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Trusts, Wills, and Administration of Estates

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TRUSTS, WILLS AND ADMINISTRATION OF ESTATES

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I. LEGISLATION

The probate of wills in solemn form should be simplified and expedited by a recent amendment. The statute requiring proof of the will by all the witnesses in life and within the jurisdiction of the court[1] has been amended so as to require that only one witness shall be required to prove a will in solemn form if no caveat is filed.[2] This development raises an interesting question about the capacity of a witness to take under the will he witnessed. If the logic behind Ga. Code Ann. §113-304 (Rev. 1975) is that it bars a legacy or devise to a witness because his testimony is necessary to prove the will, and he therefore might be tempted to perjure himself, then it would appear that a legatee-witness whose testimony is not needed or used to prove the will should be allowed to take his legacy. Allowing this result to be reached, however, would require the amendment, or preferably, the repeal of section 113-304, which declares void any legacy or devise to a subscribing witness.[3]

Funeral expenses are second in priority of claims against an estate, being inferior only to a claim for year's support,[4] but this ordering of priorities assumes that the funeral expenses are the obligation of the estate of the decedent. When a wife dies survived by her husband, he is liable for these expenses and they should not be charged to her estate.[5] A recent act appears to change this, albeit inferentially, by listing funeral expenses as claims against an estate "whether or not the deceased leaves a surviving spouse."[6]

Precisely what objective was intended to be accomplished by this amendment is not clear. It could be the narrow objective of giving the estate of a deceased wife the funeral expense deduction on her estate tax return or it could be the broad objective of assuring payment of funeral expenses in the situation where a solvent wife died survived by an insolvent husband. In either case, the amendment may have missed its mark. To make her estate liable, at least for the purpose of making these expenses deductible on her estate tax return, it has been necessary that she include

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1. GA. CODE ANN. §113-602 (Rev. 1975).
2. Ga. Laws, 1975, p. 764.
3. This is not the first time that outright repeal of GA. CODE ANN. §113-304 (Rev. 1975) has been advocated. *See* Chaffin, *Improving Georgia's Probate Code*, 4 GA. L. REV. 505, 506 (1970).
4. GA. CODE ANN. §113-1508(2) (Rev. 1975).
5. Kenyon v. Brightwell, 120 Ga. 606, 48 S.E. 124 (1904).
6. Ga. Laws, 1975, p. 711, *amending* GA. CODE ANN. §113-1508(2) (Rev. 1975).

in her will a direction that these expenses be paid from her estate.[7] Whether her estate will be liable in the instance of a wife's dying interstate, or with a will which does not direct payment of funeral expenses, is doubtful. As was stated in *Kenyon v. Brightwell*,[8] with reference to what is now the code section under discussion: "The statute merely provides for the priority to be observed in the payment of debts due by the estate of a decedent." Thus, it is arguable that the section being amended has, itself, no bearing on the issue of whether a claim *is* a debt owed by the estate; it purports only to state the priority of what are admittedly debts of the estate, not to resolve an issue of debt *vel non*.

The frequently amended and increasingly confusing statute on the subject of inheritance by and from adopted persons was amended again in 1975.[9] This latest amendment expands the operation of the statute in two significant respects. First, it provides expressly that an adopted person may take by inheritance from relatives of the adopting parents.[10] Apparently this makes an adopted child a "lineal descendant" of a deceased adopting parent for purposes of inheriting, by representation, property which would have been inherited by the deceased adopting parent.[11] Apparently, also, the amendment overrules such decisions as *Doughty v. Futch*,[12] which held that the adopted children of a testatrix's daughter (then deceased) were not "lineal descendants" of the testatrix and, therefore, had no standing to caveat the testatrix's will. Since the amendment would give them the right to inherit, by representation, from the mother of their deceased adopting mother, they necessarily would have standing to caveat her will.

The second way in which the amendment enlarges the operation of the adoption statute is by its provision that an adopted child may take as a "child" of the adopting parent under a class gift made by the will of a third person. Class gifts are replete with problems of construction. Whether this provision of the statute will make the task easier or harder remains to be seen. The language of the provision is permissive—"An adopted child *may* also take as a 'child' of the adopting parent under a class gift. . . ."[13]

The question still will be whether the donor of the class gift intended to include the adopted child within the class. In the case of a gift in the will of X "to the children of A," could the natural child of A argue that X did not intend to include the adopted child of A? Would it matter whether the adopted child was adopted before or after X's execution of the instrument containing the class gift? Would extrinsic evidence bearing on X's inten-

7. REV. RUL. 65-300, 1965-2 CUM. BULL. 375. *See* LOWNDES, KRAMER AND MCCORD, FEDERAL ESTATE AND GIFT TAXES §15.7 (3d ed. 1974).

8. 120 Ga. 606, 610, 48 S.E. 124, 128 (1904).

9. Ga. Laws, 1975, p. 797, *amending* GA. CODE ANN. §74-414 (Rev. 1973).

10. The prior law could be construed to have this effect, but only by implication.

11. *See* GA. CODE ANN. §113-903(4)(5) (Rev. 1975).

12. 219 Ga. 677, 135 S.E.2d 286 (1964).

13. Ga. Laws, 1975 at 797 (emphasis added).

tion be admissible?

The amount of money, owed by an employer to a deceased employee at the time of his death, which may be paid to the employee's surviving spouse or minor children without any administration, was increased from $1,000 to $2,500.[14]

II. JUDICIAL DECISIONS—WILLS AND ADMINISTRATION

One of the few ways of assuring some coherence to a discussion of developments in this area of the law is by dealing with the issues in the chronological order in which they usually arise in the process of administration of estates. That sort of coherence the writer hopes for in the balance of this paper.

A. Contracts To Will

When a husband and wife contract to make a joint will, or mutual wills, and the first of them to die leaves a valid will which breaches the contract, the survivor ordinarily has no cause of action against the estate of the deceased; nor can the contract be offered to prevent probate of the will which breached the contract. The theory is that the contract is impliedly subject to being voided by either party's dying survived by the other and leaving a will not complying with the contract. The survivor, being no longer bound to perform under the contract, has no right to complain because the other disregarded it. *Rigby v. Powell*[15] had some unusual features in it which caused the court to question whether this theory was applicable. In this case the husband and wife agreed, in 1962, to make mutual wills leaving everything to the other. The wife died in 1971 leaving a will which did not comply with the terms of the agreement. When her will was offered for probate, the husband acknowledged service, the will was admitted to probate, and letters were granted to a son of the wife by a previous marriage. The husband accepted, through that will, some bequests and a devise of some realty until his death or remarriage. After he remarried in 1972, he was notified to vacate his realty. He then filed a bill seeking a declaration that the probated will was void as to him and asking that he be awarded the entire estate, pursuant to the terms of the agreement. The trial court summarily dismissed his bill on the quite logical theory that one who actively participated in the probate of a will which he knew breached a contract to will, and who willingly accepted and enjoyed benefits under that will, could hardly be heard to complain that the will was invalid. The supreme court reversed this judgment, however, feeling that the husband was at least entitled to a hearing on the issues he raised. Clearly the probate of the will could not be set aside on the ground

14. Ga. Laws, 1975, p. 1191, *amending* GA. CODE ANN. §66-103 (Rev. 1966).
15. 233 Ga. 158, 210 S.E.2d 696 (1974).

that its terms were in breach of contract. It did not follow, though that the husband had no cause of action against the estate of the wife. His allegations that he did not know of the wife's breach until her death and that during their joint lives he had bought several parcels of land and taken title to them in her name, all pursuant to this contract, were sufficient to preclude a summary judgment against him.

The issue of the husband's laches or estoppel remained. On this issue the court said that his failure to protest probate of the will did not bar his present action because, had he complained at the time of probate, his allegations would have been no more than that a will, otherwise admissible to probate, was in breach of contract and that he was, therefore, a contract creditor of the estate. Whether his laches will bar his enforcement of the contract at this late date is a matter beyond the jurisdiction of the probate court; so he is still entitled to his day in a court with jurisdiction of the matter. His argument on the issue of estoppel apparently would be that in accepting a part of her estate through the will which breached the contract he was only accepting a part of an estate all of which was rightfully his.

In *Ammons v. Williams*[16] the parties to a joint and mutual will agreement followed the expected pattern. The husband died in 1964 and the joint and mutual will was probated as his will, but when the wife died in 1974 she left a different will, making different dispositions of the property. The case really resolved itself into a construction problem, the resolution of which determined whether this different will of the wife was actually a breach of the agreement. Her representative argued that the language of the joint and mutual will gave her authority to do as she did. That will provided that the residue of the estate of the first to die would go to the survivor "in fee simple," but following that provision was another one saying that at the death of the survivor, whatever portions of the two estates then remained would go into a trust for a named granddaughter. These provisions were construed as giving the survivor, the wife, the estate of the husband "in fee simple," but subject to a gift over of whatever property was in the estate of the survivor at death to the trust for the granddaughter. Similarly, the net estate of the wife went into that trust, by force of the argeement on which the joint and mutual will was based, and in disregard of the later will of the wife which breached that agreement.

B. Probate Proceedings

There is still some disagreement as to the applicability of the Civil Practice Act[17] to probate proceedings. This disagreement was voiced most recently in *Cochran v. McCollum*.[18] There the caveator alleged fraud in the

16. 233 Ga. 534, 212 S.E.2d 769 (1975).
17. Ga. Code Ann., tit. 81A (Rev. 1972).
18. 233 Ga. 104, 210 S.E.2d 13 (1974).

execution of the will, but he did not allege any specific facts which would constitute fraud. The probate court and the superior court agreed that the coveat should be dismissed because of this lack of specificity in the pleadings. Most of the members of the supreme court, however, disagreed and held that under the Civil Practice Act, which is applicable to all courts of record not expressly excepted, a pleading should not be dismissed for failure to state a claim unless it appears beyond doubt that the pleader could prove no set of facts which would entitle him to relief. If further particularity is needed, it should be elicited by a motion for a more definite statement at the pleading stage or by a motion for discovery thereafter.[19]

The birth of a child to a testator after the execution of a will in which no provision is made in contemplation of that event revokes the will by operation of law.[20] The cases hold, without exception, that in order to avoid such a revocation it must appear on the face of the will that this possible event was in the contemplation of the testator at the time he executed the will. The mere fact that he had the matter in mind cannot be shown by parol evidence. When the will in *McParland v. McParland*[21] was executed, the testator had three living daughters, and thereafter two more daughters were born to him. He never had any sons. The only evidence on the face of the will that he had future-born children in contemplation was a provision in the will disposing of property " 'after the last child born reaches his or her majority. . . .' "[22] If we presume that he knew that he had only daughters when he executed the will, his reference to a child's reaching "his" majority could only indicate that he was thinking prospectively. The supreme court held, though, that the will had been revoked by the subsequent birth of children and that the "mere erroneous use of 'his or her' "[23] at a time when he had only daughters, was insufficient to show that the will was executed in contemplation of the birth of additional children.

The will in *Richards v. Tolbert*[24] deserves respect if for no other reason than its age. It was offered for probate more than fifty-seven years after its execution. The propounder's evidence consisted of the deposition of one of the subscribing witnesses, the other two being dead. The deposing witness identified the document as the will of the testator, stating that he remembered it well because it was the only will he had ever witnessed. Since the only evidence of the caveators did not refute the testimony of

19. The two dissenting justices pointed to GA. CODE ANN. §81A-109(b) and (c), as requiring different pleadings, depending upon the thing pleaded. Subsection (b) says that "[i]n all averments of fraud, or mistake, the circumstance constituting fraud or mistake shall be stated with particularity," while subsection (c) says that in pleading performance or occurrence of conditions precedent, a general averment is sufficient. Since the averment in this case was a general allegation of fraud, the dissenting justices felt that the lower court's dismissing the caveat for lack of specificity was proper. *Id.* at 105-06, 210 S.E.2d at 15-16.

20. GA. CODE ANN. §113-408 (Rev. 1975).

21. 233 Ga. 458, 211 S.E.2d 748 (1975).

22. *Id.* at 458, 211 S.E.2d at 744.

23. *Id.* at 460, 211 S.E.2d at 750.

24. 232 Ga. 678, 208 S.E.2d 486 (1974).

this subscribing witness, and did not otherwise raise an issue of fact, summary judgment in favor of the will was required.

C. *Administration Of Estates*

One of the very first duties of a personal representative, upon his being qualified, is to collect and maintain control over the assets of the estate. His failure to pursue an asset that is a part of the estate will be a breach of duty, while assets not belonging to the estate are no concern of his. Nevertheless, he must decide, often at his own peril, who owns a particular asset. In *Tri-City Federal Savings & Loan Association v. Evans*,[25] the testator's sister, who was named executrix in his will, agreed to renounce the appointment in favor of testator's wife. As a part of this agreement the wife released all claims against the sister and then formally qualified as administratrix. Sometime after testator's death, but prior to probate of the will, the sister drew out the proceeds of a savings and loan account which had been in the names of her and the testator as joint tenants with right of survivorship. The wife, as administratrix c.t.a., thereafter sued the savings and loan association as executor de son tort in paying this money to the sister. If the money was an asset of the estate, of course, there would be a clear case of liability of the association, but the court concluded that this account was a true joint and survivor account and, therefore, the estate of the first of the joint tenants to die had no interest in it.

After this case got into the courts, the statutes governing joint accounts in banks and joint deposits in savings and loan associations were recodified as parts of the Financial Institutions Code of Georgia,[26] the effective date of which was April 15, 1975. The new code retains the substance of the acquittance statute which was the former law as to bank liability.[27] The new code also repeals and supersedes the former section which protected savings and loan associations from possible double liability by fixing the property rights in the account as those of "joint tenancy with right of survivorship."[28] There is no mention in the new code of the type of tenancy created by a joint account in a savings and loan association. The result is that the new code leaves the question of ultimate ownership of both joint deposits in banks and joint accounts in savings and loan associations to the contract of the parties. As a consequence, we may continue to expect frequent litigation of the issue of whether the parties to a joint deposit or account really intended to create survivorship rights, notwithstanding the form of the deposit or account.

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25. 132 Ga. App. 735, 209 S.E.2d 20 (1974).

26. Ga. Laws, 1974, p. 705, *creating* GA. CODE ANN., tit. 41A (Rev. 1974).

27. GA. CODE ANN. §41A-1603 (Rev. 1974), *replacing* former GA. CODE ANN. §13-2039 (Rev. 1967).

28. GA. CODE ANN. §41A-3521 (Rev. 1974), *replacing* former GA. CODE ANN. §16-431 (Rev. 1971).

In *Mincey v. Mincey*[29] a claim to land depended upon the right of an illegitimate to inherit from his mother's father, who died intestate, the interest that his mother would have inherited had she not predeceased her father. In denying this claim the court construed the Georgia statute[30] as allowing illegitimates to inherit only from their mother and from each other. Allowing them to take by representation the interest the mother would have taken had she survived her father would be tantamount to allowing them to inherit from their maternal grandfather. The statute does not go so far.

D. Conflicts Of Interest

Potential conflicts of interest are built into the extremely common instance of a member of the family serving as personal representative. His personal interest as an heir or legatee sometimes clashes with his duty to administer the estate for the best interest of all concerned. The zeal of the courts in holding him to the line displayed itself in two cases decided within the past year. In one of these[31] a son qualified as executor of his mother's will. The will left the entire estate to all her children equally, but gave the executor-son the first choice of buying the homeplace. After qualifying as executor this son filed a claim against the estate, in his individual capacity, alleging that he had spent $10,000 on behalf of and for services rendered to his mother during the last eleven years of her life. Prior to his discharge he conveyed the homeplace and another two acres to himself in satisfaction of this claim. After his discharge an action was brought against him to enjoin his dissipation of any of the assets of the estate. The court found a direct conflict of interest and held that he had committed a fraud on the court in representing to it that he had fully performed his duties as executor. He had failed to show a valid claim against the estate for the $10,000 he spent on behalf of his mother. Such expenditures and services on behalf of close kin are presumed to have been gratuitous.[32] Since he showed nothing which would rebut this presumption, his conveyance to himself in satisfaction of this alleged claim was fraudulent. The court order directed him to reopen the estate, to sell the homeplace—still giving himself the first choice of purchasing it, and to divide the proceeds equally among all the children.

An administrator, though he is one of the heirs at law, may purchase at his administrator's sale, provided he is guilty of no fraud and the sale is carried out in such a way as to command the best price available.[33] Presumably the court order and the public nature of the sale[34] are regarded

29. 233 Ga. 512, 212 S.E.2d 345 (1975).
30. GA. CODE ANN. §113-904 (Rev. 1975).
31. Hampton v. Taylor, 233 Ga. 63, 209 S.E.2d 634 (1974).
32. GA. CODE ANN. §108-116 (Rev. 1973).
33. Anderson v. Miller, 212 Ga. 477, 94 S.E.2d 321 (1956).
34. Although since Anderson v. Miller, 212 Ga. 477, 94 S.E.2d 321 (1956) was decided,

as sufficient to safeguard the estate against the administrator's potential conflict of interest. This reasoning also presumes that the sale was pursuant to the terms of the court order. In *Adamson v. James*,[35] though, the administrators pushed their luck too far. The order for sale in that case called for 29% cash with the balance of the purchase price to be in the form of an 8% note secured by a deed to secure debt. The deeds which the administrators executed were to four of the heirs, two of whom were the administrators themselves. Also, the deeds did not show the price bid; instead, they simply recited that they were made " 'in consideration of the distribution and division in kind of the estate. . . .' "[36] The note and security deed called for by the court order were never executed; instead, the amounts of the bids were merely charged, as cash transactions, against the shares of the four heirs (including the two administrators) in the funds of the estate. The court ordered the deed reformed to comply with the order of sale.

E. Ademption

Ademption always poses a problem for the executor because in the ademption situation there are two opposing parties claiming the same asset in the estate. In *Chandler v. Owens*[37] the legacy was in the form of a direction to the executor to sell the house and to invest the proceeds in United States government bonds, which were then to be divided equally between two nieces and used for their education. The alleged ademption was claimed to have resulted from the fact that a few months before her death the testatrix had sold the house for $15,000, had placed that amount as well as another $2,000 in a checking account, and from that account had purchased a certificate of deposit, which was still in the estate at death. In its holding that there was no ademption, the court carefully distinguished these facts from the situation in which a testator devised described realty and then sold it before his death. Here the will did not devise realty; instead, it bequeathed a fund to be realized from a directed sale of the realty. The intention was to bestow upon the nieces the economic benefit represented by the realty at the time of the execution of the will. That economic benefit still existed in the estate, and it still lay within the power of the executor to deliver.

F. Will Construction

A traditional rule of evidence is that if an ambiguity appears on the face of a will, extrinsic evidence is not admissible to clear it up. The court must

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an act has been passed authorizing private, as well as public sales by administrators (Ga. Laws, 1974, p. 1135, *amending* GA. CODE ANN. §113-1702 (Rev. 1959), there are still adequate safeguards in the form of requirements for notice and service on interested parties.

35. 233 Ga. 130, 210 S.E.2d 686 (1974).

36. *Id.* at 133, 210 S.E.2d at 687.

37. 233 Ga. 25, 209 S.E.2d 618 (1974).

determine what the testator intended from what he said in the will. On the other hand, if the will is unambiguous on its face but an ambiguity appears when one goes outside the will and tries to carry out its terms, then extrinsic evidence is admissible to resolve that newly discovered ambiguity. An example of the application of the first principle is *Gill v. Bassett*.[38] There the will contained three specific devises or bequests to Mary Bassett, daughter of the testator's son Woodrow. Then, in a later item, was the statement: " 'Having provided for my son, Woodrow Waters, during his lifetime, I leave nothing to his heirs.' "[39] Thus, the same will that said, in effect, "I leave nothing to Woodrow's heirs" also contained three specific devises and bequests to one of those heirs. The specific devises and bequests to Mary Bassett were held to be valid. Since the ambiguity appeared on the face of the will, the court had only to apply the "four corners" principle; *i.e.*, to construe, without the aid of any extrinsic evidence, what appeared in writing within the four corners of the will. The negatively expressed general exclusion of heirs gave way to the specific bequests and devises to a named individual, even though she was a member of the excluded class.

Whether a power expressly given to a life tenant (the widow) to invade the corpus for her maintenance and support was personal to her or, on the other hand, whether it continued in favor of successive life tenants (daughters), to whom the power was not expressly given, is similarly a matter to be resolved within the four corners of the will, and not by extrinsic evidence. In *Pittard v. Pittard*[40] the court resolved it in favor of the continued existence of the power in the successive life tenants. The court found this intention to continue the power implied in the language of a later clause which said that " 'whatever property may remain' "[41] after termination of all the life estates would pass to the testator's legal heirs. This uncertainty as to the amount of the property which would go to the ultimate takers suggested that the testator anticipated possible invasion of the corpus by any of the life tenants.

III. JUDICIAL DECISIONS—TRUSTS

A. Private Trusts

Some unusual facts in *Charles v. Citizens & Southern National Bank*[42] forced a careful examination of the problem of closing an estate and setting up the testamentary trust provided for in a will which named the bank as both executor and testamentary trustee. One of the claims against the estate was the judgment claim of a former wife to alimony of $1,000 per

38. 232 Ga. 615, 208 S.E.2d 443 (1974).
39. *Id.* at 616, 208 S.E.2d at 443.
40. 232 Ga. 731, 208 S.E.2d 788 (1974).
41. *Id.* at 732, 208 S.E.2d at 788.
42. 232 Ga. 208, 206 S.E.2d 8 (1974).

month for life or widowhood. The problem of what to do about this debt probably explains why the bank continued to administer the estate, as executor, from 1959 until this action was brought. In this proceeding, the bank sought to close the esate and to obtain permission to transfer to itself, as trustee, the remaining assets of the estate. The trial court attempted to resolve the problem by directing the bank, as excutor, to bring an equitable action to have established an equivalent portion of the estate for the divorced wife in lieu of her claim to monthly alimony for life or widowhood. None of the parties to the litigation liked this solution; nor had any of them asked for it. The positions they took on appeal point up the quandary in which the bank found itself.

The divorced wife contended that the alimony obligation, being a claim against the estate, was an obligation of the executor which the testamentary trustee had no power to assume. The widow argued that a lump sum determination of the alimony obligation is impossible because of the uncertainty as to what the ultimate obligation to pay $1,000 a month for life or widowhood will be. The bank's position was that the only fair way to resolve the problem would be to transfer all the assets to the testamentary trust and to subject the trust assets and the trustee to the alimony obligation.

The supreme court came out in basic agreement with the bank's position, and its opinion affords probably the best path out of the thicket created by these facts; nevertheless, it seems to direct the path around some basic questions which should have been met directly. The first, and easiest, of the questions was whether the court of equity had jurisdiction in light of the fact that the estate was still open. The code quite clearly authorizes resort to a court of equity in cases of difficulty in distributing estates.[43] A more serious problem was posed by the statute dealing with the closing of estates. That statute clearly contemplates a closing only after payment of expenses of administration and after the payment of debts.[44] The court decided, though, that this statute does not prohibit such an executor's transferring assets to a testamentary trustee, provided the transfer is pursuant either to a court order or to a contract between the executor and the trustee which continues to impress the assets with the liability which was on them in the hands of the executor. A third problem had to do with the very nature of the alimony claim of the divorced wife. She contended that the court's decision deprived her of her secured position, as a judgment creditor, and changed her claim to that of an unsecured creditor of the trust, thus subjecting it to all the terms of the trust. Those terms of the trust admittedly gave the widow a power of appointment over the assets and gave the trustee a power to invade the corpus for trust purposes. The court's answer to this objection was that her position as a judgment creditor would not be affected, suggesting that a claim of a

43. *See* GA. CODE ANN. §37-404 (Rev. 1962).
44. GA. CODE ANN. §113-1001 (Rev. 1975).

judgment creditor of an estate being administered in the probate court may be involuntarily converted into a judgment claim against a trust estate over which the probate court would have no jurisdiction. While this opinion probably afforded the best path out of the thicket created by these facts, it may not be appropriate to extend it, as precedent, beyond these facts.

A case of first impression in Georgia[45] involved a testamentary trust for the widow in which the trustee was instructed to pay to her " 'at his discretion, and in any maner he sees fit, the proceeds from said trust . . . always keeping mind [sic] her necessities in the way of medical expenses, food, shelter, clothing, and other incidentals. . . .' "[46] required to maintain her in her accustomed standard of living. The question raised in an action for construction was whether, in determining the amount of trust proceeds to be paid to the widow, the trustee should consider any separate income or estate that she might have. It was held that these things should not be considered, it being presumed that a testator who sets up a trust for a life beneficiary intended for that beneficiary to be supported by the trust. The presumption was strengthened here by the facts that the life beneficiary was the testator's widow and that the will named no other beneficiary (the remainder being left to testator's "heirs at law").

In *Moore v. First National Bank & Trust Co. of Macon*[47] it was held that under a trust for the settlor for life, remainder as she should appoint by deed or will, the settlor was the sole beneficiary and she, therefore, could revoke the trust even though it was expressly stated to be irrevocable. Ten years later the General Assembly amended the Georgia statute to provide that no trust which is expressly or impliedly made irrevocable may be revoked or terminated while the trust remains executory.[48] To leave no doubt that it intended to nullify the *Moore* case, the General Assembly included in the amendment, a provision that a trust which is expressly or impliedly made irrevocable shall not be considered as an executed trust just because the settlor has a life estate and a general power or is otherwise the only person beneficially interested. It was inevitable that a case would raise the question of whether the *Moore* case, or the amendment nullifying it, would apply to such a trust which was created between the *Moore* decision and the amendment. That case reached the supreme court in 1974,[49] and in it, the court held that the settlor-sole beneficiary could revoke her trust which was created after the *Moore* case was decided but before the 1973 amendment was passed. The right to revoke, which the *Moore* case recognized, was "vested" in her at the creation of the trust, and this right could not be constitutionally impaired by the later act which

45. Hamilton Nat'l Bank of Chattanooga v. Childers, 233 Ga. 427, 211 S.E.2d 723 (1975).
46. *Id.* at 427, 211 S.E.2d at 724.
47. 218 Ga. 798, 130 S.E.2d 718 (1963).
48. Ga. Laws, 1973, p. 844, *amending* GA. CODE ANN. §108-111.1 (Rev. 1973).
49. Woodruff v. Trust Co. of Georgia, 233 Ga. 135, 210 S.E.2d 321 (1974).

nullified the *Moore* doctrine. The mere fact that the 1973 act is so at variance with the very concept of the trust would justify, in the writer's opinion, the repeal of that act and the reinstatement of the *Moore* case as valid authority.