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WILLS--SPECIFIC BEQUEST OF CAPITAL STOCK--DISPOSITION OF STOCK DIVIDENDS DECLARED BEFORE TESTATOR'S DEATH

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WILLS—SPECIFIC BEQUEST OF CAPITAL STOCK—DISPOSITION OF STOCK DIVIDENDS DECLARED BEFORE TESTATOR'S DEATH—In her will, testatrix made several specific gifts to Miss Dorothy Spencer, including "20 shares of stock of the Times-Picayune Publishing Company," the extent of her holding at the time the will was executed. Later, the company declared a 100 per cent stock dividend and issued testatrix a certificate for an additional 20 shares. When she died, testatrix had in her possession certificates for 40 shares of the corporation's stock. Ten legatees objected to a provisional account filed by her executor which listed the 40 shares as belonging to Dorothy Spencer, claiming that the additional shares should be converted into money and applied to a deficit in the amount available to pay the ten cash legacies. *Held,* the will passed the entire 40 shares to Miss Spencer because by its provisions testatrix bequeathed to Miss Spencer her proportionate interest in the Times-Picayune Publishing Company. That interest, formerly represented by 20 shares is now represented by 40 shares. *Succession of Quintero,* (La. 1946) 24 S. (2d) 589.

As pointed out by the dissenting justices, the decision in the principal case represents a departure from the rule applied by the majority of American courts to the disposition of dividends on stock bequeathed which were declared after the execution of the will and before its taking effect.[1] While dividends declared after testator's death belong to the specific legatee of shares of stock even though declared from surplus earned during testator's lifetime,[2] the rule has been general "that income and dividends, whether in cash, property, or a stock dividend, which accrue prior to the decease of the testator belong to him, and do not either become a part of the specific legacy or belong to the specific legatee unless a contrary intention is manifest in will or codicil." [3] For the most part, courts have refused to recognize a distinction between stock dividends and ordinary cash dividends,[4] while at the same time, there is abundant authority for allowing the additional shares to pass to a specific legatee where there has been a stock split-up after the execution of the will and prior to the death

[1] Principal case at 599.

[2] 4 PAGE ON WILLS 556, §1599c (1941), "A specific gift of stock carries all dividends whether of stock or cash declared after testator's death, even if earned before; but not to dividends declared before testator's death."

[3] Griffith v. Adams, 106 Conn. 19 at 25, 137 A. 20 (1927) (testator bequeathed shares of three corporations each of which declared stock dividends before his death, and by codicil he declared that one of the three dividends was to go to the specific legatees of this stock. Although this case is commonly cited as authority for the majority rule, it might be explained on the theory that the will shows intent that the other two stock dividends should not go to specific legatees.) See generally, 4 PAGE ON WILLS 556, §1599c (1941); 69 C.J., §1452, p. 402 (1934), and 42 YALE L. J., 973 (1933).

[4] In the principal case at 599 the dissenting justice remarks, "Counsel for the appellant conceded in argument that under our law if The Times Picayune Publishing Company had declared a cash instead of a stock dividend, such cash dividend would not have passed to the legatee at the death of the testatrix . . . . I cannot see the force or logic of the reasoning that would make this rule of law inapplicable in the instant case merely because the company, instead of declaring a cash dividend, issued such dividend in the form of additional stock of the corporation unless there were an express provision in our law making such a distinction." To the same effect see Hicks v. Kerr, 132 Md. 693 at 695, 696, 104 A. 426 (1918).

of the testator.[5] It would seem that the application of the majority rule which the Louisiana court here refused to follow frequently defeats the intent of the testator. It is probable that in most cases where the question arises, the testator did not consider the possibility of receiving a stock dividend. Had he done so, it is not unlikely that he would have desired the dividend to go to the legatee together with the original shares because a stock dividend, like a stock split-up, gives him no additional property.[6] The declaration of a stock dividend is little more than a bookkeeping device; the stockholder has exactly what he had before —a certain proportionate interest in the corporation.[7] He receives more paper certificates, but their market value and book value are diminished.[8] If the new

[5] 89 A.L.R. 1130 at 1131 (1934), "In cases in which an increase in the number of shares bequeathed has been effected by a change in the organization of the corporation or by a splitting of the original shares with a proportional reduction in par value after the making of the will and during the testator's lifetime . . . the courts hold that the increased number of shares, in proportion to the number of shares bequeathed, pass to the specific legatee." Fidelity Title & Trust Co. v. Young, 101 Conn. 359, 125 A. 871 (1924) [additional stock awarded specific legatees after 5 for 1 split-up; distinguished from case of stock dividend in Griffith v. Adams, 106 Conn. 19 at 26, 137 A. 20 (1927)]; In re Mandelle's Estate, 252 Mich. 375, 233 N.W. 230 (1930) (additional stock awarded legatee after 5 for 1 split-up and conversion to no par value stock); Bireley's Administrators v. United Lutheran Church, 239 Ky. 82, 37 S.W. (2d) 203 (1931) (additional stock awarded specific legatee after 4 for 1 split-up).

[6] The question of whether or not a stock dividend is income arises in two analogous fields. The Supreme Court held that a stock dividend is not taxable as income to the recipient in Eisner v. Macomber, 252 U.S. 189, 40 S.Ct. 189 (1920). A recent effort by the Commissioner of Internal Revenue to secure a reversal of the case on statutory grounds in Helvering v. Griffiths, 318 U.S. 371, 63 S.Ct. 636 (1943), was unsuccessful. See Rottschaefer, "Present Taxable Status of Stock Dividends in Federal Law," 28 MINN L. REV. 106 (1944), and 130 A.L.R. 408 (1941). In administration of trusts, "there is still a cleavage between those states which accept the Massachusetts rule that extraordinary dividends other than in stock of the corporation declaring the dividend are allocable to income and that stock dividends are allocable to principal, and those states which accept the Pennsylvania rule that whether the dividends are in cash or in stock they are to be treated as income so far as and only so far as they are declared out of earnings of the corporation during the period of the trust. Undoubtedly the trend has been toward the acceptance of the Massachusetts rule. Finally, Pennsylvania itself has by statute abolished the Pennsylvania rule by enacting in 1945 the Uniform Principal and Income Act, Section 5(1) which adopts the Massachusetts rule." Scott, "The Law of Trusts, 1941-1945," 59 HARV. L. REV. 157 at 192, 193 (1945). See also 2 SCOTT, TRUSTS, (Supp. 1946) §236.3.

[7] "A stock dividend really takes nothing from the property of the corporation, and adds nothing to the interests of the shareholders. Its property is not diminished, and their interests are not increased. After such a dividend, as before, the corporation has the title in all the corporate property; the aggregate interests therein of all the shareholders are represented by the whole number of shares; and the proportional interest of each shareholder remains the same." Gibbons v. Mahon, 136 U.S. 549 at 559, 10 S.Ct. 1057 (1890).

[8] The courts have regarded the fact that par value remains unchanged by a stock dividend as an important consideration and have generally disregarded changes in market value and book value of the shares. "Mr. Lounsbury's stock holding had been

stock does not pass with the old, in most cases the value of the gift will be decreased. The fact that the testator does nothing with the dividend stock in most cases between the time he receives it and the time of his death might well be taken as an indication that he regarded it as disposed of by his will. The view of the principal case that the testatrix intended to bequeath her proportionate interest in the company rather than the mere paper certificates, valueless in themselves, was the basis of the court's decision in a comparatively recent New Jersey case.[9] There the court refused to make the usual distinction between a stock split-up and a stock dividend and awarded the increased shares resulting from a 50 per cent stock dividend and a stock split-up of two and one-half new shares for each old one to the legatee, adding 2,200 shares to the original gift of 800 shares "which I now own and possess." The court said,[10] "The thing bequeathed, then—the interest in the corporation, represented by eight hundred shares of stock at the time of executing the will—was still owned and possessed by testator at the time of his death, slightly changed in form (*i.e.*, being then represented by three thousand shares of stock), but not sufficiently changed to indicate a change of testamentary intent." The majority rule is commonly justified by the proposition that no interest vests in the legatee until the death of the testator and that therefore all dividends until his death belong to him.[11] This might be said of any property bequeathed. The fundamental point of difference between the courts is on the meaning of a gift of shares of stock.[12] In reversing the usual construction and holding that the gift is of an interest in the corporation rather than the certificates representing that interest, unless a contrary intent appears in the will, the Louisiana and New Jersey courts have adopted a realistic attitude and one better calculated to carry out the intent of the testator, which, after all, is the court's primary objective in will cases.

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increased by way of a stock dividend, which presumptively had been paid for out of the surplus, while his original shares remained unchanged and of the same par value." Griffith v. Adams, 106 Conn. 19 at 26, 137 A. 20 (1927).

[9] Chase National Bank v. Elizabeth H. Deichmiller, 107 N.J.Eq. 379, 152 A. 697 (1930).

[10] Id. at 383.

[11] Principal case at 599. After stating the majority rule, the dissenting justice remarks, "This has been held to be true even though the stock dividend, declared during the testator's lifetime, is not paid until after his death, under the theory that a dividend belongs to the person owning the stock at the time it was declared." And in Griffith v. Adams, 106 Conn. 19 at 25, 137 A. 20 (1927), "Since the accumulated profits or surplus are but the increment and augmentation of the stock, the stockholder, while he lives, has his proportional interest in the surplus, and all dividends of whatever character, cash, property, or stock dividends, belong to him. A legatee to whom he has bequeathed a part of his stock is not entitled to the proportional part of the stock which his specific stock legacy bears to the entire capital stock since he has no vested interest in the specific legacy until the decease of the testator."

[12] "A share of capital stock is the interest or right of the owner in the management of the corporation in its surplus profits, and, on dissolution, in the balance of its assets after the payment of debts." 18 C.J.S., § 194a, p. 619 (1939).