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Wills, Trusts, and Administration of Estates

James C. Rehberg

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By James C. Rehberg*

I. Legislation

Inheritance by, from, and through illegitimates. Two relatively recent decisions of the United States Supreme Court, *Trimble v. Gordon*[1] and *Lalli v. Lalli*,[2] prompted legislation which greatly enlarged the rights of illegitimates to inherit property in Georgia. The first of these cases struck down an Illinois statute on the ground that it was overly broad in distinguishing the rights of inheritance by legitimates from those of illegitimates. The latter case upheld a New York statute distinguishing those rights. While all members of the court in *Lalli* could not agree that the two cases were reconcilable, the majority seemed to say that the validity of such a statute turns on whether it is substantially related to some permissible state interest, such as the safeguarding of the orderly disposition of property and the protection of estates against false claims of paternity and other spurious claims. Under this reasoning the New York statute was upheld and the Illinois statute was struck down.

The Georgia statute passed in 1980[3] appears to follow quite closely the New York act which was upheld in *Lalli v. Lalli*. It allows an illegitimate child to inherit in the same manner as would a legitimate one from and through the mother, from and through other children of the mother, and from and through any maternal kindred. On the other hand, the new statute allows an illegitimate child to inherit from and through the father and from and through paternal kin only if, during the lifetime of the father and after the conception of the child, a court order has been issued establishing legitimacy under the authority of Georgia Code Ann. section 74-

* Professor of Law, Walter F. George School of Law, Mercer University (A.B., 1940; J.D., 1948); Duke University (LL.M., 1952). Member, State Bar of Georgia.

1. 430 U.S. 762 (1977).
2. 439 U.S. 259 (1978).
3. 1980 Ga. Laws 1432, amending Ga. Code Ann. §§ 113-904 and 113-905 (Supp. 1980).

103, or such other authority as may be hereafter provided by law, or if a court order has been issued "establishing the father of the illegitimate child."[4]

While the new Georgia statute is a step in the right direction since it improves the lot of the illegitimate child considerably, an opinion as to its constitutionality should be expressed with caution. After all, in deciding both *Trimble v. Gordon* and *Lalli v. Lalli*, the members of the Supreme Court of the United States were divided five-to-four.

II. Recent Decisions—Wills and Administration of Estates

A. *Year's Support*

The constitutional issues which have been litigated in recent year's support cases seem to have been resolved. The cases decided during the current survey period are of interest primarily because of the unusual factual situations which raised other issues.

In *Ingram v. Pirkle*,[5] the court of appeals upheld a directed verdict which had awarded year's support to a woman upon her showing that the decedent had fathered her three illegitimate children and had then legitimated them by marrying her and recognizing the children as his. The brief opinion does not spell it out, but the award was apparently for the widow and the children, the latter being minors at the time of the father's death.

Since the amount of an award is determined "according to the circumstances and standing of the family"[6] prior to the death of the decedent, the amount of an appraisers' award is often unpredictable. It is probably for this same reason that a challenge of an award on the ground of excessiveness is seldom successful. In *Rawlins v. Rawlins*,[7] the only evidence of excessiveness was that the realty which was awarded had once been put on the market for $250,000. The fact that no inquiries were received subsequent to this offer deprived this evidence of any probative value; so the prima facie correctness of the appraisers' award withstood the challenge. This presumption of correctness stands regardless of whether there is a personal representative of the estate and regardless of the identity or the status of the caveator.

The standard will clause forcing the surviving spouse to elect to take under or against the will often is successful in avoiding a serious frustration of the testamentary scheme. Its use, though, will not accomplish this

4. *Id.* at 1433.
5. 150 Ga. App. 374, 258 S.E.2d 24 (1979).
6. Ga. Code Ann. § 113-1002 (1975).
7. 150 Ga. App. 534, 258 S.E.2d 187 (1979).

result if the will deals too sparingly with the spouse. This was one of several interesting points made in *Howard v. Howard*.[8] The estate in this case was valued for estate tax purposes at $176,809, but the will left the widow only $5,000 in cash, the household goods, and a determinable life estate in the home. When she claimed year's support, the appraisers awarded her $25,000, plus the household furniture, but the probate judge, after a caveat was filed by the executor, reduced the award to $6,000, plus the furniture. On appeal to superior court, the jury then fixed the award at $45,000 in cash, plus three separate tracts of land. The court of appeals affirmed, noting that it was passing, not on the weight of the evidence, but only on its sufficiency to support the verdict.

Two other interesting issues were raised in the *Howard* case. The first one was that, notwithstanding the fact that the statute specifies that the appraisers' award be "either in property *or* money,"[9] suggesting the one or the other, the award may be in the form of realty *and* money. The other issue was raised by the fact that after the husband's death the widow withdrew funds from a joint checking account in her and her husband's names. The executors contended that this action constituted an election on her part to take under the will and, thus, a bar to her claiming year's support. Recognizing that the account might be held ultimately to belong to the husband's estate (a possibility in every joint and survivor account), that alone was not sufficient to make withdrawal of funds evidence of an election on her part.

In *Pierce v. Moore*,[10] a levy to satisfy a judgment against a widow was made on some property which had been awarded to her alone as year's support. She argued that since the award was for her support and maintenance the property could be levied upon only if the judgment debt had been incurred for support and maintenance. That argument would have been persuasive prior to 1937 (she cited only pre-1937 authority), but in that year the year's support statute was amended.[11] Under the amendment, and under the present law,[12] property set apart to the widow alone is not exempt from levy and sale simply because it was originally awarded for support.[13]

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8. 150 Ga. App. 213, 257 S.E.2d 336 (1979).

9. GA. CODE ANN. § 113-1002 (1975).

10. 244 Ga. 739, 261 S.E.2d 647 (1979).

11. 1937 Ga. Laws 861.

12. GA. CODE ANN. § 113-1023 (1975).

13. Property set apart to a widow and minor children is subject to her voluntary conveyance or incumbrance, but only to the extent of her undivided interest in it. GA. CODE ANN. § 113-1024 (1975).

B. No Administration Necessary

When each of two persons claims to be the widow of a decedent, each proving an undissolved ceremonial marriage to him, the standing of either to petition for no administration necessary is open to question. Each marriage, considered alone, has a presumption of validity, arising from the fact that it was a ceremonial marriage. When such presumptions meet head-on, however, as they did in *Uddyback v. Johnson*,[14] the burden of going forward with the evidence becomes the crucial issue. In this case plaintiff, who first married the decedent, prevailed notwithstanding the fact that after that ceremonial marriage and during the decedent's lifetime she had married another. This result was demanded because the caveator failed to prove affirmatively the dissolution of plaintiff's marriage to the decedent.[15] Absent such affirmative proof, the subsequent marriage of plaintiff was invalid, and her prior marriage to the decedent still carried its presumption of validity.

C. Probate of Wills

Only one case within the past year dealt directly with the issue of testamentary capacity. *Johnson v. Dodgen*[16] was a case involving the alleged will of an elderly and infirm person with little future apart from a nursing home. The evidence at the probate proceeding revealed that her doctor and her nephew (the nephew being her sole heir) had recommended that she go into a home, and that this recommendation gave her the mistaken notion that her nephew was trying to get rid of her and thus get her property. The evidence further showed that she then revoked her prior will, which had left the entire estate to her nephew, and executed the one offered for probate. A verdict denying probate of the second will was affirmed on the ground that there was substantial evidence that monomania existed and that the second will was the product of it.

D. Problems of Administration

A section of the Financial Institutions Code provides that only trust companies, certain banks, and certain corporations which market securities for charitable organizations may serve as fiduciaries.[17] In reliance upon this section, the capacity of an officer of a charitable foundation to serve as successor administrator was challenged in *McGonagle v.*

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14. 149 Ga. App. 769, 256 S.E.2d 29 (1979).
15. GA. CODE ANN. § 53-102 (1974).
16. 244 Ga. 422, 260 S.E.2d 332 (1979).
17. GA. CODE ANN. § 41A-1103 (1974).

Duncan.[18] It was argued that neither the Georgia Baptist Foundation, Inc., which was the sole residuary legatee, nor its executive director, qualified under this section. The challenge proved unsuccessful. While the officer, as an individual, was not an interested party, the foundation was, and obviously it could act only through its officers. The obstacle posed by the above-cited section of the Financial Institutions Code was held to be only apparent. The section contained an express disavowal of repeal by implication, so the general statute listing those qualified to serve as administrator[19] was not repealed. Under the general statute the residuary taker was an interested party, and since it was a corporation, its executive director could act for it.

Despite criticism of it and efforts to repeal it, Georgia's mortmain act,[20] which limits the portion of an estate which may be left to charity by a will executed within ninety days of the testator's death, is still making itself felt. In *Citizens & Southern National Bank v. Martin,*[21] the will was executed more than ninety days prior to death, but it was amended by a codicil executed only sixty-seven days prior to death. Since the codicil republished the will, the mortmain act was clearly applicable. Whether it was violated was a different question. The will, which disposed of an estate worth over $700,000, created a charitable remainder annuity trust; so the question was whether more than one-third of the first $200,000 in the estate went into this trust. Since the appeal was from a judgment on the pleadings, the court concluded that there was not sufficient evidence in the record to ascertain whether the act was in fact violated.

Performance by the personal representative of his duty to collect the assets of the estate is sometimes made difficult by the fact that ownership, particularly of personal property and intangibles, is not readily ascertainable. If there is a real possibility of ownership by the estate, then the personal representative must pursue it, for fear of a surcharge if he fails to do so and it later is decided that he made the wrong decision. Multiple-party accounts (joint accounts, pay-on-death accounts and Totten trusts) have repeatedly created this dilemma for the personal representative. The "Multiple Party Accounts" chapter,[22] which was added to the Financial Institutions Code in 1976, should help. It did in *White v. Royal,*[23] where the facts showed that *A* had opened an account in the names of "*A* or *B*" and, after *A*'s death, his administrator and *B* each claimed the account. The court decided in favor of *B,* the survivor, relying

18. 244 Ga. 308, 260 S.E.2d 44 (1979).
19. GA. CODE ANN. § 113-1202 (1975).
20. GA. CODE ANN. § 113-107 (1975).
21. 244 Ga. 522, 260 S.E.2d 901 (1979).
22. GA. CODE ANN. ch. 41A-38 (Supp. 1980).
23. 150 Ga. App. 57, 256 S.E.2d 662 (1979).

upon that section which provides that at the death of a party to a joint account the sum on deposit belongs to the surviving party "unless there is clear and convincing evidence of a different intention at the time the account is created."[24] There was no such evidence before the court. Presumably the account in dispute in this case was opened after the last-cited section took effect.

The radical change in Georgia law brought about by the new law is pointedly noted in another recent case in which a similar account had been opened prior to the effective date of the new law.[25] A contrary result was reached. Under the prior law it is presumed, even though the account is joint in form, that no survivorship rights were intended unless they were clearly expressed. In this latter case the court acknowledged that understandable confusion might have resulted from a misinterpretation of *White v. Royal*,[26] and for that reason it declined to assess damages for a frivolous appeal.

Though legal title to property may be in a decedent at death, thus making it imperative that the personal representative claim it, an application of the doctrine of implied trusts may result in the estate's being divested of that property. In *Weekes v. Gay*,[27] title to a home was in the joint names of the decedent and the survivor, but the survivor proved that he had paid the entire purchase price. Insurance proceeds had been collected by the decedent's estate for fire damage to the home, because the policy was in decedent's name only, but the survivor proved that he had paid all the premiums on that policy. Title to another piece of realty was also in decedent's name only, but the survivor proved that he had paid one-half the purchase price of that realty. The court applied the doctrine of implied trusts and held that the home and the insurance proceeds, as well as an undivided one-half interest in the other realty, belonged to the survivor.

III. Recent Decisions—Trusts

A. *Resulting Trusts*

Ford v. Ford[28] gave the supreme court an opportunity to resolve the conflict between two lines of authority on the issue of rebutting the presumption of a gift in the situation where the husband pays the purchase price and legal title to the property is taken in the name of the wife. The

24. Ga. Code Ann. § 41A-3804 (Supp. 1980).
25. Johnson v. Lastinger, 152 Ga. App. 328, 262 S.E.2d 601 (1979).
26. 150 Ga. App. 59, 256 S.E.2d 662.
27. 243 Ga. 784, 256 S.E.2d 901 (1979).
28. 243 Ga. 763, 256 S.E.2d 446 (1979).

majority of the court failed to resolve this conflict, however, and, as a consequence, we are likely to see this issue raised, again and again, until it is resolved. The majority chose to follow a line of cases represented by *Scales v. Scales*[29] and *Adderholt v. Adderholt*,[30] both of which held that, in order to rebut the presumption of a gift and to raise, instead, a resulting trust, the payor must show that a resulting trust was contemplated by both parties by way of an understanding or agreement. Justice Hall dissented on this point, emphasizing that, as a matter of history and of logic, whether a resulting trust is raised depends upon whether the payor intends to divest himself of a beneficial interest in the property and not upon whether he has entered into an understanding or agreement. The reasoning of the majority seems to say that in order to prove a resulting trust one must prove an express trust. If that is what the majority is saying, then it appears to be at odds with the statutory requirement that all express trusts must be created or declared in writing.[31]

In *Epps v. Wood*,[32] a case decided shortly after *Ford v. Ford*, the supreme court held that when there was evidence of a long-standing course of conduct in holding various properties first in the name of the husband and then in the name of the wife, it would be erroneous to award a summary judgment on the basis of the presumption of a gift. The issue of gift or resulting trust, it was held, was one for the jury. Chief Justice Nichols, who joined in the dissent of Justice Hall in *Ford v. Ford*, limited the holding in *Epps* to the procedural point that the presumption of a gift and the conflicting evidence of a long-standing course of conduct made the grant of summary judgment erroneous.

B. Express Private Trusts

In the situation where all the beneficiaries are *sui juris* and all of them desire to terminate a trust, the only reason for refusing termination would be that there remains unaccomplished some trust purpose that remains capable of accomplishment. However, if there are substitute beneficiaries who are not yet ascertained, their ascertainment as beneficiaries and the subsequent administration of the trust in their behalf would obviously be unaccomplished trust purposes. The plaintiffs in *Clark v. Citizens & Southern National Bank*[33] failed in their effort to terminate because the court felt that, under the circumstances, termination would leave out some potential beneficiaries who were not yet ascertained. The testamen-

29. 235 Ga. 509, 220 S.E.2d 267 (1975).
30. 240 Ga. 626, 242 S.E.2d 11 (1978).
31. GA. CODE ANN. § 108-105 (1979).
32. 243 Ga. 835, 257 S.E.2d 259 (1979).
33. 243 Ga. 703, 257 S.E.2d 244 (1979).

tary trust directed that, at the death of the last of two life beneficiaries, "the then trust estate [be divided] into as many parts as I have grandchildren in life with a part also for the children of any deceased grandchild or grandchildren."[34] The surviving life beneficiary, who was the only child of testator, joined with her only two children, both of whom were adult and *sui juris,* in the request for termination. They proved that she, the testator's only child, was 59 years old and also offered uncontroverted medical evidence that she was no longer capable of bearing children.

The court concluded that there were still two reasons for not terminating the trusts: first, the conclusive presumption of fertility is still the law in Georgia and, second, even if it were not, the class would still be open to let in any child that the daughter might adopt in the future.[35]

The unlikely event of the 59-year-old woman's either having or adopting children in the future seems, in the opinion of the writer, to justify termination of this trust upon the posting of security to protect any children that may be born to or adopted by her.[36]

C. *Charitable Trusts*

In *Jones v. Wolf,*[37] the supreme court dealt with the latest development in a local church schism which was first litigated in 1975. When the Supreme Court of Georgia had this controversy before it in 1978,[38] it held that, in such a dispute over the right to possess and control the local church property, there existed a rebuttable presumption that the vote of the majority in the church should control and that this presumption could be rebutted only by a contrary showing based upon neutral principles of law such as state statutes, corporate charters, relevant deeds or the organizational constitutions of the denomination. Finding that this presumption had not been rebutted, the court then held in favor of the majority of the local congregation, which had voted to separate from the general church. The United States Supreme Court vacated that decision and remanded the case,[39] expressing concern as to why Georgia Code

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34. *Id.* at 704, 257 S.E.2d at 245.

35. As authority that such a child would be a member of the class of beneficiaries, the court cited Warner v. First National Bank of Atlanta, 242 Ga. 661, 251 S.E.2d 511 (1979), a case decided after the trial court's decision in the *Clark* case. *Warner* held that in deciding whether adopted children take under a gift to "descendants" or "issue," the law in effect at the testator's death controls.

36. This solution is recommended in 4 A. SCOTT, THE LAW OF TRUSTS, § 340.1 (3d ed. 1967) to cover the remote possibility of future birth of children. It would seem equally applicable to a similarly remote possibility of the adoption of a child.

37. 244 Ga. 388, 260 S.E.2d 84 (1979).

38. 241 Ga. 208, 243 S.E.2d 860 (1978).

39. Jones v. Wolf, 443 U.S. 595 (1979).

Ann. section 22-5504[40] was not argued in the briefs. That section provides that "the majority of those who adhere to its organization and doctrines represent the church."[41] In its latest consideration of this case[42] the Supreme Court of Georgia responded to this expression of concern by pointing out that it had been stipulated that the section applies only to churches which have a congregational form of government and not to those which, like the church in question, have a hierarchical or connectional form of government.

IV. Will Construction

A. *Adoption*

The effect of adoption upon the succession to property continues to be a problem, first, because of the frequent amendment of the adoption statutes and, second, because testators fail to foresee the problem and, therefore, fail to express their intentions with reference to it. The will in *Nunnally v. Trust Co. Bank*[43] contained a class gift to the "issue" of a deceased grandchild of the testatrix. The construction problem raised was whether adopted children of the deceased grandchild, adopted after the testatrix' death, qualified as takers. The adoption statute in force at the testatrix' death, in 1945, provided that adopted children could inherit only from the adopting parents and not from other relatives by adoption.[44] The law in effect at the death of the testatrix was challenged on the ground that it drew a constitutionally impermissible distinction between natural and adopted children, but the court held that, though the statute itself constituted state action, the distinction it drew was a permissible one. It is legitimate to presume that one would prefer his property to remain within his bloodline and go to his natural descendants rather than to persons who came into the family only by an adoption which took place after his death.

B. *Ademption*

Whether a change in the form or nature of a testamentary gift will effect an ademption, or only a substitution, is a question of degree which

40. Ga. Code Ann. § 22-5504 (1977).
41. *Id.*
42. 244 Ga. 388, 260 S.E.2d 84 (1979).
43. 244 Ga. 697, 261 S.E.2d 621 (1979).
44. 1941 Ga. Laws 300, 305-6. In 1949 the statute was amended on this point (1949 Ga. Laws 1157), but in an earlier appearance of the *Nunnally* case it was established that the law in force at the testator's death controlled in the ascertainment of rights under this will. Nunnally v. Trust Co. Bank, 243 Ga. 42, 252 S.E.2d 468 (1979).

cannot be covered in detail in a statute. In *Peacock v. Owens*,[45] a devise of "such interest I may own"[46] in described realty was held adeemed by a later conveyance of that interest by the testator to another, even though he took back, and still held at death, a purchase money security deed to the realty. The radical change in the nature of the property from a beneficial interest in realty to a secured right to the payment of money effected an ademption of the devise. The right to the money, which was collected during the period of administration, passed under the residuary clause.

C. *The "Early Vesting" Problem*

The will in *Wood v. Roberts*[47] left some rental property in trust for a twenty-year period at the end of which it would be distributed in kind to *A* and *B* "or to their surviving heirs, share and share alike, per stirpes."[48] *B* subsequently married a widower with three children by his prior marriage and then died intestate, survived by this husband but without ever having children. The husband was thus her sole heir. He then died, just three months later, leaving a will which left his entire estate to his three children by the prior marriage. The twenty-year period of the trust had not yet expired. At this point *A* sought a declaratory judgment to the effect that *B*'s interest was from the beginning contingent upon her surviving the twenty-year period, that she did not do so and, therefore, that there was nothing to pass by intestacy from her to her husband and from him to his children. The court, in a 4-to-3 decision, held that the one-half interest in the trust vested in *B* at the testator's death, passed at *B*'s death to her husband as her sole heir and, when he died three months later, passed to his three children by the prior marriage.

This property thus went to persons who were unrelated and unknown to the testator, a result which is technically justifiable on the ground that the testator used the words "or to their surviving hiers [sic]"[49] as substitutional.

The majority opinion assumed that the decision had to turn upon the presumption in favor of early vesting. Historically, that presumption evolved as a means of avoiding the harshness of the common law destructibility rule and, consequently, applied only to contingent remainders. Unless we are prepared to treat every successive interest in property, including an executory interest, as a remainder, that reasoning is hardly

45. 244 Ga. 203, 259 S.E.2d 458 (1979).
46. *Id.* at 203, 259 S.E.2d at 459.
47. 244 Ga. 507, 260 S.E.2d 890 (1979).
48. *Id.* at 509, 260 S.E.2d at 892.
49. *Id.* at 508, 260 S.E.2d at 892.

applicable in this case. The minority did not think that the will called for the presumption of an early vesting; instead, it thought that the matter was controlled by the code section which requires that a limitation over to "heirs" be construed as a limitation over to "children."[50] On this reasoning the minority contended that, since *B* died without children, the "limitation over" failed and the property reverted to the testator's estate.

The writer finds himself in the unenviable position of disagreeing with the reasoning of both the majority and the minority, though not with the holding of the majority. The interests of *A* and *B* under this will appear to have been vested as of the testator's death. The entire legal title was in the trustee, and the entire equitable title was in *A* and *B*, subject only to an executory devise in favor of the surviving heirs of either of them who might die before termination of the trust. It seems that, while the majority reached the right result, there was no reason for either it or the minority to talk about the presumption of early vesting.

D. The Rule Against Perpetuities

The Georgia rule against perpetuities has been stated, at least since 1863, in terms of "limitations of estates."[51] Whether it was aimed, particularly in the case of trust estates, at the potential duration of a trust or at the remote vesting of the property interests has been uncertain. To a considerable extent it is still uncertain, but there are signs pointing toward a resolution of this problem. The trend is apparent when one looks at the decisions within the past twenty years. In *Fuller v. Fuller*,[52] it was held that a trust which was to last for twenty-five years in gross violated the rule. It is not clear from the report of the case whether the will also provided for a possible vesting of an interest beyond the twenty-one year period in gross.[53]

Two years later the court in *Burton v. Hicks*,[54] relying solely on *Fuller*, held void a trust which would last longer than the period of the rule even

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50. GA. CODE ANN. § 85-504 (1978).

51. CODE OF GEORGIA, 1863, § 2249; GA. CODE ANN., § 85-707 (1978).

52. 217 Ga. 316, 122 S.E.2d 234 (1961).

53. Justice Undercofler, dissenting in Capers v. Camp, 244 Ga. 7, 257 S.E.2d 517 (1979), cited the record in *Fuller* to show that there was in fact a remote vesting in that case. The court in Erskine v. Klein, 218 Ga. 112, 126 S.E.2d 755 (1962) also distinguished *Fuller*, apparently on that basis, and held that a trust to last for fifty years did not violate the rule, because all the interests created by the will in Erskine v. Klein were initially vested. The court there made the flat statement: "The rule against perpetuities (GA. CODE ANN. § 85-707) is concerned with remoteness of vesting." 218 Ga. at 117, 126 S.E.2d at 759. Had it said that the rule is concerned "only" with remoteness of vesting, perhaps this issue would have been resolved at that time.

54. 220 Ga. 29, 136 S.E.2d 759 (1964).

though all the interests were presently vested.[55] A national commentator describes the result reached in *Burton v. Hicks* as "almost indefensible."[56]

This extensive background will put the perpetuities cases decided during the current survey period in perspective. The will in *Capers v. Camp*[57] contained a devise of realty to *A* and *B*, a son and a son-in-law, to be held by them for twenty-five years "for the use of their families and my grandchildren as a summer vacation place";[58] at the end of that time, if the devisees or their heirs should desire to sell the property, it could be sold and the proceeds divided among the devisees or their heirs. There did not seem to be any provision for a future vesting, unless it be in the heirs of the named devisees, and that would necessarily take place at the deaths of *A* and *B*. The majority, relying upon *Fuller v. Fuller*,[59] held that the trust violated the rule.

Justice Undercofler's dissent made a convincing argument that the majority was wrong. He said that they misinterpreted *Fuller* because the record in *Fuller* showed a remote vesting that would have violated the rule without regard to the duration of the trust. Justice Undercofler said that they should have overruled *Burton v. Hicks*,[60] because *Burton* was wrong in holding a trust invalid just because it would last longer than the period of the rule notwithstanding the fact that all the interests were presently vested.

About two months later, in *Burt v. Commercial Bank & Trust Co.*,[61] the supreme court did unanimously overrule *Burton v. Hicks* on this point. The opinion recognized, first, that Georgia's rule against perpetuities is a codification of the common law rule and, second, like the common law rule, it does not invalidate interests which vest within the period of the rule even though the trust remains in effect beyond that period.[62]

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55. The court failed in Burton v. Hicks to mention either Erskine v. Klein or Lanier v. Lanier, 218 Ga. 137, 126 S.E.2d 776 (1962), both of which contained dictum to the effect that beneficial interests which vest immediately or which will vest, if ever, within the period of the rule are valid even though the trust may continue beyond that period.

56. R. LYNN, THE MODERN RULE AGAINST PERPETUITIES 2 (1966).

57. 244 Ga. 7, 257 S.E.2d 517 (1979).

58. *Id.* at 7, 257 S.E.2d at 519.

59. 217 Ga. 316, 122 S.E.2d 284.

60. 220 Ga. 29, 136 S.E.2d 759.

61. 244 Ga. 253, 260 S.E.2d 306 (1979).

62. Less than one month later the court reiterated this holding. Walker v. Bogle, 244 Ga. 439, 260 S.E.2d 338 (1979).