

# Michigan Law Review

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Volume 32 | Issue 8

---

1934

## WILLS-CONTRACT NOT TO CONTEST

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### Recommended Citation

*WILLS-CONTRACT NOT TO CONTEST*, 32 MICH. L. REV. 1174 (1934).

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WILLS—CONTRACT NOT TO CONTEST—A testatrix left the bulk of her estate to the plaintiff whom she named as her executor. Defendant, dissatisfied with his bequest, threatened to contest the will. Thereupon, the parties entered into a contract whereby the plaintiff agreed to give the defendant a piece of land and a sum of money in addition to his legacy in consideration of defendant's promise not to contest the will. Shortly thereafter defendant joined relatives of the decedent in opposing probate. In an action in equity to specifically enforce the agreement, *held*, that the contract was valid and that the defendant be permanently enjoined from contesting the will.<sup>1</sup> *Ewing v. Waddington*, (S. D. 1933) 252 N. W. 28.

<sup>1</sup> See WILLS—RIGHT OF BENEFICIARIES TO COMPROMISE SO AS TO DEFEAT PROVISIONS OF WILL, p. 1176, *infra*.

By the great weight of authority a contract by one interested in the estate of the testator to refrain from contesting the will is valid if it is made with full knowledge of the facts and without misrepresentation or fraud.<sup>2</sup> The consideration furnished by the party agreeing not to contest the will is his forbearance of his right to bring suit. In some jurisdictions it is sufficient if he believes in good faith that he could have the will set aside, and it is not necessary that he should have a reasonable cause to believe that he might succeed in such suit.<sup>3</sup> In other jurisdictions reasonable grounds for controversy must exist in order to constitute a valuable consideration sufficient to support the contract.<sup>4</sup> A contract not to contest a will is specifically enforceable in equity,<sup>5</sup> or it may be pleaded against the contest petition in the probate court.<sup>6</sup> Such a contract is not against public policy because it lessens litigation and encourages amicable settlements of disputes,<sup>7</sup> and the fact that one has agreed to refrain from contesting a will does not estop him from seeking the legal interpretation of the instrument,<sup>8</sup> nor prevent him from claiming an interest in the intestate property.<sup>9</sup>

R. R. K.

<sup>2</sup> 1 PAGE, WILLS, 2d ed., sec. 630 (1926); notes in 13 L. R. A. (N. S.) 484 (1908) and 55 A. L. R. 811 (1928); Evans, "Certain Evasive and Protective Devices Affecting Succession to Decedents' Estates," 32 MICH. L. REV. 478 at 486 (1934); *Boughy v. Minor*, [1893] P. 181; *Sheppey v. Stevens*, (C. C. N. D. N. Y. 1911) 185 Fed. 147; *In re Garcelon's Estate*, 104 Cal. 570, 38 Pac. 414 (1894); *Cole v. Cole*, 292 Ill. 154, 126 N. E. 752 (1920); *Hutchison v. Hattendorf*, 216 Mich. 638, 185 N. W. 667 (1921); *Grochowski v. Grochowski*, 77 Neb. 506, 109 N. W. 742 (1906); *Rector v. Teed*, 120 N. Y. 583, 24 N. E. 1014 (1890). But see *Conklin v. Conklin*, 165 Mich. 571, 131 N. W. 154 (1911). *Contra*, *Taylor v. Hoyt*, 207 Wis. 520, 242 N. W. 141 (1932). There are statutes sanctioning compromise agreements. See Mass. Gen. Laws (1932), c. 204, sec. 15; Mich. Comp. Laws (1929), secs. 15581-15584 (which provide that such contracts will be valid if there is "a good faith contest").

<sup>3</sup> *Sheppey v. Stevens*, (C. C. N. D. N. Y. 1911) 185 Fed. 147; *Blount v. Wheeler*, 199 Mass. 330, 85 N. E. 477 (1908); *Grochowski v. Grochowski*, 77 Neb. 506, 109 N. W. 742 (1906).

<sup>4</sup> *Crawford v. Engram*, 157 Ala. 314, 47 So. 712 (1908); *Cole v. Cole*, 292 Ill. 154, 126 N. E. 752 (1920); *Montgomery v. Grenier*, 117 Minn. 416, 136 N. W. 9 (1912).

<sup>5</sup> *Cole v. Cole*, 292 Ill. 154, 126 N. E. 752 (1920); *Blount v. Wheeler*, 199 Mass. 330, 85 N. E. 477 (1908); *In re Cook's Will*, 244 N. Y. 63, 154 N. E. 823 (1926).

<sup>6</sup> *In re Garcelon's Estate*, 104 Cal. 570, 38 Pac. 414 (1894); *Reichard v. Izer*, 95 Md. 451, 52 Atl. 592 (1902).

<sup>7</sup> *Eissler v. Hoppel*, 158 Ind. 82, 62 N. E. 692 (1902); *Seaman v. Colley*, 178 Mass. 478, 59 N. E. 1017 (1901); *Grochowski v. Grochowski*, 77 Neb. 506, 109 N. W. 742 (1906); *In re Cook's Will*, 244 N. Y. 63, 154 N. E. 823 (1926). *Contra*, *Taylor v. Hoyt*, 207 Wis. 520, 242 N. W. 141 (1932) (on the ground that it amounts to "wrongful suppression, by collusion between them, of a judicial inquiry," and thereby encourages the probate of invalid wills).

<sup>8</sup> *Hansbarger v. Hansbarger*, 206 Mich. 281, 172 N. W. 577 (1919); *Robbins v. Boulder County Com'rs*, 50 Colo. 610, 115 Pac. 526 (1911).

<sup>9</sup> *Chase v. Dickey*, 212 Mass. 555, 99 N. E. 410 (1912).