TRUSTS, WILLS AND ADMINISTRATION OF ESTATES

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LEGISLATION

The flexibility of the law of trusts and the rigidity of the law of wills often have made it difficult for a testator to take full advantage of the best features of both. Particularly has this been true in those situations where the testator directs a "pour over" of a part or all of his estate at death into an amendable trust which he has created prior to the execution of the will. Can he, after he has executed the will, exercise his reserved right to amend the trust? If he does amend the trust, will it necessitate a codicil or re-execution of the will? It has been suggested that full effect can be given to both the will and the trust, even if the latter is amended after the execution of the former, on the theory that the independent legal significance of the trust and its amendments reduces to the vanishing point any possibility of the evils at which the statute of wills is aimed, but this reasoning is weightier as a legal argument than as advice to one planning his future.

Estate planners may now give advice as to "pour over" trusts with much more assurance than in the past, because of the enactment of the Testamentary Additions of Trusts Act.[1] The act specifically authorizes a devise or bequest to the trustee of a trust which is already established or is to be established, including a funded or unfunded life insurance trust, if the trust is identified in the will or if its terms are set forth in some other instrument referred to in the will or in the will of another who has predeceased the testator. It goes on to provide that the devise or bequest shall not be invalid because the trust is amendable or because it was in fact amended after execution of the will or after the testator's death, that the property so passing shall not be deemed to be held under a testamentary trust, and that the property shall thereafter be administered pursuant to the provisions of the trust insrument, including any amendments up to the time of the testator's death and thereafter if the will so provides. The trustee of the inter vivos trust is protected by a section providing that he shall not be required to inquire into the acts of the executor or to make a claim against him unless the trust instrument so directs, and that

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1. Ga. Laws 1968, p. 1068.

if the trust instrument directs or authorizes the trustee to transfer any or all of the trust property to the executor for the payment of debts, taxes and expenses, the trustee shall not be liable for the application of the trust property so transferred.

The next statute to be discussed was the direct result of the decision in *Daniel v. Denham*.[2] That case held that a problem of abatement arose where a will left substantial devises and bequests to children and then left the residue to testator's wife. The children conceded that a legacy to the wife in lieu of dower and year's support does not abate with other legacies to pay debts, but they argued that this rule should not apply where (as in this case) the legacy to the wife is of much greater value than her marital right. The court held otherwise, reasoning that since the wife took as a quasi-purchaser her gift should not abate along with gifts to persons who took as volunteers. The result was that with reference to every dollar not needed for debts and expenses, there were necessarily conflicting claims on the part of the specific legatees and the wife; since the wife took as a quasi-purchaser, she would have priority as to every dollar over the specific legatees, all of whom took as volunteers. The holding would mean that in the case of a large estate, where estate taxes and other prior claims against the estate might exceed the amount of all specific gifts, the specific gifts would be entirely eliminated. If the court had construed the gift of the residue as a gift of what may be left after payment of debts, taxes, expenses and other legacies, then there would be no abatement problem because there would be no conflict between the gifts. At the rather urgent suggestion of the Fiduciary Law Section of the State Bar of Georgia, an act was passed amending GA. CODE ANN. section 113-821 (Rev. 1959), by inserting therein the following sentence:

> Unless otherwise provided in the will, a bequest of the residuum or any part thereof, including a bequest to a widow in lieu of dower or year's support or both, shall be deemed a bequest of the net residuum or part thereof remaining after all debts and expenses of administration including taxes have been paid.[3]

GA. CODE ANN. section 113-903 (3) (Rev. 1959) which gives the surviving wife the right to claim a child's part of her husband's estate, was amended[4] for the apparent purpose of assuring that the child's part qualified for the marital deduction. This was accomplished by deleting the sentence referring to the effect, on her claim to a child's part, of the widow's election to take dower, and substituting for it the following:

> No election by the wife shall be necessary to entitle her to such portion of the husband's estate, but she shall be entitled thereto

2. 223 Ga. 544, 156 S.E.2d 906 (1967).
3. Ga. Laws 1968, p. 1070.
4. Ga. Laws 1968, p. 1093.

> as a matter of law, unless she shall, within twelve months from the death of the husband, notify the administrator that she elects to take her dower, or, if there be no administrator, file such notice in the office of the ordinary of the county. If such notice is given, the wife shall have no interest in the realty beyond her dower rights, but such election shall not affect her rights under this section with respect to the personal property of the decedent.

This statute makes the child's part of the widow a vested property right as of the death of the husband; presumably, if she subsequently elected to take dower then her election would operate retroactively to the time of the husband's death and she would be treated as never having had vested in her that part of the realty which was assigned to her as dower and which otherwise would have been hers as a child's part.[5] Such an election to claim dower would not affect her rights under this section in the personal property of the husband.

The statute just discussed necessitated a rewriting of the code section specifying as bars to dower the election of the widow to take a child's part in the realty and her failure to apply for dower prior to a sale by the administrator or executor.[6] These are no longer needed since her rights in the realty are spelled out as of her husband's death by the 1968 amendment to GA. CODE ANN. section 113-903 (3) (Rev. 1959).

One step was taken toward streamlining administration of estates. A statute was passed waiving the requirement of appraisement, imposed by GA. CODE ANN. section 113-1401 (Rev. 1959), unless an heir or a creditor files with the ordinary within 90 days after filing of the inventory a request for an appraisement.[7] An additional appraisement duty was imposed by another statute[8] which requires the ordinary, when a year's support return sets apart property in a county other than that in which the application for year's support was filed, to mail a copy of the return to the tax commissioner or tax collector of the county where the property is located.

PROBLEMS OF ADMINISTRATION

A disputed question of heirship forced the Court of Appeals of Georgia to re-examine the rules of inheritance set out in GA. CODE ANN. section 113-903 (Rev. 1959).[9] The case was one in which the "ancestor" was a five-year-old decedent and the opposing claimants of heirship were his grandparents, on the one hand, and his first cousins, uncles and aunts, on the other. No closer relatives survived the five-year-old. The argument was made that subsection 7 of this code section, placing paternal and

5. The necessary effect of this statute is to overrule, on this point, a line of cases holding that there is no presumption of law that a widow has elected to take a child's part. *See Miles v. Blanton*, 211 Ga. 754, 757, 88 S.E.2d 273, 276 (1955).
6. Ga. Laws 1968, p. 1227, GA. CODE ANN. §31-110. (Supp. 1967).
7. Ga. Laws 1968, p. 474.
8. Ga. Laws 1968, p. 997, amending GA. CODE ANN. §113-1005 (Rev. 1959).
9. Waters v. Roberts, 116 Ga. App. 620, 158 S.E.2d 428 (1967).

maternal next of kin on an equal footing in all degrees more remote than those covered by the first six subsections, had the effect of impliedly placing grandparents ahead of first cousins, uncles and aunts, which latter groups are not mentioned until subsection 8. The court rejected this reasoning, holding that grandparents are mentioned in subsection 7 only for the purpose of preventing any discrimination between paternal and maternal next of kin in the same relationship in applying subsections 8 and 9; consequently, grandparents could qualify as heirs only under subsection 9. The first cousins, uncles and aunts, being specifically qualified in subsection 7, take to the exclusion of grandparents.

Two illegitimate children failed in their effort to claim as heirs of their putative father in *Savage v. Blanks*.[10] The only statutory provisions in Georgia changing the common law rule that bastards could not inherit from anyone are the one allowing them to inherit from their mother and from each other,[11] and the one allowing them to inherit from their father if the father has previously legitimatized them.[12] Since the putative father in this case had taken no steps to legitimatize the children under the exclusive procedure by which this may be done, the children have no claim as heirs.

Execution and Revocation of Wills

Gardner v. Thomas[13] involved an instrument which was in form a warranty deed but which repeatedly pointed to the death of the grantor as the operative moment for the transfer of the property interest. For example, the deed stated that "the grantor shall retain ownership" for the rest of her life, that the property "shall not vest" in the grantees until the grantor's death, and that at the death of the grantor "this deed and conveyance shall legally vest." The court correctly held, in a declaratory judgment action, that the instrument was testamentary.

The only case involving the issue of testamentary capacity which reached the appellate courts during the survey period was *Waters v. Arrendale*,[14] and it involved no more than a question of the burden of going forward with the evidence. It held that, when the propounder has made out his prima facie case, no issue of fact as to capacity is raised by mere proof that the testator was suffering from an incurable disease at the time of execution and that it caused his death shortly thereafter.

There were several other instances in which duly executed wills were challenged, but on grounds other than that of lack of testamentary capacity.

10. 117 Ga. App. 316, 160 S.E.2d 461 (1968).
11. Ga. Code §113-904 (1933).
12. Ga. Code §74-103 (1933).
13. 223 Ga. 378, 154 S.E.2d 926 (1967).
14. 223 Ga. 617, 157 S.E.2d 289 (1967).

In one of these cases[15] the will left to a devisee certain property which, at the testator's death, was the subject of a subsisting lease. While proceedings were pending to admit the will in solemn form the devisee requested and received from the executor a deed of assent to this devise. The devisee also then had pending a bill to cancel the lease on the ground that it had been obtained by fraud. The devisee's caveat to the will was dismissed. His acceptance of the deed of assent to the devise, which transferred to him the cause of action for cancellation of the lease, was the acceptance of a benefit under the will which would estop him from contesting the will.

An attempt to enforce an alleged contract to devise is an attempt to set aside, to the extent of the property allegedly subject to the contract, the will making a contrary disposition of it. The courts are reluctant to vary the effects of a valid will on this ground; consequently, the person seeking to enforce the contract has the burden of showing such things as the value of the property alleged to be the subject matter of the contract so that the court may determine that the contract as a whole is equitable and just. The party relying upon such a contract failed to carry this burden in *Logan v. Logan*.[16]

A duly probated will was set aside in *Cooper v. Butler*[17] on the ground that it had been revoked by subsequent marriage of the testatrix. The unusual feature of the case was that the subsequent marriage was a common law marriage, but this posed no problems other than those inherent in proof of such a marriage. Once the marriage is shown by the evidence, the Georgia statute[18] operates to revoke the will.

Problems of Administration

A matter of immediate concern to the newly qualified administrator or executor is the assumption of control over the assets of the decedent's estate. This is a matter of particular importance if the newly qualified executor is named to succeed a predecessor executor. Not only is he under a duty to collect the unadministered assets; he is also responsible for checking on the work of his predecessor to see that he is receiving all these unadministered assets. The successor executor in *Estes v. First National Bank of Gainesville*[19] sued the representative of the estate of the predecessor executor, alleging that the predecessor had made no returns or inventories, that he had converted funds of an inter vivos trust set up by the decedent whose estate he was administering, and that he had converted assets of that estate. The prayers of the bill are important to an understanding of the court's decision. They were: (1) that the defendant be ordered to file an in-

15. Jones v. Congdon, 223 Ga. 284, 154 S.E.2d 612 (1967).
16. 223 Ga. 574, 156 S.E.2d 913 (1967).
17. 223 Ga. 797, 158 S.E.2d 244 (1967).
18. Ga. Code Ann. §113-408 (Rev. 1959) as amended by Ga. Laws 1952, p. 196.
19. 223 Ga. 653, 157 S.E.2d 449 (1967).

ventory and accounting of unadministered assets of the estate being administered by defendant's decedent at the time of the death of the latter; (2) that the assets of that estate be marshaled; and (3) that a trust be declared of realty wrongfully purchased by defendant's decedent with assets of the inter vivos trust which had been set up for named beneficiaries. The Georgia Supreme Court held that the bill should have been dismissed on jurisdictional grounds. It is true that GA. CODE ANN. section 113-2204 (Rev. 1959), changed the common law rule that a successor administrator had no right to call his predecessor to account (all he could do was demand the assets); nevertheless, equity still will order such an accounting only when the relief at law is inadequate. Here adequate relief is available in the court of ordinary where both these incompletely administered estates are still open. As for the alleged wrongful diversion of funds of the inter vivos trust, the plaintiff has no interest in them. They were separated from the estate of his decedent years before his death and therefore were not subject to administration as a part of his estate at his death.

A somewhat similar factual situation is that in which an administrator is duly qualified, he proceeds to act, and then it is discovered that in fact there was a valid will. Such was the situation in *McSherry v. Israel*.[20] The petitioner sued to set aside some judgments which had been entered against him in favor of the defendant as administrator on the grounds that defendant had no authority to sue as administrator. These judgments had ordered canceled some deeds which the decedent had executed to petitioner and had decreed title to the property covered by these deeds to be in the heirs of the decedent. The petitioner based his claim to equitable relief on the allegation that these judgments had been procured by fraud in that the defendant duly qualified as administrator while knowing that there was in fact a duly executed will left by decedent, which will was admitted to probate after the judgments referred to were entered. Without the necessity of reaching the issues raised by these allegations, the court dismissed the petition on demurrer. Unless and until the letters of administration are set aside, they serve as authority for the administrator to prosecute to judgment such suits as those brought against petitioner. Implicit in the court's language is the advice that the proper procedure, assuming the truth of petitioner's allegations, would be first to set aside the grant of letters of administration and then to set aside the judgments obtained by the fraudulently qualified administrator.

The capacity of a foreign sovereign to take property under the will of a Georgia resident was before the courts in *Freedman v. Scheer*.[21] After holding that a friendly sovereign country is competent to accept a devise, the court then faced the more serious question as to the right of a Georgia

20. 223 Ga. 472, 156 S.E.2d 33 (1967).
21. 223 Ga. 705, 157 S.E.2d 875 (1967).

testator to make such a devise. There is no law or policy of Georgia which forbids a testator's disposition of his personal property to a friendly foreign sovereignty, but realty in Georgia may not be so devised (presumably because such a devise would be tantamount to surrender of Georgia's sovereignty over a part of its geographical area). Nevertheless, the doctrine of approximation calls for a construction which will give as full effect as possible to the testator's intentions; consequently, it was ordered that the realty be sold and the proceeds given to the foreign sovereign country.

Solicitude for the testator's intention ceases to have merit when the point is reached at which an ademption has occurred. For example, in *Woodall v. First National Bank of Columbus*[22] the will left "all my capital stock" in named corporations in trust for specified purposes. Two years after the making of the will the testator disposed of all such stock and shortly thereafter died without having reacquired it. The court held: (1) The gift was a specific legacy, one that in the words of *Young v. Young*[23] "can be separated from the body of the estate and pointed out so as to individualize it;" (2) The testator's actual intention in such a situation cannot be inquired into; (3) The fact that much of the money was traced into other securities purchased by testator is not sufficient to show a mere exchange, which would avoid ademption, because the sale of the bequeathed stock and the purchase of the other securities were separate and independent transactions.

The fact that a creditor has reduced his claim to judgment and has taken steps to collect it prior to the debtor's death does not automatically entitle that creditor to continue his efforts without regard to the administration proceedings. In *Professional Discount Corp. v. Fulton National Bank*[24] the diligent creditor filed its affidavit and bond of garnishment prior to the debtor's death and then served the garnishment, after his death, on an insurance company in which the debtor had a policy payable to his estate. The court held that as of the death of the decedent the creditor was still just a creditor, and it must file its claim along with those of other creditors so that the executor may marshal the assets and determine the validity and priority of the various claims.

Problems of Construction

The value of the power of appointment as an estate planning tool has been recognized for hundreds of years, and it has been used quite often in Georgia; nevertheless, its use as a method of minimizing estate taxes is only recently apparent in the appellate courts decisions of Georgia. (The federal courts in Georgia have had their share of estate tax disputes in-

22. 223 Ga. 688, 157 SE.2d 261 (1967).
23. 202 Ga. 694, 44 S.E.2d 659 (1947).
24. 223 Ga. 424, 156 S.E.2d 80 (1967).

volving powers of appointment.) Since the federal estate tax liability often turns upon the state law, it is necessary to look to the state law to determine whether a power was created and, if so, what kind. Three cases decided during the past year involved such questions. *Citizens and Southern National Bank v. Kelly*[25] involved a marital deduction trust under which the wife was given a general testamentary power, and in default of the exercise of the power the subject property was to go under another clause of the will to other persons. The wife executed her will in 1947, leaving "all of my possessions both real and personal" to her daughters outright. In 1957 she suffered a stroke and from that time until her death, in 1965, she was never competent to make a will. In 1958 her husband executed his will creating the marital deduction trust referred to above. The husband died in 1963 leaving this instrument as his will, and the wife died in 1965 leaving her 1947 will. The ultimate question then was whether the wife's will, executed in 1947, exercised the power given her in the husband's will, executed in 1958. The argument was that the husband, in 1958, when he executed his will, knew the contents of his wife's 1947 will and intended for the marital deduction assets to go as the wife's will specified that her property should go. The court held that the power was not exercised, first, because the power was not in existence when the wife's will was executed and, second, because, even if it were held to be subject to exercise by her antecedent will, that will did not use language showing an intention to exercise a power. The gift of "all of my possessions" had the wife's individual estate upon which it could operate, and there was no reference in the wife's will to either the power or the property subject to the power. The time at which the intention to exercise the power must be found is that of the execution of the wife's will.

In *May v. Citizens and Southern National Bank*[26] the husband's will created a similar general testamentary power in his wife, but unlike the *Kelly* case here the wife executed her will after the creation of the power. The question was whether her will exercised the admittedly valid power that she had. Her will made no reference to the power, but bequeathed a part of "my net estate" to one trust and the residue "of my property" to named takers. Again it was held that the wife's will failed to exercise the power. There could not have been an exercise by implication because there was no reference to the power in the donee's will, there was no reference to the appointive property in the donee's will, and the donee's will was not rendered otherwise ineffective, insensible or absurd by the holding that the power was not exercised.

The power of the owner of a limited interest to encroach upon and dispose of the corpus is a power of appointment. Whether such a power

25. 223 Ga. 294, 154 S.E.2d 584 (1967).
26. 223 Ga. 614, 157 S.E.2d 279 (1967).

existed and, if so, whether it could be exercised under the unusual facts of the case were the questions posed in *Pickett v. First National Bank of Atlanta*.[27] At the husband's death in 1951 his will appointed his wife executrix and directed her to hold the estate together until her death but, nevertheless, gave her "full power to manage, govern and otherwise enjoy" all the property until her death, at which time it would go to grandchildren equally. In 1959 the wife became incompetent, a guardian was appointed for her, and an administrator d.b.n., c.t.a. was appointed for the husband's estate. The wife remained incompetent until her death in 1961. Thereafter her executor brought suit claiming that during her life her guardian and the administrator of the husband's estate had breached their obligations in using her own property for her maintenance and support rather than encroaching upon the husband's estate for that purpose. It was held that the will of the husband gave her no right of encroachment. The power to "manage, govern and otherwise enjoy" merely described the life estate given the wife. She had no right of encroachment; consequently, her guardian had none.

Seldom has the question of whether an interest is vested or contingent produced such a divergence of opinions as did *Arnold v. Richardson*.[28] The report of the case consists of a per curiam opinion, a special concurring opinion, and two separate dissenting opinions. The will was one which had been drafted by the testator, a medical doctor, and was designed to set forth an elaborate estate plan. The item under dispute began by leaving all the property to testator's widow for life, remainder to his three named children

> . . . [F]or and during their natural lives . . . remainder to their children. Upon the death of any of my children, his child or children shall immediately succeed to the interest and share of such deceased child and parent. Should any of my children die without issue, that is without child or children, him or her surviving, then the share bequeathed and devised herein to such child for life shall go to and vest in the children of my other children, that is my grandchildren, each set of grandchildren should there be more than one set of grandchildren at the death of the last of my children herein named, to take as a class and not per capita.

The testator had only two grandchildren, both of whom were alive at his death. One of them died in 1953 devising his entire estate to his wife. The other one claimed that he was entitled to all the property because, as it turned out, he was the only grandchild to survive termination of the preceding life estates. The issue then was whether the interests of the grandchildren were contingent upon their respectively surviving termination of the prior estates, in which event the entire property would go to

27. 223 Ga. 507, 156 S.E.2d 438 (1967).
28. 224 Ga. 181, 160 S.E.2d 809 (1968).

the sole surviving grandchild, or whether the interests were vested, in which event the property would go one-half to the widow of the deceased grandchild and one-half to the sole surviving grandchild.

The majority of the court held that the remainder to the grandchildren was contingent as to the person insofar as future-born grandchildren were concerned, and as to the event of survivorship insofar as living grandchildren were concerned; therefore, the entire property belongs to the one grandchild who satisfied both contingencies. While the words "remainder to their children" in the first sentence would, of itself, create vested remainders, the second sentence qualified it by introducing the contingent element. The words to the effect that the children of a deceased child would "immediately succeed" to the share of their parent, plus the provision for a different disposition at the death of the parent if the parent left no issue, suggested contingency until the death of the parent.

The concurring opinion stressed the intention of the testator (expressed in another item of the will) that none but "grandchildren" could take if a child left no surviving issue. One of the dissenting opinions pointed out that that is precisely what would happen under its line of reasoning; namely, that the remainder of the deceased grandchild was contingent as to the event only, and as such was devisable, and the deceased grandchild voluntarily disposed of it by devising it to his wife. The other dissenting opinion laid stress upon the constructional preference for an early vesting, and quite logically argued that the second and third sentences were concerned only with the time of possession by remaindermen and not the time of the vesting in interest. The opinions in this case afford ammunition for use on any side of any battle where the issue is vested versus contingent remainders.

A more simply worded devise, but one raising similar issues, was before the court in a case decided on the same day as *Arnold*. This case was *Owens v. Davis*,[29] a partitioning proceeding which involved construction of a disposition found in a 1918 will. The will left the property to testator's wife for life "and at her death to [A's] children, if she dies and leaves no children to go to [B's] children." The wife died in 1942, and *A* died in 1964 without having had any children. *B* had two children one of whom predeceased the life tenant, but left a husband and one child as her heirs. The question was whether the interest of this child survived her in favor of her heirs. The will was construed as creating in *B's* children at birth a remainder contingent only as to the event of *A's* dying without having had any children. That sort of remainder was owned at his death by the child of *B* who predeceased testator's wife; it descended to his heirs and

29. 224 Ga. 146, 160 S.E.2d 352 (1968).

is now owned in equal shares by the living child of *B* and the heirs of the deceased child of *B*.

The will in *Reynolds v. Rackley*[30] devised realty to *A* and then provided that if *A* "should die without leaving any child or that child should die," then over to another. *A* died in 1956 survived by one child and that child died in 1965 survived by his wife and a child. The will was construed as giving *A* a fee subject to an executory devise if *A* died without a child surviving her. That eventuality did not, and now cannot, occur; hence at *A's* death the indefeasible fee passed to *A's* heirs. The phrase "or that child should die" obviously meant if that child should die before *A's* death.

TRUSTS

A trust case likely to have far-reaching implications is *Presbyterian Church in the United States v. Eastern Heights Presbyterian Church*.[31] The action was precipitated by a local church's withdrawal from its national body on the ground that the latter had abandoned the fundamental tenets of the faith existing when the local church joined the national body. Legal title to the property was in the local church, but the national body argued that the local church held it on implied trust for the benefit of those members of the local church who still adhered to the doctrines of the national body. The local church sought injunctive relief against the national body's interference with the use of the property. Evidence of many alleged departures by the national body from its original fundamental tenets was introduced and the jury, finding in favor of the local church, decided that these departures constituted a substantial diversion of the trust property from the intended purpose. The Supreme Court of Georgia found that there was ample evidence to support the verdict. Despite the reluctance of the civil courts to become involved in religious disputes, they are specifically authorized by the statutes to intervene when necessary to prevent substantial diversion of the property from accomplishment of the trust purpose.[32] Complete diversion is not prerequisite to such intervention.

In another church case[33] the dispute was over the right to fire insurance proceeds. Title to the property was vested in named trustees for the benefit of an unincorporated congregation. At 7:30 a.m. on a Saturday morning the trustees conveyed the property; at 2:30 that same day the property was destroyed by fire; and the following morning the trustees, without submitting the question to the congregation, voted to return the purchase price and annul the sale. The insured church was held entitled to the

30. 223 Ga. 586, 157 S.E.2d 283 (1967).
31. 224 Ga. 61, 159 S.E.2d 690 (1968), certiorari granted, 392 U.S. 903 (1968). Ed. Note. The decision in this case has subsequently been nanded down by the Supreme Court. ___ U.S. ___, 37 U.S.L.W. 4107 (1969).
32. GA. CODE §22-408 (1933) (retained intact in the 1968 GA. BUS. CORP. CODE, as section 22-5506).
33. 115 Ga. App. 533, 154 S.E.2d 796 (1967).

proceeds. Since the church constitution provided that church property could be disposed of only after such a decision was arrived at in a congregational meeting, the trustees had no power to sell.

The law governing private trusts also came to the attention of the Georgia Supreme Court. In one case[34] the issue of the essentials of an implied trust was up on appeal from dismissal of the case on demurrer. It was held that a cause of action for enforcement of an implied trust was stated by allegations that plaintiff and defendant contemplated marriage, that in reliance thereon plaintiff paid the down payment on a piece of property title to which was taken in the name of defendant, that plaintiff took possession and made improvements, that the two of them made monthly payments in equal amounts, and that defendant has now married another woman and is threatening to evict plaintiff.[35]

The other case,[36] involving an inter vivos trust set up for the settlor's benefit, called for the construction of a clause granting broad powers to the trustee. The wife of the settlor sued individually and as guardian of the settlor to force the trustee to pay over to her certain money (a) for the support of herself and the settlor, (b) for payment of attorney's fees incurred by her in defending criminal proceedings brought against her by one of the trustees in his individual capacity, and (c) for expenses incurred by her in this action. The defense was that the discretion lodged in the trustee by the trust instrument was so broad that no honest exercise of that discretion could constitute a breach of trust. The decision of the trial court, which was affirmed by a 4 to 3 vote, granted all the relief prayed for and granted it in precise minimum amounts. The minority in the Supreme Court of Georgia felt that the discretion given the trustees was broad enough to cover everything they did, and that there was no evidence of bad faith in the exercise of that decision. The majority, on the other hand, felt that where the exercise of discretion reaches the point at which it frustrates the trust purposes the scope of discretion lodged in the trustee by the trust instrument ceases to be the dominant issue. The majority felt that that point had been reached; the minority felt otherwise.

34. Hill v. Pringle, 223 Ga. 143, 154 S.E.2d 193 (1967).
35. *See* GA. CODE ANN. §108-106 (1) (Rev. 1959).
36. Citizens & Southern National Bank v. Orkin, 223 Ga. 385, 156 S.E.2d 86 (1967).