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Power to Confess Judgment, Insanity of Maker

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tional defect by which he is not prejudiced. In a revocation proceeding it will be rare indeed that the person charged has to rely for his defence upon the testimony of unwilling witnesses; normally it is the testimony on behalf of the state that may stand in need of compulsory process, and if it does, the case for the state will be apt to be weak. Except in cases of investigations, it is the opportunity to be heard and to hear the evidence on the other side, not the right to compulsory testimony that counts in administrative proceedings.

However, the decision calls attention to the desirability of two general statutory provisions: the one, authorizing and requiring administrative bodies or officials, in connection with determinations adverse to private right, to take all necessary proof; the other, giving them for that purpose the necessary testimonial powers and the right to apply to a court to enforce obedience, if necessary.

ERNST FREUND.

AGENCY—POWER TO CONFESS JUDGMENT—INSANITY OF MAKER. —[Illinois] May 1, 1920, George F. Hoots and his wife, Mabel, executed a note with a power of attorney to confess judgment "in the usual form of such powers used by banks." Hoots was adjudicated insane July 30, 1920, and the appointed conservator took possession of Hoots' property. The bank had judgment entered by confession in circuit court August 10, 1920, against George and Mabel. County court decreed sale of Hoots' land November 3, 1920. Daily purchased and subsequently conveyed to complainant who filed bill for declaration that the judgment was void. *Held* bill dismissed, reversing decree of circuit court which had been affirmed by appellate court.[1]

The well considered opinion of the Supreme Court of Illinois followed the authority under the Anglo-American system of jurisprudence reversing the poorly considered opinion of the appellate court to the contrary.[2] The latter court failed to make a distinction between a naked power or ordinary agency and a power given as security or, as more frequently expressed, coupled with an interest. Only one case of a power to confess judgment where confession was had after insanity of the maker has been found.[3] There are other decisions, however, that hold that insanity does not end a power that is "coupled with an interest."[4] The result is desirable. The law of

1. *Johnson* v. *National Bank of Mattoon* (1926) 151 N.E. 231.
2. *Johnson* v. *National Bank of Mattoon* (1925) 237 Ill. App. 233.
3. *Spencer* v. *Reynolds* (1890) 9 Pa. Co. Ct. Rep. 249.
4. *Berry* v. *Skinner* (1869) 30 Md. 567 (power of sale in mortgage not revoked by adjudication and appointment of committee); *Meyer* v. *Kuechler* (1881) 10 Mo. App. 371 (similar except adjudication occurred after sale under deed of trust); *VanMeter* v. *Darroh* (1892) 115 Mo. 153, 22 S. W. 30 (adjudication before sale under deed of trust); *Laughlin* v. *Hibben* (1891) 129 Ind. 5, 27 N. E. 753 (foreclosure by suit); *Hill* v. *Day* (1881) 34 N. J. Eq. 150 (power to pledge mortgage); *Powell* v. *Batchelor* (1915) 192 Mo. App. 67, l. c. 74, 179 S. W. 751, noted in U. of Pa. L. R. 64: 397 (power to dispose of business). Contrast *Encking* v. *Simmons* (1871) 28 Wis. 272 (circumstances may make sale fraudulent). See also *Davis* v. *Lane* (1839) 10 N. H. 156; *Matthiessen* v. *McMahon* (1876) 38 N. J. L. 536.

agency should serve decent business practice. It would be highly undesirable if insanity or the adjudication thereof made a power to confess a judgment unavailable. In the principal case the judgment was entered long before the sale was made under the order of the county court.

It does not appear that the conservator of George F. Hoots was served with notice to appear in circuit court at the time of entering the judgment. One may venture to think that this was not done since no mention is made and since the judgment was taken "in vacation." No ruling as to the necessity for this has been found. It would be an added protection if it were required.[5]

If Hoots had died it is stated in the opinion under review that no judgment could have been taken against him. It is not believed that the court meant by this that the power would have been revoked by Hoots' death but that in such event it would have been necessary to have summoned his personal representative into court and to have taken judgment against him. In *Fuller* v. *Jocelyn*[6] a judgment was entered against the principal on a warrant of attorney after his death. This was not known to the court at the time, but was called to its attention upon motion to set aside the judgment. The court refused to do so on the unsatisfactory ground that "being the course of the court to enter the judgments as of the first day of the term, they could not alter it on consideration of the circumstances that attend a particular case."[7]

It is generally, but not universally, held that death does not end a power of sale in a mortgage.[8] *Reilly* v. *Phillips*[9] was such a case and in addition the dead mortgagor left minor heirs. No guardian was appointed for them and no notice was given to them otherwise than by the customary publication. It was held that the sale under the power was valid.[10]

However closely insanity may resemble death, the analogy is not aided by the troublesome fiction of "civil death" which was rejected as a basis for refusing to enter a judgment in *Spencer* v. *Reynolds,* supra.

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CONSTITUTIONAL LAW—DUE PROCESS—TAXATION—INHERITANCE TAX ON SHARES IN FOREIGN CORPORATION OWNED BY NON-RESIDENT DECEDENT—[United States] The case of *Rhode Island Hospital Trust Co.* v. *Doughton*[1] decided by the federal Supreme Court last spring finally settles a question much mooted in recent years. One of the alleged grievances of some of our western and

5. Cf. *Lundberg* v. *Davidson* (1898) 72 Minn. 49, 74 N.W. 1018 (sale under power while mortgagor was insane; guardian ad litem unnecessary).
6. (1730) 2 Strange 882.
7. Cf. *Lanning* v. *Pawson* (1861) 38 Pa. 480.
8. *Mechem* "Agency" sec. 659; Tiffany "Agency" (2d ed.) sec. 88.
9. (1894) 4 S. D. 604, 57 N.W. 780.
10. See *Tracey* v. *Lawrence* (1854) 2 Drewry 403. See also *Grandin* v. *Emmons* (1901) 10 N.D. 223, 86 N.W. 723.

1. (1926) 46 S. Ct. 256.