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Decedents Estates And Trusts—Escheat of Decedent Veteran's Estate

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It is the writer's opinion that the word "provision" does not relate to an intestate share, but merely to an express bequest of the will itself. There is, therefore, no conclusive proof that the testator did not contemplate, or in fact desire that Charles Gautier retain the possibility of an intestate share. As the Court points out, at least he evinced no intention that he was to be excluded as next of kin. A court may not rewrite a will to avoid intestacy.[36] This appears to be especially true where such a rewriting was not clearly desired by the testator.

Escheat of Decedent Veteran's Estate

Under a federal escheat statute,[37] federal pension benefits paid to an incompetent beneficiary who dies intestate with no surviving distributees, are to escheat to the United States if, under the laws of the state wherein the beneficiary last resided, they would escheat to the state.

In *In re Hammond's Estate*,[38] both the state and federal governments sought control of the federal pension funds which comprised the estate of an incompetent veteran, who died intestate with no surviving distributees.

The state contended that there was no escheat of these unclaimed estate funds to the state, that under the present New York laws the state does not assert absolute title to such funds but takes possession and holds them in a custodial capacity for the benefit of unknown living distributees who may forever come forward and claim them.[39] Since, technically, the term escheat means that title to such property must pass to the state absolutely,[40] with all rights present in unknown surviving distributees cut off forever,[41] there is no longer any escheat under New York laws and therefore the federal escheat statute does not apply to the estate funds in question to determine their disposition.

In unanimously rejecting the state's argument, the Court of Appeals stated that the term "escheat" in the federal statute must not be given such a narrow interpretation as to defeat the manifest purpose of the statute, which is to secure for the United States the use and benefit of funds originally paid to federal beneficiaries which would otherwise become the property of the state.

Since, under both the federal escheat statute[42] and present New York laws,

36. In re Englis' Will, 2 N.Y.2d 395, 161 N.Y.S.2d 39 (1957).
37. Act of July 3, 1930, ch. 849, 450(3), 49 STAT. 993. (Now 71 STAT. 136 (1957), 38 U.S.C. 3502(d), Supp. V 1958).
38. 3 N.Y.2d 567, 170 N.Y.S.2d 505 (1958).
39. N. Y. SURR. CT. ACT §272.
40. Johnson v. Spicer, 107 N.Y. 185, 80 N.Y.S.2d 125 (1887); Crowner v. Cowdrey, 139 N.Y. 471, 68 N.Y.S.2d 493 (1893).
41. N. Y. ABANDONED PROPERTY LAW §§201, 203.
42. See Opinion of the Solicitor of the Veterans Administration, 1946.

the funds in question are subject forever to the claims of the decedent's unknown distributees, the state is the only party affected by the Court's decision. Certainly, between the state and federal governments, the latter has, in light of the federal statute, a superior claim to the use and benefit of the funds that arose from its beneficent acts.

Trusts—Stock Dividends and Stock Splits for Purposes of Distribution Under Trust Instrument

In 1918, Wood Fosdick, by deed of trust, created a trust for each of two nieces. He provided that the income from each trust should be paid to the niece for her life and upon her death to a grand niece for life, with the remainder to the settlor if he be living, or to his executor if he be dead. The deed of trust also provided that any and all stock dividends received by the trusts should be turned over to the settlor if he be living, or to his executor if he be dead. The dividends were to be free and clear of all trusts. The settlor has since died and the sole residuary legatee of his estate is the American Museum of Natural History, which, as such, has succeeded to the settlor's interest in stock dividends declared upon stock held by the trusts.

Common stock, issued by General Electric, was included in the stock held by the trusts. In 1954 that corporation wished to reduce the market value of its stock, and to establish a low par value for each share of stock in order to facilitate more frequent and less expensive transfer of its stock.[43] To accomplish these ends the stockholders authorized the corporation to change its thirty-five million no-par shares into one hundred and five million five dollar par value common shares. This necessitated a transfer of earned surplus to capital, which more than doubled the capital account, in order to bring the total capital account up to the new total par value of the outstanding shares.[44] The question presented to the Court in *In re Fosdick*[45] was whether this transaction constituted a stock dividend.

When a corporation capitalizes retained surplus available for dividends instead of distributing it, a stock dividend results.[46] The transfer from surplus to capital

43. INT. REV. CODE OF 1954 §4321; Treas. Reg. 71 §113.32 (1941). The transfer tax on a sale of no par stock is at the rate of $.05 a share if the sale price is less than $20 per share and $.06 a share if the sale price is more than $20 per share. The transfer tax on a sale of par value stock is at the rate of $.05 per aggregate $100 of par value when the sale is at the rate of less than $20 per share and at the rate of $.06 per aggregate of $100 of par value when the sale is at the rate of more than $20 per share.

44. N. Y. STOCK CORPORATION LAW §38.

45. 4 N.Y.2d 646, 176 N.Y.S.2d 966 (1958).

46. Eisner v. Macomber, 252 U.S. 189, 211 (1920).