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Decedents' Estates and Trusts—Determination of Undue Influence

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The effect of this case on the substantive law of future interests is eliminated concerning future dispositions by the recent amendment to the Personal Property Law.[41] The case does stand, however, as an example of the lengths to which the Court will go in upholding trusts which apparently violate the rule against perpetuities.

DETERMINATION OF UNDUE INFLUENCE

Undue influence in the execution of wills is a concept that does not lend itself to any precise definition. Generally the courts regard it as something that amounts to a destruction of free agency.[42] Thus, it presents a subjective question in each case,[43] which seldom, if ever, is capable of proof by direct evidence. This being true, it is generally recognized in New York, as well as other jurisdictions, that undue influence may be proved by circumstantial evidence.[44] Therefore, under our jury system, the question that usually faces appellate courts is whether the evidence was sufficient to support a finding of undue influence.

This precise question was before the Court in *In re Walther's Will.*[45] Here, the testatrix was an elderly spinster who became afflicted with senile psychosis several years prior to her death. She was declared incompetent and her sister, the proponent and chief beneficiary of her will, was appointed committee. During this period the testatrix was removed from her apartment and spent her last days in her sister's home except for several intervals of confinement to a nursing sanitarium. Sixteen months prior to her death she executed a will to which a nephew objected on probate on the ground that it was the product of undue influence exercised by the sister. The Appellate Division affirmed the jury finding of undue influence,[46] and the Court of Appeals (5-2) reversed and remanded for probate.[47]

The majority, in holding that there was insufficient evidence to sustain the jury finding, placed a great deal of emphasis on the fact that the beneficiary was not the unnatural object of the testatrix's bounty. It pointed out that the sister was probably her most intimate companion while the contestant was an inattentive nephew.

The majority was aided in their finding of insufficiency of evidence by two rules of evidence followed by New York courts. The first of these is that in an allegation of undue influence the burden of proof is upon the party who

41. *Supra* note 31.

42. Children's Aid Society of City of New York v. Loveridge, 70 N.Y. 387 (1877); Rollwagen v. Rollwagen, 63 N.Y. 504 (1875); Smith v. Keller, 205 N.Y. 39, 98 N.E. 214 (1912).

43. ATKINSON, HANDBOOK ON THE LAW OF WILLS § 55 (2d ed. 1953).

44. In re Dowdle, 224 App. Div. 450, 231 N.Y. Supp. 320 (4th Dep't 1928), *aff'd* 256 N.Y. 629, 177 N.E. 169 (1931).

45. 6 N.Y.2d 49, 188 N.Y.S.2d 168 (1959).

46. 6 A.D.2d 858, 175 N.Y.S.2d 1008 (4th Dep't 1958).

47. *Supra* note 45.

asserts it.[48] The second was enunciated in *In re Ruef*,[49] wherein the Court said that an inference of undue influence cannot be drawn from evidence that is not inconsistent with an inference that it was decedent's voluntary intent. Aside from the mental condition of the testatrix, it is difficult to say that the evidence was inconsistent with an inference of voluntary disposition by the testatrix.

The two dissenting justices rendered no opinion, but it can be surmised that their thinking was affected by the mental condition of the testatrix. It is generally accepted that a mind impaired by age or infirmity is much more susceptible to domination than one which is strong and vigorous.[50] It would appear that where this condition exists the dissenting justices would sustain a jury finding of undue influence on evidence of a less substantial nature than is required in the normal case.

There are probably two factors that make this a most difficult area of law. The first of these is the indefinable nature of the concept itself, and the second is the jury element. Of these two, the latter has rendered the law more uncertain. A jury often times attempts to rewrite a will merely because it disagrees with the disposition made by the testator.[51] Therefore, the courts are obliged to require evidence of a very substantial nature before they will sustain a jury finding of undue influence.

WITHDRAWAL OF SECTION 18 ELECTION

In affirming an Appellate Division order dismissing objections to the accounting of husband's executors,[52] the majority of the Court of Appeals in *In re Allan* held that a notice of election under Section 18, Decedent Estate Law, may be withdrawn after the expiration of the statutory period for filing such an election.[53] In reaching its decision, the Court quoted *In re Clark's Estate*[54] to the effect that the purpose of the statutory limitation on filing a notice of election is, ". . . to assure timely notice to those charged with the administration of the estate that the surviving spouse is dissatisfied with the terms of the will and asserts the additional right accorded by the statute, thus enabling them to be on guard against any method of dealing with the assets in their charge which does not take into consideration the statutory rights of the elector." In the matter of the withdrawal, however, the court reasoned that the same effect on the executor's account would be occasioned

48. In re Schillinger, 258 N.Y. 186, 179 N.E. 380 (1932); In re Kindberg, 207 N.Y. 220, 100 N.E. 789 (1912).

49. 180 App. Div. 203, 167 N.Y. Supp. 498 (2d Dep't 1917), *aff'd* 223 N.Y. 582, 119 N.E. 1075 (1918).

50. *Ibid.*; Atkinson, *op. cit. supra* note 43, § 54.

51. For an analysis of the problem see Note, 50 MICH. L. REV. 748 (1952).
748 (1952).

52. The widow died, and her executors were substituted in this action.

53. 5 N.Y.2d 333 184 N.Y.S.2d 613 (1959); Judges Desmond and Dye dissented in part; Judge Van Voorhis dissented.

54. 166 Misc. 909, 3 N.Y.S.2d 364 (Surr. Ct. 1938). The *Clark* opinion was written by Surrogate Wingate, a member of the Decedent Estate Commission which wrote Section 18.