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Decedent's Estates—Constructive Trusts

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DECEDENT'S ESTATES

Constructive Trusts

When a beneficiary of a trust has been shown to be guilty of fraud or undue influence on the settlor, a constructive trust may be imposed upon property received in favor of the party deprived of the property by the beneficiary's acts.¹ The Statutes of Wills and of Frauds do not interpose a bar to such a suit.² In proving the allegations of fraud and undue influence, the burden must be carried by the person seeking to impose the constructive trust.³ New York holds that this burden never shifts to the other party but recognizes that if a confidential relation is shown to exist between the beneficiary and the settlor, the burden of going forward with the evidence to explain the circumstances surrounding the transaction lies with the beneficiary.⁴

*Cassidy v. Cassidy*⁵ presented a situation in which the decedent's wife had been named the sole beneficiary of his retirement fund benefits for eighteen years. Three months before his death, the decedent, while ill in a hospital, made his sister co-beneficiary in the presence only of his sister and a commissioner of deeds procured by her without any knowledge on the part of the wife. The sister evaded questions by the wife concerning any possible change of beneficiary by the decedent.

The Court, reversing the Appellate Division,⁶ held that the lower courts had incorrectly placed the burden of proof on the defendant while the plaintiff had failed to establish prime facie either fraud or undue influence or a confidential relationship. The dissent on the appellate level,⁷ in contrast, had contended that the existence of a confidential relationship had shifted the burden of going forward with the evidence to defendant but that she had carried this burden by setting forth the circumstances surrounding the transaction.

The Court of Appeals states the better view here, in that the facts did not

1. 3 BOGERT, TRUSTS §§473-474, 489, 499; *Latham v. Father Divine*, 299 N. Y. 22, 85 N.E. 2d 168 (1949).

2. *Latham v. Father Divine*, 299 N. Y. 22, 85 N.E. 2d 168 (1949); *Ahrens v. Jones*, 169 N. Y. 555, 62 N.E. 666 (1902).

3. *In re Kindberg's Will*, 207 N. Y. 220, 100 N. E. 789 (1912).

4. *Matter of Putnam*, 257 N. Y. 140, 177 N.E. 399 (1931); *Matter of Smith*, 95 N. Y. 516 (1884); *Marx v. McGlynn*, 88 N. Y. 357 (1882).

5. 309 N. Y. 332, 130 N.E. 2d 881 (1955).

6. 285 App. Div. 1040, 140 N. Y. S. 2d 67 (1st Dep't 1955).

7. See note 6. *supra*.

warrant the finding of a confidential relationship.⁸ The acts of the sister did not amount to a handling of decedent's affairs, financial or otherwise, but rather resembled the acts of an agent of decedent, obtaining the requisite forms and the services of an official to act as a witness. These are not the sort of acts which should burden a beneficiary with the necessity of explanation.

Discovery Proceedings

Section 205 of the Surrogate's Court Act authorizes the initiation of discovery proceedings by a representative of an estate to recover money or other personal property, or the proceeds or value thereof, belonging to the decedent. The court may determine adverse claims to the property. Upon a finding that the property is improperly withheld, the court, under Section 206, may direct its delivery to the representative.

In holding that the Surrogate lacked jurisdiction to issue an order directing a bank to pay over an ordinary bank deposit, the Court of Appeals in *In Re Trevor's Estate*⁹ unanimously reaffirmed a construction that Section 205 was limited to specific money. The bank which held a deposit alleged to be under an assumed name of the decedent, challenged the jurisdiction of the Surrogate to force it to pay the deposit to the decedent's administrator, since discovery will not lie to enforce a debt,¹⁰ and the relationship between a bank and its depositor is that of debtor and creditor.¹¹

Discovery has been allowed for recovery of shares of stock,¹² insurance policy proceeds,¹³ money belonging to a client held in trust by an attorney,¹⁴ and proceeds from the sale of personal property.¹⁵ While a debt is an in personam right, the nature of discovery proceedings is in rem. Therefore, the property

8. *Gager v. Matthewson*, 93 Conn. 539, 107 Atl. 1 (1919). (But it is only where the beneficiary is or has acquired the position of a religious, professional, or business adviser . . . that the rule of public policy can be invoked which requires such beneficiary to show that he has not abused his fiduciary obligation). *But cf. In re Wilson's Estate*, 364 Pa. 488, 72 A.2d 561 (1950). (A confidential relation exists whenever the relative position of the parties is such that one has the power and means to take advantage of, or exercise, undue influence over the other.)

9. 309 N. Y. 389, 131 N.E. 2d 561 (1955).

10. *In re Thoms' Estate*, 235 App. Div. 450, 257 N. Y. S. 330 (1st Dep't 1932); *In re Thoms' Estate*, 165 Misc. 398, 300 N. Y. S. 872 (Surr. Ct. 1937).

11. *In re Delaney*, 256 N. Y. 315, 176 N.E. 407 (1931). The court suggested that the proper remedy was an action for debt in a common law court.

12. *In re Babcock's Estate*, 85 Misc. 256, 147 N. Y. S. 872 (Surr. Ct. 1914), *aff'd mem.* 169 App. Div. 903, 153 N. Y. S. 1105 (3d Dep't 1915), *aff'd mem.* 216 N. Y. 717, 111 N.E. 1084 (1915).

13. *In re Hawley's Estate*, 133 Misc. 34, 231 N. Y. S. 95 (Surr. Ct. 1928).

14. *In re Ostrow's Estate*, 162 Misc. 783, 295 N. Y. S. 610 (Surr. Ct. 1937).

15. *In re Fraley's Estate*, 129 Misc. 803, 221 N. Y. S. 641 (Surr. Ct. 1927).