WILLS-AN EXCEPTION TO THE PENNSYLVANIA MORTMAIN STATUTE

Robert H. Frick
University of Michigan Law School

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Testatrix and her husband entered into an agreement that the survivor should devise property owned by them as tenants by the entireties to charities of the Catholic Church. Ten years later, testatrix, who had survived her husband, executed a will in accordance with the agreement, and died within thirty days thereafter. The lower court held that the bequest was not invalid under the Pennsylvania statute voiding religious or charitable bequests made within thirty days of death. On appeal, held, affirmed. Where a valid contract to make a will antedates the testator's death by more than the statutory period, the statute has no application. In re Gredler's Estate, (Pa. 1949) 65 A. (2d) 404.

The purpose of the Pennsylvania statute and similar statutes in other states is to prevent deathbed bequests to religious or charitable institutions which might not be the result of the testator's deliberate intent. In holding the statute inapplicable to the facts of the principal case, the court stressed the fact that the bequest was not tainted with the evils contemplated by the statute. However, the court also emphasized the fact that the contract to make a will was valid and enforceable, and it is possible that this decision was intended to operate as a streamlined method of enforcement. The usual “specific performance” remedy for the breach of a contract to make a will, however, is to require those who receive legal title to the property as a result of the breach to hold the property in trust for the beneficiary of the contract. This remedy has been employed in cases where the testator has made a good faith attempt to comply with the contract, but the bequest has been invalidated by some rule of law. The principal case would stand alone in holding the bequest itself valid. It would seem, therefore, that the court in the principal case is not attempting to enforce the contract, but is merely accepting it as sufficiently strong evidence of forethought and deliberation on the part of the testatrix to constitute an exception to the statute. If so, Pennsylvania may accept other forms of evidence as exceptions to the statute in the future.

Robert H. Frick