

Wills: Precatory Words Held Sufficient to Create Trust

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was only considered. As Mr. Ames says,⁵ "All overlooked that beneficent principle in our law by which equity, acting *in personam*, compels one who by misconduct has acquired a *res* at common law, to hold the *res* as a constructive trustee for person wronged, or if he is dead, for his representatives."

Our court seems somewhat hesitant in so extending equitable jurisdiction to this case. While recognizing the equitable principle that one may not profit by his own wrong, yet the distinction is made that if this equitable doctrine applies, the vesting and the taking of the property are separable acts and that once title was vested "there is visited upon the criminal a punishment in addition to that provided for by law. In other words, it amounts to an attainder or a corruption of the blood, prohibited by the Constitution," while the two actions are really simultaneous. The decision then rests upon the theory that the will may be considered revoked insofar as B is concerned, and still be within the blanket statute 238.14 "that nothing contained in this section shall prevent the revocation *implied by law* from subsequent changes in the condition or circumstances of the testator." (Italics ours.) As stated *In re Will of Battis*,⁶ in explaining how the case is brought within the exception, "the rule rests on the idea that the changed conditions and circumstances of the testator respecting his property, his family, or beneficiaries, imposing different moral and legal duties, affords strong evidence that the testator intended that his will should become revoked as to the provisions affected by such subsequent change."

In a word, then, the rule seems to be that a beneficiary who murders his testator, causes, within the contemplation of the legislature, a revocation of the will as to him, and that in addition to that controlling reason in the case, a county court may exercise equitable jurisdiction in construing a will by preventing a wrongful actor from realizing profit from his own wrong. The mere fact that the actor did not know he was a beneficiary is immaterial.

ROBERT A. EWENS

Wills: Precatory Words Held Sufficient to Create Trust.—Wisconsin has added another to its list of precatory phrases that are sufficiently expressive of the intention of the testator to create a trust. In the case of *In re Doe's Will*¹ the testator left practically all of his property to his wife "well knowing" that she would make wise use thereof and would leave the residue to the children of their marriage. There is nothing startling about this decision for the same words have been held to create a trust in various other jurisdictions. *Nriggs v. Penny and Bardswell v. Bardswell*² had previously adjudicated upon these exact words.

⁵ Can a murderer acquire a title and keep it? Ames' Lectures on Legal History, p. 310.

⁶ 143 Wis. 234, 126 N.W. 9.

¹ (Wis.), 212 N.W. 781.

² 49 Eng. Ch. 4.

³ 49 Eng. Ch. 4, 9 Sim. 319.

The words "having full confidence in my wife and hereby request" that at her death she will divide among our children the residue of the property, were in *Knox v. Knox*³ held sufficient to create a trust.

In *Swarthout v. Swarthout*⁴ "it is my wish" that certain property mentioned and devised to his wife should go to the children at her decease, was held to be sufficient.

*Will of Olson*⁵ follows the above case.

In other jurisdictions the following phrases have been held to be mandatory:

"In the full faith" was so held in *Noe v. Kern*.⁶

"Feeling assured and having full confidence," in *Gully v. Cregoe*.⁷

"Under the firm conviction," in *Barnes v. Grant*.⁸

"In the fullest confidence," has been twice adjudicated. *Wright v. Athynes*⁹ and *Curnich v. Tucker*.¹⁰

The general rule seems to be that where the words express entire confidence in the beneficiary they are sufficient.

HOWARD KALUPSKE

Activities of the Division of International Law of the Carnegie Endowment for International Peace.—The work of the Division of International Law of the Carnegie Endowment for International Peace as outlined in the annual report just issued by its director, Dr. James Brown Scott, falls roughly into four groups: (1) The activities of the Institute of International Law, and the American Institute of International Law, both of which receive generous financial aid from the Endowment; (2) the sessions of the Academy of International Law at the Hague, and the traveling fellowships granted to teachers and students; (3) publications and translations, and (4) financial aid to journals and societies of international law, and help in meeting the cost of publication of meritorious works on this subject.

During the past year the two Institutes have been mainly concerned with the tremendous work of codifying international law. At a meeting held in Paris in September, 1926, fifteen commissions appointed by the Institute of International Law to study various phases of the subject gave reports covering a large part of the international law of peace.

The American Institute of International Law met at Montevideo on March 21, 1927, and reconsidered projects of codification that it had adopted at Lima in 1924. These projects are now to be submitted to the Commission of Jurists which is to assemble at Rio de Janeiro during the present month. Dr. Scott, the director of the Division of International Law, is also president of the American Institute, and he has

³ 59 Wis. 172, 18 N.W. 155.

⁴ 111 Wis. 102, 86 N.W. 558.

⁵ 165 Wis. 409, 162 N.W. 429.

⁶ 93 Mo. 367, 6 S.W. 239.

⁷ 42 Bev. 185.

⁸ 26 L. J. Ch. (N.S.) 92.

⁹ 17 Ves. 255.

¹⁰ L.R. 17 Eq. 320.