TRUSTS, WILLS, AND ADMINISTRATION OF ESTATES

By JAMES C. REHBERG*

One who examines developments in Georgia fiduciary law during the period of this survey will note particularly the paucity of legislative developments. The judicial developments, on the other hand, are noted in the entire spectrum of fiduciary law, from the basic rules of intestate succession to the involved rules of tax and estate planning. Developments in these two broad areas will be discussed in the order mentioned.

I. LEGISLATION

The paucity of legislation in the field of fiduciary law may well be explained in terms of our having a set of statutes which are workable and understandable. This appears to be the feeling of many members of the Georgia bar. On the other hand, the explanation may lie, at least in part, in the fact that the Uniform Probate Code is standing in the wings and waiting to come on stage. The uniform act has already been adopted in seven states, five others have adopted substantial portions of it and at least twenty others have the subject under consideration.[1]

The Georgia Charitable Trust Act[2] seems to be aimed at assuring, not only that activities which purport to be charitable are in fact such, but also that there be maintained public records of the charitable nature of the activities. Since that sort of assurance is already available insofar as the traditional charitable enterprises are concerned, the act excepts from its operation these traditional ones, such as governmental units, religious corporations and organizations, cemetery corporations, educational institutions, and hospitals. It applies to all other charitable trusts with property valued in excess of $5,000. It authorizes the Attorney General to maintain a register of trustees who are subject to the act; it requires these trustees to file with the Attorney General a copy of the trust instrument, if any, under the terms of which they operate; it requires them to file annual reports of the operation of their trusts or, in lieu of such reports, copies of the trustees' annual returns to the Internal Revenue Service; and, finally, it gives the Attorney General broad visitorial and supervisory powers over the affected trusts, including subpoena power and the power to institute such proceedings as may be necessary to secure compliance with the act.

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

1. ALI-ABA, CONTINUING LEGAL EDUCATION REVIEW, August 9, 1974, at 1. *See* HANDBOOK OF THE NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS 159-69 (1973); Wellman, *Trust Business under the Uniform Probate Code,* 113 TRUSTS & ESTATES 78 (1974).

2. Ga. Laws, 1974, p. 440, *creating* GA. CODE ANN. §108-217 *et seq.*

Ga. Code Ann. §49-604 (Rev. 1974), which had previously authorized "any person in interest" to petition the court of ordinary for appointment of a guardian for a person mentally incapable of managing his estate, was amended to authorize the Department of Human Resources to file such a petition if the situation is one in which the prospective ward is receiving or is believed to be eligible to receive services from that department and no relative or other individual has applied for appointment.[3] The act then authorizes the ordinary to appoint the Commissioner of Human Resources as guardian, and he, in turn, may delegate his duties to responsible employees within his department.

Another act[4] makes a change in Georgia law that was long overdue. It permits administrators to sell real or personal property at private sale if, after a hearing on a petition seeking an order for such a sale, the ordinary finds that the proposed sale is fair and is in the best interest of the estate. Detailed provisions for notice to and service on interested parties, and for the appointment of guardians *ad litem,* if needed, are contained in the amendment.

Lastly, a resolution was passed at the 1974 session of the General Assembly to submit to the voters a proposed constitutional amendment which, if adopted, will change the name of the court of ordinary and the ordinary to the probate court and the judge of the probate court, respectively.[5]

II. Judicial Decisions—Wills and Administration

A. Testamentary Capacity

Since no two wills are alike, the crucial question on an appeal from a probate proceeding is frequently that of whether the allegations of the caveator are sufficient to raise a justiciable issue and thus forestall a summary judgment. Particularly is this true where the allegation is lack of testamentary capacity. In *Wiley v. Hudgins*[6] the caveator based his attack on the will on the facts that the testatrix was eighty-six years of age at the time of execution of the will and that she was then suffering from an ailment which, coupled with medication she was taking, caused some disorientation. These facts were held insufficient to raise the issue of lack of capacity because there was undisputed evidence of the testatrix' knowledgeable participation with the attorney and the witnesses in the preparation and execution of the will.

In another case,[7] however, after a superior court had entered a summary judgment directing a verdict for the will, the supreme court reversed on the ground that there was sufficient allegation of lack of testamentary

3. Ga. Laws, 1974, p. 472, *amending* Ga. Code Ann. §49-604 (Rev. 1974).
4. Ga. Laws, 1974, p. 1135, *amending* Ga. Code Ann. §113-1703 (Rev. 1959).
5. Ga. Laws, 1974, p. 1646.
6. 230 Ga. 475, 197 S.E.2d 703 (1973).
7. Powell v. Thigpen, 230 Ga. 760, 199 S.E.2d 251 (1973).

capacity to take the case to a jury. This allegation was that the testator suffered monomania in that he mistakenly believed that the caveatrix had "cast a spell on him" and was about to take his land. Under Georgia law a will made by a monomaniac is valid if it is in no way "the result of or connected with" the monomania.[8] Direction of a verdict in this case was held to be improper because the offered evidence, if believed by the jury, would show such a connection between the monomania and the will as would invalidate the will.

B. Jurisdiction Of Courts

The outcome of several recent cases depended upon the location of the line separating the jurisdictions of the court of ordinary and the superior court, on the trial level, and of the court of appeals and the supreme court, on the appellate level. One such case was *Maddox v. Wheeler*[9] where, after the court of ordinary had admitted a will to probate, the beneficiaries named in an earlier will sued in superior court to enjoin the carrying out of the terms of the probated will. They alleged undue influence, lack of testamentary capacity and lack of knowledge on their part that they were named as beneficiaries in the earlier will in time for them to caveat the later one. In affirming a summary judgment for the defendants, the supreme court noted that while a judgment of the court of ordinary may be set aside by the court of equity upon a showing of fraud, the only allegation of fraud in this case was in the procuring of the execution of the will. That sort of fraud raises the basic issue of *devisavit vel non,* a matter addressed solely to the jurisdiction of the court of ordinary and one which cannot be litigated in the superior court. Indeed, the code section giving equity concurrent jurisdiction with law in all cases of fraud expressly excepts from its operation cases of fraud in the execution of wills.[10] That matter is thus left exclusively within the jurisdiction of the court of ordinary.

Sometimes the question of jurisdiction of courts does not arise until a case reaches the appellate level. For example, in *Scheridan v. Scheridan*[11] the issue on appeal was narrowed down to which of two persons with similar names was the individual ("Boyd E. Scheridan") named as executor and sole beneficiary in a duly probated will. The supreme court transferred the appeal to the court of appeals, holding that the supreme court would have jurisdiction only when the issue is one of the validity or construction of a will.[12]

8. GA. CODE ANN. §113-204 (Rev. 1959).

9. 230 Ga. 580, 198 S.E.2d 284 (1973).

10. GA. CODE ANN. §37-701 (Rev. 1962).

11. 231 Ga. 729, 204 S.E.2d 293 (1974).

12. After the supreme court transferred this case to the court of appeals, the latter court reversed the trial court's decision on the parol evidence rule, holding that since the ambiguity was a latent one (it would be discovered only outside the will that there were two "Boyd E. Scheridans"), parol evidence was admissible to clear up the ambiguity. Scheridan v. Scheridan, 132 Ga. App. 210, 207 S.E.2d 691 (1974).

While a judgment that is void for lack of jurisdiction of the person or of the subject matter may be attacked at any time,[13] a judgment admitting a will to probate which showed on its face that the court had jurisdiction of both the parties and the subject matter may be attacked only within the three-year period following the rendition of the judgment.[14] Applying these principles, the supreme court, in *Purcell v. Cowart*,[15] held that a petition filed nine years after probate of a will, seeking to set it aside on the ground that it was erroneously admitted upon only the affidavits of the witnesses rather than upon their required personal testimony, was subject to dismissal whether or not the record affirmatively showed that the witnesses were present to testify. The law will presume that the court of ordinary did all that the law required it to do.

C. *Contracts To Will*

> [A]s one reads these cases [involving contracts to will] he cannot but have an uneasy feeling that general expectations of becoming the object of a testator's bounty often ripen into a contract after testator's death.[16]

When we look at an alleged contract in which a decedent has surrendered some or all of his power to dispose of his property by will, we are looking at a contract one party to which is no longer around to testify and the other party to which is a person whose self-interest may tempt him, after the decedent's death, to stretch his "general expectations" into a contract. Nevertheless, there are legitimate contracts to will which the courts should and will enforce. The form of relief to which the surviving contracting party is entitled varies, as do the legal theories through which the relief is afforded.

Jones v. Jones[17] raised the question of the revocability of a will which had been executed pursuant to valid contract to will. The contract, which was between a husband and wife, had been made a part of a divorce decree in 1942 and a will had then been executed in accordance with the terms of the contract. The husband remarried and this second wife survived his death in 1971. The second wife offered for probate a 1956 will which left everything to her and which was thus in flagrant violation of the terms of the 1942 contract. It was argued by the representatives of the first wife, then deceased, that the 1942 will, the one carrying out the terms of the contract, and not the 1956 will, the one in violation of it, should be probated. The supreme court held that the law of wills demanded probate of the 1956 will notwithstanding the fact that its execution was a breach of

13. GA. CODE ANN. §81A-160(f) (Rev. 1972).
14. GA. CODE ANN. §3-702 (Rev. 1962).
15. 231 Ga. 675, 203 S.E.2d 482 (1974).
16. Pound, *The Progress of the Law: Equity*, 33 HARV. L. REV. 929, 933 (1920).
17. 231 Ga. 145, 200 S.E.2d 725 (1973).

contract. The 1956 will expressly revoked all prior wills, was itself in compliance with the statute of wills, and had not been revoked as of the husband's death.

It was emphasized that the contract to will, as a contract, remained valid. While the court decided only the issue of the admissibility of the will, it would appear that the aggrieved party would have a cause of action against the husband's estate for damages or in *quantum meruit*. The decision did not purport to establish those rights and liabilities. It decided only which one of the two wills was admissible to probate.

Liberty National Bank & Trust Co. v. Diamond[18] is a report of the third visit of this "contract to will" case to the supreme court. Its judicial history may be instructive. When the will involved was offered for probate, the widow of the testator challenged it, but the challenge was unsuccessful. While her appeal of that decision was pending in the superior court, she filed a bill in equity in the same court seeking enforcement of an oral contract in which the testator allegedly promised to devise one-third of his estate to her. The first appeal to the supreme court raised the question of whether she could prosecute concurrently her "contract to will" case and her caveat to the will. The supreme court held that these two remedies could be pursued concurrently.[19] On remand, the trial court handed down a judgment establishing the validity of the alleged oral contract and impressing a trust in favor of the widow on "one-third (1/3) of said estate." On appeal, this judgment was affirmed.[20]

The question was then raised as to whether the subject matter of this trust was one-third of the gross or of the net estate. The trial court ruled that it was of the gross estate, and the executor and the residuary legatee (a charity) appealed. In this most recent appearance of the case in the supreme court, the holding was that the contractual intention was that she get one-third of the net estate.[21] It followed that her interest thus bore one-third of the burden of expenses of administration, attorneys' fees, taxes and costs.

D. Effect Of Wrongdoing On Succession To Property

While we cannot constitutionally exact a forfeiture of one's property because of a crime he has committed,[22] there still are situations in which wrongdoing may affect one's right to succeed to property at the death of another. In *Moore v. Moore*[23] a husband had conveyed land to his wife, reserving a life estate and providing that if she predeceased him the property would revert to him. After the wife killed the husband (and thus

18. 231 Ga. 321, 201 S.E.2d 400 (1973).
19. 227 Ga. 200, 179 S.E.2d 761 (1971).
20. 229 Ga. 677, 194 S.E.2d 91 (1972).
21. 231 Ga. 321, 201 S.E.2d 400 (1973).
22. GA. CONST. art. 1, §3, ¶3, GA. CODE ANN. §2-203 (Rev. 1973).
23. 231 Ga. 232, 201 S.E.2d 133 (1973).

assured that he would not survive her), the question arose as to whether her wrongdoing affected the property she had acquired from her victim. The court held that, since she did not acquire any new interest at or because of his death, her killing him did not affect her interest. Since no new interest vested in her at his death, the statutory proscription against a killer's inheriting or otherwise taking at the death of the victim[24] was not applicable. Such a dryly logical application of the theory of estates hardly seems appropriate here. It is true that during his life she owned the "fee" and after his death she still owned the "fee;" nevertheless, it was the wrongful killing which converted her "fee" from a non-possessory, defeasible fee into a possessory, indefeasible one.[25]

The wrongful killer of an insured is barred from collecting, as beneficiary, on the policy on the life of the one he killed.[26] In *Willis v. Frazier*[27] the roles were reversed. There the insured husband killed the beneficiary, his wife, and then committed suicide. The court of appeals held that since the insured did not benefit from his unlawful act, neither the letter nor the spirit of the cited code section was violated. The issue of the devolution of the right to the insurance proceeds remained, however, and on this issue it was held that since the insured had a right to change the beneficiary, the beneficiary had no vested right at her death which could pass to her estate. The proceeds, therefore, had to pass to the estate of the insured.

E. Year's Support

An interesting constitutional question was raised, and then avoided, about a portion of our year's support statute. In *Payne v. Bradford*[28] an adult daughter and a daughter-in-law of a decedent caveated the widow's application for year's support, alleging that the notice provision of the statute is constitutionally inadequate. That provision is to the effect that notice shall be given "to the representative of the estate (if there be one, and if none,)" the ordinary, without notice to anyone, may proceed to appoint the appraisers.[29] The trial judge held this provision unconstitutional in that it authorized judicial ascertainment of property rights without notice to interested parties. The supreme court reversed, neatly avoiding the constitutional issue by pointing out that the record showed that the caveators' attorney had actual notice of the widow's application on the day it was filed and, on that day, wrote the ordinary requesting a hearing. There was one dissent, without opinion.

The problem raised in this case bears close examination. If there is a personal representative, he would represent all those interested in the es-

24. GA. CODE ANN. §113-909 (Rev. 1959).
25. The case was decided 4 to 3, Justice Gunter writing a strong dissenting opinion.
26. GA. CODE ANN. §56-2506 (Rev. 1971).
27. 128 Ga. App. 748, 197 S.E.2d 830 (1973).
28. 231 Ga. 487, 202 S.E.2d 422 (1973).
29. GA. CODE ANN. §113-1002 (Rev. 1959).

tate; if the estate is unrepresented, however, there may be serious question as to whether the mere right of an interested party, who did not have notice, to attack the judgment after it is entered would be the equivalent of his having been afforded due process at the time of the entering of the judgment.

The favor with which the law looks upon the device of year's support found expression in *Studstill v. Studstill.*[30] There it was held, as a matter of law since there were no factual issues, that unless a will expressly forces the widow to elect or unless it is clearly implied from the will that the claim of year's support would drastically frustrate the testamentary scheme, she will be entitled to claim year's support and to take under the will. In this case the will left the estate equally to the widow and a former wife; so the result of the decision was that the widow got $10,000, the amount of the year's support award, more than the former wife. While the decision does not merit criticism, it does point up the importance of a clause clearly requiring an election. Leaving the clause out is an open invitation to the sort of post mortem distortion of a testamentary scheme that occurred in this case. The extent of the distortion is only a matter of degree.

F. Powers Of Appointment

While the power of appointment is the most flexible of the estate planner's tools, that very flexibility often produces litigation. The donor may fail to define the outer limits of the donee's power with sufficient preciseness, or the donee may fail to make it clear whether he is exercising the power or, if he is, the extent to which he is doing so. For example, when one admittedly has a general testamentary power over property, will a devise or bequest of all of "my property" constitute an exercise of the power? This was the question in *Little Red Schoolhouse for Special Children, Inc. v. Citizens & Southern National Bank.*[31] There a will created a marital deduction trust, giving the widow a life estate and a general power to appoint by will, with a gift over to charity in default of exercise of the power. The widow's will, in turn, made specific bequests of about $90,000 and then disposed of "all the residue and remainder of *my property*", stating that she thereby intended to dispose of "all of *my* property over which I may have a power of appointment or disposition."[32] It was held that the charity received nothing. Since the specific gifts of about $90,000 virtually exhausted her owned assets, the court reasoned that she must have intended for the quoted language to operate on not only her owned property but also on that over which she had a power.

Two other recent cases are illustrative of the flexibility and, at the same time, the limitations of the power. Where a will creates a life estate and

30. 130 Ga. App. 803, 204 S.E.2d 496 (1974).
31. 230 Ga. 393, 197 S.E.2d 342 (1973).
32. *Id.* at 393, 197 S.E.2d at 343 (emphasis added).

also gives the life tenant a general power presently exercisable, the taker in default has little standing to complain. In *Williams v. Bullock*[33] the will left property to the widow for life and then continued: "to be hers to use, occupy, rent, sell or to handle as she deems proper and whatever portion that she still has at the time of her death"[34] should go to two named sons. Her voluntary conveyance of the land to one of the sons was held to be clearly within the scope of the power given her. The heirs of the son whose interest was defeated by the exercise of the power were not aided by any rules of construction. Such rules would be operative only where the scope of the power was not clearly defined. Here, it was.

The other case alluded to shows some of the limitations of power of appointment. It was *Lewis v. Tennille Banking Co.*,[35] where two sisters, who had been given a life estate and a power of sale, executed a security deed in which they purported to convey as owners rather than as donees of a power. The deed was held not to be an exercise of the power. To show an intention to exercise a power, there must be either a reference to the power, a reference to the subject property (here this would be the remaining property interest other than the life estate), or a showing that the conveyance would be ineffective or insensible if not construed as an exercise of the power. In this case the donees had an owned interest, the life estate, on which the security deed could operate.

G. *Marital Deduction*

In construing language which is vague only because it is so broad, the courts often, of necessity, base their decisions on what they think the testator must have meant. *Strickland v. Trust Company of Georgia*[36] is an example of such a process of construction. This case had as its subject matter an estate valued at almost a million and a half dollars, consisting of 13% of real property, 1% tangible personal property and 86% intangible personal property. In one item the will left to the widow "my automobiles, and all of my other personal property."[37] If "all of my other personal property" included the 86% of the estate made up of intangible personal property, then the elaborate language creating a marital deduction trust and trusts for four minor children would be almost entirely superfluous because there would be practically nothing left with which to fund these trusts. He must not have intended that consequence, the court reasoned; so it held that the reference to "all of my other personal property" was intended to refer to "all [of my other] *tangible* personal property."[38]

33. 231 Ga. 179, 200 S.E.2d 753 (1973).
34. *Id.* at 179, 200 S.E.2d at 754.
35. 230 Ga. 529, 198 S.E.2d 172 (1973).
36. 230 Ga. 714, 198 S.E.2d 668 (1973).
37. *Id.* at 715, 198 S.E.2d at 669.
38. *Id.* at 717, 198 S.E.2d at 670 (emphasis added).

The will in another case,[39] after directing that all debts be paid and then defining "debts" in the broadest possible language, created a marital deduction trust of one-half "of all my property and estate." The residue was then left to testator's sisters. The widow contended that one-half "of all my property and estate" meant one-half of the gross estate, while the sisters argued that it meant one-half of the net estate. The supreme court agreed with the sisters. The earlier direction in the will to pay all debts, including all tax liabilities, would have been unnecessary if he had intended that they be paid out of the residuum; so he had "otherwise directed," in the language of the statute directing payment of debts from the residuum "unless otherwise directed."[40] The result was that the widow's marital deduction trust got one-half the net estate and the sisters got the other one-half. The widow's share thus contributed one-half the payment of the estate tax even though what went to her did not contribute to the tax liability.

III. JUDICIAL DECISIONS—TRUSTS

A. Private Trusts

The court-created trust may well become a common part of divorce decrees, if two 1974 cases are indicative of a trend. The first of these cases[41] held that, while a divorce court cannot award the husband's property directly to his minor children in satisfaction of his obligation of support and education,[42] it can award his property to a trustee for their support and education. The second case,[43] decided just a couple of months later, again approved this same sort of court-created trust. In his concurring opinion in this latter case, Justice Gunter called attention to what to him appeared to be "a distinction without a practical difference." He felt that awarding property to a trustee for the support of a minor child is the same as awarding it to the child because in both situations somebody in the capacity of a fiduciary, be he trustee or guardian, must hold and manage the property during the child's minority.

If divorce courts are going to create trusts, they should give more attention to the fundamentals of trust law than the trial court did in the last-cited case. That court provided, with reference to the trust it was ordering into being, only the following:

> ". . . As additional child support, the defendant shall transfer title to the following described real estate, to a trustee for the use, benefit, education and support of said child, ..."[44]

39. Gibson v. McWhirter, 230 Ga. 545, 198 S.E.2d 205 (1973).

40. GA. CODE ANN. §113-821 (Rev. 1959).

41. Fitts v. Fitts, 231 Ga. 528, 202 S.E.2d 414 (1973).

42. The court had recognized this limitation on the divorce courts' power in Clark v. Clark, 228 Ga. 838, 188 S.E.2d 487 (1972) (Gunter, J. dissenting).

43. Collins v. Collins, 231 Ga. 683, 203 S.E.2d 524 (1974).

44. *Id.* at 684, 203 S.E.2d at 526.

The court thus failed to name a trustee, to enumerate trust powers, to specify the duration of the trust, and to provide for disposition of the property upon termination of the trust. The order did clearly identify the trust property, the beneficiary of the trust, and the trust purpose. These elements were held sufficient to bring the trust into being.

While it is specifically provided for in the statutes,[45] the implied trust is itself a court-created trust. It is not until a court finds the necessary implication that this type of trust comes into being. The court could find no such implication and, therefore, no trust in *Barnes v. Barnes,*[46] another divorce case. It found there only the joint adventure of a tenancy in common where the husband and wife had taken title to a dwelling in their joint names and payments on the purchase price had been made from a joint checking account into which each had made deposits.

Cunningham v. Cunningham[47] is instructive on the law governing termination of a trust prior to the time set by the settlor. In this case a mother's testamentary trust named her son as sole beneficiary during the life of the father, subject to a power in the trustee to use income or to invade the principal if needed for the support of the father. At the father's death the entire trust property was to go to the son if he were then living, otherwise, to his descendants. After the father conveyed whatever interest he had in the trust to the son, the latter, on the theory that he was then the sole life beneficiary and the sole remainderman, demanded termination of the trust. The court rightly refused to be drawn into the unproductive argument of whether the son's remainder interest was vested or contingent. Instead, it held that premature termination of the trust would defeat the contingent interest of the descendants of the son and would thus frustrate a legitimate trust objective of the settlor, namely, that of assuring that the son's descendants would get the property if the son failed to survive the father.

Class gift problems seem to surface at the termination of trusts. *Brown v. Trust Company of Georgia*[48] raised the question of whether an adopted child of the testator's sister took under a gift over, at termination of the trust, to "nephews and nieces" of the testator. Under the adoption statute which was in force at the death of the testator, the adopted child would not be a member of the class, while under the statute as it stood at the termination of the trust he would be a member of it. In affirming a holding that he took as a member of the class, the supreme court laid down a rule of construction for use in future cases:

> [W]here a trust is created so as to terminate at some future date when a class of beneficiaries is to be determined, unless the trust instrument itself

45. GA. CODE ANN. §108-106 (Rev. 1973).
46. 230 Ga. 226, 196 S.E.2d 390 (1973).
47. 230 Ga. 493, 197 S.E.2d 731 (1973).
48. 230 Ga. 301, 196 S.E.2d 872 (1973).

> provides expressly that a statutory rule other than that in effect at the date of termination shall be applied, then the statutory rule in effect at the date of the termination of the trust shall be applied.[49]

Since the adoption statute is subject to frequent amendment, prudence demands that careful consideration be given to the statute in force at the execution of a will or trust. If the testator or settlor wants that statute to control, he must now express that intention.

B. Charitable Trusts

Unsuccessful attacks were made on two charitable trusts of substantial size. In one of these cases[50] the trustee of a residuary trust was directed to pay the income, at least semi-annually, to charitable, educational, or religious institutions to be selected by the trustee. The thrust of the attack was that the trust was void for indefiniteness and, therefore, violative of the rule against perpetuities. The trust was held valid in all respects. Even though the will did not identify an object of charity, it gave the trustee the power to select and in making selections he was expressly limited to "charitable, educational or religious institutions."[51] At least since 1937 such a delegation to a trustee of the power to select objects of charity as recipients, from time to time, has been recognized as the equivalent of a full-blown charitable trust.[52]

The will in *Trammell v. Elliott*[53] established a scholarship fund the trustees of which would be the trustees of the Georgia Institute of Technology, Emory University, and Agnes Scott College and the beneficiaries of which would be "*deserving and qualified poor white boys and girls.*"[54] Since one of these schools was a state school, the fourteenth amendment would make the carrying out of the racial restriction of the trust a violation of the equal protection clause. The only question, then, was whether the trust would fail and the property go by resulting trust to the estate of the testator or whether the court would apply the *cy pres* doctrine, strike the word "white" and continue the trust as so modified. The court chose the latter course and in doing so carefully distinguished *Evans v. Abney*,[55] which ordered a resulting trust when the racial feature of the trust in that case was found unenforceable. The distinction found was that the will in *Evans* made it clear that the charitable intention was a narrow and specific one, which left no room for the *cy pres* doctrine, while the will in *Trammell* showed a broad and general charitable intention.

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49. *Id.* at 303, 196 S.E.2d at 874.
50. Marshall v. Trust Co. of Georgia, 231 Ga. 415, 202 S.E.2d 94 (1073).
51. *Id.* at 416, 202 S.E.2d at 96.
52. Ga. Laws, 1937, pp. 593, 594, GA. CODE ANN. §108-209 (Rev. 1973).
53. 230 Ga. 841, 199 S.E.2d 194 (1973).
54. *Id.* at 844, 199 S.E.2d at 197 (emphasis in the original).
55. 224 Ga. 826, 165 S.E.2d 160 (1968).

These two cases emphasize the importance, in the drafting of a will creating a charitable trust, of specifying precisely the nature of the testator's charitable intention as well as his wishes as to where the trust assets should go if it ever becomes impossible to carry out the trust in the particular manner specified.