Some Observations Concerning the United Security Trust Company Case, 321 Pa. 276

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NOTES

SOME OBSERVATIONS CONCERNING THE UNITED SECURITY
TRUST COMPANY CASE, 321 PA. 276.

The article, "The United Security Trust Company Case, 321 Pa. 276," written by Joseph P. McKeehan, Esquire, which appeared in the October 1940 number of the Dickinson Law Review, interested me greatly. To me the concluding paragraphs were especially intriguing. I might say "They started me thinking," if I were not fearful that some wit, on reading these observations, might remark, perhaps with good cause, "Who stopped him?" Let us be content to say they are responsible for what follows, be it good or bad.

It is firmly fixed in Pennsylvania law that, upon death, all debts of a decedent become liens upon a decedent's real estate. At common law, lands of a decedent were not assets for the payment of a decedent's debts. However, by the Acts of 1700, 1 Sm. Laws 7 and 1705, 1 Sm. Laws 51, creditors of a decedent acquired, by operation of law, at decedent's death, liens in the full amount of their claims against the decedent's real estate. The duration of the lien was limited to seven years by the Act of 1797,¹ to five years by the Act of 1834,² to two years by the Act of 1893,³ and to one year by the Act of 1917.⁴ Let us bear in mind that these Acts of Assembly do not make the real estate of a decedent assets for the payment of decedent's debts, but merely give to the creditors a lien upon the real estate of the decedent, which lien, unless a creditor acts, expires one year from decedent's death. Although it has been held that lands left by a decedent are assets for the payment of his debts,⁵ nevertheless, strictly speaking, it is clear that real estate of a decedent is not an asset of a decedent's estate, applicable to the payment of decedent's debts generally, to the same extent that the real estate of a living insolvent is applicable to the payment of the insolvent's debts. When a creditor of a decedent loses the lien, acquired at the time of the decedent's death, by failure to protect it, such failure does not necessarily enure to the benefit of all other creditors, but is in reality a release of the lien to the heirs.⁶

Another well fixed rule of law in Pennsylvania is that the personal estate of a decedent is first applicable to the payment of the debts of a decedent, unless a contrary intention appears by a will.⁷ The principal parties interested in this rule

¹Act 1797, Apr. 4, 3 Sm. L. 296.
²Act 1834, Feb. 24, P.L. 70.
³Act 1893, June 8, P.L. 392.
⁶Bindley's Appeal, 69 Pa. 295 (1871); Little's Estate, 23 Pa. Dist. 1013, 1014 (1914).
⁷Bindley's Appeal, 69 Pa. 295 (1871).
are the heirs of the decedent, as by reason of it, the rights of the heirs to the real
estate cannot be divested unless the personal property is insufficient to pay the
debts of the decedent. Although the creditors have, as we have stated, acquired
liens on the real estate, the real estate cannot be sold to satisfy such liens unless
the personal property is insufficient to pay the debts of the decedent.

The true situation, taking into consideration the foregoing, seems to be that
upon the death of a decedent who dies seized of real estate, all his creditors become
secured creditors by reason of the liens which they acquire on his real estate by
operation of law. However these liens are of a peculiar nature and may not be
enforced, unless the personal property of the decedent is insufficient to pay dece-
dent's debts.

Until the United Security Trust Company Case, the estates of decedents which
were insolvent at the time of distribution, were distributed according to the Equity
Rule, and such distribution did not violate in any manner the fixed rules of law
which we have stated.

In distributing the estates of decedents, which are insolvent at the time of
distribution, under the Bankruptcy Rule, as all creditors are secured by liens on the
real estate, logically the real estate must first be applied to the payment of debts to
determine what portion of each debt shall participate in the personal property. In
other words, the strict application of the Bankruptcy Rule to estates of decedents,
insolvent at the time of distribution, effects the result that in solvent decedents'
estates, personalty is first applicable to payment of debts, and in insolvent estates,
realty is first applicable to the payment of debts. At first blush it seems that this
would not make any practical difference, but taking into consideration that an
estate may well be solvent at date of death and insolvent at time of distribution,
that the rights of mortgagees and judgment creditors must be considered and that
some creditors may lose their lien upon the real estate by failure to bring suit as
provided by statute, it will be seen that much confusion and many complications
can arise from this condition.

Let us consider several concrete cases in which the lien acquired by all cred-
itors on the real estate of a decedent at the time of death will cause uncertainty and
confusion by reason of the application of the Bankruptcy Rule in the distribution
of estates of decedents insolvent at the time of distribution.

I have a claim against a decedent of $5,000, secured by corporate stock as
collateral. Decedent died, intestate, seized of unencumbered real estate. All other
creditors of decedent were unsecured prior to decedent's death. After decedent's
death, I sell my collateral for $2,000. The real estate is sold for the payment of
debts within one year. At the time of distribution the estate is insolvent.
Immediately after decedent's death I had a claim of $5,000 secured by stock worth $2,000, and a $5,000 lien on decedent's real estate, which arose by operation of law upon decedent's death. Under the Equity Rule, I would receive a dividend on $5,000 from the personalty fund and a dividend on $5,000 from the real estate fund, provided, of course, such dividends shall not exceed $3,000. There are no difficulties and no complications. Under the Bankruptcy Rule these questions arise. As I am secured by lien on real estate, my claim must first participate in the real estate fund to determine for what amount it may participate in the personal fund. I clearly have a lien of $5,000 against the real estate as security for my now $3,000 claim against the estate. However as to the other creditors, in relation to the real estate fund, I am a super-secured creditor who has realized upon his super-secuity. May I participate in the real estate fund on the basis of $5,000 or $3,000? If I may participate for $5,000, the basic principle of the Bankruptcy Rule is violated. If I may only participate for $3,000, I have been clearly deprived of a vested right, that is, the lien for $5,000 against decedent's real estate which came into being upon decedent's death. Either the basic principle of the Bankruptcy Rule must be violated, or a vested right infringed. It may well be argued that under the Bankruptcy Rule, by reason of my lien, I can participate in the real estate fund on the basis of $5,000, but only participate in the personal fund on the basis of $3,000. If this is done, then I repeat, the basic principle of the Bankruptcy Rule must be discarded.

The same situation will arise if the decedent died seized of several pieces of real estate. I hold the decedent's bond for $5,000, secured by a first mortgage on one piece of decedent's real estate. Immediately after decedent's death my claim of $5,000 is secured by the mortgage executed by decedent prior to his death, and by lien of $5,000 on all of decedent's real estate. Decedent's real estate is sold for the payment of debts and I agree that the land on which my mortgage is a lien shall be sold discharged of my mortgage. The mortgaged piece of real estate sells for $3,000. At the time of distribution, the decedent's estate is insolvent. Shall I participate in the real estate fund realized from the sale of the real estate not covered by my mortgage on the basis of $5,000 or $2,000?

A different problem arises under the following state of facts:

I have an unsecured claim of $5,000 against a decedent. The decedent died, intestate, seized of unencumbered real estate worth $2,000 and unpledged personal property worth $11,000. The decedent owed unsecured debts, in addition to my claim, in the amount of $5,000, that is, the total unsecured claims are $10,000. The estate is solvent at the time of decedent's death. The personal representative does not sell the real estate for the payment of debts and none of the creditors, except myself, bring suit within the year to continue the lien on the real estate. At the time of distribution, the personal property, by reason of expenses, deprecia-
tion in value of securities, etc., through no fault of the personal representative, has depreciated to $7,000. The estate is clearly insolvent as there are claims of $10,000 with assets applicable to their payment of $9,000. Under the Equity Rule, I would participate on the basis of $5,000 in the distribution of the personal estate, and receive on account of my claim $3,500. The balance of my claim of $1,500 I could collect from the real estate and $500 of the real estate fund would remain for the heirs. Under the Bankruptcy Rule I would realize first upon my lien on the real estate, which would reduce the amount due me to $3,000. I would then participate with the other creditors holding claims of $5,000 in the personalty fund of $7,000 on the basis of $3,000, and receive therefrom $2,625, or a total of $4,625, which is $375 less than my claim against the estate. In other words, the Bankruptcy Rule deprives me of an advantage which I had gained by my diligence in continuing my lien against the real estate of the decedent, to the benefit of those creditors who were not diligent, and to the detriment of the rights of the heirs. To avoid this result, it is necessary to hold that I am not a secured creditor under the Bankruptcy Rule as to the other creditors because they too were secured in the same manner but lost their security by negligence. If the Bankruptcy Rule is not limited in this way and is applied strictly, not only the above results will be reached, but in effect the rules of law, which we have stated and which have been in force for over 200 years, will be violated, for let us remember that personal property is the primary fund for the payment of debts of decedents; that a decedent’s real estate cannot be called upon to pay debts until the personal fund is exhausted; that the decedent’s heirs are entitled to the real estate subject only to be called upon to pay the debts of the decedent, the lien of which has been continued, reduced, however, by the payment made, or which could be made, from the personal estate; and that the failure of a creditor to continue his lien is in effect a release of it to the heirs.

We have assumed, in accordance with the holding of the Superior Court in Miller’s Estate, that in the distribution of the estate of a decedent, insolvent at the time of distribution, the Bankruptcy Rule applies although the estate was solvent at the time of decedent’s death. It is true that the Supreme Court, in Emlen’s Estate, held on page 248:

"It is necessary that some time be agreed upon when creditors’ rights shall be regarded as fixed for the purposes of title and distribution.

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8Riegelman’s Estate, 174 Pa. 476, 34 Atl. 120 (1896).
9Ibid.
10Little’s Estate, 23 Pa. Dist. 1013 (1914).
11Kohler’s Appeal, 3 Grant 143 (1861).
12Little’s Estate, 23 Pa. Dist. 1013 (1914).
14Emlen’s Estate, 333 Pa. 258, 248, 4 A(2d) 143, 147 (1939).
The general rule is that they are fixed as of the date of appointment of receivers, or, as of the date of the assignment for the benefit of creditors (*United Security Trust Company Case*, 321 Pa. 276, 284, 184 A. 106) and, in the case of a decedent, at the time of his death."

but as the extent of the application of this general rule is now before the Supreme Court in *Skolnek's Estate*, we will not discuss it.

The foregoing is very inadequate and no doubt any reader can think of many examples illustrating the inconsistencies and difficulties which will arise in the application of the Bankruptcy Rule to the distribution of a decedent's estate insolvent at the time of distribution. However, the foregoing examples do support the conclusion that, because the real estate of a decedent is not an asset for the payment of his general debts, except through the medium of a restricted statutory lien given to all his creditors at the time of his death, and because a decedent's estate may well become insolvent after his death, either by a decrease in the value of decedent's property, or through failure of creditors to continue their liens, a decedent's estate insolvent at the time of distribution is so different from the insolvent or bankrupt estate of a living person that the Bankruptcy Rule, although properly applicable to such estates, cannot, consistently with well established rules of law, be applied to decedent's estates insolvent at the time of distribution. To apply it, rules of law, long in force, must be abrogated and statutory and contractual rights infringed or exceptions made in its enforcement. Of course it must be applied, but just how it will be applied and what will develop from its application by the Courts remains to be seen.

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15 *Skolnek's Estate*, No. 440 O.C. 1938, Orphans' Court of Blair County, Pennsylvania, appealed to Supreme Court, Eastern District, to No. 7 January Term, 1941.

16 One year duration unless suit brought, and enforceable only when the personal estate is insufficient to pay all debts.

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