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WILLS-AN EXCEPTION TO THE PENNSYLVANIA MORTMAIN STATUTE

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WILLS—AN EXCEPTION TO THE PENNSYLVANIA MORTMAIN STATUTE—Testatrix and her husband entered into an agreement that the survivor should devise property owned by them as tenants by the entireties to charities of the Catholic Church. Ten years later, testatrix, who had survived her husband, executed a will in accordance with the agreement, and died within thirty days thereafter. The lower court held that the bequest was not invalid under the Pennsylvania statute voiding religious or charitable bequests made within thirty days of death.[1] On appeal, *held,* affirmed. Where a valid contract to make a will antedates the testator's death by more than the statutory period, the statute has no application. *In re Gredler's Estate,* (Pa. 1949) 65 A. (2d) 404.

[1] Act of June 7, 1917, Pa. Laws 403, §6, as amended by the Act of July 2, 1935, Pa. Laws 573, 20 Pa. Ann. Stat. (Purdon, 1930) §195.

The purpose of the Pennsylvania statute and similar statutes in other states[2] is to prevent deathbed bequests to religious or charitable institutions which might not be the result of the testator's deliberate intent.[3] In holding the statute inapplicable to the facts of the principal case, the court stressed the fact that the bequest was not tainted with the evils contemplated by the statute. However, the court also emphasized the fact that the contract to make a will was valid and enforceable,[4] and it is possible that this decision was intended to operate as a streamlined method of enforcement. The usual "specific performance" remedy for the breach of a contract to make a will, however, is to require those who receive legal title to the property as a result of the breach to hold the property in trust for the beneficiary of the contract.[5] This remedy has been employed in cases where the testator has made a good faith attempt to comply with the contract, but the bequest has been invalidated by some rule of law.[6] The principal case would stand alone in holding the bequest itself valid.[7] It would seem, therefore, that the court in the principal case is not attempting to enforce the contract, but is merely accepting it as sufficiently strong evidence of forethought and deliberation on the part of the testatrix to constitute an exception to the statute. If so, Pennsylvania may accept other forms of evidence as exceptions to the statute in the future.[8]

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[2] Idaho Code (1947) §14-326; N.Y. Consol. Laws, (McKinney, 1949) c. 13, §17; Mont. Rev. Codes (1935) §7015; Fla. Stat. (1941) §731.19; Ohio Gen. Code (Page, 1932) §§10504-5; Ga. Civ. Code (1910) §3851; Bordwell, "Statute Law of Wills," 14 IOWA L. REV. 173 (1929).

[3] Paxson's Estate, 221 Pa. 98, 70 A. 280 (1908); In re Fowler's Estate, 43 N.Y.S. (2d) 94 (1943); ZOLLMAN, AMERICAN LAW OF CHARITIES, §506 (1924).

[4] 4 PAGE, WILLS, §1707 (1941). Mutual promises to make a will are consideration for each other: Turnipseed v. Sirrine, 57 S.C. 559, 35 S.E. 757 (1900); Brown v. Webster, 90 Neb. 591, 134 N.W. 185 (1912). It makes no difference that a third person is to be the beneficiary: 4 PAGE, WILLS §1712 (1941), and cases cited.

[5] Matheson v. Gullickson, 222 Minn. 369, 24 N.W. (2d) 704 (1946); Equitable Trust Co. v. Hollingsworth, (Del. Ch. 1946) 49 A. (2d) 325; 4 PAGE, WILLS §1736 (1941) and cases cited.

[6] Hoffner's Estate, 161 Pa. 331, 29 A. 33 (1894); Green v. Orgain, (Tenn. Ch. App. 1895) 46 S.W. 477; Imthurn v. Martin, 150 Kan. 906, 96 P. (2d) 860 (1936).

[7] The court purported to follow Hoffner's Estate, 161 Pa. 331, 29 A. 33 (1894) which involved an almost identical fact situation. However, in enforcing the contract the court in that case expressly held the will to be invalid.

[8] Another exception to the statute was incorporated in the new wills act of April 24, 1947, Pa. Laws 89, 20 Pa. Ann. Stat. (Purdon, Supp. 1949) §180.7, which became effective January 1, 1948 and was therefore inapplicable in the principal case. "Unless the testator directs otherwise, if such a will or codicil shall revoke or supersede a prior will or codicil executed at least thirty days before the testator's death, and not theretofore revoked or superseded . . . and if each instrument shall contain an identical gift for substantially the same religious or charitable purpose, the gift in the later will or codicil shall be valid." Pennsylvania has also held that a codicil which reduces an amount previously bequeathed is valid though executed within 30 days of death: Appeal of Carl, 106 Pa. 635 (1884). However, codicils which increase the amount are invalid: Lightner's Appeal, 57 Pa. Super. Ct. 469 (1914).