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WILLS-RIGHT OF LEGATEE TO RENOUNCE TO DETRIMENT OF CREDITORS

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WILLS—RIGHT OF LEGATEE TO RENOUNCE TO DETRIMENT OF CREDITORS—A judgment creditor of an insolvent residuary legatee commenced supplementary proceedings to reach the legacy. While these proceedings were pending, some ten months after the will was probated, and after testifying that he had a one-third interest in the residuary estate, the legatee filed a formal renunciation of his interest. In the proceeding by the executors for a final accounting, the Surrogate's Court and the Appellate Division ruled that the renunciation was effective to divest the judgment debtor of his interest under the will. On appeal, *held,* reversed, two judges dissenting. *In re Wilson's Estate,* 298 N.Y. 398, 83 N.E. (2d) 852 (1949).

It is well established that a legatee may renounce a legacy and thereby prevent the vesting of any interest under the will.[1] Although there is a presumption of acceptance of a beneficial bequest, proof of renunciation will defeat this presumption.[2] This result is reached either on the theory that title vests immediately upon death of the testator, subject to being divested by renunciation,[3] or that the legacy leaves the title in abeyance until accepted or refused.[4] Any effective disclaimer relates back to the time of death and title passes as if the legacy had not been in the will.[5] The general approach has been that the right to renounce is absolute

[1] Bouse v. Hull, 168 Md. 1, 176 A. 645 (1935); Olsen v. Wright, 119 N.J. Eq. 103, 181 A. 182 (1935); Albany Hosp. v. Albany Guardian Society, 214 N.Y. 435, 108 N.E. 812 (1915).

[2] Chilcoat v. Reid, 154 Md. 378, 140 A. 100 (1928); Schoonover v. Osborne, 193 Iowa 474, 187 N.W. 20 (1922).

[3] Blake v. Blake, 147 Ore. 43, 31 P. (2d) 768 (1934).

[4] This theory has usually been expressed by analogizing a legacy to an offer. Albany Hosp. v. Albany Guardian Society, 214 N.Y. 435, 108 N.E. 812 (1915).

[5] Bradford v. Calhoun, 120 Tenn. 53, 109 S.W. 502 (1907); Dare v. New Brunswick Trust Co., 122 N.J. Eq. 349, 194 A. 61 (1937). Thus a renounced general legacy falls into the residuary estate; Myers v. Smith, 235 Iowa 385, 16 N.W. (2d) 628 (1944); and a renounced residuary legacy goes by intestacy: New York Trust Co. v. Halkin, 68 N.Y.S. (2d) 404 (1946).

and cannot be subjected to the control of courts or creditors, the relation back displacing any claims which meanwhile have attached to the interest of the legatee.[6] In absence of a collusive agreement to obtain a benefit in exchange for renunciation, the motive of the legatee is immaterial.[7] As it prevents title from vesting, the disclaimer is not considered a taxable transfer of property,[8] nor may it be set aside as a conveyance in fraud of creditors.[9] However, this right is subject to some restrictions. The renunciation must be clear and unequivocal,[10] and an acceptance, which may be implied from manifestations of ownership or control, is final.[11] If renunciation is not made within a reasonable time, the presumption of acceptance becomes conclusive.[12] The instant case is nominally based on this ground, although, as the dissent points out, a delay of ten months has not usually been regarded as unreasonable, in the absence of some element of estoppel. It would seem that the actual basis of the decision is the feeling that one should devote all available assets to the discharge of his obligations, and that he should not be permitted to divert property to the heirs-at-law indirectly, by renunciation, when he could not do so directly by assignment. These policy arguments have led one court to disregard the technical rule that title cannot vest without acceptance, and hold that a legatee can renounce only if the claims of his creditors may be otherwise satisfied.[13] Nevertheless, the weight of authority still supports the rule that neither creditors nor courts are empowered to prevent an insolvent legatee from renouncing his legacy, so long as he has not previously accepted it.

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[6] Lehr v. Switzer, 213 Iowa 658, 239 N.W. 564 (1931); Funk v. Grulke, 204 Iowa 314, 213 N.W. 608 (1927); 4 PAGE ON WILLS, 3d., Lifetime ed., §1405. The same rule applies to renunciation of a gift by an insolvent donee. Lynch v. Lynch, 201 S.C. 130, 21 S.E. (2d) 569 (1942).

[7] Schoonover v. Osborne, 193 Iowa 474, 187 N.W. 20 (1922); People v. Flanagin, 331 Ill. 203, 162 N.E. 848 (1928).

[8] Brown v. Routzahn, (C.C.A. 6th, 1933) 63 F. (2d) 914, cert. den., 290 U.S. 641, 54 S.Ct. 60 (1933).

[9] Bradford v. Calhoun, 120 Tenn. 53, 109 S.W. 502 (1907); Ohio Nat. Bank of Columbus v. Miller, (Ohio App. 1943) 57 N.E. (2d) 717; contra, Neeld's Estate, (Pa. 1940) 38 D & C 381.

[10] Peter v. Peter, 343 Ill. 493, 175 N.E. 846 (1931).

[11] Bogenrief v. Law, 222 Iowa 1303, 271 N.W. 229 (1937); Blake v. Blake, 147 Ore. 43, 31 P. (2d) 768 (1934).

[12] Strom v. Wood, 100 Kan. 556, 164 P. 1100 (1917); Sanders v. Jones, 347 Mo. 255, 147 S.W. (2d) 424 (1941). But it has been held that delay alone will not constitute acceptance. McGarry v. Mathis, 226 Iowa 37, 282 N.W. 786 (1938).

[13] In re Kalt's Estate, 16 Cal. (2d) 807, 108 P. (2d) 401 (1940), 25 MINN. L. REV. 951 (1941), 29 CALIF. L. REV. 531 (1941). See also 18 N.Y. UNIV. L. Q. REV. 142 (1940); 37 MICH. L. REV. 1168 (1939); 43 YALE L. J. 1030 (1934), for other criticisms of the decisions.