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125 Md. 431, 94 A. 8

Court of Appeals of Maryland.
 BAMBERGER et al.

v.

**MAYOR AND CITY COUNCIL OF
 BALTIMORE.**

No. 7.

April 7, 1915.

Appeal from Baltimore City Court; Morris A. Soper, Judge.

“To be officially reported.”

Action by the Mayor and City Council of Baltimore against Louis Bamberger and another, executors of Elkan Bamberger, deceased. Judgment for plaintiffs, and defendants appeal. Reversed, without new trial.

West Headnotes

Municipal Corporations 268  **966(1)**

[268k966\(1\) Most Cited Cases](#)

Under Code Pub.Civ.Laws art. 81, §§ 11, 70, and Baltimore City Charter, §§ 36, 40, 171, even as to property in Baltimore, executors are not liable for taxes assessed and levied after testator's death, but not due till after distribution under order of court.

Argued before BOYD, C. J., and BRISCOE, BURKE, THOMAS, PATTISON, URNER, STOCKBRIDGE, and CONSTABLE, JJ.

Charles Markell, of Baltimore (Gans & Haman, of Baltimore, on the brief), for appellants. E. J. Colgan, Jr., Asst. City Sol., and Oscar Leser, both of Baltimore (S. S. Field, City Sol., of Baltimore, on the brief), for appellees.

PATTISON, J.

The mayor and city council of Baltimore brought suit against the appellants, as executors of Elkan

Bamberger, deceased, to recover city taxes for the year 1910 upon the estate of the decedent. The estate consisted of furniture and household effects and of “bonds, certificates of indebtedness, and evidences of debt.” On the 1st day of October, 1909, the furniture was valued and assessed, for the purpose of taxation for the year 1910, at the sum of \$600, and the bonds, etc., were at such time and for said purpose assessed at the sum of \$258,756. After such valuation and assessment, and after the passage of an ordinance on the 23d day of December, 1909, making the annual levy of taxes, but before the taxes became due and payable on January 1, 1910, the appellants, under an order of the orphans' court of Baltimore city, passed on the 29th day of December, 1909, distributed the estate of their decedent without paying therefrom the aforesaid taxes for the year 1910. It was to recover these taxes that the suit in this case was brought, and the only question presented by this appeal is whether the appellants, as such executors, are liable for the payment of said taxes.

It is not because of any beneficial ownership in the estate of their decedent that administrators and executors are chargeable with the payment of taxes thereon, but it is a statutory liability imposed upon them, as custodians and holders, in their representative capacity, of a qualified title in the estate, pending its settlement, and consequently we must look to the statute to find their liability as well as the extent of such liability.

Section 70 of article 81 of the Code of 1912 provides that:

“Administrators shall pay all taxes due from their decedents as preferred debts, and to the exclusion of all others, except the necessary funeral expenses; and on failure, their bonds shall be put in suit for the use of the state, and recovery had for the whole amount of taxes due, and interest from the time they were payable.”

And section 11 of said article provides that:

“The several registers of wills in this state shall annually, on or before the first day of March, return to the county commissioners or appeal tax court, a summary account of all property that shall appear by the records of the several orphans' courts to be in the hands of each executor, administrator or guardian as such; and all such property, if not before assessed, shall then be assessed; and every executor, administrator or guardian shall be liable to pay the taxes levied thereon, and shall be allowed therefor by the orphans' courts in his accounts.”

In our opinion, the above provisions of the Code, when construed together, confine the liability of administrators and executors to the payment of those taxes due from the decedent at the time of his death and to such other taxes as may thereafter become due while the estate is in the course of settlement and before it is distributed, including, of course, the taxes upon assessable property that was not, at the time of decedent's death, assessed, but which was thereafter, under said section 11, assessed and brought within the operation of levies previously made. The correctness of this conclusion is shown by the decisions of this court in [Wheeler v. Addison, 54 Md. 41](#), and [State v. Safe Deposit & Trust Co., 86 Md. 581, 39 Atl. 523](#).

In the first of these cases the court was construing section 63 of chapter 483 of the Acts of 1874, which is now section 68 of article 81 of the Code, with the sole amendment that, from the proceeds of the sale, only the taxes upon the property sold shall be paid. This court in that case said:

“The sale was made on September 14, 1877, and the taxes were not then due, and in arrear *9 for the year 1877. Section 68 of Acts 1874, c. 483, reads thus: ‘Whenever a sale of either real or personal property shall be made by any ministerial officer under judicial process or otherwise, all sums due and in arrear for taxes from the party whose property is to be sold,

shall be first paid and satisfied, and the officer or person selling shall pay the same to the collector of the county or city, if any, or to the treasurer if there be no collector.’ And the sixty-sixth section of the same article declares that ‘taxes shall be considered in arrear on the first day of January next, succeeding the date of their levy, and shall bear interest from that date at the rate of six per cent. per annum.’ According to the express language of the statute, taxes are not to be regarded in arrear until the 1st day of January after the levy made. These taxes are expressly named as being for 1877. They were therefore not in arrear till the 1st of January, 1878, and, by the terms of the law, the trustee was not bound to pay them.”

In the case of *State v. Safe Deposit & Trust Co.*, supra, the main question there presented was: When did the state taxes assessed upon the stock of the corporation become due? The determination of that question was necessary in order to determine whether the trustee, who had sold some of the stock of the corporation on the 23d day of May, 1895, was chargeable with the taxes for that year. This court held in that case that the taxes were not due and in arrears, under section 84 of article 81 of the Code of 1888, as modified by Acts 1890, c. 244, until the 1st day of November, and consequently such taxes were not due and in arrears when the property was sold on May 23d of that year. The court having decided when the taxes became due and in arrears, it then became necessary, in order to determine whether such taxes were properly chargeable against the trustee, for the court to construe section 64a of chapter 407 of the Acts of 1896, now section 69 of article 81 of the Code of 1912, which provides that:

“Whenever a sale of either real or personal property of a corporation, on which state taxes are due and payable, shall be made by any sheriff, constable, trustee, *** or other ministerial officer, under judicial process or

otherwise, all sums due and in arrears for state taxes from the corporation whose property is sold shall be first paid and satisfied, after the necessary expenses incident to the sale.”

And the court there said:

“As the sale of the property [the stock of the corporation] took place on the 23d day of May, 1895, there were no taxes for that year due and payable at the time of this sale properly chargeable against the trustee, the appellee in this case. The statute provides only for the payment of such taxes as may be due and in arrears at the time of the sale of the property.”

This court again construed section 68 of article 81 in the [Casualty Ins. Co.'s Case, 82 Md. 565, 34 Atl. 781](#), in which it said:

“These taxes were consequently due when the company's assets passed into the hands of the receiver; and, being then due, Acts 1892, c. 518 (now section 68 of article 81 of the Code of 1912), directs that they shall be paid and satisfied by the officer or person selling under judicial process the property, real or personal, upon which such taxes are payable.”

But it is contended by the appellees that the liability of administrators and executors in respect to the payment of taxes upon the estate of their decedent has been extended and enlarged by certain provisions of the city charter found in sections 36, 40, 168, and 171.

Section 36 creates the board of estimates and provides that such board shall annually, between the 1st day of October and the 1st day of November, cause to be prepared a draft of an ordinance to be submitted to the city council, providing appropriations sufficient to meet all expenditures of the city government for the ensuing year, which ordinance, when passed, is designated therein as the ordinance of estimates.

Section 40 provides:

“The board of estimates shall, on the first day of October, or as soon thereafter as practicable, in the year 1898, and in each succeeding year, procure from the proper municipal departments and shall send with said ordinance of estimates to both branches of the city council a report showing the taxable basis for the next ensuing fiscal year and the amount which can reasonably be expected to be realized by taxation for said year. The report shall show the difference between the anticipated expenditures and receipts of the city and shall state a rate for the levy of taxes sufficient to raise the amount required to meet the said difference.”

The section then provides for the passage of an—
“ordinance making the annual levy of taxes, which ordinance shall be passed by the mayor and city council of Baltimore in the month of November in each year, and as soon as practicable after the passage of the ordinance of estimates, the mayor and city council of Baltimore shall fix a rate of taxation not less than the rate stated in the aforesaid report. The taxes levied under said ordinance shall be the taxes to be collected for the fiscal year next ensuing after said month of November and may be paid to the city collector on or after the first day of January next ensuing said levy. The taxes included in said levy on all forms of personal property shall be in arrears on the first day of May next ensuing the date of their levy,” and shall bear interest from such time.

Section 168 is a re-enactment of said section 11 of article 81 of the Code of 1912, with the single amendment that the return therein mentioned to be made by the register of wills is to be made on or before the 1st day of October instead of on or before the 1st day of March, as provided in said section 11 of the Code.

Section 171 of the charter provides:

“In the year 1898, and in all succeeding years thereafter, the valuation of the property subject

to taxation in the city of Baltimore, as it shall appear upon the assessment books of said court on the first day of October in each and every year, shall be final and conclusive and constitute the basis upon which the taxes for the next ensuing fiscal year shall be assessed and levied: Provided, the foregoing provisions shall not apply to property in the city liable to taxation and which may have escaped or which may have been omitted in the regular course of valuation, but such property shall be valued and assessed and the owners thereof charged with all back and current taxes justly due thereon whenever the same may be discovered and placed upon the assessment books.”

It is upon the provision found in section 171, “that the valuation of property subject to taxation in the city of Baltimore as it *10 shall appear upon the assessment books of said court on the first day of October in each and every year, shall be final and conclusive and constitute the basis upon which the taxes for the next ensuing year shall be assessed and levied,” considered in connection with the aforesaid sections 36, 40, and 168 of the charter, that the appellees chiefly rely in their contention that upon and after the aforesaid valuation and assessment of the decedent's estate the appellants, as his executors, became liable for the payment of the taxes thereon for the ensuing year, even though the estate was distributed by them, under the order of the orphans' court, before said taxes became due. This provision of the present charter appears, in practically the same language, in the City Codes of 1879, 1892, and 1893; the only difference being, as shown by the preceding Codes, that the assessment and valuation was to be made upon the first Monday of March and not upon the 1st day of October, as provided by the present charter.

In the case of [Hopkins v. Van Wyck, 80 Md. 7, 30 Atl. 556](#), which was decided November 14, 1894, this provision of the charter was before the court.

In that case property which was in existence and assessable on the first Monday of March, 1892, escaped valuation and assessment and was not at such time entered upon the assessment books. It was thereafter, on May 12th, pursuant to section 9, now section 11 of article 81, placed upon the assessment books of that year. The executors, however, resisted the payment of the taxes upon the ground that their testatrix had not been charged with this property on the assessment books on the first Monday of March, 1892. The same contention was there made that is made here, that such assessment and valuation was conclusive, and that no property not included within such assessment and valuation could be made to come within the operation of the levy of that year, and this view was adopted by the lower court, but upon appeal to this court Judge McSherry, speaking for the court, said:

“In the system thus devised to put into effective operation the fundamental law, it is obvious that, to avoid confusion and uncertainty, some definite period had to be adopted as the point of time, in each year, when the valuation or appraisement fixed upon the property actually assessed and charged upon the books to each individual would no longer be open to question, but would be conclusively ascertained and made binding upon both the city and the taxpayer alike. Accordingly the mayor and city council, by section 5 of article 50 of the City Code of 1892, provided that ‘the valuation of the property as it shall appear by the assessors' books on the first Monday of March, shall be final and conclusive and constitute the basis upon which the taxes for the ensuing year shall be assessed and levied.’ But it was never designed by this provision to exempt from taxation for a current year the individual who, by adroitness or otherwise, succeeded in eluding the vigilance of the assessors, or who, by inadvertence, was not rated with all his assessable property on the first Monday of March of that particular year. *** Its only object

is to fix for a current year a final and conclusive valuation upon such property of each taxpayer as is, on the first Monday in March, actually entered upon the assessment books, and not to exempt property that is not, but ought rightfully to be there. It has relation to ascertained values and not to an exclusive basis.”

The aforesaid sections 68 and 69 of article 81 , in addition to the one here involved (section 70), would seem to make it impossible to regard the valuation and assessment made on October 1st of any year as absolutely conclusive and final as to the property and amount of property subject to taxation for the ensuing year. Under these sections of the Code, the amount of property so valued and assessed was liable to be diminished by the sale of any part of it. And said section 171 of the charter, containing the provision that such valuation and assessment “shall be final and conclusive and constitute the basis upon which the taxes for the next ensuing fiscal year shall be assessed and levied,” especially provides that:

Such “provision shall not apply to property in the city liable to taxation and which may have escaped or which may have been omitted in the regular course of valuation, but such property shall be valued and assessed and the owner thereof charged with all back and current taxes justly due thereon whenever the same may be discovered and placed upon the assessment books.”

By this provision of the section, the amount of property embraced within the annual valuation and assessment was liable to be increased by the addition of after-discovered property. And therefore it will be seen by the existing laws that the property and amount of property embraced within the general valuation and assessment cannot be regarded as final and conclusive as the exact basis of taxation.

It is not contended by the appellees that, by the aforesaid sections of the city charter, the taxes are

made to become due and payable earlier than the 1st day of January in the year succeeding the assessment and valuation. But the contention is made by them that to effectuate the objects and purposes of sections 36 and 40 of the city charter, relating to the annual budget, the above-quoted language of section 171 should be given a broader and more comprehensive meaning than was given to it in the case of *Hopkins v. Van Wyck*, supra. The claim is made that, to comply with the provisions of said sections, it is essential that the board of estimates should know, at the time of making its estimate as to the needs and resources of the city and before the levy is made, the property and amount of property subject to taxation for the ensuing year; and it is for such reason, as we understand the contention of the appellee, that the claim is made that administrators and executors are to be held liable for the payment of taxes upon property of their decedent, valued and assessed on or before the 1st of October in any year, for the ensuing year, although the estate *11 may be fully closed and the property distributed before the taxes for such ensuing year become due and payable.

In complying with the provisions of the charter it is, of course, well to know, so far as it is practicable to ascertain, at the time the levy is made and the rate fixed and established, what property is subject to taxation for the ensuing year and the value of such property; and this was true under the charter of the city at the time the case of *Hopkins v. Van Wyck* was decided. It may be that under the present charter this information is still more important in order that its provisions may be more readily and satisfactorily complied with, but for such reasons we do not feel called upon to modify the recognized meaning heretofore given to this language of the charter, or to modify the usual and ordinary meaning to be given to the language of the statute imposing liability upon administrators and executors for the payment of the taxes of their decedent, in the absence of any

legislative enactment thereon.

The liability of administrators and executors for the payment of taxes upon property of their decedent does not, we think, extend to the payment of taxes becoming due after the settlement and distribution of the estate, although the annual valuation and assessment upon such property, as well as the levy thereon, may have been made prior to such settlement and distribution of the estate, as in this case.

The appellees in their brief quote largely from the case of [Union Trust Co. v. State, 116 Md. 368, 81 Atl. 873](#), and rely largely upon this, as well as the case of [Baltimore City v. Chester S. S. Co., 103 Md. 400, 63 Atl. 810](#).

In the first of these cases the court was construing section 150 of article 81 of the Code of 1904, now section 153 of the Code of 1912. That section provides that the president or other officer of any corporation located and doing business in this state shall, by the 15th of March in each year, report to the state tax commissioner a true and correct statement of the number of shares of the capital stock of such corporation and the par value of each share, with such information in regard to the value of the same as may be required by the commissioner, and may be in the possession of such officer as of the 1st day of January in each year. The commissioner is then required to value and assess said shares of stock as of the 1st of January next preceding. The section then provides that:

It "shall be the duty of the said president, cashier or other chief officer on or before the first day of January next succeeding to pay to the treasurer of the state the state tax on said shares of the capital stock of such bank or banking association or other incorporated institution of which he is president, cashier or other chief officer as aforesaid."

In that case the treasurer of the company, on

January 11th, filed with the state tax commissioner the report required to be made by the aforesaid section of the Code, and on January 22d of the same year the tax commissioner placed a valuation upon said stock, and a levy was made thereon. On February 25, 1907, the Union Trust Company reduced its outstanding stock from 20,000 to 10,000 shares, and paid off, liquidated, and retired 10,000 shares, and on the 16th of April, 1906, notified the tax commissioner of such reduction in its capital stock. The corporation resisted the payment of the taxes upon the entire 20,000 shares of its stock, claiming that it should pay taxes for such year only upon the remaining 10,000 shares. We, in that case, on construing the aforesaid section of the Code, held the corporation liable for the payment of taxes upon the entire 20,000 shares of its stock.

We are, however, unable to discover any similarity between that case and the case now before us. The liability of the corporation was dependent upon the statute, as the liability of the executors and administrators is dependent upon statute. The provisions of the statute creating the liability in respect to the corporation in that case differs altogether from the provisions of the statute creating the liability in respect to the executors in this case. The officer of the company in that case was required to send to the tax commissioner his report showing the number of shares and the value of such shares on the preceding 1st day of January, which he did; and the commissioner, upon the receipt of such report, was required to value and assess such stock, which he did; and, the levy being made, the corporation was specifically required, "on or before the 1st day of January next succeeding, to pay to the treasurer of the state the state tax upon such shares of the capital stock." The liability of the corporation was in no sense dependent upon the question as to whether the taxes were due, but it was directed, in language which admits of no uncertainty, to pay the taxes levied upon the stock

so returned by it as of the 1st day of the preceding January on or before the succeeding 1st day of January. The court there said:

“The trust company knew on February 25th that it had made a return to the state tax commissioner of 20,000 shares of stock. It further knew that this stock was subject to taxation, and that the company was the agent of the state for collecting that tax. It was therefore its plain duty, when it paid off the stockholders and retired 10,000 shares, to have retained from each one a sufficient amount to have paid the tax, and it cannot now set up its own voluntary act of the payment out of the money, as a ground to defeat a suit upon the part of the state, brought in accordance with the statute, and based upon the sworn return of the corporation.”

The same section of the Code was before this court in the case of *Baltimore City v. Chester S. S. Co.*, supra, and we find nothing in the opinion in that case inconsistent with the conclusion we have here reached.

In this case a plea was filed setting up the *12 defense that the executors were not liable for the payment of the aforesaid taxes for the year 1910, inasmuch as the estate was finally settled and the property distributed before such taxes became due and payable, and that the appeal tax court was duly notified in writing that the estate had been fully administered and the assets distributed, and that the defendants denied all liability for the payment of such taxes. To this plea a demurrer was interposed, which was sustained by the court below, whereupon the case was submitted to the court for trial on the issues joined on the remaining pleas, first, that they never promised as alleged, and, second, that they were never indebted as alleged, and a verdict was rendered by the court in favor of the plaintiff, upon which a judgment was entered.

From what we have said, we think the court was wrong in sustaining the demurrer to the

defendant's plea. We must therefore reverse the judgment of the court below; and inasmuch as it was admitted at the trial, which admission is found in the record, that the distribution of the securities and property shown in the final account of the executors was in fact made to the parties therein named on or before the date of said account, to wit, December 29, 1909, and before the said taxes for the ensuing year became due and payable, it will serve no useful purpose to award a new trial in this case. Therefore the case will be reversed, without new trial.

Judgment reversed, without new trial, with costs to the appellant.

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