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Decedents' Estates And Trusts—Revocation of Letters of Administration Within Surrogate's Jurisdiction

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COURT OF APPEALS, 1959 TERM

committed before July 1, 1926, but denied such compensation to convicts whose crimes were committed after that date.⁵ Thus, in the *Denno* case the Court disposed of Warden Denno's contention that, compensation being no longer a matter of right but of grace, the Prison Board in its discretion could deny Vanilla his previously granted compensation. Vanilla committed his crime in 1920 when, by the express terms of the 1926 amendment to Section 230 of the Prison Law, compensation was still a matter of right.

The case settles the law only as to compensation of criminals who committed their crimes between the years 1916 and 1926. Such compensation, once granted, cannot be taken away except, as mentioned above, for violation of prison rules, escaping from prison, or being convicted of a felony committed after release on parole.⁶ Though the Court expressly limited its decision to crimes committed between the years 1916 and 1926, the distinction between compensation and commutation in the 1916 statute by which compensation was a matter of right has in subsequent amending legislation entirely disappeared.⁷ The case provides a strong indication that, as to crimes committed after July 1, 1926, compensation will be treated as commutation always has been—as a matter not of right but of grace.

DECEDENTS' ESTATES AND TRUSTS

REVOCAION OF LETTERS OF ADMINISTRATION WITHIN SURROGATE'S JURISDICTION

An administratrix, who was the plaintiff in a cause of action for wrongful death and for pain and suffering of the deceased, had obtained letters of administration from the Surrogate on the bona fide representation that she had been the wife of the deceased. The trial court dismissed the cause of action and revoked the letters of administration upon discovering that the plaintiff was not the legal widow of the decedent since her marriage to him was void. The Court of Appeals, in *Stolz v. New York Central Railroad Company*,¹ unanimously reversed an Appellate Division affirmance,² holding that the revocation of the letters was solely within the Surrogate's discretionary powers.

The relationship of the Surrogate's Court Act, Section 43, with Sections 99 through 101 of the same Act was the determining factor in the case. According to Section 43, where the jurisdiction of a Surrogate Court to make a determination is drawn in question collaterally, the jurisdiction is presumptively, and in the absence of fraud or collusion, conclusively, established by an allega-

5. Former N.Y. Prison Law § 230 as amended in 1926.

6. Former N.Y. Prison Law §§ 236, 238, 243.

7. The distinction ceased with the 1926 amendment to § 230 of the Prison Law. No evidence of the distinction appears presently in Art. 9 of the Correction Law.

1. 7 N.Y.2d 269, 196 N.Y.S.2d 969 (1959).

2. 6 A.D.2d 643, 180 N.Y.S.2d 88 (3d Dep't 1958).

tion of the jurisdictional facts used in the Surrogate's Court. The Court of Appeals reached its result in the instant case, however, even though the existence of constructive fraud, namely the innocent misrepresentation of the plaintiff as the decedent's widow, was conceded.

Two cases involving constructive fraud wherein letters of administration were revoked were relied on by the respondent but were distinguishable from the present case. In one, *Lapiedra v. American Sur. Co.*,³ it was held that an untrue allegation, though innocently made, constituted a fraud upon the Surrogate which directly affected jurisdiction and therefore permitted the trial court to revoke the letters where letters of administration *de bonis non* had been issued upon the erroneous allegation that prior letters had been revoked.⁴

The second case, *Hoes v. New York, N. H. & H. R.R. Co.*,⁵ involved a plaintiff who had procured the letters by claiming the existence of assets of the decedent within the state. When the trial court found that these assets, which were trivial in value, were brought into the state after the decedent's death to lay a foundation for application for the letters, it revoked the letters. The theory which permitted revocation was that a constructive fraud resulted from the plaintiff's innocent but erroneous judgment of his legal rights.

These two cases were instances where the constructive fraud affected the jurisdiction of the Surrogate over the subject matter of the letters. In both instances the presumption of jurisdiction under Section 43 was overcome by the presence of the fraud. In the *Lapiedra* case the continued existence of the earlier set of letters eliminated the Surrogate's jurisdictional power to issue a second set. The entry of property into the state after the decedent's death, in the *Hoes* case, for the purpose of giving the Surrogate jurisdiction was an improper method which destroyed the possibility of jurisdiction over the subject matter.

Since the Court's power to consider the disposition of the property in the instant case was not challenged, the constructive fraud therein did not affect the Surrogate's jurisdiction over the subject matter at all. The presumption of the Court's jurisdiction under Section 43 was not rebutted. The Court therefore conclusively had and retained jurisdiction over the subject matter. The constructive fraud found here merely concerned the qualification of the plaintiff to retain her position as administratrix of an estate over which the Court had jurisdiction.

Since the jurisdictional requirements of Section 43 were met, the Court looked to Section 99, subdivisions one and four, and Section 101 of the Surrogate's Court Act to find that the Surrogate has the discretion, notwithstanding the misrepresentation, to retain the plaintiff as administratrix. The Court of Appeals, therefore, held that the trial court should have suspended the plain-

3. 247 N.Y. 25, 159 N.E. 710 (1928).

4. De bonis non: of the goods not already administered.

5. 173 N.Y. 435, 66 N.E. 119 (1903).

tiff's action for wrongful death and for pain and suffering of the decedent pending action by the Surrogate. Once the Surrogate determined to retain the plaintiff as administratrix or to appoint someone to replace her, the wrongful death and pain and suffering actions could continue.

This interpretation of the Surrogate's Court Act, Sections 43 and 99 through 101, brings about a desirable result. The administratrix receives no personal gain if she is retained as administratrix because any recovery on the action for wrongful death would go to the lawful widow or next of kin of the decedent,⁶ and recovery in the pain and suffering action would go into the decedent's estate.⁷ On the other hand, retention or replacement of the administratrix, as distinguished from dismissal of the action and revocation of the letters, can serve to save the cause of action, as it did in the instant case, where a dismissal would bar a subsequent action because of the statute of limitations.⁸

MENTAL DELUSION AS BASIS FOR TESTAMENTARY INCAPACITY

There can be no doubt that a testator has the right to dispose of his estate as he wishes and neither the reasonableness nor the justice of the disposal shall effect his determination. The law will, if there is no lack of testamentary capacity nor any showing of undue influence or fraud, expedite his wishes as he has decreed.⁹ Where there is a showing, however, of testamentary incapacity which has affected a disposition made under the will, the law will not permit the will to be probated. The party making the claim of testamentary incapacity has the burden of proving it,¹⁰ but once evidence has been produced which establishes an unsound mental condition which could have affected the disposition of the testator's estate, then the proponents have the obligation of providing a reasonable basis for the testator's belief. It is not necessary that testator be completely insane, if it can be shown that at the time of the making of the will he was laboring under a morbid delusion for which there was no reasonable basis.¹¹ Therefore, once evidence has been produced which allegedly establishes an unsound mental delusion and an explanation thereof has been offered, the issue of testamentary incapacity becomes a question of fact to be determined by the jury.

In the case of *In re Honigman's Will*,¹² the testator, in a will dated just one month before his death, left his wife only so much of his estate as he was required to by statute.¹³ The wife contested the probate of the will on the grounds that the testator was suffering from a mental delusion, viz., that she

6. N.Y. Dec. Estate Law § 130.

7. N.Y. Dec. Estate Law § 120.

8. N.Y. Civ. Prac. Act § 20.

9. *Clapp v. Fullerton*, 34 N.Y. 190 (1866).

10. *Dobie v. Armstrong*, 160 N.Y. 584, 55 N.E. 302 (1899).

11. *American Seamen's Friend Soc. v. Hopper*, 33 N.Y. 619 (1865).

12. 8 N.Y.2d 244, 203 N.Y.S.2d 859 (1960).

13. N.Y. Dec. Est. Law § 18.