the majority opinion in the case. Thus, if the issue is in the future presented squarely to the Court, the principal case would be distinguishable, and the use tax may be upheld; however, it will be quite difficult to obtain such a holding in the face of the principal decision.

WILLS—GENERAL PECUNIARY LEGACIES—VALUATION WHEN IN TERMS OF FOREIGN MONETARY UNITS

In re *Wirth's Estate, 132 N.Y.S.2d 98 (Surr. Ct. 1954)*

A testator living in New York bequeathed 5000 gold marks to a former servant, a resident of Germany. At the time the will was executed the gold mark was not a unit of currency, but was a term denoting a certain amount of gold having a definite value recognized in the financial world. After the will was executed, but prior to the testator's death, Germany went off the gold standard with the result that the term "gold mark" had no monetary significance at the time of probate. In proceedings to compel payment of the legacy, the court held that the amount bequeathed should be measured by the value of the gold mark on the date the will was executed.[1]

The amount of a general pecuniary legacy[2] is ordinarily measured by the value of the monetary unit at the time payment is due,[3] and is payable in the current legal tender of the country where the will was executed. An annuity of £80 bequeathed by a will made in England, for example, was held payable in English and not in Irish pounds even though the testator's estate was located in Ireland.[4] If the legatee is a resident of a country other than the one in which the will is executed, however, payment is made in the legal tender of such other country, according to the current rate of exchange.[5] Accordingly, a legatee domiciled in England and entitled to the sum of 30,000 rupees by the terms of a will executed in India was held entitled to that amount of English currency which would purchase 30,000 rupees in India on the date the legacy was payable.[6]

---

vendor liable only for the tax on goods delivered. Fourth, counsel for the state could have stressed the difference between the two taxes before the Supreme Court in order to save part of the assessment.

1. *In re* Wirth's Estate, 132 N.Y.S.2d 98 (Surr. Ct. 1954). The action was instituted by the Attorney General of the United States who, as successor to the Alien Property Custodian, vested the interest of the German legatee in the estate.

2. A "general pecuniary legacy" may be defined as a legacy of a specified sum of money without a designation of the fund from which it should be paid. 4 PAGE, WILLS § 1393 (Lifetime ed. 1941).

3. *In re* Manus' Estate, 200 Misc. 441, 106 N.Y.S.2d 102 (Surr. Ct. 1951); 4 PAGE, WILLS § 1587 (Lifetime ed. 1941).

4. Wallis v. Brightwell, 2 P. Wms. 88, 24 Eng. Rep. 652 (1722); *accord*, Pierson v. Garnet, 2 Bro. C.C. 38, 29 Eng. Rep. 20 (1786).

5. *In re* Manus' Estate, 200 Misc. 441, 106 N.Y.S.2d 102 (Surr. Ct. 1951).

6. Cockerell v. Barber, 16 Ves. Jr. 461, 33 Eng. Rep. 1059 (1810).

When a legacy is stated in terms of a monetary unit of a country other than that in which the will was executed, fluctuations in value of such "foreign" currency or changes in the kinds of currency circulating in the foreign country have raised problems as to how the value of a general pecuniary legacy should be determined. One of these problems arises when both specie and paper money are used as currency in the foreign country but the latter is depreciated in value with reference to the former and, by the nature of the terms of a bequest, either could be used as a unit of measurement in valuing a general pecuniary legacy. Suppose, for example, an annuity in a will executed in the United States provided for the payment of 15,000 francs to a resident of France but that, at the time for payment, there are circulating in France gold francs worth 20c each in relation to domestic currency and paper francs valued at 5c each. Is the French legatee entitled to receive $750 from the testator's estate in the United States, which is the amount that would purchase 15,000 *paper* francs, or is he entitled to $3000, which is the equivalent of 15,000 *gold* francs?[7] This determination is complicated further if the value of the gold franc has declined since the execution of the will; there, the additional question would be presented as to whether the value of the gold franc should be based on its value at the date of execution of the will or at the time that payment is due.[8]

A closely related question is presented when two kinds of specie or currency are circulating and the bequest does not specifically name the one to which the legatee is entitled. Suppose a testator made a will in a southern state during the Civil War and left his son $2500. Should the son receive Confederate or Union dollars if the will is probated after termination of the war?[9] If a will provides that the testator's daughters are to receive 22,000 pesos, should they receive that amount of dollars from the testator's estate in the United States which would purchase 22,000 Mexican *gold* pesos or 22,000 Mexican *silver* pesos, the latter having a higher value than the gold pesos at the time the legacy was payable?[10]

7. It has been held that the value of the specie and not that of the depreciated paper money should be used in measuring the amount of a general pecuniary legacy. Chemical National Bank v. Butt, 123 Misc. 575, 206 N.Y. Supp. 36 (Surr. Ct. 1924); *accord*, Graveley v. Graveley, 25 S.C. 1 (1886); *In re* Hess' Will, 120 Misc. 372, 198 N.Y. Supp. 573 (Surr. Ct. 1923). This problem may also arise in relation to domestic money: see M'Dowell v. Burton, 7 Ky. (4 Bibb) 326 (1816); Allen v. Bird, 20 Va. (6 Munf.) 108 (1818).

8. It has been held that valuation should be made as of the date of the execution of the will. *In re* Willing's Estate, 292 Pa. 51, 140 Atl. 558 (1928); *accord*, M'Dowell v. Burton, 7 Ky. (4 Bibb) 326 (1816) (paper money).

9. In one case, after holding that the son was entitled to "good money," the court held that he should be paid in Union dollars since the value of the legacy, if paid with 2500 Confederate dollars, would equal only about $50.00 in terms of Union dollars. Alexander v. Summey, 66 N.C. 577 (1872).

10. Presented with these facts, one court has said that, because the gold and silver pesos were of equal value at the time the testator executed his will, he

Another problem arises when one kind of currency depreciates to such an extent that it is withdrawn from circulation and replaced by another type having a greater value. To illustrate, assume a will is executed while paper marks, declining in value, are in circulation, these being replaced after execution of the will, but prior to the testator's death, by gold marks (specie) having a higher value than the paper mark. Should the value of a general pecuniary legacy stated in terms applicable to either kind of mark, *i.e.*, "475,000 marks," be valued according to the depreciated value of the paper mark on the date the will was executed, according to the value of the practically worthless paper mark on the date of the testator's death, or according to the value of the gold mark on the date the legacy is payable?[11] Or could the court avoid these issues by treating the legacy as a bequest of a commodity, thus giving the legatee the right to whatever passes as marks at the time payment is due?[12]

In order to solve these problems, the courts will examine not only the language of the will, but also many extrinsic circumstances, some of which are the size of the estate, the personal relationships between the testator and the legatee, the nature of the testator's business, and the effect a particular ruling will have on the interests of others taking under the will, especially the residuary legatee.[13] If the court finds, after examining all the extrinsic circumstances, that the testator intended to give a substantial amount of money to the legatee, the problems will generally be decided in such a manner as to give the general legatee the maximum sum possible.[14]

Because the bequest of 5000 gold marks was not one of currency, either in specie or paper money, but of units of value, the bequest in the principal case is distinguishable from legacies stated in terms of a foreign currency. The court found that the testator, by stating the legacy in such a manner, in effect gave an amount of money not subject to currency fluctuations.[15] That amount, therefore, could only be

---

intended the bequest to be payable in either and, accordingly, allowed the executor to pay the daughters the value based on the gold peso. Volpe v. Benavides, 214 S.W. 593 (Tex. Civ. App. 1919).

11. See *In re* Lendle's Estate, 250 N.Y. 502, 505, 166 N.E. 182, 183 (1929), *reversing* 225 App. Div. 697, 231 N.Y. Supp. 797 (2d Dep't 1928).

12. This was answered in the affirmative by *In re* Lendle's Estate, 250 N.Y. 502, 166 N.E. 182 (1929). A necessary implication of treating a gift of foreign currency as a commodity is that a monetary unit bearing the same name as the unit mentioned in the will must be in circulation at the time payment of the legacy is due in order for the legatee to receive anything. See Comment, 15 CORNELL L.Q. 140 (1929).

13. See, *e.g.*, M'Dowell v. Burton, 7 Ky. (4 Bibb) 326 (1816); Alexander v. Summey, 66 N.C. 577 (1872); *In re* Lendle's Estate, 250 N.Y. 502, 166 N.E. 182 (1929); Volpe v. Benavides, 214 S.W. 593 (Tex. Civ. App. 1919); Allen v. Bird, 20 Va. (6 Munf.) 108 (1818).

14. See Note, 63 A.L.R. 524 (1929).

15. *In re* Wirth's Estate, 132 N.Y.S.2d 98 (Surr. Ct. 1954).

measured at the time the will was executed. In using the gold mark as a unit of value with which to measure the amount of a general pecuniary legacy, the testator avoided the problems created by fluctuations in the value of foreign currency and simplified the determination of his intent.