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DESCENT AND DISTRIBUTION-NECESSITY OF ADMINISTRATION OF DECEDENTS' ESTATES-EFFECT OF STATUTES WHICH CHANGE THE DEVOLUTION OF PERSONAL PROPERTY

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DESCENT AND DISTRIBUTION—NECESSITY OF ADMINISTRATION OF DECEDENTS' ESTATES—EFFECT OF STATUTES WHICH CHANGE THE DEVOLUTION OF PERSONAL PROPERTY—It is almost an axiom of the common law that upon the death of a person the title to his personal property vests in his personal representative.[1] On the other hand it is equally axiomatic that title to real property descends directly to the heirs or devisees,[2] subject to the control of the personal representative and the probate court for purposes of satisfying the debts of the decedent in the absence of sufficient personalty.[3] A number of jurisdictions,

[1] This is the common-law rule which obtains, unless changed by statute, in all of the United States except Louisiana. There the civil-law doctrine of universal succession is in force, according to which title to all of the decedent's property vests immediately in the heir. See ATKINSON, WILLS 528-529 (1937), and Rheinstein, "European Methods for the Liquidation of the Debts of Deceased Persons," 20 IOWA L. REV. 431 (1935).

It is generally held today that the title vests in either the administrator or the executor at the time of his qualification or appointment by the probate court and the issue of letters testamentary pursuant thereto. This was always true of the administrator: Woolley v. Clark, 5 B. & Ald. 744, 106 Eng. Rep. 1363 (1822); Rand v. Hubbard, 4 Metc. (45 Mass.) 252 at 256 (1842). But at one time the rule with reference to executors was contrary, that is, an executor took title by virtue of the will, the authentication of the probate court merely confirming his title. But in most states that rule has been changed so that even as to executors, title is said to vest at the time of appointment by the probate court and by virtue of such appointment. See authorities collected in 1 WOERNER, THE AMERICAN LAW OF ADMINISTRATION, 3d ed., § 172 at p. 590, (1923). Title until the appointment is said to be in abeyance, but on the appointment of the personal representative it relates back for most purposes to the death of the decedent. See 2 WOERNER, id., § 187 at pp. 633-634.

[2] The reason for the difference in the treatment of personalty and realty is largely historical, feudal concepts dictating devolution of realty, while the ecclesiastic courts assumed jurisdiction over personalty. Woerner discusses the origin of distinction in 1 THE AMERICAN LAW OF ADMINSTRATION, 3d ed., c. 2, pp. 13-18 (1923).

[3] Subjecting realty to the payment of decedent's debts is universally a matter of statute. See Barry, "Modernizing the Law of Decedents' Estates," 16 VA. L. REV. 107 (1929), for a discussion of the New York type statute accomplishing this objective.

however, have by statute altered the common-law doctrine and have provided that title to both personalty and realty passes directly to the distributee. This is true in California[4] and Texas,[5] in the case of both testate and intestate property, while in a number of other jurisdictions intestate property alone is affected.[6] The manifest purposes of such statutory provisions are: first, to abrogate the largely historical difference in treatment of a decedent's real and personal property,[7] and second, to make it easier to dispense with administration of decedents' estates.[8] It is the purpose of this comment to evaluate the practical effect and operation of these statutes, insofar as they purport to change the common-law doctrine relative to the devolution of personalty, on the necessity for an administration of a decedent's personal property.

I

At the outset it is perhaps pertinent to analyze the legal situation in the absence of the type of statutory provision under discussion and compare it with the situation in which such statutes are in force. Look-

[4] Cal. Prob. Code (Deering, 1931) § 300, which reads in part as follows: "When a person dies, the title to his property, real and personal, passes to the person to whom it is devised or bequeathed by his last will, or, in the absence of such disposition, to the persons who succeed to his estate as provided in Division II of this code; but all of his property shall be subject to the possession of the executor or administrator and to the control of the superior court for the purposes of administration, sale or other disposition. . . ."

[5] Tex. Civ. Stat. Ann. (Vernon, 1935) art. 3314.

[6] Idaho Code Ann. (1932) § 14-102; Mont. Rev. Code (Anderson and McFarland, 1935) § 7072; N.D. Rev. Code (1943) § 56-0103; Okla. Stat. (1941) tit. 84, § 212; S.D. Code (1939) § 56.0102; Utah Code Ann. (1943) § 101-4-2; Wash. Rev. Stat. (1932) §§ 1364, 1366, as interpreted in Estate of Turner, 191 Wash. 145 at 148, 70 P. (2d) 1059 (1937).

The Montana statute is illustrative: "The property, both real and personal, of one who dies without disposing of it by will, passes to the heirs of the intestate, subject to the control of the district court, and to the possession of any administrator appointed by that court for the purposes of administration." Mont. Rev. Code (Anderson and McFarland, 1935) § 7072.

[7] As long ago as 1887 David Dudley Field advocated the abolition of the distinction in "Improvements in the Law," 22 AM. L. REV. 57 at 63. His solution, however, was to have title to both personalty and realty vest in the personal representative. This has been the development in England by virtue of the English Administration of Estates Act, 1925 Part II, § 9, 15 GEO. 5, 894, which reads as follows: ". . . real and personal property shall vest in the probate judge until administration is granted, to the same extent as personal property vested in the ordinary." While this solution may be practicable in England, where administration is generally a simple, quick, and inexpensive proceeding, it is doubted whether it would work well in this country. While it would abolish the distinction in the treatment of realty and personalty, it would not aid in dispensing with administration. See SIMES, MODEL PROBATE CODE 452 (1946).

[8] In general on the desirability of dispensing with administration and the steps which have been taken in that direction see 44 YALE L. J. 478 (1935); ATKINSON, WILLS 530-540 (1937); and SIMES, MODEL PROBATE CODE 557-681 (1946).

ing at it first from the standpoint of the distributee's interest,[9] it will be noted that in the jurisdictions having such statutes the distributee has legal title, but the property is subject to the possession of the personal representative and the control of the court: on the other hand, in the common-law jurisdictions, both legal title and the right to possession and control are in the personal representative as an officer of the court. It does not follow, however, that the distributee has no interest in the property.[10] The courts have seen fit to view the personal representative as a sort of trustee[11] holding bare legal title, for the purposes of administration, in trust for the distributee, who is conceived to have an "equitable" interest in the property,[12] and presumably may deal with it in the same manner as any other equitable asset. Viewing the situation from the standpoint of the personal representative, in the common-law jurisdiction he has legal title, subject to the trust noted above, while in the statutory jurisdiction, although he does not have legal title, he "has a very substantial interest in the estate during the course of administration, though it may be described in terms of right to possession or a power of disposition rather than in terms of title."[13] In the situation where there has been no administration, and no personal representative has been appointed, the courts having a statute at their disposal have no difficulty in saying simply that title has vested in the distributee, though it may be defeasible in part at the claim of creditors of the decedent. But in the absence of such statute there is a logical or theoretical problem of the vesting of title. If it is in abeyance how will it eventually vest in the distributee? The doctrine, of course, contemplated an administration, but courts faced with the fact that frequently there is is no administration in this country[14] have had to

[9] The term "distributee" is used throughout this comment as a convenient term to indicate the persons who succeed to a decedent's property and is intended to include devisees, legatees, next of kin, and beneficiaries generally unless the context indicates to the contrary.

[10] It should be noted that an "interest in the property" is more than a mere right to enforce proper administration and distribution of the property on completion of administration.

[11] See Holmes, "Executors," 9 HARV. L. REV. 42 (1895), for the history of the development of this concept.

[12] Brewster v. Gage, (C.C.A. 2d, 1929) 30 F. (2d) 604, cert. granted, 279 U.S. 831, 49 S. Ct. 418 (1929), aff'd., 280 U.S. 327, 50 S. Ct. 115 (1930); for further discussion of the heir's interest before distribution, see Chase National Bank v. Sayles, (C.C.A. 1st, 1926) 11 F. (2d) 948, 48 A.L.R. 207 at 223 (1927), cert. denied, 273 U.S. 708, 47 S. Ct. 99 (1926). The interest of the distributee is, of course, "equitable" only in the sense that it is analogous to an equitable interest. Normally the interest is enforceable in the probate court rather than in a court of equity. But for convenience the courts designate the interest as "equitable."

[13] SIMES, MODEL PROBATE CODE 453 (1946).

[14] It has been estimated that there is one administration for every four deaths, Powell and Looker, "Decedents' Estates," 30 COL. L. REV. 919 (1930).

devise some rational way of getting title to the distributee. The problem is, of course, purely formalistic, and the courts have realistically faced it by holding that where administration would serve only to transfer title to the distributee, title can be said to vest automatically in those who have the "equitable" interest.[15] It is quite apparent, however, that the presence of the type of statute here under consideration makes the theory much simpler and greatly clarifies the situation in which there has been no administration. It is doubtful, however, whether the absence of such a statute, as a practical matter makes administration any more necessary, since the same end result is reached, albeit on different logic. That this is proper is apparent when it is remembered that the primary purposes of administration are (1) the collection of the assets of the decedent, (2) payment of the decedent's creditors, and (3) distribution of the property remaining to the distributees. Providing a mere conduit for passage of title to the personal property is not per se a primary purpose of administration.[16]

2

Having thus viewed the general situation, attention may now be directed to more specific points to evaluate the extent to which the statutes under investigation bring about a change in the results reached at common law. The first type of situation to be considered is that in which the distributee finds it necessary to bring an action to collect the decedent's personal property. By far the most likely action of this sort today will be one which is brought to collect a debt due or an obligation owed to the decedent; that is, enforcement of a chose in action. But it frequently occurs also that collection of tangible personal property is necessary. In the common law jurisdictions it is generally stated that the distributees cannot maintain an action in their own names to recover assets of the estate without administration.[17] Such suits must be brought by the personal representative.[18] The usual

[15] Bell v. Farmers and Traders Bank, 188 Mo. App. 383, 174 S.W. 196 (1915); Powell v. Pennock, 181 Mich. 588, 148 N.W. 430 (1914); Fretwell v. McLemore, 52 Ala. 124 (1875). The theory has often been stated that the legal title should automatically vest in the beneficiary by analogy to the dry trust.

[16] Atkinson states, in fact, that: ". . . the reason why title to chattels does not devolve directly upon legatees or distributees is that the law deemed it advantageous that some one person should carry out these three functions, particurarly that of seeing that decedents' creditors are satisfied before his property passes into the control of the beneficiaries of his estate. . . ." ATKINSON, WILLS 528 (1937).

[17] Roath v. Smith, 5 Conn. 133 (1823); Leamon v. McCubbin, 82 Ill. 263 (1876); Pryor v. Ryburn, 16 Ark. 671 (1856); Gardner v. Gantt, 19 Ala. 666 (1851); Buchanan v. Buchanan, 75 N.J. Eq. 274, 71 A. 745 (1909), 22 L.R.A. (n.s.) 454 (1909); see also 15 L.R.A. 490 (1892).

[18] Unless the personal representative refuses to administer or collect claims. McChord v. Fisher's Heirs, 13 B. Mon. (52 Ky.) 193 (1852), Moore v. Waldstein, 74

reason given is that title vests in the personal representative; therefore only he can enforce the claims. However, it is conceded that in many jurisdictions there is an exception to the general rule where it affirmatively appears that there are no claims or debts of any kind outstanding against the estate.[19] It must be noted, however, that a few jurisdictions have not recognized this exception.[20] Another exception has been made where the decedent is an infant and is incapable of contracting debts.[21] Thus it is evident that in the exceptional cases referred to, the distributee has been allowed to maintain an action in his own name, and that the main concern of the courts has been the protection of creditors. Denying the right to the distributee to maintain an action is in the interest of protecting creditors and is not based merely on his not having legal title. The fact that protection of creditors is the primary reason for administration is further evidenced by various types of statutes that dispense with administration where the creditor of the decedent would not be able to satisfy himself out of the assets of the estate in any event: for example, those which dispense with administration where the assets of the estate are sufficient only to pay the widow or minor children their statutory share exempt from creditors' claims, or where the estate does not exceed certain specific sums.[22] These various exceptions to the rule either with or without the aid of statute are evidence of the little concern given the location of legal title where creditors can be protected[23] or are not en-

Ark. 273, 85 S.W. 416 (1905); Austin v. Snider, 17 Colo. App. 182, 68 P. 125 (1902); Hatton v. Howard Braiding Co., 47 R.I. 47, 129 A. 805 (1925); N.M. Stat. Ann. (1941) c. 33, § 125.

[19] Fretwell v. McLemore, 52 Ala. 124 (1875); Metropolitan Life Ins. Co. v. Fitzgerald, 137 Ark. 366, 209 S.W. 77 (1919); see also cases collected in 22 L.R.A. n.s.) 454 at 457 (1909), and 15 L.R.A. 490 at 493 (1892). Generally see 2 WOERNER, THE AMERICAN LAW OF ADMINISTRATION, 3d ed., § 201 (1923); 70 A.L.R. 386 at 389-393 (1931); 11 R.C.L., § 10, p. 27.

[20] Leamon v. McCubben, 82 Ill. 263 (1876); Brobst v. Brobst, 190 Mich. 63, 155 N.W. 734 (1916); Weis v. Kundert, 172 Minn. 274, 215 N.W. 176 (1927). Generally see 2 WOERNER, THE AMERICAN LAW OF ADMINISTRATION, 3d ed., § 200 (1923).

[21] Graves v. Davenport, 45 Colo. 270, 100 P. 429 (1909); Lynch v. Rotan, 39 Ill. 14 (1865); McCleary v. Menke, 109 Ill. 294 (1884).

[22] For a collection of these statutes generally, see Basye, "Dispensing with Administration," 44 MICH. L. REV. 329 (1945); SIMES, MODEL PROBATE CODE 592 (1946); 2 WOERNER, THE AMERICAN LAW OF ADMINISTRATION, 3d ed., § 202 (1923).

[23] It should be noted that one of the objections to allowing the distributee to maintain an action in his own name even though he alleges and proves that there are no debts owed by the estate is that the adjudication to that effect is, of course, not binding on the creditor, who is not party to the suit. But this objection, though well-taken, again shows that the real reason for denying the distributee the right to maintain the action is consideration for the creditor, not concern over the state of the title. A few devices have been used to overcome the objection and allow the dis-

titled to protection. On the other hand, in those jurisdictions having statutes providing for passing of title directly to the distributee, a court, if it is to deny to a distributee the right to maintain an action to collect the assets of the decedent, must do so on some other ground than his lack of title, since the statute gives him title. It by no means follows, however, that the courts in those jurisdictions will not deny him the right on the same considerations, primarily protection to creditors of the decedent, since the distributee gets title subject to the control of the court. Thus the California court decided that a distributee could not bring an action in his individual capacity to collect debts due the estate or to preserve title to personalty in the absence of some default or fraud or refusal on the part of the administrator to collect the property of the estate.[24] It was argued there that the distributee should be able to maintain the action in question since the statute vested title in him. But the court pointed out that his title was subject to the control of the personal represenative and the probate court for the satisfaction of creditors' claims. A similar result has been reached in Texas,[25] and in South Dakota.[26] Thus the end result as a practical matter is the same whether there is a rule which vests title to personalty in the personal representative or a statutory provision vesting such title in the distributee.

3

The second major problem to be considered is the position of the distributee with respect to title to personalty of decedent which is in his possession. Perhaps one of the best methods of evaluating the effect of the statutes under discussion is to survey the cases in which the distributee has purported to transfer title to such property. At the outset it should be remembered, as noted above, that in common law jurisdictions the distributee has an "equitable" title which may merge with legal title by a process of self-execution analogous to the dry trust. It is quite evident then, that a distributee may under that theory be able to transfer a good title. The Illinois court has conceded that a sole distributee may without administration make a valid sale of prop-

tributee to maintain an action, such as requiring the distributee to give an indemnity bond to the defendant: Kent v. Davis, 89 Ga. 151, 15 S.E. 457 (1892); Conklin v. Alabama & Vicksburg Ry. Co., 81 Miss. 152, 32 S. 920 (1902); or providing for notice by advertisement to interested parties: Roberts v. Garbett, 54 R.I. 150, 171 A. 241 (1934).

[24] Holland v. McCarthy, 177 Cal. 507, 171 P. 421 (1918).

[25] Youngs v. Youngs, (Tex. Comm. App. 1930) 26 S.W. (2d) 191; Richardson v. Vaughn, 86 Tex. 93, 23 S.W. 640 (1893). The court held that an allegation that there had been no administration and that none was needed was necessary to allow the distributee to maintain as action to collect personal property of the decedent.

[26] Mears v. Smith, 19 S.D. 79, 102 N.W. 295 (1905).

erty received from her husband's estate.[27] The action there was between the distributee and the transferee, the former attempting to collect the purchase price and the latter resisting on the ground that he had not obtained title in the absence of an administration. In other actions between distributee and transferee at least two courts have reached a contrary result.[28] But in each of these cases the reason for denying that title had passed was said to be the existence of outstanding debts of the decedent. Thus again the main concern of the court was the protection of creditors rather than the bare question of title. The very meagerness of authority on this precise point would seem to indicate that where the single question of title has appeared it has seldom been doubted that the distributee had title and could pass it to a transferee. The larger group of cases holding that a distributee cannot acquire or pass title without administration involve actions between a subsequently appointed administrator and the transferee or between a subsequently appointed administrator and the distributee himself.[29] The very appointment of an administrator suggests that one of the purposes of administration has not been accomplished and that there is consequently a need for administration beyond that of providing a mere conduit for title.[30] In fact some courts have even denied administration where no debts are shown and where a satisfactory distribution of the property has been made,[31] or have ordered an administration already started to be discontinued.[32] In a number of states the denial of administration in this situation has been sanctioned by statute.[33] Thus it is again apparent that in the common-law jurisdictions administration is never necessary for the sole purpose of providing a conduit of title.[34]

[27] Cross v. Carey, 25 Ill. 461 (1861).

[28] Lounsbury v. Depew, 28 Barb. 44 (1858); Elders v. Vauters, 4 Desaus. Eq. (S.C.) 155 (1811).

[29] Smith v. Wilson, 17 Md. 460 (1861); Whit v. Ray, 26 N.C. 19 (1843); Morton v. Preston, 18 Mich. 60 (1869).

[30] Where an administrator has been subsequently appointed and there has already been a satisfactory distribution of the decedent's property and the decedent left no debts, it has been held that the administrator could not recover the assets of the estate from the distributees: Harris v. Seals, 29 Ga. 585 (1859); Henderson v. Clark, 27 Miss. 436 (1854); Lewis v. Lyons, 13 Ill. 117 (1851); Woodhouse v. Phelps, 51 Conn. 521 (1884). Nor can the administrator in this situation recover the property from transferees of the distributee: Walworth v. Abel, 52 Pa. St. 370 (1866); Giles v. Churchill, 5 N.H. 337 (1831).

[31] Faulkner v. Faulkner, 23 Ariz. 313, 203 P. 560 (1922); Rogers v. Barbee, (Tex. Civ. App. 1930) 32 S.W. (2d) 666; In re Riley, 92 N.J. Eq. 567, 113 A. 485 (1921); In re Carter's Estate, 113 Okla. 182, 240 P. 727 (1925).

[32] Adamson v. Parker, 74 Ark. 168, 85 S.W. 239 (1905); Pullis v. Pullis, 127 Mo. App. 294, 105 S.W. 275 (1907); Murphy v. Murphy, 42 Wash. 142, 84 P. 646 (1906).

[33] For a collection of these statutes see 44 MICH. L. REV. 329 at 385-387 (1945); SIMES, MODEL PROBATE CODE 628-630 (1946).

[34] Spann v. Jennings, 1 Hill Eq. (S.C.) 324 (1883); Huson v. Wallace, 1 Rich.

The distributee is deemed to have title so long as the purposes of administration have been met. On the other hand, in the jurisdictions having statutes that expressly give title to the distributee, there can, of course, be no argument that he lacks title. Again it must be noted that his title is subject to the control of the court for purposes of administration. In those states it might become a question of whether the personal representative could pass a good title in a sale of personal property to meet creditors' claims. The general holding is, as might be expected, that though legal title passes immediately to the distributee, the personal representative has power to dispose of or sell the decedent's personal property to meet his debts and can transfer a good title to the purchaser.[35] Thus, reviewing the cases in which the title of the distributee has been questioned, it appears again that the practical effect of these statutes under investigation is of little significance.

The foregoing analysis indicates persuasively that ". . . the dogma that personal property passes to the personal representatives is, as a practical matter, more frequently false than true. This rule is more often honored in the breach than the observance."[36] It appears further that it is more than a mere matter of the exceptions swallowing up the rule. On the contrary it is doubtful whether the rule itself is any more than a convenient method of expressing a result based on other considerations, a legalistic formula to be applied to compel administration in those cases in which it is necessary to the accomplishment of one or more of the fundamental purposes of administration, and to be ignored, or, in the usual parlance, not applied because of exceptional circumstances, where the fundamental purposes of administration have been fulfilled. This being so, the statutes which purport to change the devolution of title to personalty, passing it directly to the distributee but subjecting the property to the control of the personal representative and of the court for purposes of administration, will have little practical effect insofar as the necessity of administration is concerned, beyond altering the theoretical basis for the resulting decision. In that regard it must be conceded that this type of statute will clarify the reasoning and make the logical explanation simpler and less artificial. For this reason, as well as because it eliminates the difference in the treatment of personalty and realty at common law, the statutes are commendable.

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Eq. (S.C.) 1 (1844). In the situations where title is recorded, however, such as corporate stocks, automobiles, and similar chattels, administration may be necessary in order to change the registration; but frequently even there it has not been necessary. Statutes in many states provide a method of changing such registration without administration. See SIMES, MODEL PROBATE CODE 653-656 (1946); 44 MICH. L. REV. 329 at 405-406 (1945).

[35] In re Vance's Estate, 152 Cal. 760, 93 P. 1010 (1908).

[36] ATKINSON, WILLS 539 (1937).