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As Others See Us

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APPORTIONMENT OF DIVIDENDS

In a note in the November number of the Harvard Law Review,[1] it is stated that "commentators have almost without exception approved the Pennsylvania rule" as to the distribution of corporate dividends between successive beneficiaries of a trust; and that "the experience of courts following the Pennsylvania rule has led them to extend rather than restrict the doctrine;" and that "for the sake of consistency, it may be hoped that a late Pennsylvania decision,[2] awarding rights to subscribe to the life tenant, will carry weight in those states where the question has not yet arisen".

The note, however, calls attention to the fact that in New York, which adopted the Pennsylvania rule,[3] the complicated inquiries of fact involved in apportionment induced the legislature to enact the Massachusetts rule as to stock dividends, and that, largely for the same reason, the Commissioners on Uniform State Laws have advocated the adoption of the Massachusetts rule *in toto*.[4]

GIFTS OF CHOSES IN ACTION

The Restatement of the Law of Contracts[1] provides: The right acquired by the assignee under a gratuitous assignment is revocable by the assignor's death, by a subsequent assignment by the assignor, or by notice from the assignor received by the assignee or the obligor, unless:

(a) * * * *

(b) the assigned right is evidenced by a tangible token or writing required by the obligor's contract for its enforce-

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[1]44 Harvard Law Review 101.

[2]Jones v. Integrity Trust Co., 292 Pa. 149.

[3]Matter v. Osborne, 209 N. Y. 450.

[4]Uniform Principal and Income Act, sec. 5, n.

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[1]Sec. 158.

ment and this token or writing is delivered to the assignee.

(c) * * * *

In a recent number of the Yale Law Journal[2] Mr. Paul Burton contended that this rule was too restricted, and that the delivery to an assignee of any written contract between the obligor and assignor is a sufficient formality to make the gift irrevocable. In support of his contention Mr. Burton cited *In re Huggins Estate,*[3] in which delivery by the donor, with proper intent, of a written contract to convey certain coal rights for $1800 was held to effect an irrevocable gift of the right to the money.

In a reply[4] to the criticisms of Mr. Burton, Mr. Williston, the draftsman of the rule of the Restatement, objects to any extension of the rule of the Restatement and particularly to the rule advocated by Mr. Burton and acted upon by the Pennsylvania court in the case mentioned. Mr. Williston objects to the rule suggested by Mr. Burton because of its uncertainty, because it is not supported by the authorities and because the reasons advanced in its support are not convincing. After stating a number of questions to which the gift of a chose in action may give rise he says, "The embarrassment of answering such questions and the possible frauds that the questions suggest are reduced to a minimum if the effectiveness of a gift by mere delivery of a document is admitted only when the document is of a character that is essential according to law or business usage for the collection of the claim".

THE DECLARATORY JUDGMENT AS AN ALTERNATIVE REMEDY

The Yale Law Journal[1] in its *Recent Case Notes* discusses the case of *City of Williamsport v. Williamsport Water*

[2] 39 Yale L. J. 837.
[3] 204 Pa. 167.
[4] 40 Yale L. J. 1.

[1] November, 1930, p. 129; 40 Y. L. J. 129.

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Co.[2] "The plaintiff city had in 1920 entered into a consent judgment with the defendant corporation whereby it was agreed that the city 'may and shall' take over the defendant's waterworks at a stipulated price. The consent of the city electors was a prerequisite to the transfer. After the judgment had been entered, the electors voted down the project. In 1927 a new resolution to take over the waterworks was approved by the electors. The water company contested the city's right to buy at the consent judgment price and the plaintiff brought an action to determine its rights. The lower court dismissed the proceedings. It was held on appeal that the declaratory form of action could not be invoked to determine the validity of a past judgment but that the adverse vote of the electors had terminated the city's right to take over the water plant."[3]

In its comment the note says, "Declaratory judgment proceedings are now generally favored when the plaintiff has no other immediate remedy.[4] There is, however, some tendency, particularly noticeable in Pennsylvania, to refuse such petitions if the plaintiff might equally well have sought other relief.[5] This tendency finds justification only when a specific statutory remedy would have been available. Certainly a petition for a declaratory judgment need not

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[2]150 Atl. 652 (1930).

[3]Quotation of facts and holding from Yale Law Journal, pp. 129-130.

[4]Citing among other decisions, "Girard Trust Co. v. Tremblay Motor Co., 291 Pa. 507, 140 Atl. 506 (1928)."

[5]Citing, "Appeal of Kimmell, 96 Pa. Super. Ct. 488 (1930); Leafgreen v. La Bar, 293 Pa. 263, 142 Atl. 224 (1928); Dempsey's Estate, 288 Pa. 458, 137 Atl. 170 (1927); Ladner v. Siegel, 294 Pa. 368, 144 Atl. 274 (1928). See Taylor v. Haverford Tp., 299 Pa. 402, 406, 149 Atl. 639, 641 (1930); Sterrett's Estate, 150 Atl. 159, 162 (Pa. 1930). But compare Malley v. American Indemnity Co., 297 Pa. 216, 146 Atl. 571 (1929). A reason for the tendency in Pennsylvania may be its doctrine that the declaratory judgment should only be granted when the plaintiff can show the necessity of a speedy determination of the issues. List's Estate, 283 Pa. 255, 129 Atl. 64 (1925). And this necessity will not be found present if there is other adequate remedy. See Dempsey's Estate, 288 Pa. 458, 460, 137 Atl. 170, 171 (1927)."

be treated as an extraordinary remedy. In the *Williamsport* case, had the plaintiff been compelled to institute an action for specific performance, or for execution of the old judgment, the very spirit and purpose of the Uniform Declaratory Judgment Act would have been frustrated.[6] In fact, the court virtually declared the rights of the petitioners, although it gave no convincing reason for its refusal to issue a formal declaratory judgment.[7] Perhaps the reactionary attitude on the part of the formerly liberal Pennsylvania court may be traced to an unwarranted fear of overburdening the judiciary".[8]

IMPLIED AGREEMENT TO BEAR EQUALLY PREMIUM COSTS OF JOINT LIFE INSURANCE POLICY

In re Montgomery's Estate, 299 Pa. 452, 149 Atl. 705 (1930). "Two brothers took out a joint life insurance policy payable to the survivor. At the end of six years, during which period premium costs were borne equally, one brother refused to continue his share of the payments; the other, to keep the policy alive, continued to pay the full amount. Upon the death of the defaulter, the survivor

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[6]Citing among other decisions, "Kariher's Petition (No. 1), 284 Pa. 455, 471, 131 Atl. 265, 271 (1927)."

[7]"The court assigns no other reason for its decision that the Declaratory Judgment Act cannot be used to elucidate judgments than that it cannot be used to elucidate judicial decrees, and cites Ladner v. Siegel, supra note 5, where on a totally dissimilar state of facts the court says at 375, 144 Atl. at 276: 'Construction of a decree cannot be given until the question comes regularly before the court in proceedings requiring construction and application to acts alleged to have been done or omitted under it.' "

[8]"Total digested number of petitions for declaratory judgments in the Pennsylvania Supreme and Superior Courts were: 1916-1927, 5 (evidently an error in 1916 date—Act passed 1923); 1924, (evidently an error—should be, 1927) 4; 1928, 8 (after the Uniform Declaratory Judgment Act had been found constitutional); 1929, 5; 1930 (Jan.-July), 11."

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collected the proceeds and sued the deceased's estate to recover one-half of the premium costs. The lower court held for the claimant on the ground that the facts gave rise to an implied contract to share the premium costs equally, and on appeal this decision was affirmed."

In commenting on this decision, the Yale Law Journal[1] says, "In the clear absence of an express contract, the instant court could have allowed recovery only upon the theory of a contract implied in fact or a quasi-contract. Contracts implied in fact as said to differ from express contracts only in the method of proof and to arise under circumstances which show a mutual intent to contract.[2] While such contracts have been implied principally in cases of services performed,[3] money loaned at request, and the like, they may also arise wherever the 'circumstances' demand the conclusion of a contract to account for them'.[4] The facts of the instant case, however, would not seem to compel the implication of a contract.[5] Furthermore, since the equitable doctrine of contribution is generally limited to cases of joint obligations, and since, the present policy being unilateral, there was no obligation to pay the premiums, it is difficult to find authority by which the court could have imposed upon the defaulter a quasi-contractual duty to contribute. Likewise, where a policy beneficiary has been held to a quasi-contractual duty of restitution to one who has voluntarily advanced the premiums, it has been on the recognized equitable principle of preventing 'unjust enrichment'. Although there appears no techincal 'unjust enrichment' in the present situation, nevertheless, by virtue of the claimant's payment of the full premium

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[1]November, 1930, p. 137; 40 Y. L. J. 137; from which the facts and holding are quoted.

[2]"See Hertzog v. Hertzog, 29 Pa. 465, 468 (1857)."

[3]"See also Reitmyer v. Coxe Bros. & Co., 264 Pa. 372, 107 Atl. 739 (1919)."

[4]"See Hertzog v. Hertzog, 29 Pa. 465, at 469."

[5]"Cf. Robinson v. Hayes' Estate, 207 App. Div. 718, 202 N. Y. Supp. 732 (3d Dept. 1924); Butler v. Peters, 62 Mont. 381, 205 Pac. 247 (1922); 26 A. L. R. 560 (1923)."

rates, the deceased, until his death, had actually received the full benefit as an expectant, conditional beneficiary. Accordingly it seems probable that the court was influenced in finding an implied contract as a basis for recovery rather by the equities of the case than by any established legal justification."

Book Review

PENNSYLVANIA PRACTICE, PART 1

A selection of Statutes, Rules and Forms, with Annotations, published by David Werner Amram in 1922, Revised and Enlarged by Philip Werner Amram in 1930, Philadelphia.

The original edition of this book contained a table of contents printed on the last of its 126 pages. It contained no index. The present edition contains an index covering pages 162 to 167 but has no table of contents. Neither contains a table of cases nor a table of statutes. This suggests that the books were intended for consecutive study by pupils of the authors rather than as working books for the busy lawyer, who frequently seeks to find the latest discussion of a point covered by a familiar case or well known statute. A table of statutes would have made it easy to turn to the discussion of the recent statutory changes in the law relating to matters of practice but these can only be found by one who knows the subjects to which they relate. The last edition of Patton's Practice does not include the statutes passed at the 1927 and 1929 sessions of the legislature. Amram, of course, embodies these and many late decisions in his new edition. He makes no reference however to valuable articles in legal periodicals, such as the one on the Sci. Fa. Act of 1929 in the August number of the Temple Law Quarterly nor is his citation of cases exhaustive. No reference was found to the Acts of 1929 allowing other claimants to become parties to suits on official bonds and for the consolidation of suits growing out of the same accident. The decisions of the appellate