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Wills--Sequestration--Acceleration of Life Interest Upon Renunciation of Prior Interest

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WILLS—SEQUESTRATION—ACCELERATION OF LIFE INTEREST UPON RENUNCIATION OF PRIOR INTEREST—Testator made an inter vivos agreement in which he promised to bequeath to his son a certain portion of his estate. Upon testator's failure to comply with this agreement, the bequest actually given, a life interest in sixty percent of the estate, was renounced by the son, who instead elected to receive one million dollars from the estate in settlement of his claim.[1] The will gave a remainder interest for life to the son of the renouncing legatee, testator's grandson. The ultimate remaindermen of the corpus of this part of the estate were two hospitals. In regard to the remaining forty percent of the estate, 5,000 dollars of the net income therefrom was to be paid annually to the testator's wife, with the balance of the income and, upon termination of the trust, the corpus to be paid to the same hospitals. These remaindermen, whose interests were diminished through satisfaction of the son's claim, contended unsuccessfully in the chancery division that the grandson's life interest in remainder should not be accelerated and that the renounced interest should be sequestered so as to restore the lost corpus for their benefit. On appeal to the superior court, *held*, affirmed. Since there was not a substantial distortion among the diminished interests of the legatees, sequestration should not be granted. *In re Nixon's Estate*, 71 N.J. Super. 450, 177 A.2d 292 (1962).

When a life interest is renounced, the judicially established rule provides that the remainder interest shall be accelerated as if the life estate had been terminated by the death of the life tenant.[2] However, for the benefit of disappointed legatees and devisees, many courts have computed the income from the renounced interest through the application of the doctrine of sequestration.[3] There is a sharp conflict of authority concerning the circumstances which render sequestration appropriate. This disparity is in part explained by the factual variations which arise from the terms of each will and partly by the characteristic lack of specificity in the general field of equity jurisprudence. Some courts, refusing to apply any limitations to the doctrine, have unqualifiedly granted sequestration as the closest approximation of the testator's thwarted intent.[4] Contrariwise, a few deci-

1 Prior to the settlement, the estate had an estimated value of $4,000,000. Principal case at 455, 177 A.2d at 294.

2 See, *e.g.*, Union Trust Co. v. Rossi, 180 Ark. 552, 22 S.W.2d 370 (1929); Northern Trust Co. v. Wheaton, 249 Ill. 606, 94 N.E. 980 (1911); Trustees Church Home v. Morris, 99 Ky. 317, 36 S.W. 2 (1896).

3 *E.g.*, Firth v. Denny, 84 Mass. (2 Allen) 468 (1861); Sellick v. Sellick, 207 Mich. 194, 173 N.W. 609 (1919); Trustees of Kenyon College v. Cleveland Trust Co., 130 Ohio St. 107, 196 N.E. 784 (1935); Lonergan's Estate, 303 Pa. 142, 154 Atl. 387 (1931); Meek v. Trotter, 133 Tenn. 145, 180 S.W. 176 (1915); Jones v. Knappen, 63 Vt. 391, 22 Atl. 630 (1891). See generally 5 AMERICAN LAW OF PROPERTY § 21.43 (Casner ed. 1952); 5 PAGE, WILLS § 47.46 (Bowe-Parker rev. ed. 1960); 2 POWELL, REAL PROPERTY § 310 (1950); Note, 61 HARV. L. REV. 850 (1948).

4 See Wakefield v. Wakefield, 256 Ill. 296, 100 N.E. 275 (1912); Dowell v. Dowell, 177 Md. 370, 9 A.2d 593 (1939); Cotton v. Fletcher, 77 N.H. 216, 90 Atl. 510 (1914); 1 P-H WILLS, TRUSTS & ESTATES SERV. ¶ 452 (1962).

sions have rejected the doctrine in its entirety,[5] unless the testator has indicated an intent that there should be no acceleration.[6] One of the specific justifications for granting sequestration arises when the disappointed legatee is the special object of the testator's bounty.[7] Another reason for permitting sequestration occurs when the remainder is contingent and the remaindermen are unascertainable.[8] Finally, if there is a disproportionate diminution among the interests of the legatees, to the extent that a substantial distortion exists, many courts and the *Restatement of Property* consider this a proper circumstance for sequestration.[9] The requirement of substantial distortion, however, is limited by certain definitive corollaries. If the interests of each legatee are diminished in equal proportion, there is no need for sequestration.[10] Secondly, if the diminished interest is considerably greater than the undiminished interest, the minimal distortion is not considered sufficiently substantial to warrant sequestration.[11] This was the situation presented in the principal case, in which the court, without discussion, treated the undiminished gift of 5,000 dollars annually to the widow as minimal and therefore not providing an appropriate basis for sequestration.[12]

In ascertaining whether the distortion is a substantial one, most courts

5 See, *e.g.*, Equitable Trust Co. v. Proctor, 27 Del. Ch. 151, 32 A.2d 422 (Ch. 1943); Scotten v. Moore, 28 Del. (5 Boyce) 545, 93 Atl. 373 (1914); Hesseltine v. Partridge, 236 Mass. 77, 127 N.E. 429 (1920). *Cf.* Davidson v. Miners' & Mechanics' Savings & Trust Co., 129 Ohio St. 418, 195 N.E. 845 (1935).

6 See St. Louis Trust Co. v. Kern, 346 Mo. 643, 142 S.W.2d 493 (1940).

7 *E.g.*, Trustees of Kenyon College v. Cleveland Trust Co., 130 Ohio St. 107, 196 N.E. 784 (1935); compare Mercantile Trust Co. v. Schloss, 165 Md. 18, 166 Atl. 599 (1933); Schmick's Estate, 349 Pa. 65, 36 A.2d 305 (1944). These decisions refuse sequestration because acceleration serves to benefit the special objects of testator's bounty.

8 See, *e.g.*, Campbell v. Campbell, 380 Ill. 22, 42 N.E.2d 547 (1942). *But see* Scotten v. Moore, 28 Del. (5 Boyce) 545, 93 Atl. 373 (1914).

9 A comprehensive statement of this theory is propounded in detail in RESTATEMENT, PROPERTY § 234 (1936). This section states in part: "When a will otherwise effectively creates prior and succeeding interests; and an attempted prior interest is renounced; and the renouncer effectively claims an intestate share; and there is no manifestation of a contrary intent, then (a) if the satisfaction of the derogating claim causes substantial distortion among the other testamentary dispositions, so much of the renounced interest as does not pass as part of such intestate share is sequestered for judicial distribution among the other testamentary distributees. . . ." Before the promulgation of the *Restatement*, a similar theory was followed in a number of cases. See Sellick v. Sellick, 207 Mich. 194, 173 N.W. 609 (1919); Trustees of Kenyon College v. Cleveland Trust Co., 130 Ohio St. 107, 196 N.E. 784 (1935); Lonergan's Estate, 303 Pa. 142, 154 Atl. 387 (1931). Since publication, the rule has been referred to infrequently. Principal case at 457, 177 A.2d at 297; Schmick's Estate, 349 Pa. 65, 36 A.2d 305 (1944); Will of Marshall, 239 Wis. 162, 300 N.W. 157 (1941); Will of Muskat, 224 Wis. 245, 271 N.W. 837 (1937). This rule is also recognized by a number of scholars. See, *e.g.*, ATKINSON, WILLS 126 (2d ed. 1937); 2 POWELL, *op. cit. supra* note 3, § 310; SIMES, FUTURE INTERESTS 314 (1951). See generally 5 AMERICAN LAW OF PROPERTY § 21.44 (Casner ed. 1952); Note, 61 HARV. L. REV. 850.

10 RESTATEMENT, PROPERTY § 234, comment *i*, at 990-91 (1936). Many courts are confronted with this fact situation.

11 *Id.* § 234, comment *k*, at 992-95.

12 Principal case at 460, 177 A.2d at 296.

refuse to consider the increment accruing to the remainderman through the extension in duration of his accelerated interest. Rather, they concern themselves with the effect of the renunciation on the diminution of the remainder interests generally.[13] Though there are no doubt many situations in which this corollary of the sequestration doctrine may be justified, the facts of the principal case present in a striking fashion, a basis for challenging it as an incontrovertible rule of thumb. It was alleged by the hospitals, and not denied by the court, that to give the grandson the total income of the sixty percent share during the life expectancy of the renouncing legatee would give him considerable gain over the amount he would have received had there been no renunciation.[14] On the other hand, if sequestration were decreed, the one million dollars lost by the remaindermen through the renunciation would be restored to them many years before the death of the renouncing legatee.[15] Under the result reached in the principal case, while the ultimate remaindermen suffer diminution of their interests, the grandson, by virtue of acceleration, would receive during the lifetime of his father an annual income which the testator did not intend to be his for many years. When this increment reaches the proportions that appear to be present in this case, the grandson, rather than bearing his proportionate share of the loss of income caused by renunciation, stands to gain an amount which may well exceed that necessary to make him whole, leaving the ultimate remaindermen to bear the loss alone. In contrast, the granting of sequestration would deny the grandson nothing that had been intended for him, but rather would place him, along with the other remaindermen, in the same position that would have existed had the life interest not been renounced. Moreover, this consideration reveals the court's misplaced reliance on the general practice of placing the welfare of a family member above that of a stranger in construing the will.[16]

13 RESTATEMENT, PROPERTY § 234 illustration to comment *k*, situation 1, at 993 (1936). In the principal case, the court stated: "There is always an advantage to the holder of an accelerated interest in the fact of its enjoyment earlier than would have been the case if he were required to await the event . . . stipulated in the will. The mere fact that other beneficiaries do not obtain comparable benefit has never been regarded as spelling out such substantial distortion . . . as should . . . warrant denial of the acceleration, absent a reduction of the estate of the kind here involved." Principal case at 459, 177 A.2d at 296. *But cf.* Cotton v. Fletcher, 77 N.H. 216, 90 Atl. 510 (1914); Lonergan's Estate, 303 Pa. 142, 154 Atl. 387 (1931); Meek v. Trotter, 133 Tenn. 145, 180 S.W. 176 (1915). In these cases, the courts felt that acceleration would be contrary to the testator's intent due to the additional accrual of income to the remaindermen to the renounced interest.

14 The grandson will lose approximately $600,000 through the settlement of the claim of his father, and the acceleration of his interest would give him more than $1,800,000 over the period of his father's expectant lifetime, the unforeseen increment thus amounting to more than $1,200,000. See principal case at 455, 177 A.2d at 295.

15 The $1,000,000 paid in settlement of the renounced life interest would be restored through sequestration in sixteen years. Thus, the grandson's remainder would be accelerated fifteen years before the father's estimated time of decease. See principal case at 455, 177 A.2d at 295.

16 Principal case at 462, 177 A.2d at 298.

The objective of a court in resolving problems created by the renunciation of a life interest is to fulfill the implied intention of the testator.[17] In the principal case, sequestration of the renounced interest would have best effectuated this objective.

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[17] *E.g.*, Equitable Trust Co. v. Proctor, 27 Del. Ch. 151, 32 A.2d 422 (Ch. 1943); Northern Trust Co. v. Wheaton, 249 Ill. 606, 94 N.E. 980 (1911); Sellick v. Sellick, 207 Mich. 194, 173 N.W. 609 (1919); Holdren v. Holdren, 78 Ohio St. 276, 85 N.E. 537 (1908).