Wyoming Law Journal

Volume 3 | Number 2 Article 11

December 2019

Rights of Legatees to Principal in Lieu of Annuity

Robert E. Holdstedt

The search of premises incidental to a lawful arrest is permitted on the theory that the arrested person has control of the immediate premises in which he is arrested and may have hidden the fruits of his crime somewhere on the premises. Under this theory, in order to justify the search of a third person who is present on the premises authorized to be searched as incidental to the arrest it would be necessary that the pockets of the third person be under the control of the person arrested. Unless the third person is an accomplice in the crime, such, of course, is not the situation. A third person's pockets are under his own control and, if his search is to be justified, the justification must come from something more substantial than the arrest of one other than himself. If the third person has committed an offense in the presence of the officers or if the officers have a good reason to believe that he committed a felony, he may himself be arrested[16] and his person searched as incidental to his own arrest; but if he is presumably innocent to such an extent that he is not subject to *arrest,* his search would be unreasonable. The minute possibility that the arrested person may have slipped an important piece of evidence into his pocket is not sufficient to deprive a third person of his immunity from search as guaranteed by the Federal Constitution.

JOE R. WILMETTI

RIGHTS OF LEGATEES TO PRINCIPAL IN LIEU OF ANNUITY

The testatrix bequeathed a sum of $3,000.00 to the legatee, payable $1,000.00 in cash and the remaining $2,000.00 to be invested by the executor for the benefit of the legatee in specified annuities. The executor asked the direction of the court as to whether or not he could pay the entire sum over to the legatee, or be forced to purchase the annuities. The executor stated that he was of the opinion that the legatee had the right to receive the total sum in cash. To this the societies from whom the annuities were to be purchased, filed objections. On appeal to the supreme court: *Held,* that where the testatrix has bequeathed a certain sum and specified that it is to be used for the purchase of a specified annuity, that the intent of the testatrix must be followed and the annuity must be purchased. *In re Johnson's Estate,* 30 N. W. (2d) 164 (Iowa 1947).

This decision is a complete reversal of the rule of law that an annuitant may elect to take the capital sum, where there is a direction in the will to the executor to purchase an annuity for a named beneficiary.[1] This has been the accepted law

---

was unreasonable and unlawful. State v. Jokosh, 181 Wisc. 160, 193 N. W. 976 (1923). Defendant was the owner of the house in which she lived and when she learned that officers with a search warrant were about to search her home for whiskey she took a bottle of whiskey out from under the pillow of her bed and secreted it on her person. Officers took her to headquarters and had her searched. Held, that the search was unreasonable and unlawful. State v. Nozanich, 207 Ind. 274, 192 N. E. 431 (1934).

16. Shettel v. United States, 113 F. (2d) 34, 35 (App. D. C. 1940); United States v. Sam Chin, 24 F. Supp. 14, 17 (Md. 1938); United States v. Biddle, 39 F. Supp. 203 (E. D. Pa. 1941); United States v. Strickland, 62 F. Supp. 468, 471 (W. D. S. Car. 1945).

1. 69 C. J. 945, sec. 2133.

in England for over a century;[2] and in the leading case of *Parker v. Cobe*,[3] it was adopted in this country. Until recently, the few American courts before whom this question has been raised were content merely to cite the English rule and *Parker v. Cobe*, and upon no further arguments, grant the right of election to the annuitant.[4]

The case of *Barnes v. Rowley* is the English case most often cited for this proposition. There the reason given was that to force an annuity upon a person would be a mere nugatory act, because the annuitant could immediately sell such annuity and recover the capital sum.[5] Although the annuity in question was a life annuity, this reasoning might seem fallacious when applied to the ordinary life annuity of today. According to some authorities there is no cash value in the majority of such life annuities, other than the guaranteed installments during the life of the annuitant. If the provisions of the annuity do permit its sale, such sale is extremely rare and can be made, if at all, only at a very heavy discount. In fact, an annuity, because of its characteristics of becoming valueless upon the death of an annuitant, is not even acceptable as security for a loan.[6]

Another case from England cited as supporting this rule can be distinguished.[7] In that case the court did grant the annuitant the capital sum, but the annuity in question was a perpetual government annuity. This type of annuity is really in the form of a government security, and, as such, has a definite value and is not subject to the same discounts of an ordinary life annuity. Because of such marketable characteristics, this type of annuity would easily conform to the reasoning of the *Barnes* case, even though it is hard to see how the same reasoning can apply to an ordinary life annuity.

One theory that has been advanced in an attempt to explain this rule is based upon the broad policy of English law to give the complete power and control over property to the person who owns the sole and absolute interest therein. Under this it is suggested that the court felt the direction of the testator was that a fund representing the principal of the annuity should be severed completely from the bulk of the estate and devoted to the sole benefit of the annuitant and, therefore, should be considered as a gift in the alternative of the principal or the annuity on the option of the proposed annuitant.[8]

It has also been suggested that this is analogous to the situation which arises in trusts. Where a trust is set up to pay the income to the beneficiary for a certain period of time and then pay the whole amount over to the beneficiary, if there is no

2. Barnes v. Rowley, 3 Ves. 305, 30 Eng. Rep. 1024 (1797); In re Mabbett, [1891] 1 Ch. 707; In re Robbins, [1906] 2 Ch. 648; In re Brunning, [1909] 1 Ch. 276; Kerr v. Middlesex, 2 De. G. M. & G. 576, 42 Eng. Rep. 996 (1852).
3. 208 Mass. 260, 94 N. E. 476 (1911).
4. Matter of Cole's Estate, 174 App. Div. 534, 161 N. Y. Supp. 120 (2d Dep't 1916) aff'd 219 N. Y. 435, 114 N. E. 785 (1916); In re Bertuch's Will, 225 App. Div. 773, 232 N. Y. Supp. 36 (1928); In re Benzigen's Estate, 61 Cal. App. (2d) 628, 143 P. (2d) 717 (1943).
5. Barnes v. Rowley, 3 Ves. 305, 30 Eng. Rep. 1024 (1797).
6. Feiler v. Klein, 74 N. E. (2d) 384 (Ohio 1947); Harwood & Francis, Insurance and Annuities From The Buyer's Point of View, p. 121 (1935).
7. Kerr v. Middlesex, 2 De. G. M. & G. 576, 42 Eng. Rep. 996 (1852).
8. Comment, Annuities—Right of Legatee for Whose Benefit the Purchase of an Annuity is Directed, to Receive the Principal in Lieu Thereof, 41 Mich. L. Rev. 276 (1941).

gift over on condition that the beneficiary reach a certain age, then the beneficiary upon reaching legal age can have the trust terminated.[9] This rule has been accepted in England,[10] but rejected in this country.[11] In fact, one American court, while accepting the English rule as to the annuities, has expressly differentiated it from the rule on trusts.[12]

Still another analogy is the situation where a will directs an executor to sell land and give the money to the legatee. It has been held that the legatee can elect to receive the land instead of having it sold and then receive the money. This is based upon the principle that if the legatee wanted the land, he himself could purchase the land at the sale and then receive the same money back that he had used for the purchase.[13]

Although writers have criticized this rule, not until recent years has there been any rebellion from the agencies who make or decide the law. The first such action was a New York statute.[14] This statute passed in 1936, took away the right of election of the annuitant, between the capital or the annuity, except where the testator had expressly provided that such right would exist. Very recently the same result has been reached by judicial decision. The principal case of this article is the most recent of cases in three different jurisdictions which have decided that the old rule is a ruthless disregard of the wishes of the testator, and that the testator's intent should govern wherever possible.[15]

From these recent developments it appears that there might be a trend toward the abrogation of the rule, and that one inconsistency of the law respecting wills might be corrected. If more states would pass similar statutes, the courts would be relieved of this problem. However, with these recent cases, the future courts could, if they are so inclined, find no difficulty in following this trend.

ROBERT E. HOLSTEDT

9. 3 Scott, Trusts sec. 346, pp. 1896-1899 (1939).
10. Saunders v. Vautier, 4 Beav. 115, 49 Eng. Rep. 282 (1841).
11. Claflin v. Claflin, 149 Mass. 19, 20 N. E. 454 (1889).
12. Parker v. Cobe, 208 Mass. 260, 94 N. E. 476 (1911).
13. Craig v. Leslie, 3 Wheat. 563, 4 L. Ed. 460 (U. S. 1818); Lane v. Albertson, 78 App. Div. 607, 79 N. Y. Supp. 947 (1903).
14. Decedent Estate Law sec. 47-b (1936), Thomps. Laws of N. Y. (1939).
15. Bedell v. Colby, 54 A. (2d) 161 (N. H. 1947); Feiler v. Klein, 74 N. E. (2d) 384 (Ohio 1947).