax, not equal nor uniform and which unjustly discriminated between citizens. The court, after a careful consideration of the case, held that it was constitutional. The right to take by will or from intestates is a mere privilege of municipal law to be changed, modified or repealed at the discretion of the state and is not a natural right. (Black, (a) 4 Wheat. 318; 100 U. S. 491.)
Book II., Pp. 10 - 13). As this is the result of municipal regulation, it must, consequently, be enjoyed subject to such conditions as the state sees fit to impose (38 Fed. Rep. 134).

The tax can not be objected to, even though it is a tax upon particular property, as long as it is equally imposed and properly apportioned among all the property of the class upon which it is imposed. The right to impose a tax upon a class of property has been exercised many times and has never been questioned, as a tax upon all transfers, business sales and acquisitions of property and upon all incomes (104 N. Y., 306).

It is not generally a property tax within the meaning of the Federal and State constitutions. The property tax which the framers of the constitution were contemplating was the ordinary, annually recurring tax for the support of the government and laid upon all property whatsoever, as may be seen from the speeches reported in the Federalist. They had no reference to casual subjects of taxation, occurring irregularly and occasionally which, though connected with property, were yet readily to be distinguished in their essential character and

(a) 76 Va. 927; 78 Va. 367; 28 Md. 577; 66 N. C. 361.
Some state courts have held it to be constitutional as being a tax upon the property while other courts have held it to be a tax upon a privilege and many courts, like those of New York state, do not decide on which ground it should be upheld, saying that it is immaterial as in either one case or the other it cannot be objected to (52 Pa. St. 181; 16 W. Va. C. 212). The Inheritance Tax which was laid by the Federal government during the civil war was upheld by the United States courts, not as being a direct tax upon the land taken by descent, within the meaning of the Federal Constitution, but more as an impost or excise upon the devolution of the estate, or the right to become beneficially entitled thereto or the income thereof (23 Wall. 331).

The Inheritance Tax Act of 1885 provided that "All property which shall pass by the will or the intestate laws of this state from any person who may die seized or possessed of the same while being a resident of this state, or which property shall be within this state, to any other than certain exempt persons, nearly related to

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(a) 66 N. C. 363; 104 N. Y. 306.
the decedent, should be subject to a tax of $5 upon the
$100 of the clear market value of such property".

In the Matter of Enston, 116 N. Y. 174 it was de-
cided that property belonging to a non-resident which was
situated within this state was exempt from taxation un-
der the above act. This was soon remedied by the legis-
lature's passing an act in 1887 as an amendment to the
act of 1885. By this act all property, both real and
personal situated within this state and belonging either
to a resident or a non-resident decedent was made liable
to taxation. A non-resident decedent left personal
property within this state after the amendment of 1887
was passed and an attempt was made to avoid the payment
of the tax in the Matter of the estate of Romaine, 121
N. Y. 80, on the application of the fiction Mobilia "seq-
uantur personam". The Court of Appeals held, that the
tax must be paid on all property within the state. Com-
stock, C. J., said, "The fiction or maxim "mobilia perso-
nam sequuntur" is by no means of universal application.

Like all other fictions it has its special uses. It may

(a) Laws of 1885, Chap. 486.
(b) Laws of 1887, Chap. 713.
(c) 26 N.Y. 224.
be resorted to when convenience and justice so requires. In other circumstances the truth and not the fiction affords, as it plainly ought to afford, the true rule of action. The proper use of legal fictions is to prevent injustice according to the maxim 'In fictione semper aequitas existat'. Accordingly there seems to be no place for the fiction of which we are speaking in a well adjusted system of taxation. In New York all property situated within the state is liable for the tax, no matter whether it belongs to resident or non-resident decedents. All the personal property of a resident decedent which is situated without the state is also liable to taxation under the Act of 1837".

Thus, we are treated to another singular spectacle of a statute which in two successive clauses, most importantly connected, affirms and abrogates the same principle -- affirms for the purpose of taxing the property of residents the doctrine of "mobilia personam sequuntur" - abrogates that doctrine for the purpose of laying a similar tax upon the personal property of non-resident decedents within the state. Although this is not unconsititu

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(a) 137 N. Y. 77.
(a) tional it is certainly not compatible with a proper and
easy administration of justice.

For the purpose of taxing the personal property of
non-resident decedents situated within the state of Penn-
sylvania, courts draw a distinction between personal p
property of a tangible and of an intangible nature. The

(b) former is made liable to taxation while the latter is

(c) not. Bonds, stocks, mortgages and such are considered
as in tangible personal property, and personn property
which is actually situated or is used for business pur-
poses within the state is considered as tangible personal
property.

It is universally conceded that real estate situated

(d) outside the state cannot be taxed constitutionally, and

many states do not tax such foreign real estate even
where by the decedent's will the executors are instructed
to sell it and bring the proceeds into the courts of this
state for distribution and thereby constituting a case of

(e) equitable conversion.

A bequest to a legatee of his (legatee's) own note

(f) is liable to taxation.

(a) 96 U. S. 97-106; 2 Chet. Pa. 246.
(b) 15 Pa. St. 1.
(c) 97 Pa. St. 179.
(d) 129 Pa. St/ 356; 110 N. Y. 77; 6 DeM. 268,
19 Rep. 263. (e) 134 N. Y. 77; (f) 15 Sup. 548; 46 Rep
A legacy, given in payment for a claim, which could have been enforced against the estate of the testator, is not liable to taxation to the extent of the debt which he owed as it is simply one way of paying the debt. (39 N. Y. St7 Rep. 402)

The clause of the New York Inheritance Tax Act relating to the amount under which legacies are exempt reads as follows, "Provided that an estate which may be valued at a less sum than five hundred dollars shall not be subject to said duty or tax."

The first point contested under that clause was whether the legislature meant that if the whole estate of the decedent was worth $500 it should be exempt, or whether it meant that the legacies or individual gifts should be less than $500 should be exempt from taxation. (c) The New York courts took the latter view of it, but the Pennsylvania courts hold that it means the whole of the decedent's estate. (Matter of Mixer 10 Pa. Orph. Ct. 409).

The next point brought into controversy under this

(a) 30 Rep. 943. (b) Laws of 1885, Chap. 483. Laws of 1887 Chap. 713; Laws of 1892, Chap. 169;
(c) 5 Dem. 90; 111 N. Y. 343; 112 N. Y., 100
clause was whether or not $500 was to be taken from each legacy liable to taxation, in computing the amount of the tax to be paid. i.e. When a legacy of $1500 is given to a person, the question was whether the rate or tax of 5% should be charged on the whole legacy or only $1000 (a) of it. In 125 N. Y. 376 the court decided that it meant that a bequest of $500 was the smallest that could be taxed.

A legatee was given $500 and the executor did not pay the legacy until one year after the testator's death (the length of time allowed him by law to do so) and the legatee sued for interest on the legacy for one year and (b) the court held that he could not recover. From this decision arose the question "Is a legacy of $500 taxable under the collateral inheritance tax act?" The Surrogate (c) of Kings County, also the Surrogate of Westchester County held that as the Act said that property was to be assessed at its true value and as the executor did not have to pay the legacy until one year after the testator's death, therefore the true market value of the lega-

(a) 32 Rep. 1002.
(b) 113 N. Y. 193.
(c) 32 Rep. 1020/
(d) 30 Rep. 209.
acy was $500 less the discount. Surrogate Ransom of New York County takes the contrary view of this case. He said that the true market value of that legacy on the day of the testator's death was $500. He considered that the market value was the value which could be obtained for that particular property on the market on that day, and surely $500 would bring $500 on the market. The Legislature did not intend that it should be the value of the property to the beneficiary that should be used as the standard. The mere fact that the legacy did not bring him any income for a year after the testator's death should not exempt him from paying a tax which he would otherwise have had to pay. I think it is safe to say that the Court of Appeals in this state will adopt the holding of Surrogate Ransom in this case if such a case is ever brought before it. Surrogate Ransom has had a great many cases before him arising under the Inheritance Tax Acts and upon appeal the higher courts have quite generally upheld his decisions on the subject.

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(a) 32 Rep. 899.
(b) Matter of Laavitt, 4 Supp. 179.
CHAPTER IV.

The courts of New York have not accepted the doctrine of equitable conversion as applied to cases arising under the Collateral Inheritance Laws. The reason is probably, that by doing so they would have to adopt it in all cases or have the difficulty of deciding just how far they would allow the doctrine to be applied. If they should adopt it without any limitation the tax would be avoided by the testator directing the executor in his will to invest the property in land situated in another state which had no inheritance tax and the court would have to consider that personal property as real estate situated in another state and so exempt from taxation.

The Pennsylvania courts adopt the theory of equitable conversion. A resident of New York, owning real estate in Pennsylvania, in his will directed his executor to convert this property into personalty and give it to certain collateral relatives. The Pennsylvania courts deemed this real property to be personal property according to the theory of equitable conversion and as the Pennsylvania courts also adopted the fiction "mobilia sequuntur personam" and so they considered the personable

(a) 23 N. Y. 224.
(b) 28 At. Rep. 137.
property as taxable only at the domicile of the owner, being intangible, the property was not taxed in Pennsylvania. The New York courts not adopting the fiction of equitable conversion treated the property as real property in a foreign state and hence not taxable here, hence this property escaped taxation. This seems to be about the only way the New York Collateral Inheritance Tax can be avoided.

In New York a few attempts have been made to avoid payment of the tax by conveying property to a trustee and then, by will, directing the property to be conveyed by him to certain persons. All such attempts to avoid payment of the tax have resulted in failures.

It would be a decided improvement if the courts of the several states would consider legal fictions as inapplicable to cases in regard to taxation. If a resident of a state whose courts adopt the fiction "mobilia personam sequuntur" dies leaving personal property in a state the courts of which do not recognize the fiction as applicable to cases of taxation, as New York, the result is that this property is taxed in both states, a clear case

(a) 137 N. Y. 77.
(b) 131 N. Y. 274; 47 Rep. 391.
of double taxation, which, although not unconstitutional is not compatible with a proper and easy administration of justice. In another case, as reported in 28 Atlantic, 137, by the courts of one state adopting the fiction of equitable conversion and the courts of another state, in which the owner resided, not recognizing it, we find that in this case the property escapes taxation entirely. So, as I have before said, it would be a decided improvement to abolish the use of fictions in all taxation cases. This position has been taken by many of the leading courts of the country.

Until the amendment of the Inheritance Tax Act of 1885 by Chap. 713 of the Laws of 1887, adopted children were not exempt from taxation. After this act was passed attempts were made to have the courts consider it as applying to all cases in which such taxes had not been paid although they had already accrued under the Act of 1885, but the court decided that the Act of 1887 was not retroactive. The tax having accrued at the moment of the persons death the tax in such cases would not have been avoided on the ground that it was practically a repeal of

(a) 110 N. Y. 216.
the Act of 1885 and it contained no saving clause as to
(a)
the actions then pending.

It is not necessary under the present laws that the
child should be adopted according to the laws of New York
state in order to claim the exemption. It will be suffi-
cient if the legal requirements of the state in which he
(b) was adopted were complied with.

According to the decisions upon this subject a per-
son may be adopted in one of three ways:--

(1) By adoption under Chap. 830 of the Laws of 1873
and the amendments thereto, whereby an adult takes a mi-
nor into the relations of a child and thereby acquires
the rights and incurs the responsibilities of a parent in
respect to such a minor. Under this law the child as-
sumes the name of the person adopting him, and becomes
his or her legal child and heir.

(2) Where an adult by his conduct and relations to
a minor stands in "loco parentis" to him, and thereby has
become entitled to the rights and subject to the respon-
sibilities of an actual parent.

(3) Where a person of the age of 21 years or up-

(a) 105 N. Y. 245.
(b) 58 Hun 400.
wards, by the agreement or at the request of an adult, becomes a member of his family, with the purpose of having the relation of parent and child exist between them.

I suppose that it was because the legislature was aware that it would be a difficult, if not impossible to prove the origin of such relations, the peculiar circumstances and necessities which made them desirable, the agreements and understandings or arrangements that were entered into -- all the facts necessary to establish the legal existence of parental relations from their inception -- that it made the right of exemption from tax dependent upon the ability of the party claiming it to prove that the decedent, for not less than ten years prior to his or her death, stood in the mutually acknowledged relation of parent.

In New York the exemption of different institutions from the payment of the tax has been carried to the utmost extent. The "Collateral Inheritance Tax Act" of 1885 as amended in 1887 and 1889 exempted "all societies corporations and institutions now exempt from taxation". This included all those exempt by special acts as their charters and those exempt under the general act, contained in 2 R. S., 8th Ed., 1083, Sec. 4., which may be said
to contain, in a general way, all poor houses, alms house houses of industry, houses for reformation of offenders, institutions of learning and for public worship. By an amendment contained in Chap. 553 of the Laws of 1892, the following are exempt from payment of the tax,—"Any religious, educational, bible, missionary, tract, literary, scientific, benevolent or charitable corporation organized for the enforcement of the laws relating to children or animals, or for hospital, infirmary, or other than business purposes", on any property to be used for the purpose for which it was incorporated, to the extent of three million dollars.

The taxes imposed by the Collateral Inheritance Tax (a) Act are special and not general, and special tax laws are to be construed strictly against the government as a person can not be subjected to special burdens without clear warrant of law. The rule that the statutes of exemption are to be strictly construed does not require that only such societies are deemed exempt as are declared exempt from all taxation by their charters; it is enough that the society claiming immunity belongs to the class

(a) 104 N. Y. 174 - 177. 
(b) F Dern. 132.
exempted by general statute or that the bequest comes within the amount it can hold by law, even though it is not exempt from all taxation.

The exemptions apply to domestic corporations and so foreign corporations have to pay their tax no matter how commendable their object or purpose is. It is not to be presumed that the legislature of the state of New York would attempt to impose the restraints or disabilities of a foreign corporation.

The decisions on this subject are mostly from the lower courts and from them the following rules may be deduced:

(1) All corporations, institutions and societies which are of a charitable nature and help to relieve the public of a burden and charge nothing whatever for the care and treatment bestowed, are exempt. These may be considered as examples,-- Homes for Aged Persons, Orphans, Incurables, Consumptives, Inebriates and such.

(2) As to those which are partly free and which charge those persons for treatment, who are able to pay

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(a) 127 N. Y. 1-8.
(b) 113 N. Y. 133.
(c) 136 N. Y. 347.
(d) 18 Supp. 603.
(e) 31 Rep. 959. (f) 55 Hun 167.
(g) 32 Rep. 910; 724.
for it, there is a conflict of opinion but it seems that when the money so received is used to maintain the free part of the institution that it may be safely considered (a) as exempt.

(3) Any institution charging any amount whatever for the benefits to be received, is not exempt from taxation no matter how small the tax maybe in proportion to (b) the benefits received.

In matters relating to practice the acts have been very clear and therefore leaves very little for me to say on this part of my subject. I will call your attention to a few important particulars which escaped the eyes of the framers of the different acts and so were left for the courts to determine just what the legislature meant.

The different acts have provided for the appointment of appraisers by the surrogate on his own motion or on motion by the District Attorney who had been notified to prosecute by the County Treasurer, but it did not contain a provision allowing any one else to apply for the appointment of appraisers. The courts have held

(a) 58 Hun 386.
(b) 31 Rep. 369; 32 Rep. 227; 10 Supp. 239; 22 Abb. N. C. 221.
that although there is no express provision in the acts the executor may apply for the appointment of them. The appraisers must notify the County Treasurer or, in New York County the comptroller of the time of appraisal in order to bind the state by such appraisal. The appraisers are to appraise the estate at the clear market value at the decedents death. Life estates are to be valued according to the tables of Mortality. The appraisers are not to decide as to whether property is exempt or not but they are to report the value of all property to the surrogate.

The payment of the tax by persons interested can be enforced by contempt proceeding only after execution against their property has been issued and returned unsatisfied. But the executor or administrator is personally liable for the tax and can be punished for non-payment of it by contempt proceedings without execution having first been issued.

(a) 20 Abb. N. C. 405.
(b) 15 Supp. 539.
(c) 5 Demi. 92.
(d) In re Astor's Estate, 2 Supp. 630.
(e) Code of Civ. Pro., Sec. 2555.
(f) 19 Rep. 318.

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