TO INCREASE THE REVENUE

HEARINGS

BEFORE THE

SUBCOMMITTEE OF THE COMMITTEE ON FINANCE UNITED STATES SENATE

SIXTY-FOURTH CONGRESS
FIRST SESSION
ON

H. R. 16763

AN ACT TO INCREASE THE REVENUE, AND FOR OTHER PURPOSES

Printed for the use of the Committee on Finance

SECTIONS RELATING TO INCOME TAX

PART 2

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SUBCOMMITTEES ON THE EMERGENCY REVENUE BILL.

SUBCOMMITTEE No. 1.

SUBJECTS ASSIGNED: MUNITIONS, WINE TAX, DYESTUFFS, AND UNFAIR COMPETITION.

Mr. STONE, *Chairman.*
Mr. THOMAS. Mr. HUGHES.

SUBCOMMITTEE No. 2.

SUBJECTS ASSIGNED: INHERITANCE AND INCOME TAXES.

Mr. WILLIAMS, *Chairman.*
Mr. JAMES. Mr. GORE.

SUBCOMMITTEE No. 3.

SUBJECTS ASSIGNED: TARIFF COMMISSION, DUMPING, AND MODIFICATION OF THE PRESENT EMERGENCY ACT, EXCEPT AS TO WINES.

Mr. JOHNSON, Maine, *Chairman.*
Mr. SMITH of Georgia. Mr. KERN.

TO INCREASE THE REVENUE.

(INCOME TAX.)

TUESDAY, AUGUST 1, 1916.

UNITED STATES SENATE,
COMMITTEE ON FINANCE,
Washington, D. C.

The subcommittee met pursuant to call at 12.30 o'clock a. m., in the room of the Committee on Finance, Capitol, Hon. John Sharp Williams presiding.

Present: Senator James and Representative Hull.

The subcommittee proceeded to consider the bill (H. R. 16763) to increase the revenue, and for other purposes.

The CHAIRMAN. The subcommittee has under consideration subdivision (b) of section 102 of the bill. Mr. Elston, a Representative from the State of California, is present and desires to submit some remarks to the committee. Mr. Elston, the committee will be glad to hear you.

STATEMENT OF HON. JOHN A. ELSTON, A MEMBER OF THE HOUSE OF REPRESENTATIVES FROM CALIFORNIA.

Mr. ELSTON. Mr. Chairman and gentlemen, I appear before the committee to-day to draw your attention to a portion of subdivision (b) of section 102 of the revenue act known as H. R. 16763, and I will read the particular clause in paragraph (b), or subdivision (b) that I desire to address an argument to, intended to persuade you to eliminate it. It reads as follows:

Now, in connection with that clause I have just read, I would like to draw your attention to section 109 of the same bill, which provides:

> That unless the tax is sooner paid in full, it shall be a lien for 10 years upon the gross estate of the decedent, etc.

Now, my contention is that this provision, which I first read, declares a presumption that is not usually found in inheritance-tax laws. The usual provision in inheritance-tax laws, some of which I am familiar with, provides that any transfer made in contemplation of death, or to take effect in possession after death, shall be subject to the tax. That lays down the law. The burden is on the Federal Government or on the State government to institute a proceeding where they believe that fraud has been committed in the way of transfers prior to death intended to defeat the tax. That is to say, in my State upon the probate of an estate which the tax collector has reason to believe is considerable and where the inventory discloses that it has been reduced to a great extent, and an inspection of the record shows that

transfers have been made within a short period or a reasonably short period prior to death, the district attorney or the attorney general, through the comptroller's office, is directed and authorized to institute proceeding for an investigation of the circumstances and make inquiry and discovery; and thereupon, if there are any suspicious circumstances surrounding these transfers prior to death or trusteeships which are to take effect upon death, or any other transfer intended or calculated to defraud the Government, the proper machinery is provided in the acts to recover the tax and to lay a lien upon the property wherever it has gone.

Mr. Chairman, I may say that I have had a little to do with the drawing of the inheritance-tax law of California. That was a good many years ago, and at that time I was secretary to the governor, and the chief deputy of the State comptroller and myself were charged with the duty of preparing a tentative draft of a bill, and we did so, and it contains the substance of the present inheritance-tax law of California. We inspected the various laws of States like New York, Wisconsin, Massachusetts, etc. When I read over this bill it recalled a good many notions that I had very clearly in my head when this matter was fresh in my mind, and it immediately appealed to me as creating a presumption that would cause great irritation and confusion.

I asked the legislative reference clerk at the Library to look up the laws of California, Wisconsin, New York, and Massachusetts to ascertain whether there was any similar clause to this in the laws of those States so far as inheritance tax was concerned. I was told by him that he had made a very careful investigation and found no such clause in the laws of California, Massachusetts, or New York; that he did find a clause similar to this in the inheritance tax, but not with regard to the number of years prior to death, in the law of Wisconsin. Notwithstanding the fact that Wisconsin may have tried this, I want to call your attention to a few considerations that I think will tend to show you that the creating of this burden upon titles that are transferred prior to death will not inure to the benefit of the Government, but will create a tremendous amount of irritation and confusion, particularly in some States where presumption does exist, such as California, Massachusetts, New York, and I imagine in nearly every State but Wisconsin, although I can not speak with authority as to that.

We will just take an individual case, for instance. We will take the case of Senator Williams here. We will presume that he has an expectation at this time of 20 or 30 years. The law does not inhibit a transfer by gift to his wife or child. The child may be married, and he could make the transfer within four years because at the present time a transfer by gift deed is permissible. The law does not prohibit that so far as inheritance is concerned if the deed is made for a valuable consideration prior to death, unless it is done with the expectation of defrauding the Government of the tax. So that if a person in present life has an expectation of 20 years and makes a gift deed, if it is property that is taxable, you are fixing on that property a presumption of a lien of the tax which will last, as I contend, an indefinite period, and it can not be cleared by any showing ex parte, not by any showing of any kind except by a quiet title suit in court, and that the property is not subject to the tax.

We will say that Senator Williams makes a transfer at this time by gift to his daughter who is married, and the law is in effect, we will presume, and he has an expectation of 20 years, and we will say she takes that property, and in some exigency a week hence she desires to obtain a loan. Now any lawyer of any title company will immediately know that the transfer was made by gift deed. If they are well advised they will know that the lien of the Federal inheritance tax attaches presumptively to that property as soon as the deed is made unless full money consideration and value is stated in the deed. So that the lien for the tax attaches at once. If she wants to get a loan on the property the lawyer will say, "This title has been searched and we find that it is so-and-so; the taxes are so-and-so, subject to an indefinite lien of the inheritance tax by reason of the fact that the full consideration was by gift, and by reason of the fact that it does not appear that the grantor is dead." The law says that any property transferred four years prior to the death of the decedent shall be presumed to be subject to the tax.

That is one question. I need not repeat the argument, because every one of you gentlemen is a lawyer, and if you have ever examined titles you, of course, know what the law is in a similar case.

I have already drawn your attention to section 109, which says that the tax shall attach to the property and become a lien for 10 years, and you can not get out of it.

Now, we will assume that we have, as we have in California——

Senator SIMMONS. Suppose the man should not die within four years?

Mr. ELSTON. I will take that right up here.

Senator SIMMONS. You say he had an expectancy of 20 years at the time he made it. Suppose he does not die within the four-year period, then would not the lien be divested at once?

Mr. ELSTON. Yes; it would; but how are you going to show it? I want to direct your attention to it. Suppose you take the instance which I have given in which a gift deed was made by a father to a daughter—which is perfectly permissible, and is usual—and he has an expectation of 10 years, but dies a year thereafter. Immediately presumptively the tax attaches to that property. Now, in the meantime, of course, the lien——

The CHAIRMAN. And continue for 10 years.

Mr. ELSTON. Yes, sir; for 10 years. How is it going to be divested? The transfer is upon the recorder's books. Is it not of record? The death may have occurred in Massachusetts—I am speaking of California now—and by what means legally are you going to bring to the notice of the Federal authorities, or to the proper authority who can establish it on the record book in California, the fact of death? You will have to begin as we have in California, what is tantamount to a suit to establish the death of the decedent. It is necessary to establish that death in order to show that life has terminated, or that some other homestead interest has vested. There is no way of record to show that the decedent has died within four years, and there is no way of record to show that the tax does not attach to that property because that does not clear it. It merely shows that the tax attaches. Now, how is the party who took the property going to first divest it of the lien where she can not show that death has occurred? She can not go to the internal-revenue collector and say, "My father died

in Massachusetts. Give me a clear title to the property." He will say, "We have no method of doing that." If her representative writes and says, "This lady has informed me that her father is dead; please cancel the inheritance tax on that property," the recorder will merely say, "We have no authority to do that, and furthermore, I do not know whether the tax has attached or not, because you will have to show me whether the decedent had $50,000 or not, or whether this comes within the exemption or not." There is absolutely no way of doing it.

I would like to have further questions on that line if you think I am in error. I do not think I am.

Senator SIMMONS. I catch your point, I think. Your point is that if at the end of four years after the execution of the deed if he should die, the lien would be actually divested, but it would not be divested of record.

Mr. ELSTON. It would not be divested of record. Suppose, for instance, you should at this time make a gift deed to your wife, with reversion to your child upon her death. That is a life estate to your wife with remainder to your child. Suppose your wife dies, and suppose thereupon your child makes a transfer of that property. There is a search of the title, and it is not disclosed by the record that your wife has died. You would have to do something similar to what we do in California—bring a proceeding to establish title to the property by a decree, securing a certified copy from the recorder's office and there have the devolution of the property shown of record. By this law a person can not go ex parte to the internal-revenue collector and say, "My father is dead and here is my official statement showing that he did not leave $50,000." You can not do it in that way and make a good claim of title. It is absolutely impossible.

Now, here is the proposition— and I am speaking without any captious idea at all, or a critical idea; I voted for this bill although I am on the minority side of the House, so I am not coming here as an opponent of this revenue measure but as a friend, because I believe in the main portions of the bill, as is evidenced by the fact that I voted for it. Take the irritations occasioned by the stamp tax— which was one of the greatest irritations in California, and that is a big State; I have had a great deal to do with the transfer of titles, and as attorney for four or five banks in my own State and as clerk, and also acting for various trusts' interests I have had titles searched, and I will say that one of the great irritations we have had in matters of title is that which affect grantors who recited, by reason of the stamp tax, the full consideration of the deed. It is an irritation in transfers of title of every kind.

Suppose a person wants to buy a piece of property for $50,000, agreeing to turn it over to his company. If he does not he breaks faith or violates the trust. Suppose he wants to turn it over to the company without disclosing the real consideration, he will find out in this revenue bill that he was cut out by this stamp tax and prevented from stating a $1 or a $10 consideration. You have written in a clause which will compel the reestablishment of that old irritating custom because you say here that any transfer upon any consideration except the full money's worth shall be presumed to be the subject of tax, compelling every man who makes a transfer of any kind, after this act goes in effect, to put in the full considera-

tion. So far as his attempt to collect on the lien is concerned, that will be a good thing. But does he do it? We all know that the recital in the deed by the party who makes known all of the consideration is not binding upon anybody. It is not a statement of fact, but a mere ex parte statement that has no credence anywhere except with those who want to believe it? It has not the binding effect of a decree.

Now, we will say that a man makes a deed and puts into it what he believes to be the money consideration and he says, "In consideration of $4,000 to me in hand paid," do you mean to say that the Government is going to take every statement made in that way not under oath but by a party who might want to make it in his own favor, stating the amount of the consideration, and will it stand? If you think that, what virtue is there in this provision? This provision is intended as a "catch-all," to clasp and bind every transfer made of every kind, in order to hold it in leash and in suspension until the man dies so that you can make the proper communication, and in the mean time hold a lien over the property. You are not going to be bound by the statement in any deed of what the man gave or received as a consideration. The Government is not going to be bound by that, and no title man is going to take the statement of a deed so certified—and a clear title—merely by reason of the fact that the grantor says he received so much. He would say, "That is subject to proof." How do we know because a man says he received $4,000 for a piece of property that it is true?

Now what is the object of the bill anyhow? Your object is, if anything, to subject to the tax every transfer of property that comes with the intent and spirit of this law, and it is not intended to subject to the tax any bona fide transaction between persons in life who have an exception of more than four years, or an expectation of any number of years, because four years would not be the time at all. You had just as well make it one year or two years or six years, because a man does not know when he is going to die, and four years is a period way beyond the usual exigency where a man makes final disposition of his estate. A man might have an expectation of 30 years and die in 1 year afterwards, and by reason of the fact that we have so short a time you say that the lien attaches more firmly. That is not your object. Your object is to bring under the provisions of the bill, subject to tax, every transaction that is intended to come under it.

Now how do we do in California, and how should the Government do in this matter? We should not enact laws that will create the irritation that I spoke of, and as I know this law will. You have greater resources than the State of California has in the matter of ascertaining and subjecting to taxation various transfer of this kind. You have the agency of every State that has an inheritance tax law. You have the records of every officer of every State Government that deals with the inheritance tax matters. You can employ those agencies. In the State of California you can go to the State comptroller's office and see all the records you wish of the proceedings of the Attorney General or district attorney to establish liens on the State tax, and add to it the Federal tax itself. You have all of those records and all those agencies to help you and you do not need this law at all, any more than we do in the State of California.

Now, what is your object? To hold this thing in suspension when, as I say, suspension would mean a terminable period at the end of which you are going to catch up this whole thing that you have brought into this case. You have got every transaction in the State of California, we will say—every $10 consideration as well as every $4,000 transaction. You are not going to rely on the recitals of every gift deed, because you can not tell when the transfer is made whether the man is going to die at the end of four years or not. What is there in the record to show that the four-year period has passed?

Suppose Senator Williams makes a transfer now to his daughter. Four years hence, we will say, how do you know he is in life or not in life? If he is dead, it might be established by some probate record. If he is living, you will have to show it—I am speaking of your catch-all of every transfer. In the State it is permitted, for a period that is terminable, to make an investigation because that is the only reason, it is the only presumption, and it is subject to rebuttal on the part of the party. But the Government wants its chance for investigation. Now, do you mean to say that this Government is going to attempt to catch in its net every transaction in the State of California and then make a minute investigation into every transaction and pass upon the fact whether the kind of transaction was subject to the tax or not subject to the tax? It would be a superhuman task; it could not be done.

Senator JAMES. They would not do that except in a case where they had reason to believe that the decedent had more than $50,000, would they?

Mr. ELSTON. If that is so, they would make a selective proposition of some particular transaction as it is disclosed by some probate proceeding in the State. The State has already employed those agencies and why do you want this catch-all that will make so much irritation because you will have then the opportunity, we will say, of disclosure in the probate proceedings which shows the fact that the estate is valued at more than $50,000. That is not the way you will do it. You will have enough instances there to make a prima facie case, aided by the State, to fix a tax upon that property instead of going over ninety-nine case out of every hundred to catch the tax in one.

Senator JAMES. But the main purpose of this, as it appears to me, is to have a lien that will make safe the Government tax where a fellow undertakes to dispose of his property before death.

Mr. ELSTON. Yes.

Senator JAMES. If you do not provide that the lien shall attach, how would that be secure?

Mr. ELSTON. If you will pardon me, Senator, I say your object is served by this presumption. I am saying that the fact that you have to take ninety-nine bona fide cases out of one hundred and corral them and fix a lien upon them in order to select one and hold it, is going to occasion more trouble than it is worth, especially where you have so many agencies to disclose that point. You are going to have big estates, and you do not want to take into consideration every little transaction, such as a $10,000 transaction, and there is not going to be a thing on the record that shows a man is worth only $10,000. So if a little "two-by-four" man engages in a transaction of $10,000, you will hold all of his entire property notwithstanding he has only a $5,000 estate, because what authority is there to correct that little

transaction and say, "We presume this man is worth only $10,000," and I say there is no way of telling when that four-year period ends whether he is in life or death.

Senator JAMES. Suppose a man is worth $500,000, and he is in failing health, or getting very ill, and he gives out his property to first one and then the other. If you have not some lien that would secure the Government tax, how do you propose to do it?

Mr. ELSTON. I will give you an instance. I have been attorney in several inheritance-tax matters in the State of California. We have a provision in the California law that fully covers any transfer made to defeat the tax, any transfer made in expectation of death, any transfer made to take effect in possession after death, any transfer then or afterwards, trying to cover any kind of colorable transaction that will tend to defeat the tax. Now, in a case where a man dies the State's agency will immediately, through the State agency, disclose the fact. The inheritance tax assessor or investigator in each county will immediately check up the matter, and they have a list of inquiries, through executors, of this kind: When the decedent dies, how much was his estate worth, and how much had he? It is a matter of probate record—has he made any transfers of the whole or part of his estate during the last four years? Yes; or no? If so, to whom and upon what consideration? Now, the executor has to answer upon oath to the inheritance tax assessor or appraiser. All of that is set out before the inheritance tax appraiser.

Now, you will see that all the facts are fully disclosed in this statement which he has made upon oath. They may say, "Yes; the decedent about a month prior to his death transferred the whole of his estate to what we will call the John Brown Estate Co.," or, he might state it in this alternative form, "Yes; the decedent, a month before his death, made a deed of such-and-such properties to his daughter, and another deed to his son, and another to his wife. There is something on the face of it. Suit may be brought, just as is done in numberless cases, to assert the claim that these transactions were subject to tax, and there have been innumerable instances in California where they came in and paid because they could make no showing.

Now there have been built up in all States, and in the Supreme Court of the United States, a number of decisions with regard to presumption upon a certain statement of fact as to whether the tax attaches or not, just as it has been brought up with regard to these transfers to wives in fraud of creditors. You have no presumption in that way in the case of fraud on the creditors. Here is some indefinite body of creditors who look to the estate, and they may have a lien upon it. That would be similar to the Government in this case.

Now, there is no law on the statute books of any State providing that any transfer of a man in debt, or subject to bankruptcy, who has indefinite debts that he has not paid, with a group of creditors, made so many years prior to his death to his wife shall presumptively be, unless otherwise shown, in fraud. With regard to personal property there are some. But what do you do when a debtor makes a transfer to his wife and has creditors? The creditors have the right of a creditor's suit, and they have built up a great body of laws with respect to presumption on that point.

The CHAIRMAN. As I understand you, you do not object to the provision that anything which shall be in contemplation of death or expectation of death with a view of evading the tax shall be none the less a tax?

Mr. ELSTON. Not at all, Senator.

The CHAIRMAN. The only distinction you make is that you do not think where the law provides for presumption it should be with the Government, but the burden of proof should be upon the estate?

Mr. ELSTON. That is my whole contention.

The CHAIRMAN. And that part of it which provides that any transfer within four years not for value shall be presumed to be a transfer in contemplation of death, thereby throwing the burden upon the estate, is wrong?

Mr. ELSTON. You have the matter exactly.

The CHAIRMAN. And that the burden ought to be left to the merits of the case, whatever they may be.

Mr. ELSTON. You have stated it exactly in a nutshell.

The CHAIRMAN. Those representing the Government ought to go in and assert the Government's right and leave it to the court to maintain it or deny it. That is your first objection?

Mr. ELSTON. You have stated it exactly.

The CHAIRMAN. Now, the second objection is with respect to the lien continued that long?

Mr. ELSTON. No; I do not care about that. If you change that presumption I want the lien to remain. In California we have it. You would have the advantage of that lien, and I am not contending that the lien should not remain. But the lien will attach when the Government has affirmatively shown that the tax in a proper case should have been on the property, and thereupon the lien relates back to the very beginning.

The CHAIRMAN. I misunderstand you.

Mr. ELSTON. On, no; you want to keep that in the bill.

The CHAIRMAN. I thought you were objecting to the length of the continuation of the lien.

Mr. ELSTON. Oh, no.

Senator JAMES. The Government could not go in and assert its lien until the death of the owner of the property, could it?

Mr. ELSTON. Not at all. The situation is this: If the tax is not paid and the Government has reason to believe that the man has made transfer in contemplation of death—and it has many agencies to find that out—it can then immediately, and it is so authorized in this bill, commence proceedings to establish the lien, and in the meantime, as soon as the court finds that the lien has attached——

Senator SIMMONS. What would be the difficulty of the man who wants to evade the law under these conditions, when this property is conveyed to him for this unlawful purpose—there is no presumption?

Mr. ELSTON. No, sir.

Senator SIMMONS. If there is no presumption what would be the difficulty of his evading the law by simply, as soon as he gets the property, transferring it to an innocent purchaser for a valuable consideration.

Mr. ELSTON. That is provided for in the provisions of your bill. As soon as you have made a decree, or established the fact that it was made in contemplation of death, the lien has already, by virtue

of your law, attached to that property, and I do not think that the protection of the innocent purchaser would obtain in this case.

Senator SIMMONS. You do not quite catch my point. Suppose I, having in mind a purpose to defeat or evade the tax imposed here, should undertake to distribute my property to-day among my children. If there is no presumption that transaction was intended to evade the law, then if my children should convey any part of that property to an innocent purchaser what would it avail the Government, so far as that property is concerned, if it were finally to establish the fact that the transaction between my children and myself was a fraudulent one—because it is a well-settled principle of law that however fraudulent the sale of a piece of property may be, as intended to defeat creditors, we will say he is a fraudulent purchaser and that he transfers to an innocent purchaser for value without notice—the claim upon that property is divested.

Mr. ELSTON. My recollection is that the provisions of the bill cover that. It is provided that the lien shall attach to every consideration received on such transfer. You have looked forward to every case you have spoken of, because that is something that has to be looked out for, and it is something that is permissible in all your law. You provide directly in your law—and my remembrance is very clear upon it—that a lien attaches to every consideration received on a bona fide transfer—remember any bona fide transfer to any person who had notice. That would put a prudent man upon inquiry, or if there is anything less than the full consideration the purchaser is not protected. If he is protected it means that he has given the full consideration, and the lien follows the consideration received.

Senator SIMMONS. In that particular case the Government would have to assume that the original transaction was fraudulent; it would not have to prove that the second transaction was without any virtue.

Mr. ELSTON. The Government could bring the two parties into the one proceeding.

The CHAIRMAN. I do not think you would have anything to do with that second transaction because of a well-established principle of law. If I die, for example, with a bankrupt estate, the heirs are in possession; yet if subsequent bankrupt proceedings are established and it is shown that I owed creditors, my heirs would go in subject to what is claimed. Under the decisions of our courts, at any rate, no statute of limitation ever applies in favor of the heirs. In my State suppose the heirs have gone into possession and the creditor could not be found, but turned up after awhile. The court would hold in a case of that sort the heirs had gone in merely as trustees and could not go in otherwise, there being outstanding debts not extinguished, and no statute of limitation applied in their favor at all, and there being nothing at all except equity proceedings, it being still in equity. Now, if the Government has a lien on the property, the only difference between that situation and this is that in this act we shut the lien off at the expiration of 10 years; we voluntarily surrender it beyond that period. Then the heir could go into possession, only as a trustee subject to the lien of the Government for the collection of the tax. It does not seem to me, however, of much importance, this subject of where the burden of proof is. My experience in trying law cases is that I never care much about what

the court says as to the burden of proof, whether it is on one fellow or the other. Of course you have to prove your case.

Mr. ELSTON. You have to have affirmative facts. I am not addressing myself to the burden of proof. I think you are right with respect to that because we have had but very little difficulty in California. I am thinking of the irritation, confusion, and uncertainty in the practical effect of this. I have tried to analyze it in order to ascertain at what period the Government is going to collect all these transactions that it has laid this presumptive lien upon and cull them out. Now if the Government does not do it it means that every individual who comes within the class where his transaction carries with it this presumptive lien must—as you say in the law, unless otherwise, shown, which means he has to do something affirmatively—commence a quiet title suit against the Government and establish the fact that the whole transaction does not apply.

I am thinking of the irritation that is going to be brought about immediately. If this act went into effect to-day every transaction in the State of California would be affected by it immediately. Mr. Hull says that he did not hear of any difficulty in Wisconsin, and it may be there is something peculiar there, but I am speaking as a lawyer——

The CHAIRMAN. What is the Wisconsin law?

Mr. HULL. They tax all transactions of that kind which occur within four years, and hold that they shall be deemed in contemplation of death.

The CHAIRMAN. That is what we have in this bill.

Mr. HULL. No; this says "presumed." They say it shall be "deemed."

Mr. ELSTON. Which is as bad.

Now, Mr. Chairman, I do not propose to detain you any longer. I hope that this matter will be looked at from a practical standpoint as to just what direction it will take, what transactions it will take in, and what burden will be put upon those transactions; when a man's lien can be divested; how the person will divest it; what good the Government will get out of it by doing it, and the fact that you want to realize that you have all kinds of agencies to assist in this matter, and you do not want to have confusion and irritation; that this possibly is not a matter that is going to last always anyhow; it is not going to help you much. It is not the biggest item of your revenue bill anyway.

Senator SIMMONS. You are not objecting to the length of the lien?

Mr. ELSTON. Not at all; the 10 years' lien is all right, because that will attach when it is shown that he stated his estate as over $50,000. That is subject to affirmative showing and is subject to tax, and thereupon the lien falls on the property.

The CHAIRMAN. You will be satisfied if we merely strike out the provision——

Mr. ELSTON. Strike out the first provision that I read.

The CHAIRMAN. And leave that question to be decided by the court, subject to the merits of the case?

Mr. ELSTON. Yes, sir.

Senator SIMMONS. What do you think of this suggestion, in case a suggestion is to be made as to its effect on the Government, that the

tax be doubled in case the transfer is ultimately found to have been made with intent to defeat the law?

Mr. ELSTON. You have some such provision here already. For instance, you have a provision that covers a surtax by reason of increased interest for lengthy periods. You could change those interest periods; that is, that interest shall be at the rate of 6 per cent a year from the time of death, for a certain period, jumping it up to 10 per cent for any lengthy period, which means that if the parties do not come in, the lien will be charged on the property. You have a provision here which I say is excellent, that any litigation to defeat the tax will not be presumed to be within the time of the exemption period.

The CHAIRMAN. Not be presumed to be litigation?

Mr. ELSTON. That is it. I think that is all right. I have read it over. It is not overhampered by provisions and is well jointed, and my recollection is that it is in conformity with the wise provision that I remember in the California law. We have had a little more experience there and I think we have worked out a good law and if you will glance over that law you will see that it articulates with this. I do not believe you will have any difficulty in collecting your tax. I am assuming I am correct in saying that New York has no provision of this kind; Massachusetts has no such provision, and I have not heard of any difficulty in the matter of collection. We collect three or four million dollars a year and we have an efficient system. We cover all those corporation propositions and find no difficulty merely because we know the "earmarks."

It has been upheld by the Supreme Court decisions in its application all over the United States. It is a body of law which gives you an almost universal rule. It is a rule that you can apply here, there, and everywhere. It has been well adjudicated in the collection of taxes, what is colorable fraud; you have the facts as disclosed by decisions, and you can easily work it out.

I repeat that I have no personal interest in this matter. I voted for the bill, but this is one matter that comes within my personal purview because I am somewhat familiar with it. I made an effort in the House to get a hearing but was disappointed in the impetus of work, and that made it necessary for me to come here.

That is all I care to say, Mr. Chairman.

The CHAIRMAN. The committee is very much obliged to you, and we will now adjourn.

(Thereupon the subcommittee adjourned subject to call of the chairman.)

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