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WILLS--MERGER OF ANNUITY FOR LIFE IN RESIDUE WHICH PASSED BY INTESTACY

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WILLS—MERGER OF ANNUITY FOR LIFE IN RESIDUE WHICH PASSED BY INTESTACY—Testator made several pecuniary bequests, including an annuity to his daughter of $25 per month for life. The residue was bequeathed to

charity, but this gift failed, and it went instead, by intestacy, to the daughter and a granddaughter. The latter, objecting to a plan of distribution proposed by the auditor, petitioned for immediate payment to herself of one-half of the entire estate, contending that the daughter's annuity merged in her intestate share. The Orphans' Court dismissed the petition, and decreed that $12,831.44 of the estate of $32,831.44 be retained to carry out the testator's delayed bequests, including the annuity, and that the balance of $20,000 be paid to the two distributees in equal shares. On appeal, *held*, affirmed. *In re Yeisley's Estate*, (Pa. 1948) 56 A. (2d) 205.

The opinion refers to no cases relied on by plaintiff, and it is difficult to see what her theory was. The court reasoned that the intestacy was only as to residue, and residue is that which is left after all specified gifts have been paid. Therefore, the daughter was entitled to receive the annuity plus an intestate share of what was left. Undoubtedly the court is on solid ground thus far. Testator did not contemplate that either of these people would share in the residue of his estate, and there could thus be no justification for preferring one over the other, either by charging the entire annuity against the plaintiff's share, or by holding it entirely extinguished. But the court is not supported by the cases in its further statement that there could be no merger because "where interests have been held to merge, the beneficiary possessed a life estate in the whole and also a vested interest in remainder."[1] There is ample authority that an annuity charged on land is extinguished when the annuitant inherits the land subject to the annuity.[2] Further, the Pennsylvania court had ancient authority of its own to the effect that when an annuitant takes an intestate share in the property subject to the annuity, his share of the estate is relieved of the annuity, which continues in an amount reduced *pro tanto* as a charge upon the remainder of the estate.[3] Since the legacy here was not set up as a spendthrift trust, there is no reason to delay payment to the daughter of half the fund which the court retained to support the annuity. Certainly, if she had so requested, she should have received immediate payment of her entire share of the estate, leaving the annuity to run in an amount of $12.50 per month against the plaintiff's half. It makes little difference whether this be called a result of the technical doctrine of merger; it is the solution dictated by common sense. The court's decree in the principal case subjects the daughter to the risk of never coming into full enjoyment of her inheritance during her lifetime, when that result is not necessary either to carry out the testator's intent or to protect the interests of any other person.

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[1] Principal case at 206.

[2] Cases are collected at 3 C.J., Annuities, § 19. Examples are Jenkins v. Van Schaak, 3 Paige (N.Y.) 242 (1832); Woods v. Gilson, 178 Mass. 511, 60 N.E. 4, 61 N.E. 58 (1901).

[3] Addams v. Heffernan, 9 Watts (Pa.) 529 (1840). The annuity was charged on land which went to the annuitant's brother. At the death of the brother the annuitant was one of five heirs. The court held the annuity extinguished to the extent of one-fifth its amount, while the remainder continued a charge on the shares of the other four heirs. Similar results were reached in Meeker v. Meeker, 137 App. Div. 537, 121 N.Y.S. 1051 (1910), though the court there did not call it merger.