TRUSTS-LIABILITY OF LIFE TENANT AND REMAINDERMAN FOR CARRYING CHARGES ON UNPRODUCTIVE PROPERTY

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TRUSTS—LIABILITY OF LIFE TENANT AND REMAINDERMAN FOR CARRYING CHARGES ON UNPRODUCTIVE PROPERTY — Testator put certain property, highly productive at the time of his death, in trust, income to his granddaughter for life, remainder over. Subsequently part of the property became unproductive, so that if the income from the rest should have fallen below three per cent and taxes were paid from income, the life tenant would have received nothing. The will authorized the trustee to sell when expedient; although using due diligence, the trustee had not yet sold. In a contest between the life tenant and remainderman, held, taxes accrued since the property became unproductive are payable from principal, not income. Harvard Trust Co. v. Duke, (Mass. 1939) 24 N. E. (2d) 144.

Whether expenses involved in carrying unproductive trust property are to be borne by the life tenant or the remainderman depends primarily on the settlor's intention. In some situations, his intention can be inferred from his specific directions; in other cases, the answer is deduced from a wholly presumed intent. Where the property is unproductive at the time the trust instrument takes effect, there are three possible situations. The settlor may have (1) ordered sale, (2) ordered retention, or (3) said nothing. In the first of these possibilities, it is clear that such interim expenses as taxes should be chargeable to principal, while in the second it is equally clear that they should be chargeable to principal.

1 Apportionment of the proceeds from a sale of unproductive property is a problem to be distinguished from the one under discussion. On apportionment, see Brands, "Trust Administration: Apportionment of Proceeds of Sale of Unproductive Land and of Expenses," 9 N. C. L. Rev. 127 (1931); 2 Scott, Trusts, § 241.1 (1939); 1 Trusts Restatement, § 241 (1935); 40 Yale L. J. 275 (1930).

2 Matter of Walker, 138 Misc. 879, 247 N. Y. S. 534 (1930). A recent Pennsylvania case, however, held that "in all cases [expenses] should not be charged to and be paid by income, but that whether to be so paid, or to be paid out of principal, or divided ... should be determined by considering the equities in each case." Although the lower court had ordered payment out of corpus, the case was remanded because it did not appear whether the decision was based on a general rule or a consideration of the equities. In re Levy's Estate, 333 Pa. 440 at 442-443, 5 A. (2d) 98 (1939).
Where the trust instrument specifies a period in which the unproductive property must be retained, taxes may be charged to income during such period, but not for a period of postponement merely authorized by the settlor. In the third situation principal usually bears the burden on the theory that the testator, having designated a beneficiary of income, must have intended the trust to be income-producing. From this is inferred a duty on the trustee to sell the property and make a profitable investment of the proceeds. Cases in Massachusetts and New York have required some affirmative showing of an intention that the property be sold before allowing the burden to be shifted to principal. But according to authority, it is everywhere held, as in the principal case, that where property, productive when the trust was set up, has subsequently become unproductive, taxes and similar charges are payable from corpus. Barring special circumstances, this would doubtless conform to the settlor’s intention. Since in appointing a life tenant the settlor’s aim is in most cases chiefly to benefit that person and only incidentally to dispose of income from property, it would seem inconsistent therewith to permit taxes on unprofitable land to absorb the income of the trust. Rather is it more equitable to reduce the corpus, thereby throwing the burden for the most part on the remainderman but also to some extent, in the form of reduced income, on the life tenant.

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4 This might be the result unless the will can be interpreted as placing on the trustees an imperative duty to convert. Such duty was found lacking in Love v. Engelke, 368 Ill. 342, 14 N. E. (2d) 228 (1938). Similar language surrounded perhaps by different circumstances brought the opposite result in Furniss v. Cruikshank, 230 N. Y. 495, 130 N. E. 625 (1921), modified, 231 N. Y. 550, 132 N. E. 884 (1921).
6 Brands, “Trust Administration: Apportionment of Proceeds of Sale of Unproductive Land and of Expenses,” 9 N. C. L. REV. 127 at 135 (1931); 2 Perry, Trusts and Trustees 949 (1929); 2 Scott, Trusts, §§ 233.4, 240 (1939); 1 Trusts Restatement, § 233, comment m (1935).
7 2 Scott, Trusts, § 240 (1939).
8 Matter of Andreini, 165 Misc. 297, 300 N. Y. S. 1224 (1937); Creed v. Connelly, 272 Mass. 241, 172 N. E. 106 (1930), which the principal case said was decided “upon the supposed intent of the testator that the general rule should apply to a situation of which he had full knowledge and which he must have expected might continue,” 24 N. E. (2d) 144 at 146. See, In re Richards Will, (Surr. Ct. 1939) 10 N. Y. S. (2d) 510 at 515 (1939).
9 2 Scott, Trusts, § 233.4 at pp. 1273-1274 (1939).