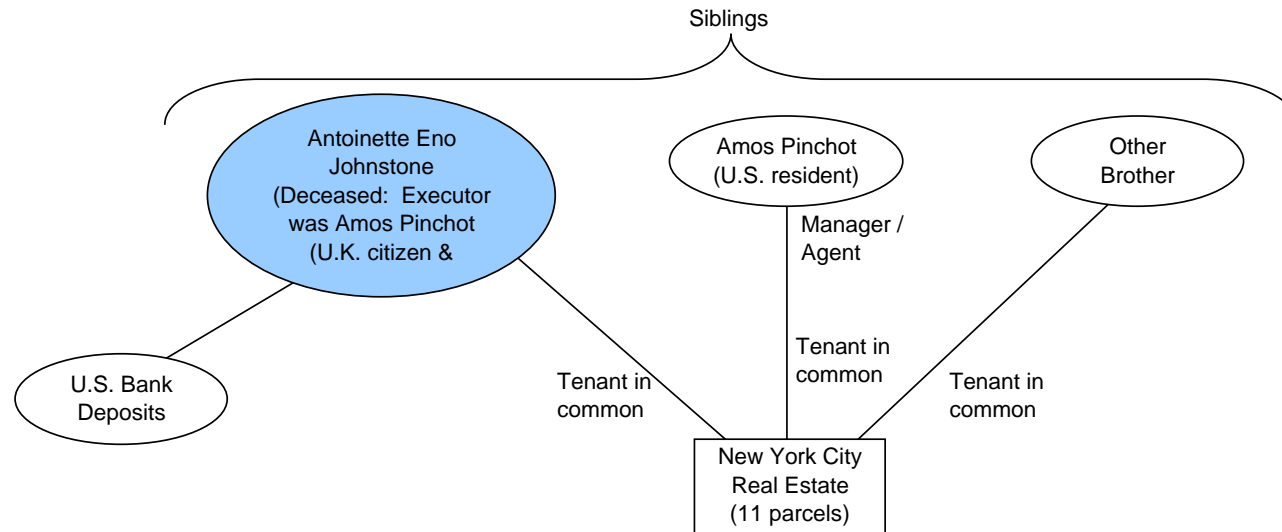


Pinchot v. Commissioner
114 F. 2d 718 (2d Cir. 1940)

**U.K. Citizen Engaged in
U.S. Real Estate Business**

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The issue was whether Antoinette Eno Johnstone, a non-resident alien, was engaged in business in the U.S. at the time of her death. Under the estate tax rules in effect at the time, bank deposits of a non-resident not engaged in a U.S. business at the time of death were not treated as property within the United States. The Second Circuit held that she was engaged in a U.S. trade or business through her brother who was her agent.

Antoinette Eno Johnstone died July 1, 1934 a British subject and a non-resident. Much of her property in the U.S. consisted of improved real estate in the City of New York owned in common by her and her two brothers. This real estate was made up of eleven parcels of which Johnstone's share had a gross value of about one million dollars. Amos R. E. Pinchot, Johnstone's brother, managed the properties for her and the third owner under broad powers of attorney which included also the management of certain personal property owned by the three. Johnstone bought and sold property for the co-owners in his discretion without consulting Johnstone who did not personally take part in the transactions. This management "consisted of the leasing and renting of the properties when they became idle, collection of rents and payment of operating expenses, taxes, mortgage interest and other necessary obligations." Over a period of eighteen years five parcels of real estate had been sold and five had been purchased. There were no sales or purchases during the last three years before Johnstone's death.

The number and the amount of the transactions of Pinchot in managing these eleven buildings in New York, were considerable, continuous, and regular. Their maintenance required the care and attention of the owners and Johnstone supplied her part of that by means of her agent and attorney in fact. What was done was more than the investment and reinvestment of funds in real estate. It was the management of the real estate itself for profit. It necessarily involved alterations and repairs commensurate with the value and number of buildings cared for and such transactions as were necessary constitute a recognized form of business. The management of real estate on such a scale for income producing purposes required regular and continuous activity of the kind which is commonly concerned with the employment of labor; the purchase of materials; the making of contracts; and many other things which come within the definition of business.