

# **BRIEF FOR PETITIONER**

FILE COPY

IN THE

Supreme Court of the United States

October Term 1916.

No. 68.

BEULAH B. CRANE,

*Petitioner*

against

COMMISSIONER OF INTERNAL REVENUE,

*Respondent*

BRIEF FOR THE PETITIONER.

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OCTOBER TERM 1946.

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*against*

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

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**BRIEF FOR THE PETITIONER.**

**The Opinions Below.**

The opinion of the Tax Court of the United States (R. 34-45) is reported in 3 T. C. 585. The opinion of the Circuit Court of Appeals (R. 53-57) is reported in 153 F. 2d. 504.

**Jurisdiction.**

The jurisdiction of this Court is invoked under Sec. 240(a) of the Judicial Code as amended (8 F. C. A., Tit. 28, at 347).

This proceeding involved alleged additional income taxes for the calendar year 1938. The 90-day letter of the Commissioner of Internal Revenue determining a deficiency of \$1,932.99 was mailed on January 5, 1942. The petition to the Tax Court of the United States (then Board of Tax Appeals) was filed on April 1, 1942. The findings of fact and opinion of the Tax Court were promulgated on

April 7, 1944. The decision of the Tax Court determining a deficiency of \$27.77 was entered on May 19, 1944. On August 16, 1944 the Commissioner filed his assignments of error and petition for review by the Circuit Court of Appeals of the United States for the Second Circuit. The decision of that Court reversing the Tax Court was rendered on December 28, 1945. The petition for a writ of certiorari was filed on March 25, 1946 and was granted on April 29, 1946.

#### **Statement of the Case.**

The facts were simple and undisputed.

William M. Crane, a resident of the State of New York, died on January 11, 1932. At the time of his death he owned real estate in Brooklyn, New York, improved by an apartment house. The real estate was subject to a consolidated mortgage then in default, made by Bell Realty Company and held by the Bowery Savings Bank of New York. There was due upon it at the time of his death principal of \$255,000 and interest in arrears of \$7,042.50, or a total of \$262,042.50. The value of the real estate as appraised in federal estate tax proceedings was \$262,042.50 (Stip., R. 15; Findings, R. 36).

Under the residuary clause of Mr. Crane's will, the property passed to his wife, Beulah B. Crane, the petitioner herein (Stip., R. 15; Will, Ex. A, p. 17). She did not assume the mortgage and was not liable upon it or obligated to pay it in any way (Stip., R. 15; Findings, R. 37; see also R. 54). During all of the time she owned the apartment house, the net rents were paid to the Bowery Savings Bank under an assignment of rents and were applied to the interest due on the mortgage (Stip., R. 16; Findings, R. 36; Exs. F to J, pp. 23-26). Mrs. Crane received no income from the property (Stip., R. 16).

Between 1932 and 1938, Mr. Crane's estate in its income tax returns for 1932 and 1933, and Mrs. Crane in her income tax returns for subsequent years showed deductions for depreciation on the building of \$25,500 (Findings, R. 37). Such deductions were greater than the income from all sources otherwise taxable, and the tax benefit to the estate and to Mrs. Crane was only a nominal amount. (Income tax returns received in evidence, not printed.)

In October, 1938, in order to avoid foreclosure (Stip., R. 16; Findings, R. 36), Mrs. Crane made a contract to sell her equity in the property for \$3,000 (Ex. K, pp. 26-32). The contract provided:

"The purchase price is Three Thousand Dollars (\$3,000) for the equity conveyed by the seller and without deduction for the mortgage principal, interest or taxes, or meter charges hereinabove referred to" (R. 29).

On November 29, 1938, Mrs. Crane conveyed the real estate to the purchaser subject to the foregoing mortgage, upon which, as previously stated, she was not liable (Findings, R. 37; Deed, Ex. L, pp. 32-33). The purchaser did not pay or assume or agree to pay the mortgage (Findings, R. 40). At that time, the amount due on the mortgage was \$255,000 of principal and \$15,857.71 of interest, or a total of \$270,857.71 (Findings, R. 36).

Mrs. Crane received \$3,000 in cash. She received no release of the mortgage debt. Expenses of sale were \$500 (Stip., R. 17). "The amount realized by the petitioner from sale, therefore, was \$3,000 less the \$500 paid for conveying, or \$2,500" (Findings, R. 42).

The foregoing facts were found by the Tax Court (with the exception of the amount of her tax benefit, which was shown by the oral testimony and exhibits not printed in the

present record, but as to which the Tax Court made no finding one way or another).

In her income tax return for 1938, Mrs. Crane reported a capital gain of \$2,500 (R. 37-38). The Commissioner of Internal Revenue claimed that the taxable gain was \$23,767.03, divided between ordinary gain of \$24,031.45 on the building 100% of which was recognized and capital loss of \$528.85 on the land 50% of which was recognized (R. 38).

The Tax Court found that Mrs. Crane's gain was \$2,500 apportioned between the land and building in proportions stipulated by the parties; that her unadjusted basis was zero which was not capable of reduction for depreciation below zero; that she received only \$2,500; that the mortgage of \$262,042.50 upon which she was not liable formed no part of the consideration received or "amount realized" by her (R. 34-45). The Tax Court also held that since Mrs. Crane's cost and basis was zero, she was not entitled to deduct depreciation in the year 1938 before the Court (R. 43).

Judge Tyson wrote the opinion of the Tax Court which was reviewed by the full Court. Judges Smith and Disney dissented without opinion (3 T. C. 585).

This resulted in a deficiency of \$27.77 (R. 45) from which the Commissioner filed a petition for review to the Circuit Court of Appeals, Second Circuit. No petition or cross-petition for review was filed by Mrs. Crane from that portion of the decision adverse to her, denying deduction for depreciation.

The Circuit Court of Appeals, Second Circuit, reversed the Tax Court and, without discussing the figures, sustained the Commissioner's determination, viz.: that Mrs. Crane's gain was \$23,767.03; that her unadjusted basis was \$262,042.50; that her adjusted basis was \$234,997.40; and that the amount realized was \$257,500, which included the

cash of \$2,500 and the principal amount due on the mortgage (R. 53-57).

Circuit Judge Learned Hand wrote the opinion in which Circuit Judge Frank concurred. Circuit Judge Swan dissented and voted to affirm upon the opinion of the Tax Court (153 F. 2d 504).

#### Assignment of Errors.

The assigned errors of the Circuit Court of Appeals which the petitioner intends to urge are the following:

(1) In holding that the findings of the Tax Court of the United States as to the amount realized, the basis of the property sold and the amount of the gain were not conclusive upon the Circuit Court of Appeals, and in reversing them and substituting contrary findings of its own.

(2) In holding that the principal amount due on the defaulted mortgage of \$255,000, which was a lien upon the real estate when Mrs. Crane inherited it and for the payment of which Mrs. Crane was not liable under the law of the State of New York, was part of the "amount realized" by Mrs. Crane from the sale; specifically, that the "amount realized" was \$257,500 as claimed by the Commissioner and not \$2,500 as found by the Tax Court.

(3) In holding that the "unadjusted basis" of the mortgaged real estate received by Mrs. Crane under her husband's will was not the value of the equity but was the value of the real estate free and clear of the mortgage; specifically, that the "unadjusted basis" was \$262,042.50 as claimed by the Commissioner and not zero as held by the Tax Court.

(4) In holding that the imposition of an "income" tax on a fictitious "gain" of \$23,767.03 when

in fact Mrs. Crane only received \$2,500, was authorized by Article I, Section 8 and the 16th Amendment of the Constitution and did not violate Article I, Section 9 and the 5th Amendment of the Constitution.

(5) Related to the foregoing and probably involved in the argument in this Court is the question whether the "unadjusted basis" of zero can be reduced through the deduction of depreciation so as to create a fictitious "adjusted basis" of a minus quantity; or, specifically, whether the "adjusted basis" for gain or loss was zero, as held by the Tax Court, or minus \$28,945.10 as claimed by the Commissioner. Alternatively, as suggested by the Circuit Court of Appeals upon the argument, whether depreciation on the building should be included in the "amount realized" upon the sale in 1938 and if so, whether the amount to be included was the depreciation "allowed or allowable", or only the depreciation which resulted in tax benefit for Mrs. Crane.

#### SUMMARY OF THE ARGUMENT.

##### Preliminary Point.

The statutory formula for determining gain and loss is simple. Section 111(a) of the Revenue Act of 1938 provides that two elements are to be considered, viz.: the "amount realized" from the sale and the "adjusted basis". If the "amount realized" is greater than the "adjusted basis", there is a gain; if it is smaller, there is a loss. In computing the "adjusted basis" under Section 113(b), it is necessary first to establish the "basis" under Section 113(a) and then "adjust" that "basis" in accordance with other provisions of Section 113(b).

From these provisions and the definitions of the "amount realized" and the "basis", it clearly appears (a) that under no circumstances can the gain exceed the "amount realized"; (b) that the function of depreciation in the statutory formula is solely to reduce the "unadjusted basis"; and that it cannot be used to increase the "amount realized"; and (c) that depreciation cannot be used to reduce the "basis" below zero.

##### (1).

The reversal of the Tax Court by the Second Circuit, was a glaring violation of the rule of this Court in *Dobson v. United States*, 320 U. S. 489. The findings upon which the decision of the Tax Court was based were not subject to review by the Circuit Court of Appeals.

The Tax Court made affirmative findings as to (a) the amount realized, (b) the unadjusted basis, and (c) the adjusted basis, and, applying the statutory formula, computed a gain of \$2,500. These findings, and particularly the finding that the "amount realized" by Mrs. Crane did not exceed \$2,500, were conclusive on the Circuit Court of Appeals.

Furthermore, the evidence before the Tax Court, largely in the form of a stipulation of facts, which showed that the mortgagee received all of the net rents, that Mrs. Crane received no income or benefit from her ownership, that the interest defaults were steadily increasing and that Mrs. Crane's sale was a desperate salvage operation entered into to avoid foreclosure, conclusively sustained the Tax Court's conclusion that her gain was only \$2,500.

The counter-findings of the Second Circuit that the amount realized was \$257,500, that the basis was \$262,048.50

and that the gain was \$24,031.45 were contrary to the evidence and had nothing in the record to sustain them.

(2).

The Second Circuit erred in holding that the principal amount due on the defaulted mortgage of \$255,000 which was a lien on the real estate when Mrs. Crane inherited it, and for the payment of which Mrs. Crane was not liable, was part of the "amount realized" by Mrs. Crane upon the sale.

Under the law of New York in which the mortgaged real estate was situated, when real estate is sold subject to a mortgage on which the vendor is not personally liable and which is not assumed by the purchaser, the primary source of payment of the mortgage debt, both before and after the sale, is the land itself. The bond and mortgage and the individual rights and liabilities in respect to the mortgage are not affected by the sale. The Bowery Savings Bank had no right to proceed personally against Mrs. Crane or the purchaser, either before or after the sale, and its right to a deficiency judgment against the Rell Realty Corporation, or whatever person might be liable for the payment of the mortgage, was not and could not be affected by the sale. Mrs. Crane received no property, consideration or benefit whatsoever from the sale, except the sum of \$2,500 on which she paid a tax.

The argument of the Second Circuit that the transaction was the same as if the purchaser had paid Mrs. Crane \$257,000 in cash and required her to satisfy the old mortgage, or as if the seller had agreed to pay off a mortgage on other real estate which Mrs. Crane retained, was entirely unsound. In the cases supposed by the Court new rights and obligations were assumed to have been contracted for

and entered into, while in Mrs. Crane's case there were none. In no sense did the sale relieve Mrs. Crane of any liability or confer upon her any benefit or property beyond the \$2,500 cash received.

Furthermore, under the New York mortgage moratorium statutes the liability of a person bound for the payment of a mortgage debt is limited to the difference between the mortgage debt, and the fair and reasonable market value of the real estate or the amount realized on a foreclosure sale, whichever is smaller. Even if relief from such alleged liability be regarded as "property (other than money) received", its "fair market value" under no circumstances could be the full amount of the mortgage debt, and in the present case would have only nominal value.

(3).

The Second Circuit erred in holding that the "unadjusted basis" of the property received by Mrs. Crane under her husband's will was the value of the real estate free and clear of the mortgage, and in adjusting this basis by the amount of depreciation allowed or allowable in previous years. The "unadjusted basis" of the mortgaged real estate was the value of Mrs. Crane's equity which the Tax Court held to be zero. Such unadjusted basis can not be reduced to a minus quantity by the deduction of depreciation.

Section 113(a)(5), which provides that, in the case of property transmitted at death, the basis should be "the fair market value of such property at the time of such acquisition" and the established Treasury practice which fixes this value as the federal estate tax valuation can only rest on the theory that, for the purpose of gain or loss, the property sold by the devisee is the same property as that received

from the decedent. In the case of mortgaged real estate, the property received is only the equity of redemption and its value must be the value of the equity, not the value of the real estate free and clear of the mortgage. This is recognized by the estate tax return and the regulations governing it. Similarly, for the purpose of other taxable transfers, as the gift tax and the stamp tax, the value of the property taxed is the value of the equity.

The Second Circuit's contrary holding, that the "property" received is the real estate free from the mortgage, is founded upon ancient concepts as to the necessity of continuous seizin which obscures the fact that in reality the "property" which Mrs. Crane received under her husband's will and sold in 1938 was her equity in mortgaged real estate.

The Second Circuit also erroneously endeavored to force into the formula for gain or loss an amount based on physical depreciation of the apartment house. This was error, because for tax purposes depreciation is based on the taxpayer's cost, which in this case was zero.

The Tax Court disallowed depreciation in 1938 from which determination no appeal was taken. Therefore, it is the law of the case that depreciation was erroneously claimed by Mrs. Crane and allowed by the Commissioner for 1932-1938. This joint error, which cannot now be corrected because of the statute of limitations, supplies no justification for the effort to offset it by committing a further error in the elements of the gains tax. In addition, by trying to avoid a double deduction in Mrs. Crane's case, the Second Circuit has opened the door to many taxpayers to obtain double deductions.

There is no occasion to distort the statute. It does not compel straight line depreciation, but simply a "reasonable

allowance". In cases such as this, where there is a zero equity, the loss because of physical wear and tear actually falls upon the mortgagee, not the title holder. No reason exists for allowing a deduction to the title holder who suffers no loss. The proper application of this principle answers the problem of sales by foreclosure, or by deed in lieu of foreclosure, where common sense shows there should be no tax. It avoids the necessity of holding such a sale taxable or exempt depending upon the identity of the transferee or the presence or absence of trivial monetary consideration.

#### (4).

Mrs. Crane received no income within the meaning of the 16th Amendment, except the sum of \$2,500 on which she paid an income tax.

The levy of an "income" tax of \$1,932.99 upon a fictitious "gain" of \$24,031.45, when in fact Mrs. Crane only received the sum of \$2,500, demonstrates that this tax cannot be sustained under the 16th Amendment, but was in the nature of a capital levy subject to the requirement of uniformity and apportionment imposed upon the taxing power of Congress by Section 9 of Article I.

#### ARGUMENT.

##### Preliminary Point.

The statutory formula for determining gain or loss was simple. Section 111(a) of the Revenue Act of 1938 which governed the tax for the year in question provided:

"(a) Computation of Gain or Loss.—The gain from the sale or other disposition of property shall be the excess of the amount realized therefrom over

the adjusted basis provided in section 113(b) for determining gain, and the loss shall be the excess of the adjusted basis provided in such section for determining loss over the amount realized."

Section 113(b) provided:

"(b) *Adjusted basis.*—The adjusted basis for determining the gain or loss from the sale or other disposition of property, whenever acquired, shall be the basis determined under subsection (a), adjusted as hereinafter provided."

In other words Section 113(a) provided that in computing gain or loss only two elements were to be considered, viz.: (1) the "amount realized" from the sale; and (2) the "adjusted basis" provided in Section 113(b). If the "amount realized" from the sale was greater than the "adjusted basis", there was a gain; if it was smaller, there was a loss.

Similarly, in computing the "adjusted basis" under Section 113(b), it was necessary first to establish the "basis" as defined in Section 113(a) and then "adjust" that basis in accordance with other provisions of Section 113(b).

Those three elements, viz.: the "amount realized", the "basis" and the method of computing the "adjusted basis" were all clearly defined by statute, thus:

(1) The "amount realized" was defined in Section 113(b) as follows:

"(b) *Amount realized.*—The amount realized from the sale or other disposition of property shall be the sum of any money received plus the fair market value of property (other than money) received."

(2) Subdivision (5) of Section 113(a) defined the "basis" to be used in this case. It read:

"(5) *Property Transmitted at Death.*—If the property was acquired by bequest, devise, or inheritance, or by the decedent's estate from the decedent, the basis shall be the fair market value of such property at the time of such acquisition."

(3) The method of determining the "adjusted basis" was laid down in subdivision (1) of Section 113(b) as follows:

"(1) *General Rule.*—Proper adjustment in respect of the property shall in all cases be made—

(A) • • •

(B) in respect of any period since February 28, 1913, for exhaustion, wear and tear, obsolescence, amortization and depletion, to the extent allowed (but not less than the amount allowable) under this Act or prior income tax laws."

From these clear and simple statutory provisions, three principles inescapably follow: (a) that under no circumstances can the "gain" exceed the "amount realized"; (b) that the function of depreciation in the statutory formula is solely to reduce the "unadjusted basis" and that the statute does not permit depreciation to be applied to increase the "amount realized"; and (c) that depreciation cannot be used to reduce the "basis" below zero, so as to produce an arithmetical imaginary such as a minus basis.

With this background, we shall proceed to the argument.

# MICRO CARD 22

TRADE MARK R



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### POINT 4.

The reversal of the Tax Court by the Second Circuit was a glaring violation of the rule of this Court in *Dobson v. United States*, 320 U. S. 489. The findings upon which the decision of the Tax Court was based were not subject to review by the Circuit Court of Appeals.

The Tax Court made the following findings:

(a) *As to the amount realized.*

"The facts show and the respondent (Commissioner) concedes, that petitioner received money to the extent of only \$2,500 from the sale" (R. 41).

"As she (Mrs. Crane) was never under any personal obligation to pay the mortgage debt she received no consideration whatever when she sold and conveyed the property subject to the mortgage, except the \$2,500 in money mentioned above" (R. 41).

"Except for the \$2,500, the petitioner thus did not receive money, or the equivalent of money, or property (other than money) having fair market value" (R. 41).

"The amount realized by the petitioner from the sale, therefore, was \$3,000 less the \$500 paid for conveyancing, or \$2,500" (R. 42).

(b) *As to the unadjusted basis.*

"The property when acquired by the petitioner was encumbered by a mortgage in an amount which, together with the accrued interest thereon, was equal to the fair market value of the property" (R. 42).

"The interest of petitioner in the apartment house property had no fair market value whatever when acquired by her" (R. 42).

(c) *As to the adjusted basis.*

"We have determined that the unadjusted basis of the property in question, under Section 113(a)(5), is zero, and, this being true, there is, in the very nature of things, nothing to adjust—nothing from which depreciation can be deducted" (R. 43).

(d) *The Tax Court's computation.*

"We conclude and so hold that the proper basis to be used in computing petitioner's gain is zero, and, as the amount realized by her from the sale of the property was only \$2,500, that her gain from the sale is in the same amount" (R. 43).

Having thus found as a fact that the minuend was \$2,500 and that the subtrahend was zero, the ascertainment of the gain of \$2,500 and the computation of the tax thereon was a simple arithmetical problem.

These findings, and particularly the finding that the "amount realized" by Mrs. Crane was \$2,500, should have ended the case. No counter-finding of fact or counter-conclusion of law by the Circuit Court of Appeals was permissible under the law to reverse the Tax Court's judgment.

The Circuit Court of Appeals with Circuit Judge Swan dissenting took a different view. Premising its remarks with the following observation:

"The appeal does not concern the figures; it only raises the question whether the taxpayer is right—as the Tax Court held, two judges dissenting—in insisting that the only gain for which she was taxable was the \$2,500 which she received upon the sale" (R. 54).

The Second Circuit substituted for the Tax Court's findings, the following findings of its own:

*(a) As to the amount realized.*

"When therefore upon a sale the mortgagor makes an allowance to the vendee of the amount of the lien, he secures a release from a charge upon his property quite as though the vendee had paid him the full price on condition that before he took title the lien should be cleared, or as though it were a condition upon the sale of Whiteacre that the vendee should clear the vendor's Blackacre of a mortgage. In neither case would anyone question the conclusion that the vendor had received 'property (other than money)'; yet the effect is precisely the same as the transaction at bar" (R. 55-56).

In figures this meant that the fair market value of the amount realized by Mrs. Crane was \$257,500.

*(b) As to the unadjusted basis.*

"Section 113(a)(5) defines the 'unadjusted basis' of property in the case of a devisee as its 'fair market value' when it was acquired, which in the case at bar was its appraised value as part of the devisor's estate" (R. 54).

This made the unadjusted basis \$262,042.50.

*(c) As to the adjusted basis.*

"We canot doubt, especially in view of the long uniform practice, that the right 'basis' for depreciation is the actual value of the buildings" (R. 55).

The depreciation so computed was \$28,045.10 which gave a figure of \$178,997.40 as the adjusted basis of the building, and \$55,000 for the land (R. 38).

*(d) The Second Circuit's computation.*

As stated, the Circuit Court of Appeals did not concern itself with figures. The Commissioner's computation, thus approved by the Circuit Court of Appeals, showed an ordi-

nary gain of \$24,031.45 for the buildings, 100% of which was recognized, and a capital loss of \$528.85 for the land, 50% of which was reeognized (R. 38).

In reversing the Tax Court's findings, and substituting findings of its own, and adopting the computations of the Commissioner, the Second Circuit committed a clear violation of the rule of the *Dobson* case.

Matters relating to gain or loss and the basis for the purpose of determining gain or loss, including the amount which was realized on the sale and the allowance, if any, for depreciation, are essentially matters for determination by the "body of experts" (H. Rep. No. 1, 69th Cong., 1st Sess., p. 19) comprising the Tax Court of the United States. *Dobson v. United States, supra; McDonald v. Commissioner, 323 U. S. 57, 64; John Kelley Co. v. Commissioner, 326 U. S. 521.*

Even if the determination of such elements might not be regarded pure finding of facts, it fell within that class of mixed questions of fact and law which this Court held in the *Kelley* case were exclusively for determination by the Tax Court and not subject to review by the Circuit Court of Appeals.

Indeed, the language which this Court used in the *Kelley* case might well have been spoken in the case at bar. For instance:

"There would hardly need to be experts in tax affairs to decide questions of dates or amounts or values or to calculate rates. Their usefulness lies primarily in their ability to examine relevant facts of business to determine whether or not they come under statutory language" (p. 529).

The Tax Court had before it the following stipulated facts:

"(11) That at all times between February 1, 1932 and November 29, 1938, the said mortgage was in default for non-payment of interest, and that petitioner entered into an arrangement with the Bowery Savings Bank whereby the net income from the premises should be paid to the Bowery Savings Bank on account of the mortgage . . . (R. 16).

"(12) That pursuant to such arrangement the petitioner paid over to the Bowery Savings Bank the net income received from the premises for each calendar year from 1932 to 1938, inclusive" (R. 16).

"(13) That for the purpose of the arrangement between the petitioner and the Bowery Savings Bank, the net income was computed without allowance for depreciation" (R. 16).

"(14) That in the year 1938 the mortgage on the premises held by Bowery Savings Bank was in default for non-payment of principal, interest, and taxes in amounts approximately as follows:

Principal .....	\$255,000.00
Interest .....	15,857.71" (R. 16).

It undoubtedly recalled that the interest default at date of death was only \$7,042.50 (Stip. R. 15), and noted that during the intervening six years Mrs. Crane received not a single dollar or item of benefit whatsoever from her ownership, and that the interest default had increased to \$15,857.71.

The Tax Court had before it the following stipulated fact:

"(15) That in order to avoid foreclosure of the mortgage, petitioner entered into a contract with Avenue C Realty Corporation, a copy of which is annexed hereto and marked Exhibit K" (R. 16).

By the Commissioner's own concession, this was not an ordinary business transaction or one entered into for profit, but was a forced sale, made under compulsion in order to avoid foreclosure of the mortgage.

The Tax Court likewise had before it the contract of sale (Ex. K, pp. 26-32) which contained the following clause (R. 29):

"The purchase price is Three Thousand Dollars (\$3,000) for the equity conveyed by the seller and without deduction for the mortgage principal, interest or taxes or meter charges hereinabove referred to; . . . .

If had before it the conceded fact that Mrs. Crane was not personally liable for the payment of the bond and mortgage, including both principal, interest, real estate taxes and other incidents (R. 15).

On these undisputed facts, the finding of the Tax Court that the amount realized by Mrs. Crane was only \$2,500 after expenses and that the principal of the mortgage was not "property (other than money) received", followed irresistably and inevitably. No other conclusion was possible upon the stipulation and uncontroverted evidence.

Quite apart from the *Dobson* case, the findings and decision of the Circuit Court of Appeals were contrary to the evidence and should be reversed.

Under the ruling of this Court in the *Dobson* case and in the *Kelley* case, it seems to us too clear for argument that Congress assigned the determination of questions such as this to the exclusive jurisdiction of the Tax Court and denied to the Circuit Court of Appeals or any other Appellate Court the jurisdiction and power to reexamine, the issues and substitute contrary findings.