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ADMINISTRATION OF ESTATES-DISCRETION OF COURT IN APPOINTMENT OF ADMINISTRATOR CONTRARY TO STATUTORY PREFERENCE

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RECENT DECISIONS

ADMINISTRATION OF ESTATES—DISCRETION OF COURT IN APPOINTMENT OF ADMINISTRATOR CONTRARY TO STATUTORY PREFERENCE—The County Court, disregarding the statutory order of preference,[1] appointed a disinterested third party administrator with the will annexed because of the conflict of interest between the grandchildren who were entitled to the appointment under the statute and the creditors.[2] The grandchildren as heirs of the devisees in decedent's will claimed that the creditors' claims were barred by the laches of the former administrator, their nominee. The circuit court decided that the statute was mandatory and ordered the appointment of the grandchildren. The creditors appeal. *Held*, reversed. The original appointment by the county court of a disinterested person will be affirmed. The order of preference set forth in the statute ". . . must yield to the discretion of the Court in unusual cases where considerable hostility, adversity and conflict of interest appear." [3] *In re Abell's Estate*, 329 Ill. App. 73, 67 N. E. (2d) 294 (1946).

The language of the Illinois statute would seem to be mandatory [4] and there is no provision, as there is in the statutes of some of the states, that the preference shall be observed "unless the court deems it proper to appoint some other person." [5] But the court's solution to the problem would seem to result in the more efficient handling of the estate. When confronted with a somewhat similar situation in an earlier case, the Illinois Supreme Court passed over one brother and gave the appointment of administrator with the will annexed to the nominee of the other brother, although construing the statute as preferring the members of a class to the nominees of the class. The brother excluded from the administration was excluded by the will from any interest in the estate and the relation-

[1] Ill. Stat. Ann. (Smith-Hurd, 1941) c. 3, § 248. "The following persons are entitled to preference in the following order in obtaining the issuance of letters of administration of the various kinds: . . . (5) The grandchildren or any person nominated by them. . . . (8) A creditor of the estate.

[2] This case should be distinguished from the case where administration is denied to a person with the statutory preference because of an interest hostile to the estate.

[3] In re Abell's Estate, 329 Ill. App. 73 at 80, 67 N.E. (2d) 294 (1946).

[4] See note 1, supra.

[5] Mass. Ann. Laws (1933) c. 193, § 1. See the application of similar language of N.D. Comp. Laws (1913) § 8663, ". . . or the court may in its discretion appoint some suitable and discreet person who is disinterested as between the parties . . . ," in Ellis v. Ellis, 42 N.D. 535, 174 N.W. 76 (1919). The statute has been amended slightly but retains the same effect. N.D. Rev. Code (1943) c. 30, § 0808. Not to be overlooked in this connection is the possibility that the statute may provide as does the Washington Statute [Wash. Rev. Stat. (Remington, 1932) §§ 1422, 1444], that the court shall have discretion in the removal of administrators. Where there is such a provision the court would seem to have discretion in its appointment. As to hostile feelings being a basis for removal under such a statute see Estate of Pike, Kimball's Appeal, 45 Wis. 391 (1878).

ship between the brothers was hostile.[6] The reasonable explanation of the Supreme Court of Washington in passing over the children and appointing a stranger administrator under an equally mandatory statute [7] was that "The appointment of any one of the children as administrator would result in litigation and defeat the very purpose of administration, which is to preserve the estate and cause it to pass to the heirs and distributees without waste or loss, and without delay." [8] Other states have rendered similar opinions, usually in cases where the element of personal antagonism was more important than in the principal case.[9] Decisions to the effect that the provisions of such a statute as the one construed in the principal case are mandatory can be distinguished on the basis that the fact situations do not present a bitter conflict of interest among those contending for appointment as administrator.[10]

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[6] Dennis v. Dennis, 323 Ill. App. 328, 55 N.E. (2d) 527 (1944).

[7] Wash. Rev. Stat. (Remington, 1932) § 1431.

[8] In re Estate of Thomas, 167 Wash. 127 at 134, 8 P. (2d) 963 (1932).

[9] Smith v. Lurty, 107 Va. 548, 59 S.E. 403 (1907); State ex rel. Flick v. Reddish, 148 Mo. App. 715, 129 S.W. 53 (1910); Warner's Estate, 207 Penn. 580, 57 A. 35 (1904). Wilhelmina Schmidt's Estate, 183 Penn. 129, 38 A. 464 (1897).

[10] In re Webb's Estate, 90 Colo. 470, 10 P. (2d) 947 (1932); Parker v. Batchelor, 40 Ga. App. 669, 151 S. E. 118 (1929); Welsh v. Manwaring, 120 Wis. 377, 98 N.W. 214 (1904); Cooper v. Cooper, 43 Ind. App. 620, 88 N.E. 341 (1909); Moran v. Moran's Admr., 172 Ky. 343, 189 S.W. 248 (1916); Buckner's Admr. v. Buckner, 120 Ky. 596, 87 S.W. 776 (1905).