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Life Estates - Power to Consume - Remainderman

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LIFE ESTATES—Power to Consume—Remainderman—The Supreme Court of Pennsylvania, applying common law rules of construction, has decided that a life tenant in personalty with the power to consume is accountable to the remainderman for the increased value of the bequeathed property.

Moltrup Estate, 424 Pa. 161, 225 A.2d 676 (1967)

Testator in 1940 bequeathed a life estate in personalty with power to consume to his wife and upon her death the remainder to his son in fee. At the death of the testator's wife the bequeathed property had increased in value fourfold and a controversy developed between the heirs of the life tenant and the heirs of the remainderman, both groups claiming that the increment belonged to them. The heirs of the life tenant contended that a debtor-creditor relation existed and that the life tenant was only indebted to the remainderman for the value of the property as originally bequeathed and hence they were entitled to the accretions; whereas the heirs of the remainderman asserted that the manifest intent of the testator dictated that the life tenant was merely a trustee for the property and that they were the authorized recipients.

Ordinarily at common law in Pennsylvania a life tenant of personalty without a power to consume was presumed to be a debtor of the remainderman for the original value of the bequeathed property.[1] When the power to consume was attached to this relationship distinctions were initially drawn and there were statements to the effect that the remainderman was not the creditor of the life tenant[2] and the life tenant was merely a "quasi trustee."[3] However, in 1941 the court in *Powell's Estate*[4] unexplainably applied the debtor-creditor relation to life tenancies with power to consume without bothering to distinguish prior inconsistent decisions.[5] This debtor-creditor presumption was used to determine the general intent of the testator absent any contrary expressions, even though on closer scrutiny it appears paradoxical to contend that a testator

1. Reiff's Appeal, 124 Pa. 145, 16 Atl. 636 (1889) firmly imbedded this principle in Pennsylvania common law. It should be noted that this doctrine is almost peculiar to Pennsylvania, most other states having applied a trust concept either through common law constructions or statutes. See also Letterle's Estate, 248 Pa. 95, 93 Atl. 935 (1915) and Kirkpatrick's Estate, 284 Pa. 583, 131 Atl. 361 (1925) reiterating this common law principle.

2. *In re* Metz's Estate, 323 Pa. 241, 185 Atl. 740 (1936).

3. Watson's Estate, 241 Pa. 271, 88 Atl. 433 (1913).

4. 340 Pa. 404, 17 A.2d 391 (1941). In this case the court for the first time applied the debtor-creditor theory to a life tenancy with the power to consume. It was shortly followed by Hays Estate, 358 Pa. 38, 55 A.2d 763 (1947).

5. No attempt was made by the court to reconcile Metz's Estate or Watson's Estate in the court's opinion.

would intend to hold a life tenant as a debtor for the original value of the bequest when he expressly gave him the power to consume.[6]

The instant court, apparently aware of this inconsistency as exemplified by the recent statutory rectification,[7] appears to have somewhat stretched the existing rules of construction to arrive at a predetermined result in conformity with the present legislative enactment. In ascertaining what the true intent of the testator was[8] regarding distribution of the enhanced value the majority rationalized the disuse of the established rules and concluded that the life tenant was not a debtor to the remainderman and was accountable to him for the excess value of the bequeathed property. The court reasoned that since testator died in 1940, a year prior to the date that Pennsylvania courts began applying the presumption that a life tenant of personalty with power to consume was a debtor to the remainderman,[9] such a construction was inapplicable to the present facts. Additionally, it stated that the facts (1) that the testator gave the remainder to his blood heirs, and (2) that there was no provision in the will intimating that the life tenant should keep the increment, indicated the manifest intent of the testator to distribute the accretions to the remainderman. This intent would rebut any presumption of a debtor-creditor relationship if one existed, and dictate the necessary order of distribution.

To support its analysis the court relied heavily on *Lyman's Estate*[10] in which the court concluded, in a very similar fact situation to the instant case, that it would not employ ex post facto rules of construction to defeat the obvious intent of the testator not to hold the life tenant as a debtor to the remainderman for the decreased value of the bequeathed property. It arrived at this construction by portraying the solicitude

6. Note, *A Debtor Who Can Consume His Own Debt*, 99 U. OF PA. L. REV. 873, 878 (1951), points out that applying the debtor-creditor theory to life estates with a power to consume vitiates the underlying basis for establishing such a rule for a life estate without the power of consumption.

7. PA. STAT. ANN. tit. 20, § 301.13 (1948) abolished prospectively the debtor-creditor theory and substituted a trust relation by operation of law: "A person having a present interest in personal property, or in the proceeds of the conversion of real estate . . . and which is subject to a future interest, shall be deemed to be a trustee of such property, and not a debtor to the remainderman. . . ."It should be emphasized that the problem in the instant case antedated the effective date of this statute and therefore it is not controlling. Thus all wills with the problem of the instant case that are effective before 1947 must be construed without the benefit of this statute.

8. It remains unquestionable that the testator's intent is the "polestar in interpreting a will." See Hoover Estate 417 Pa. 263, 266, 207 A.2d 840, 842 (1965).

9. Watson's Estate, 241 Pa. 271, 88 Atl. 433 (1913).

10. 366 Pa. 164, 76 A.2d 633 (1950). In this case testator bequeathed to his wife the residue of his estate in personalty with power to consume and remainder to relatives and a charity. During her life the securities decreased in value and the remainderman demanded the loss be made up from the life tenant's estate.

existing between the testator and life tenant and intimated that perhaps had there been an increase in the value rather than a decrease the circumstances would have commanded a contrary result.[11] Although the conclusion in the case seemingly proximates the testator's intention[12] it is difficult to determine, as with the instant case, whether the court disregarded the presumption as established by the *Powell* case[13] or just found a contrary intent to rebut it.

In a convincing dissent Justice Jones vehemently rejects all allegations of a countervailing intent rebutting the debtor-creditor presumption[14] and dismisses the supporting *Lyman*[15] case as an erroneous decision. Upon closer examination the majority's other contention, that the rule of construction was formulated after testator died and so is inapplicable, appears to misconceive the reason for using rules of construction. A rule of construction is assumed to represent what the testator generally intended and this presumption should be the same whether it is applied before or after the rule is formulated unless it can be shown that a reason exists for a change from one year to the next. In *Hood v. Pennsylvania Society*[16] it was stated that, as a general rule, when a judicial decision is rendered the law is not presumed to be changed by it but to have been the same before as after the decision. This should especially apply when a rule of construction is considered because by its very nature a rule presupposes that most testators, absent contrary expression, intend such a construction.

Although the instant court's conclusion can be commended, its rationale could have been less questionable had it decided to renounce the common law rule of construction of debtor-creditor presumption as erroneous and supplanted it with a presumption similar to the one authorized by the statute, which undoubtedly would more closely proximate testator's true intention. However, it is probable that the courts will continue, as the

11. *Id.* at 171, 76 A.2d at 636:

It is a far different thing to find, if the *intent of the testator* be given due and appropriate effect, that he intended the primary object of his bounty to have the capital gains on the corpus of a life estate, *which she has the power to consume*, than it is to conclude that he intended to impose upon such primary beneficiary liability for depreciation in the value of the corpus. . . .

12. From the circumstances surrounding the writing of the will as described by the court it appears as though testator did not intend to hold the life tenant responsible for the decreased value of the corpus and yet at the same time if there was an increase it appeared that testator wanted it to go to the life tenant.

13. Powell's Estate, 340 Pa. 404, 17 A.2d 391 (1941).

14. Moltrup Estate, 424 Pa. 161, 167, 225 A.2d 676, 684-85 (1967) (dissenting opinion). Essentially Justice Jones explained that none of the facts as presented by the majority, whether considered together or independently, refuted the common law presumption.

15. Lyman's Estate, 366 Pa. 164, 76 A.2d 633 (1950).

16. 221 Pa. 474, 479, 70 Atl. 845, 846 (1908).

instant court did, to extend the common law tools of analysis to coincide with the proposed end that the statute today prescribes[17] rather than overtly refute entrenched judicial precedent.[18]

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17. It should be noted that this statutory prescription is no panacea and in no way reflects the true intention of a testator in all situations of a bequest to a life tenant with the power to consume, but it does clearly provide a speedy means of administration and a readily ascertainable conclusion of law. However it does appear to proximate testator's intention more so than the presumption of a debtor-creditor relation in the usual case, and this, hopefully, will outweigh any disadvantages resulting from the statute's inflexible administration.

18. It should be noted that in a recent case, Sumney Estate, 425 Pa. 224, 228 A.2d 915 (1967), the Supreme Court of Pennsylvania construed a 1938 bequest giving a life estate without the power to consume to testator's widow, with remainder to his children by a prior marriage, as creating a trustee relationship rather than a debtor-creditor relation. The court stated that the testator manifested a contrary intent which rebutted the common law debtor-creditor presumption. In addition the court found an ambiguous agreement between the remaindermen and the life tenant obligating the widow to a trustee relationship. On the facts neither of these conclusions are clearly supportable and they seem to indicate an approach designed to avoid the overruling of entrenched precedent.