to assume that the legislature made this provision advisedly. To prevent the manufacture, it strikes at the fountain-head of the trouble and makes it less probable that a forbidden sale will be made. This provision is not new to Ohio police regulations. In any event, the language is clear and unambiguous, and the supreme court of Ohio in the case of Brewing Co. vs. Schultz, 96 O. S. 27, speaking in reference to the interpretation of a statute, said:

> "* * * When the language employed is clear, unambiguous, and free from doubt, it is the duty of the court to determine the meaning of that which the legislature did enact, and not what it may have intended to enact."

In view of the foregoing, it is the opinion of this department that "Van-Co" is not only a substance which cannot be sold in Ohio, but is also one which cannot be manufactured here for exclusive sale in other states.

Respectfully,
JOHN G. PRICE,
Attorney-General.

2170.

INHERITANCE TAX LAW—WHERE BEQUEST OF FIVE THOUSAND DOLLARS MADE TO EACH OF TWO SONS—PROVISION IN WILL FOR DEDUCTIONS FOR ANY MONEYS LOANED—ONE SON SOLVENT, OTHER INSOLVENT—HOW SONS' NOTES TO BE VALUED—LEGACIES DETERMINED—HOW TAX DETERMINED—NOTES TAXABLE.

B died testate, his will containing the following provision: "I give and bequeath to my two sons, X and Y, $5,000 each, upon the condition, however, that from this bequest shall first be deducted before payment any amount or amounts of money loaned either of said sons by me directly or indirectly or for their benefit or any amount that I might become liable upon by reason of any endorsement that I have made for their accommodation or benefit. In the event that the said bequest of $5,000 shall not entirely liquidate the indebtedness of either of said legatees of my estate, that the balance due my estate from either of said legatees shall be held against such legatee and deducted from any future distribution of my estate to him." At the time of death of B, his son X was insolvent but Y was solvent. Among the assets of B were found three promissory notes of $3,000 each given to him by X, one so given prior to June 5, 1919, and the others subsequent thereto. Exactly similar notes were found signed by Y. In addition to the specific legacies mentioned above X and Y will inherit from B sums in excess of $20,000;

HELD:

1. *The notes are to be valued as part of the estate of the decedent at their actual market value; therefore, the notes held against the insolvent legatee are to be regarded as worthless.*

2. *The cash legacy to each legatee is the amount of money which each would respectively receive, less the face value of the notes and interest, regardless of their actual value.*

3. *Each legatee is to receive in addition to cash the forgiveness of his debts to the testator. In the case of the solvent legatee this part of the legacy represents the*

actual value of the notes against him with interest, and if that value is the face value of the notes, the net result is that the value of his legacy is the full amount of the cash legacy without deduction. In the case of the insolvent legatee, however, the notes being worthless, the value of his legacy for inheritance tax purposes is the difference between what he would otherwise receive and the face value of the notes against him with interest.

4. *None of the notes is to be regarded as an advancement, and hence to the extent of their value all are taxable, whether representing money loaned prior to the passage of the inheritance tax law or not.*

COLUMBUS, OHIO, June 16, 1921.

Tax Commission of Ohio, Columbus, Ohio.

GENTLEMEN:—The commission requests the opinion of this department, as follows:

"B died testate, his will containing the following provision:

'I give and bequeath to my two sons, X and Y $5,000 each, upon the condition, however, that from this bequest shall first be deducted before payment any amount or amounts of money loaned either of said sons by me directly or indirectly or for their benefit or any amount that I might become liable upon by reason of any endorsement that I have made for their accommodation or benefit. In the event that the said bequest of $5,000 shall not entirely liquidate the indebtedness of either of said legatees of my estate, that the balance due my estate from either of said legatees shall be held against such legatees and deducted from any future distribution of my estate to him.'

At the time of death of B, his son X was insolvent but Y was solvent. Among the assets of B were found three promissory notes of $3,000 each given to him by X, one so given prior to June 5, 1919, and the others subsequent thereto. Exactly similar notes were found signed by Y. In addition to the specific legacies mentioned above X and Y will inherit from B sums in excess of $20,000.

In appraising the estate for inheritance tax purposes how should the above six notes be appraised?"

Considered as assets of the estate of the testator, the notes in question should be appraised at their market value.

Morgan vs. Warner, 60 N. Y. Supp. 963.

Assuming that the notes against Y are fairly worth their face value with interest, that should be the value at which they are appraised; but X, being insolvent, it is assumed that these notes are worthless, or practically so, and they should be so appraised. The fact that the debtors are legatees under the will is immaterial, for it is very clear from the bequest quoted that the effect of the legacy is to be "to liquidate the indebtedness" of each of the debtors. In other words, the will forgives the debts and is in effect, therefore, a gift of so much of the assets of the estate as are represented by the notes themselves. In the case of the insolvent son his debt is liquidated; but as it was not collectible, nothing of value is conferred upon him save "the mental relief of a bankrupt in having one score out of many canceled", as Messrs. Gleason and Otis put it in their work on Inheritance Taxation, at p. 377. This "mental relief" has no taxable value, yet the cancellation is

effective and the executor of the estate cannot collect the note out of the balance of the legacy.

While the commission's request is in terms directed to the appraisement of the notes as a part of the estate, the facts stated lead to the belief that the commission desires to be advised as to the valuations of the respective successions of X and Y for inheritance tax purposes. First, there is a specific legacy to each of $5,000, from which is to be deducted the loan made to each. The deduction of this loan, which in each case amounts to more than $5,000, wipes out the legacy as such, though the forgiveness of the debt in each case has the effect previously described of substituting a legacy in the amount of the value of the notes. Further direction in the bequest that the difference between the indebtedness of either legatee to the testator and the sum of $5,000 "shall be held against such legatee and deducted from any future distribution of my estate to him" controls the distribution of the balance undisposed of, which in the commission's letter is stated to be in excess of $20,000 in each year. The net result is that Y will receive from the estate in money $25,000, less $9,000 and interest, or something like $16,000. Y will also receive in notes assumed to be worth their face value the sum of $9,000 and interest. In other words, Y's taxable legacy, subject to his deduction of $3,500, (assuming him to be of age), is $25,000, partly in notes and the balance in money.

In the case of X, it is clear that he is to receive in money the same amount that Y is to receive, namely, the difference between $9,000 and interest and approximately $25,000. He is also to receive notes, the face value of which is $9,000 and interest but the actual market value of which is nothing. His taxable legacy is therefore less than that of Y by the amount of his notes.

It is assumed that none of the notes is barred by the statute of limitations.

The same result is reached by an independent course of reasoning. There is authority for the proposition that it is the duty of an executor or administrator to set off claims and demands due the estate from a distributee or legatee against his distributive share or specific legacy.

Lambright vs. Lambright, 74 O. S. 198.

In the opinion in that case appears the following language: (p. 205.)

> "It is undeniably the law of Ohio that an administrator or executor has the right and it is his duty, * * * to retain out of the distributive share of an heir or legatee, and to hold and set off against the claim of a creditor indebted to the estate, an amount,—if so much there be, as shall equal the indebtedness of such heir, legatee or creditor to the estate; * * *. And the duty and obligation resting upon the administrator or executor under such circumstances to withhold and apply,—to the extent of the debt,—the amount that would otherwise have been payable to the heir, legatee or creditor, is in no manner controlled or affected by the solvency or insolvency, of such heir, legatee or creditor."

It is true that the syllabus in this case declares that:

> "A debt due from an heir, legatee or creditor to an estate is an asset of such estate, and where the distributive portion of such heir

or legatee or the claim of such creditor, is equal to or greater than his debt to the estate, the administrator or executor should charge himself with, and account for, the full amount of the same."

This, however, is a mere matter of accounting by the executor or administrator, and the case should not be taken as authority for the proposition that a claim against an insolvent is converted into assets of the estate having value, simply because the distributive share or legacy due the debtor may exceed the amount of the claim.

In this view of the case, then, it may be assumed that the testator's specific direction for set-off is merely, as it were, declaratory of what would have been the result had there been no such direction, but had the testator merely bequeathed the sums of $25,000 respectively to X and Z. In that event Y, the solvent son, would have received the full sum of $25,000 on the theory that the law permitted him to keep, as it were, $9,000 of the assets of the estate which he had in his possession in the form of his obligation to pay and invested him with the balance in cash. X, the insolvent son, would be permitted by the law to receive the same amount in cash and would be treated as if he had also been allowed to receive assets of the estate in the amount of $9,000, representing his notes; but these assets have no real value as an inheritance, inasmuch as the notes themselves are worthless. Therefore, his taxable inheritance is less than that of Y by the face value of his notes.

There can be no dispute as to the proposition that the effect of the will in either view is to discharge the debts. True, one may say that they are discharged by payment, which is perhaps a sufficiently accurate description of the result of the interposition of the set-off; but whereas Y has paid a debt which he could have been compelled to pay because of his actual possession of assets which could have been reached and applied to the satisfaction of a judgment for the debt, X has paid a debt which he could not have been compelled to pay in any other way, and for the contrary reason, namely, he had no assets out of which the debt could be satisfied.

Putting it in still another way: Y, being solvent, may be assumed to have had in his possession assets really belonging to the estate of the decedent to the extent of his obligation to pay the decedent; but X, being insolvent, had no such assets in his possession. In the one case the debt is paid out of assets of the estate already in the possession of the legatee Y; in the other case the debt is paid by merely withholding assets already in the possession of the executor and in nowise in the possession of the insolvent legatee, X. It is obvious, therefore, that whereas Y is allowed to keep something that he already has, X is simply prevented from getting something that he has not yet obtained. Therefore, there must be a difference in the actual market value of their respective successions.

It is true that whether we add the face value of the worthless notes to the assets of the estate or not makes no difference in the actual distribution, as at all events in the case suggested the sum of $18,000 would be available for distribution otherwise than to X and Y, unless X and Y are residuary legatees or intestate distributees, which the commission's letter does not disclose. If they are such residuary legatees or intestate distributees, then the value of their respective successions would be enhanced proportionately; but the solution of the puzzle is believed to lie in the simple fact that the debt of X as an asset of the estate is valueless, and that it does not take on any fictitious value by reason of the fact that a legacy is given to X.

It would appear that the *Matter of Manning*, 169 N. Y. 449, is at least

analogous. The following language is quoted from the opinion of O'Brien, J., in that case:

> "Upon the hearing of the appeal the original order was modified by deducting * * * an item of $17,446.92, which appeared as an open account upon the books of the deceased against his son G. Warren Manning, one of the legatees, and who at the time of the death of his father was wholly insolvent. * * * The bequest in the will to this son was more than sufficient to pay this debt.
>
> The question is whether this worthless account is to be deemed to be property transferred or disposed of by the will, within the contemplation of the statute, and to be included in the value of the estate for the purpose of taxation. The tax is imposed upon the shares of the estate that the beneficiaries take under the will, and the account or item in question does not represent any property that passed from the deceased to any one, within the fair meaning of the statute, and, hence, the final order of the surrogate excluding the account from the estimated value of the estate was correct."

Notice has been taken of the statement that one of the notes in each case was given prior to June 5, 1919, the date when the inheritance tax law went into effect. There is nothing to show that the sums represented by the notes were treated as advancements. The testator speaks of them as loans, and the notes were found in his possession at his death. They are therefore to be regarded, not as advancements but as claims belonging to the estate (In re: Bartlett, 25 N. Y. Supp. 990); and in the case of Y, the solvent legatee, the value of the note given prior to June 5, 1919, should therefore be included in determining the taxable value of his succession.

Respectfully,
JOHN G. PRICE,
Attorney-General.

2171.

APPROVAL, BONDS OF MEDINA COUNTY IN AMOUNT OF $35,388.45 ROAD IMPROVEMENTS.

COLUMBUS, OHIO, June 17, 1921.

Industrial Commission of Ohio, Columbus, Ohio.

2172.

APPROVAL, BONDS OF MENTOR VILLAGE SCHOOL DISTRICT IN AMOUNT OF $12,000.

COLUMBUS, OHIO, June 17, 1921.

Ohio State Teachers' Retirement System, Columbus, Ohio.