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Statutory Limitations on Charitable Bequest or Devise

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STATUTORY LIMITATIONS ON CHARITABLE BEQUEST OR DEVISE

FIDUCIARIES administering estates under wills containing charitable bequests or devises have frequently experienced difficulty in the matter of distribution. Counsel is aware of the statutory limitation on such bequests or devises but is often confused in attempting to apply the statute. Reference to some of the cases construing the statute has only served to increase his doubt as to what the fiduciary may properly pay to charity.

The original statute limiting bequests and devises was enacted in 1860, Chapter 360, Section 1, and provided as follows:

> "No person having a husband, wife, child or parent shall by his or her last Will and Testament devise or bequeath to any benevolent, charitable, literary, scientific, religious or missionary society, association or corporation, in trust or otherwise, more than one-half part of his or her estate, after the payment of his or her debts (and such devise or bequest shall be valid to the extent of one-half, and no more)."

The statute was subsequently amended in the following respects:

> The law was consolidated into Section 17 of the Decedent Estate Law[1] and the above parentheses removed.

[1] Added by Laws of 1909, c. 18.

The words "or purposes" were added to the title, and inserted after the word "corporation" and before the words "in trust" in the body of the law, thereby increasing the class that may receive such bequests.[2]

A further amendment[3] resulted in including descendants of the testator by adding the words "or descendant" after the word "child" and before the words "or parent." Thus the right to oppose such bequests was extended to the issue of the testator.

So the statute remained until amended in 1929 and 1936, which amendments shall later be considered.

In determining whether or not the will violated the statute where such bequests were contested, the gross estate, less debts, established the basis for computation of the charitable interest. Of this amount charity was entitled to only one-half. If the amount that charity was to receive exceeded such one-half of the estate at death the statute had been violated and the question as to disposal of the excess property was before the fiduciary.

A voidable bequest may arise through (1) giving the charitable general legatees more than the permissive half, or (2) by bequeathing or devising more to charity as a residuary legatee than it is entitled to, or (3) by giving it a remainder interest in a residuary trust.

VOIDABLE GENERAL BEQUEST OR DEVISE.

In the first case assume the assets at death equal $25,000.00 and that the debts amount to $1,000.00. The balance is $24,000.00, one-half of which is $12,000.00. The administration expenses equal $2,000.00. Looking at the will we find bequests of $10,000.00 to charity *A*, $5,000.00 to charity *B*, and the residuary estate to the widow, *C*. If the widow contests the bequests to charities all that they may receive is $12,000.00. (Charity *A*, $8,000.00 and charity *B*,

[2] Added by Laws of 1923, c. 301.
[3] Added by Laws of 1927, c. 502.

$4,000.00.) The distribution of the estate on the above basis would be as follows:

Gross assets		$25,000.00
Less debts	$1,000.00	
Administration expenses	2,000.00	3,000.00
Net distributable estate		$22,000.00
Charitable bequest (*A* & *B*) reduced to		12,000.00
Residue to *C*, widow		$10,000.00

Had the above will been executed after August 31, 1930, the widow would have been entitled to one-half the distributable estate $11,000.00, if she had possessed and asserted her right of election under Section 18 of the Decedent Estate Law and if the decedent was not survived by issue. If there were issue surviving the testator the elective share of the widow would be $7,333.33 (⅓ of $22,000.00, the net distributable estate) under Section 18 but, as she would be entitled to take $10,000.00 under Section 17, it would be to her interest to contest the bequest under the latter section.

VOIDABLE RESIDUARY BEQUEST OR DEVISE.

Under the second case where the void bequest to charity arises under the residuary clause of the will assume testator *A* executed his will prior to September 1, 1930, under which he gave his wife *B* a legacy of $10,000.00, and the residuary estate to charities *C* and *D* in equal shares. He died October 5, 1935, and the executor's account as of January 3, 1937, reveals the following summary statement:

CHARGES:

Schedule A (Inventory—Testator owned no real property)	$212,000.00
Schedule A-1 (Increases)	13,000.00
Schedule A-2 (Income)	7,500.00
Total accounted for	$232,500.00

CREDITS:		
Schedule B (Losses)	$7,000.00	
Schedule C (Funeral and administration expenses)	8,500.00	
Schedule E (Debts)	2,000.00	
Total credits		17,500.00
BALANCE ON HAND		$215,000.00
Subject to commissions and costs of		15,000.00
NET DISTRIBUTABLE ESTATE		$200,000.00

The widow wishes to avail herself of any interest she may have under the statute. The charitable maximum interest is $105,000.00 (gross assets $212,000.00, less debts of $2,000.00, equals $210,000.00).

Thus *B*, the wife, takes as a legatee, $10,000.00; *C* and *D*, $105,000.00, leaving excess property in the hands of the executor amounting to $85,000.00, which must be disposed of under Section 83 of the Decedent Estate Law, as in intestacy.[4]

Surviving the decedent were his widow *B* and a niece *E*, the sole issue of a predeceased sister. This intestate property would be distributed as follows:

To *B* $10,000.00, plus one-half of the balance, or $37,500.00; total to *B* under intestacy, $47,500.00; *E* would be entitled to receive $37,500.00 as her share in intestacy.

Had the will in the above illustration been executed subsequent to August 31, 1930, and had the wife possessed and asserted her right of election under Section 18, instead of contesting the validity of the charitable bequest under Section 17, distribution of the estate would be altered considerably. One-half of the net distributable estate, which the wife would be entitled to, is $100,000.00; charities' permissive one-half is $105,000.00, but after the widow has withdrawn her elective share, there remains only $100,000.00, which is

[4] Matter of Logasa, 163 Misc. 628, 247 N. Y. Supp. 730 (1937).

all the charitable legatees may take. Obviously, the niece would receive nothing here as there would be no remaining intestate property.

VOIDABLE REMAINDER INTEREST.

In the last case, where the charity is a remainderman of a trust, the estate is to be considered as though it had been converted into money as of the testator's death. The share of the legatees, both general and residuary, are likewise considered. In order to determine the residuary estate to be placed in trust all debts, administration expenses, legacies, and preliminary trusts are added together and the total is deducted from the gross assets, giving the residuary estate as of death. The present value of the life tenant's interest in the residuary estate is then calculated by reference to the mortality tables, contained in the Rules of Civil Practice.[5] The present value of the life tenant's interest deducted from the corpus of the residuary trust fund gives the interest of the charitable remainderman as of the testator's death. If the charity's remainder interest together with the other bequests to charity under the will are less than one-half of the gross estate less debts at death, the will is valid and charity is entitled to the whole gift under the will when payable on termination of the trust estate. If the charity's remainder interest exceeds one-half of the gross estate less debts there is a violation of the statute and payments under the will are accordingly modified. However, under the *Matter of Seymour,*[6] where the bequest to charity exceeded the permissive one-half, the charity remainderman's interest was considered a general legacy for the maximum of a fixed amount at death which is equal to the maximum allowable under the statute. The interest of charity being thus determined it acquired the advantages of any other general legatee, namely, the right to interest on its legacy. In *Matter of Seymour,*[7] *supra,* interest was figured at the rate of five per cent, compounded annually, until the time of payment. The

[5] Matter of Apple, 141 Misc. 380, 252 N. Y. Supp. 580 (1931).
[6] Matter of Seymour, 239 N. Y. 372, 146 N. E. 372 (1925).
[7] *Ibid.*

accumulation of this fixed charge in the form of compound interest on the legacy could result in a greater sum being paid to charity eventually than equalled one-half of the gross estate less debts. As the actually collected income on the fund was paid to the life tenant of the trust this additional charge of interest could come from no other source than the capital which otherwise would have been intestate property. It would not be at all unlikely that charity might take the entire fund on the termination of the life estate. If the actual life of the beneficiary of the trust exceeded his expectancy, the compounded interest, which could be paid only from the capital, would in some instances reduce or consume the entire fund. A fund at five per cent, compounded annually, doubles itself in fourteen years. Where a life tenant lived for this period or greater, the non-charity interests would certainly receive nothing due to the fact that while charity was waiting, interest charges were accruing.

Analysis of the figures in *Matter of Schalkenbach*,[8] will serve to demonstrate the method employed to determine whether charity received more than one-half the estate and if the will violated the statute.

Gross assets (Real and personal at death, November, 1924)		$457,129.60
Administration expenses	$32,531.95	
Taxes	10,008.85	
Debts	21,885.17	64,425.97
Distributable estate at death		$392,703.63
Legacies and quarantine	$93,994.00	
Capital of trusts established by will, of which charity was the remainderman	225,000.00	318,994.00
Residuary estate to Robert Schalkenbach Foundation as of testator's death		$ 73,709.63

[8] Matter of Schalkenbach, 155 Misc. 332, 279 N. Y. Supp. 181 (1935).

The following computation determines the permissive half to charity:

Gross estate	$457,129.60
Debts	21,885.17
Gross estate less debts	$435,244.43
Permissive one-half to charity	$217,622.22
Charity bequests under will:	
General legacies to charity	7,000.00
Charity remainder interest under trust established in will ($225,000.00 less present value of intervening life estates and receiving commissions of trustee, $89,475.00)	135,525.00
Residuary charity legatee	73,709.63
Total bequest to charity	$216,234.63
Which amount is less than one-half the estate	217,622.22
by	$ 1,387.59

Thus it may be seen that, considering everything as of the time of the testator's death, the bequests to charity did not exceed the permissive half of the gross estate less debts and the charities thus became entitled to every bequest and devise given under the will. The mere fact that charities may take eventually the full corpus of the trust amounting to $225,000.00, $73,709.63 as a residuary legatee, and $7,000.00 as a general legatee, which sums total $305,709.63, results in no violation of the statute as charity received less than one-half of the gross estate less debts as of the date of death. The difference between the value as of the time of distribution and the time of death is the discount during the life expectancy of the life tenants. No computation of interest is involved in this illustration since the bequests to charity as of the testator's death was less than one-half of the gross estate less debts.

WHO MAY CONTEST THE BEQUEST OR DEVISE.

Under the law as it existed prior to 1930 those entitled to share in the estate because of a voidable bequest to charity were permitted to challenge the provisions of the will on this account, although the closest distributees, the wife, brothers and sisters, were entirely satisfied with the testamentary scheme of distribution. Thus, a niece, the issue of a predeceased sister, had the right to contest the charitable bequest and thereby take advantage of the statute. If she were successful all other distributees could likewise profit.

RECOMMENDATIONS OF COMMISSION TO INVESTIGATE DEFECTS OF THE LAWS OF ESTATES.

As has been shown, a situation existed prior to 1930 by which there was a limitation of one-half payable to charity. Due to the allowance of interest on this half, where the estate was in trust and charity forced to await its payment, the entire corpus of the estate might be consumed in paying charity what it was entitled to receive, reducing the share of the distributees to zero. It has been shown also that remote relatives were in a position to frustrate the testator's wishes though close relatives had no such desires and were agreeable to stand by the provisions of the will.[9]

To overcome the reduction through interest charges on the distributees' interest in the estate, and to limit attacks on charitable bequests, the statute was amended as a result of the study and recommendations of the Commission to Investigate Defects of the Laws of Estates. Section 17 of the Decedent Estate Law, as amended by Chapter 229 of the Laws of 1929, Section 3, effective September 1, 1930, inserted the following italicized text:

> DEVISE OR BEQUEST TO CERTAIN SOCIETIES, ASSOCIATIONS, CORPORATIONS OR PURPOSES. "No person having a husband, wife, child or descendant or parent, shall by his or her last will and testament, devise or

[9] Matter of Mosley, 138 Misc. 847, 247 N. Y. Supp. 520 (1930).

bequeath to any benevolent, charitable, literary, scientific, religious or missionary society, association, corporation or purpose, in trust or otherwise, more than one-half part of his or her estate, after the payment of his or her debts, and such devise or bequest shall be valid to the extent of one-half, and no more. *The validity of a devise or bequest for more than such one-half may be contested only by a surviving husband, wife, child, descendant or parent. When payment of a devise or bequest to such society, association, corporation or purpose is postponed, in computing the one-half part of such society, association, corporation or purpose, no allowance may be made for such postponement or for any interest or gains which may accrue after the testator's death."*

CONTESTS REDUCED.

The first result of this amendment is to confine the right to contest excess of charitable bequests to the preferred class of distributees mentioned in the amendment. If they are satisfied with the will, it stands as written by the testator. It should be noted that despite the amendment if the spouse (there being no descendant or parent) should contest the bequest it might still result that some of the property undisposed of could pass to distributees who under existing law had no right to contest the bequest in the first instance.[10] In the illustration heretofore given of a voidable bequest to charity arising under the residuary clause of the will, the niece of the testator could take a substantial part of the estate due to the opposition by the wife. Had there been no opposition by the wife, the niece could not share. Thus one of the preferred distributees might increase her interest in the assets of the estate through the contest and at the same time create an interest for another distributee who could do nothing in her own behalf to share in the intestate property. Though the right to make such contests has been reduced to the preferred distributees there is no limitation on the dis-

[10] Matter of Sonderling, 157 Misc. 231, 283 N. Y. Supp. 568 (1935).

tribution of intestate property arising from the contest; it passes as ordinary intestate property.

INTEREST ON BEQUEST OR DEVISE ELIMINATED.

The remainder of the amendment has to do with the elimination of interest on the deferred charitable remainder interest and with gains accruing subsequent to the testator's death.[11]

Doubt as to the effect of this part of the amendment seems to have arisen in the minds of some Surrogates before whom questions affecting charitable remainder interests were presented. In *Matter of Miranda,*[12] the husband of the testatrix questioned the validity of a bequest to charity. The gross estate was $13,550.08 of which $447.31 represented an equity in real property. Debts equaled $1,334.49, giving a gross estate, less debts at death of $12,215.59, one-half of which was $6,107.79. The will provided for the payment of $300.00 to a cemetery for perpetual care of the grave. This was held to be a non-charitable gift. Four articles were specifically bequeathed to the Brooklyn Museum if it "desired to receive them." The balance of the estate was placed in trust for the benefit of the husband and a sister and their

[11] Note of Decedent's Estate Commission (1929) to § 17 D. E. L. It is proposed that only those whose survivorship furnishes the ground for an objection to the will shall have the right to object. Also supersedes the ruling in Matter of Seymour, 239 N. Y. 259, 146 N. E. 372 (1925), that interest shall be added when payment is postponed, and declares the rule in that case that gains shall not be added. The amendment is in accord with the legislative intent that only one-half shall be paid over, *and no more.* The authorities hold that the computation of the one-half payable to the charitable or other corporations named must be computed as of the death of the decedent and upon the same basis as if it had then been turned into cash. By the amendment the Commission seeks to continue this rule as to the time of computation but intends to avoid any allowance to the charity by reason of a postponement occasioned by the terms of the will. The statute, it has been held, transforms a residuary gift to the corporation uncertain in amount into a general legacy for a fixed sum. Where a precedent trust has existed, and the income has been applied to the use of the beneficiary, a postponement of payment to the corporation would result under the decision cited, in a charge against the persons, who would be entitled to the other half, of the amount of interest on the postponed legacy to the corporation; interest was allowed under that decision at five per cent, compounded annually. A continuance of the trust for a substantial period of years might largely cut down the one-half share to such other persons, against whom would also be charged any losses incurred during the interim.

[12] Matter of Miranda, 151 Misc. 429, 271 N. Y. Supp. 913 (1934).

survivor, with remainder over to the Methodist Episcopal Hospital. At the testatrix's death the younger of the life tenants was sixty years of age. The value of the life estates was found to be $4,600.26, which sum the Surrogate deducted from the gross estate at death, less debts, leaving $7,615.33. (It may be noted that the $300.00 legacy to the cemetery and the administration expenses have not been considered in this computation. If these items were considered the residuary trust would accordingly be reduced and the charitable remainder interest decreased). One-half of the estate at death was $6,107.79 and as the Surrogate determined the amount of the charity's remainder interest to be $7,615.33 the will violated the statute. The Surrogate determined that the maximum gift to charity was $6,107.79 and that the balance of the fund was intestate property passing to the husband.

WHAT SHOULD ONE-HALF OF ESTATE BE?

A maximum of fifty per cent of the gross estate at death less debts was allowable to charity but charity was forced to await the payment until the trust terminated. Naturally, the one-half at death could not be the same as one-half of the estate when ultimately paid on the termination of the trust. One dollar in hand is worth more than one dollar payable ten years from now.

In the *Matter of Sonderling,*[13] the same question was before another Surrogate. There the gross estate at death less debts, was $517,139.72, the permissive half being $258,569.86. The value of the life estates based upon the mortality tables was $132,772.72. This the Surrogate deducted from the gross estate, less debts, as was done in *Matter of Miranda,*[14] *supra,* leaving a balance of $384,367.00 as the interest of charity. This amount exceeded the permissive one-half. The Surrogate held that the gift to charity became a gift of $258,569.86. There had been a gain during the administration of the estate which the Surrogate directed to be retained in the trust until its termination. The Surro-

[13] Matter of Sonderling, 155 Misc. 403, 279 N. Y. Supp. 703 (1935).
[14] Matter of Miranda, 151 Misc. 429, 271 N. Y. Supp. 913 (1934).

gate also intimated in the opinion that it was futile to anticipate gains or losses, stating that depletion to a great extent may occur and thereby eliminate the distributees from sharing in the intestate property.

In the *Sonderling* [15] case under consideration, in determining the amount of property distributable as in intestacy the Surrogate seems to have deducted the one-half which charity might take eventually from the value of the gross estate at death less debts rather than from the value of the remainder interest.

EXCESS OVER ONE-HALF ONLY VOIDABLE.

In *Matter of Apple,*[16] problems regarding charitable bequests and the right of election of a surviving spouse were presented to the Court on a construction proceeding. The gross estate at death less debts was $24,796.96, one-half being $12,398.48. As a result of the exercise by the husband of a limited right of election he withdrew $2,500.00 from the trust fund under Section 18 of the Decedent Estate Law leaving $22,296.96 in the principal account.

Under the will the husband was given a legal life estate in the estate. Upon his death $4,000.00 was payable from the fund to certain individuals and the balance to several charities in equal parts.

Reference was made to the mortality tables to determine the value of the husband's expectancy. This value was fixed at $5,421.28, which together with his outright payment under Section 18, Decedent Estate Law, equaled $7,921.28. The other non-charitable beneficiaries were the remaindermen of a $4,000.00 fund which had a present value of $3,028.00 (being diminished by the life use of the husband). The total bequests to non-charities, therefore, amounted to $10,949.28. The gross estate at death less debts was $24,796.96 which, when non-charitable bequests were deducted, left bequests to charity of $13,847.68. The permissive one-half is $12,398.48. The bequest to charity exceeded this

[15] Matter of Sonderling, 155 Misc. 403, 279 N. Y. Supp. 703 (1935).
[16] Matter of Apple, 141 Misc. 380, 252 N. Y. Supp. 580 (1931).

amount by $1,449.20, which was held to be intestate property and payable to the husband as a distributee.

In *Matter of Apple,*[17] unlike *Matter of Sonderling,*[18] *supra,* though the bequest to charity exceeded the permissive half there was no attempt to cut the *eventual* distribution down to one-half of the estate finally to be distributed. All bequests and devises including those to charity were valued as of death. The above figures indicate that $13,847.68 was sought to be given to charity as of death. The only voidable bequest that could arise would be the difference between one-half of the estate less debts at death and charity's share at death as determined by the mortality tables, or $1,449.20.

GAINS AND LOSSES DURING CONTINUATION OF TRUST.

Consideration should be given to gains and losses in the administration of a trust. What effect do gains and losses during the administration of the fund have upon the ultimate distribution?

In the *Matter of Buck,*[19] these questions were presented to the court for construction. Examination of this proceeding disclosed the following:

Gross assets at death, October 17, 1933		$150,784.99
Debts	$1,221.46	
Administration expenses	7,841.39	
Executor's commissions	3,397.88	12,460.73
Distributable estate of		$138,324.26
Subject to specific and general legacies, as follows:		
Specific legacy to charity	$ 606.94	
General legacies	7,000.00	7,606.94
Leaving a residuary estate of		$130,717.32
Less—trustee commissions		2,634.34
Leaving a net trust fund of		$128,082.98

[17] 141 Misc. 380, 252 N. Y. Supp. 703 (1931).
[18] 155 Misc. 403, 279 N. Y. Supp. 703 (1935).
[19] Matter of Buck, 158 Misc. 111, 114, 285 N. Y. Supp. 515 (1936).

This trust was administered subject to the following limitations:

The widow was entitled to an annuity of $4,800.00 per annum. At the time of the decedent's death, she was sixty-seven years of age, and the present value of her interest in this fund was set forth as $35,131.68. Under the will she was entitled also to call upon the trustee to pay her an additional $5,000.00 for "extraordinary expenses" not exceeding $500.00 annually. This right was presently valued at $3,930.35. She had the further right to appoint $10,000.00 payable out of the trust fund. This right was presently valued at $6,413.20. Thus, the value of the widow's interest in and rights over the trust fund amounted to $45,475.23.

The trust fund was		$128,082.98
Less—Present value of widow's rights		45,475.23
Leaving balance to charity of		$ 82,607.75
Specific legacy to charity		606.94
Total charitable bequests		$ 83,214.69
Maximum charitable bequest:		
Gross estate at death	$150,784.99	
Less—Debts	1,221.46	
Balance at death	$149,563.53	
One-half is		$ 74,781.76
Amount by which bequests to charity exceeded the permissive one-half		$ 8,432.93

As the voidable bequest to charity arose through the residuary clause of the will from a void bequest to charity, the residuary excess in the bequest was payable to the distributees upon the termination of the trust. The trust is valid and no difficulty is experienced until the death of the life tenant occurs, when the fiduciary is required to pay over

the corpus. The amount of intestate property as of the date of death was $8,432.93. The balance of the trust fund, $119,650.05, was earmarked for charity. What these interests will ultimately amount to at the time of distribution depends upon gains and losses during the administration of the trust.

If possible, the intestate property should be earmarked and separately administered. The income on this earmarked fund should be paid to the life tenant, together with the income on the balance of the fund which is eventually payable to charity. Whatever profit or loss results on the earmarked funds of the estate will increase or decrease the intestate property payable to the distributees on the termination of the trust. If it is impossible or impracticable to earmark that portion of the fund which represents the void bequest or intestate portion, then the estate should be administered in *solido*. That portion of the fund representing intestate property, compared with the entire trust, represents the percentage interest of the intestate property in the whole fund. The ratio or percentage of the intestate property to the whole of the fund at the time of setting up the trust will be applied to the fund at distribution, and the amount payable to distributees will be so ascertained. Thus, increases or losses during the administration will be prorated to charity and distributees in the ratio that the interests bear to the total fund. Equality in distribution is thereby preserved. The text of the 1929 amendment relating to gains refers to gains during the executorial period of administration. Whatever gain or loss occurs after the trust has been established pertains proportionately to those who ultimately receive the fund on distribution.

Basis of Valuing Life Estates.

In cases where life tenants died before the question arose courts have been urged to use the actual life period rather than the mortality tables in valuing the life estate and remainder interest of a trust. Thus, if a life tenant was 28 years old when the testator died, the present value of his in-

terest in the fund, based upon the tables, would equal a figure which would necessarily validate any bequest to charity of a remainder interest in the trust. On the other hand, were such a life tenant to live but one year and should the value of his life estate be ascertained on the basis of one year's duration it would result in a determination that the bequest to charity exceeded one-half of the estate. Were the life tenant an elderly person, charitable beneficiaries would find it to their interest to seek the determination of values on the same basis in the hope that the life tenant's actual life would be longer than the tables foretold and sufficiently long to validate the bequests to charity of the remainder.

It may readily be seen that great confusion and injustice might result from the general application of any such rule. To eliminate uncertainty and have one definite method of computation based upon expectancy rather than the actual life of the beneficiary the statute was amended by the Laws of 1936, Chapter 288, effective April 6, 1936, by adding the following to the existing statute:

> "The value of an annuity or life estate, legal or equitable, shall not be computed upon the actual duration of the life, but shall be computed upon the actuarial value according to the American Experience Table of Mortality at the rate of five per centum per annum. Such value shall be deducted from the fund or property, which is subject to the annuity or life estate, in order to ascertain the value of a future estate or remainder interest passing to such society, association, corporation or purpose."

The words "or losses" were inserted after the word "gains" and before the words "which may" so that gains and losses after death are disregarded.

In *Matter of Kaufman,*[20] an attack upon charitable bequests was made by the testator's widow. The gross estate at death less debts was $1,959,983.80, one-half thereof "the amount which gifts to charity may not validly exceed" being

[20] Matter of Kaufman, 158 Misc. 102, 285 N. Y. Supp. 515 (1936).

$979,991.90. The payments to the trustees amounted to $1,345,891.68. The Surrogate was urged to compute the life and remainder interest on a basis of the actual duration of the life of a life tenant who had died short of his expectancy. The Surrogate declined to effect computations on this basis but pointed out incidentally that in the case before him were such a basis to be adopted the bequest to charity would not exceed the statutory limit.

Under the 1936 Amendment a final step has been taken to simplify a most difficult accounting problem. The actual life of the beneficiary is never to be considered. Mortality tables are to be considered in all cases involving such computations.

If the testator wishes to bequeath part of his estate to charity it would be well for the lawyer in drawing his will to be thoroughly familiar with the statutory limitations in the light of recent decisions. Experience has shown that the average practitioner is not fully conversant with the provisions of the statute relating to bequests to charity. Care and thought on the part of the draftsman with regard to bequests and devises to charity will result in conservation of estate assets through reduced litigation. Construction proceedings to determine the testator's intention and to ascertain whether or not the provisions of the will violate the statute have delayed the administration of many estates and caused the fiduciaries much concern and inconvenience. While it is admitted that hindsight is better than foresight, especially where surcharges are concerned, there is no reason why the draftsman may not have the full benefit of hindsight by a study of the cases construing bequests and devises to charity.

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