WILLS AND ADMINISTRATION

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The decisions during the period under review follow the general pattern of many years. It is respectfully submitted that the need for complete revision of our probate law is more pressing every year, and our antiquated system will continue to hamper the administration of justice in increasing measure as business becomes more complex and property rights more difficult of determination.

PROCEDURE

Most will cases involve some question of procedure, sometimes incidentally and sometimes as the controlling question. We will try to confine this section to purely procedural decisions.

In *Holland v. Froklis*,[1] it was held that in a contest between a widow and certain creditors of the estate relative to the allowance of year's support, the administrator was not a party and could not appeal from a decision on the contest.

Byrd v. Riggs[2] is perhaps the most unusual of this year's cases. It first appears in the 209th Georgia in 1952. This first decision does not make clear which one of the two wills involved in this litigation was before the court, but the 1952 decision simply held that the Superior Court on appeal has only the jurisdiction of the Court of Ordinary, and no equity powers in such cases. In any event, the case reappeared and was decided on July 27, 1953. It appeared in the 1953 case that a will had been duly probated in solemn form when a later will was found. A petition was filed to probate the second will while the judgement admitting the first will to probate had not been set aside, and the Supreme Court held that while the first will remained of probate, it was impossible to probate a second one. The case reappeared in 1954, at which time following the hint in the 1953 case, but not following it to a correct conclusion, a motion was made to set aside a judgment of the Court of Ordinary probating

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1. 89 Ga. App. 768, 81 S.E.2d 317 (1954).
2. 210 Ga. 473, 80 S.E.2d 785 (1954).
   209 Ga. 899, 76 S.E.2d 774 (1953).
   210 Ga. 297, 79 S.E.2d 803 (1954).

the first will, which motion was overruled, and which decision was affirmed by the Supreme Court. The decisions cited by the court are directly in point, so far as the procedural question is concerned, but we would be interested in the remedy the court would suggest in the circumstances. It would seem that a bill in equity would be the proper method of handling the situation, but we have neither the ability nor the desire to offer suggestions to able counsel.

Cummings v. Cummings[3] is more interesting on its facts than its law. Boiled down, the decision simply holds that where there is no issue of fact, a directed verdict is proper, but in reaching this conclusion, a number of interesting bypaths were entered. The portion of this decision dealing with revocation is most interesting. The testatrix apparently revoked her will by obliterating part of it with a pen, a set of facts that brings to mind (and is not in conflict with) *Hartz v. Sobel.*[4] The *Hartz* case is the delightful one in which a testatrix literally undertook to cut out a devisee with a pair of scissors. Both cases might well be considered by thrifty testators who undertake to draw their own wills.

Smith v. Smith[5] simply holds that a plaintiff who is a proper party is necessary to the prosecution of a suit.

Burgess v. Burgess[6] is bottomed on the proposition that the legal representative of a deceased person is a necessary party to set aside a judgment in favor of the deceased. The statement of Mr. Justice Wyatt relative to the use of the Declaratory Judgment Act is commended to all who have occasion to use that very helpful piece of legislation.

Mental Capacity and Undue Influence

The lack of mental capacity and alleged undue influence are not as popular grounds of attack on wills as was formerly the case. In *Sheffield v. Sheffield,*[7] both of these grounds were relied on. The Supreme Court decision turned solely on the question of the burden of proof. *Anderson v. Anderson*[8] is a typical

3. 89 Ga. App. 529, 80 S.E.2d 204 (1954).
4. 136 Ga. 565, 71 S.E.2d 995 (1911).
38 L.R.A. (NS) 165 (1912).
5. 210 Ga. 354, 80 S.E.2d 196 (1954).
6. 210 Ga. 380, 80 S.E.2d 280 (1954).
7. 209 Ga. 869, 76 S.E.2d 708 (1953).
8. 210 Ga. 464, 80 S.E.2d 807 (1954).

case of this type, but it serves a very useful purpose of restating the propositions (which are in the Code) that a lunatic may make a will during lucid intervals; that incapacity to contract is not consistent to make a will, and that if the testator has sufficient intellect to enable him to have a rational desire as to the disposition of his property, this is sufficient to validate the will. If these principles were kept in mind, there would be fewer cases of this type for the courts to try.

Duncan v. Mayfield[9] restates the old proposition that where there is a conflict in the material evidence, it is reversible error to direct a verdict.

Executors and Administrators

We use this title as a matter of convenience, and under it are grouped a number of cases which might be more accurately discussed under a more particular head.

Darling v. Jones[10] really is a declaratory judgment case, since it is limited in its holding to the principles of that act.

Bell v. Bell[11] denies a widow year's support in property bought with money belonging to an outsider.

Langford v. Spain[12] holds that a sole surviving daughter is entitled to preference in granting of letters of administration of the nominee of the grandchildren.

Hiers v. Striplin[13] holds that a widow who takes year's support for her own benefit alone has the right to dispose of the property set aside by will.

Vickers v. Vickers[14] is a most interesting case. One Vickers was killed in an automobile accident, leaving a widow and their minor children, together with seven other children by a former wife. Two of these seven were minors. The case was settled for a substantial sum, and one of the adult children of the deceased asked the widow for his pro rata part of the amount received by her on account of the death of his father. The question arises: "to whom did the settlement money belong?" Mr. Justice Candler, in a careful and learned decision, holds that under the circumstances the money did not become a part of the deceased

9. 209 Ga. 882, 76 S.E.2d 805 (1953).
10. 88 Ga. App. 812, 78 S.E.2d 94 (1953).
11. 210 Ga. 295, 79 S.E.2d 524 (1954).
12. 89 Ga. App. 416, 79 S.E.2d 582 (1954).
13. 210 Ga. 293, 79 S.E.2d 539 (1954).
14. 210 Ga. 488, 80 S.E.2d 817 (1954).

husband's estate; was not subject to any debt of his; that it belonged to the children of the deceased and the widow, and that it was distributable among them according to the rules of descent as fixed by the Code. The case was obviously carefully considered, and follows the earlier decisions of the Supreme Court.

In *Orr v. Orr*,[15] the Court of Appeals held that a widow is not entitled to a second year's support where the estate is held together for more than one year due to the pendency of litigation instituted by the widow. Year's Support is peculiar to Georgia, and this case illustrates some of the unusual conclusions which arise because of it.

There have been some other cases decided during the year which involve wills more or less incidentally. It occurs to us that there is nothing in any of these cases sufficiently novel or unusual to require any more discussion.

STATUTES

The General Assembly, at its November-December Session, 1953, passed an act authorizing investments in bonds or other securities issued by the Regent of the University System of Georgia.[16] This apparently was the only legislation having to do with our subject at this session of the legislature.

15. 89 Ga. App. 633, 80 S.E.2d 489 (1954).
16. Ga. Laws, Nov.-Dec. Sess. 1953, p. 178.