



PennState
Dickinson Law

DICKINSON LAW REVIEW
PUBLISHED SINCE 1897

Volume 53
Issue 3 *Dickinson Law Review - Volume 53,*
1948-1949

3-1-1949

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Recommended Citation

Joffrey Conn, *Damages for Services Rendered in Reliance on Promise to Devise Unperformed*, 53 DICK. L. REV. 212 (1949).

Available at: <https://ideas.dickinsonlaw.psu.edu/dlra/vol53/iss3/10>

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DAMAGES FOR SERVICES RENDERED IN RELIANCE ON PROMISE TO DEVISE UNPERFORMED

In May of 1948 the Supreme Court of Pennsylvania decided two cases which involved claims against decedents' estates. Plaintiffs in both cases alleged breach of oral contracts by decedents to will claimants their estates in consideration for services rendered to decedents by claimants. Both claims were rejected by the Court because (1) *In Re Stichler's Estate*¹ "the alleged contract was not sufficiently proved and furthermore because no evidence was submitted to establish the extent and value of the services rendered" and (2) *In Re Jones Estate*² "because the evidence failed to establish a contract."

Measure of Damages was not in issue in either of these cases. But in the *Stichler Case* Justice Stearne said,

"Furthermore on a breach of a contract to will the measure of damages is the value of the services rendered and not of the estate promised to be willed."

In the *Jones case* the same Supreme Court Justice used stronger language saying,

"Even if a contract to will the whole or part of an estate had been proved and a breach shown, the measure of damages is the value of the services rendered and not the estate promised to be given."

This type of claim has arisen many times in Pennsylvania and the Courts have disclosed unmistakable judicial antipathy toward them. Justice Strong in *Graham v. Graham's Executors*³ justified the Court's attitude when he said,

"The temptation to set up claims against the estates of decedents, particularly such decedents as have left no lineal heirs, is very great. It cannot be doubted that many such claims have been asserted, which would never have been known, had it been possible for the decedent to meet his alleged creditor in a court of justice. Not infrequently, we witness a scramble for a dead man's effects, disreputable to those engaged in it, and shocking to the moral sense of the community. Such claims are always dangerous, and when they rest upon parol evidence, they should be strictly scanned. Especially, when an attempt is made, under cover of parol contract, to effect the distribution different from that which the law makes, or that which decedent has directed by his will, should it meet with no favor in a court of law. Even if any such contract may be enforced, it can only be, when it is clearly proved, by direct and positive testimony, and when its terms are definite and certain."

¹ 359 Pa. 262, 59 A.2d 51 (1948).

² 359 Pa. 260, 59 A.2d 50 (1948).

³ 34 Pa. 475 (1859).

After asserting the aforesaid reasons for using extreme care and caution in ascertaining the validity of the alleged contract, the learned justice further said,

"But without pressing the insufficiency of the proof of the contract, even if it were definite and certain, it by no means follows that the measure of damages in an action for its breach, is the value of the thing promised at the time of the breach."

Pennsylvania Courts have taken an inflexible stand in these cases and in a long line of decisions⁴ have reiterated the rule that the measure of damages is the value of the services only, and not the value of the thing promised. But Williston and other authorities⁵ do not differentiate between the measure of damages for the breach of contract to devise or bequeath property and the measure of damages for the breach of any other contract. Williston says,

"The measure of damages for the breach of a contract to devise or bequeath property is the value of the property promised to be bequeathed and devised. The measure of damages is applied both as to devises of real estate and bequest of money legacies."⁶

Labatt in his comprehensive work, *Commentaries on the Law of Master and Servant*, published in 1913, flatly states,

"In an action on a contract to recompense services by a legacy or devise, the measure of recovery is the value not of the services, but of the property promised."⁷

It is interesting to note that this learned authority, when his work was published, recognized the above rule as the law of all jurisdictions and cited no cases which adopted a contrary view.

The results of the Pennsylvania decisions seem unjust. In many situations from which these cases arise the services rendered were of a most disagreeable character and infirmities of the alleged promisor rendered many of the tasks very unpleasant. Usually the decedent was a person of declining years, deserted by his relatives and friends who shunned the distasteful tasks necessary to take care of him. In desperation the aged person turned to a friend or housekeeper with whom he contracted orally to devise a portion of or his entire estate in consideration of services to be rendered in his care. The promisee toiled for many years at disagreeable tasks which often greatly impaired the worker's health, in reliance on the promise of a substantial legacy. Upon the death of the promisor failure to

⁴ *Infra*. Note 5; *Infra*. Note 10; Real Estate, 152 Pa. Super. 229, 56 A. 2d 241 (1948); In re McWilliams Estate, 162 Pa. Super. 229, 56 A. 2d 241 (1948); *Supra*. Note 1; *Supra*. Note 2; *Infra*. Note 9.

⁵ 4 Page on Wills 1734 (Third Ed. 1941); 3 Sutherland, A TREATISE ON THE LAW OF DAMAGES, 679 (1916); 3 Elliot, COMMENTARIES ON THE LAW OF CONTRACTS, 2220 (1913).

⁶ 5 Williston and Thompson, WILLISTON ON CONTRACTS, 1411 A. (Revised Ed. 1937).

⁷ 2 Labatt, COMMENTARIES ON THE LAW OF MASTER AND SERVANT, 443 (Second Ed. 1913).

devise the promised legacy caused the promisee to institute action on the alleged contract. In the majority of the cases the complainant was awarded merely "value of services rendered", which was totally inadequate.

In one such case⁸ an aged man requested the plaintiff to take care of him and of his house. At first the woman refused to do so, but upon his promise to devise to her his entire estate if she would comply with his request, she agreed. The Court decided that "the contract was binding if one party renders services under a proposed contract and the other accepts them, without formal, verbal, or written acceptance thereof." The value of her services was estimated and the period she worked for him after the first making of the contract covered a period of 645 weeks. The verdict was in her favor for \$3227, which was less than \$5 per week.

In another case⁹ with a similar fact situation, the plaintiff was awarded a sum computed on the basis of \$10 per week as the value of services she rendered to the decedent "on the faith of the agreement."

The decisions resolve themselves into three main categories (1) Where the evidence fails to establish a contract¹⁰ (2) Where an agreement is unenforceable because it does not satisfy the Statute of Frauds¹¹ and (3) Where sufficient evidence is produced to establish a contract and it is not rendered unenforceable by non-compliance with the Statute of Frauds.¹² In (1) the Courts have either dismissed the claim or have awarded value of the services where the claimant could sufficiently establish that the services were rendered and could overcome the presumption of payment.¹³ The overwhelming majority of decisions have held in (2) and (3) that the measure of damages is the value of the services rendered and not the estate promised to be devised.

Obviously, the decisions rejecting the claim where the evidence fails to establish a contract are just. Any other conclusion would open the door to fraudulent claims, and would be contrary to basic contract law.

The second category, in which the contract is stricken down because it does not satisfy the Statute of Frauds, appears just under the existing circumstances. However, in view of the fact that a claimant often endures his unpleasant and distasteful tasks in reliance on the decedent's promise to will certain valuable real property to him, the results of such decisions often seem inequitable. In most cases, the plaintiff would not have rendered the services if he had been

⁸ Snyder v. McGill, Admr., 265 Pa. 122, 108 A. 410 (1919).

⁹ Byrne's Estate, 122 Pa. Super. 413, 186 A. 187 (1936).

¹⁰ Supra. Note 2; Re Roberts Estate, 350 Pa. 467, 39 A. 2d 592 (1944); In Re Barry's Estate, 159 Pa. Super. 287, 48 A. 2d 29 (1946).

¹¹ In Re Anderson Estate, 348 Pa. 294, 35 A. 2d 301 (1944).

¹² Cramer v. McKinney et al., Executors, 355 Pa. 202, 49 A. 2d 374 (1946).

¹³ Mary Kauss v. John Rohner, Administrator of John George Kauss, Decd., Appellant, 172 Pa. 481, 33 A. 1016 (1896).

informed that his compensation would be merely "value of services". Nevertheless, the evils of awarding the value of the property promised to be devised as the measure of damages for the breach of an oral contract to devise real property where there is no memorandum in writing, would undoubtedly outweigh its possible benefits. Such a policy would also be contrary to Pennsylvania's long established rule concerning the measure of damages for breach of oral contracts for the sale of land.¹⁴

An additional difficulty which confronts claimants in cases in which the Statute of Frauds is involved is that Pennsylvania Courts have refused to recognize a revoked will¹⁵ as sufficient writing to satisfy the statute. The decisions have followed the rule that testimony showing a legacy in a revoked will was not admissible to prove the existence of a contract to make a devise in return for services rendered unless the will itself showed or it appeared by other evidence that the legacy was given in pursuance of a contract to make a will. Pennsylvania Courts have consistently held that a will containing a devise which makes no reference to the contract does not satisfy the Statute of Frauds.

Some jurisdictions take a contrary view¹⁶ and have held that where a contract to devise land in consideration of services rendered is alleged, a revoked will was evidence of a unilateral contract and that the writing did satisfy the Statute of Frauds.

The latter view in regard to a revoked will as evidence of a contract seems to be the more equitable one. It would appear reasonable that a revoked will should be sufficient memorandum in writing to be admissible as evidence of a contract to devise land. But Pennsylvania cases do not so hold.

The third category involves the measure of damages where sufficient evidence is produced to establish a contract and the contract satisfied the Statute of Frauds. Cases which fall within this classification could lead to unjust results if the dicta in the *Jones* case is strictly followed. Some older Pennsylvania cases¹⁷ did not take this view and as illustrated by the following excerpts there are also relatively recent ones which are contra. In *Estate of Rachel Nusbaum, Deceased*¹⁸ the Court said,

"The rule seems to be that if the contract or agreement between the parties was that the services rendered the decedent at his request should be compensated for by a money legacy definite in amount or capable of being ascertained, that sum may be recovered if the decedent fails to provide for the legacy agreed upon."

¹⁴ *Seidlek v. Bradley*, 293 Pa. 379, 142 A. 914 (1928).

¹⁵ *Supra.* Note 13; *Mooney's Estate*, 328 Pa. 273, 194 A. 893 (1937); *In Re McWilliams Estate*, 162 Pa. Super. 299, 56 A. 2d 241 (1948).

¹⁶ *In re Lube's Estate*, 225 Wis. 365, 274 N. W. 276 (1937).

¹⁷ *Thompson v. Stevens*, 71 Pa. 161 (1872); *Miller's Estate*, 136 Pa. 349, 20 A. 565 (1890).

¹⁸ 101 Pa. Super. 17 (1930).

In *Elwood's Estate*,¹⁹ the Pennsylvania Supreme Court said,

"Since the contract or agreement between the parties was that the services rendered the decedent at his request should be compensated by a money legacy which under the testimony has been made definite in amount, that sum may be recovered."

In 1943, Justice Baldridge, of the Pennsylvania Superior Court, seemed to follow this view in *Fondelier v. Riddle*.²⁰ This was an action of assumpsit to recover for personal services rendered by plaintiff to a decedent. It was held on appeal that there was sufficient evidence to establish the existence of the contract for the payment of a definite sum for services rendered.

According to the dicta in the *Jones* case the measure of damages for a breach in such a situation would be the value of the services rendered and not the estate promised to be devised.

Therefore, under this late pronouncement by the Supreme Court of Pennsylvania which is a reiteration of the opinions in the majority of the older Pennsylvania cases, the measure of damages where plaintiff has given services to decedent in reliance on a promise of a devise which is not made, and where the contract is valid in every respect, is different from the measure of damages for the breach of other types of valid contracts. There seems to be no sound reason for the distinction. The argument, that to award the value of the thing promised as the measure of damages would lead to fraudulent claims against decedents' estates, is not a logical one here. If the claimant can conclusively prove either a written or an oral contract to will the whole or part of an estate and show a breach thereof, and the contract is not rendered invalid for any reason, there surely can be no question of a fraudulent claim.

It is true that due to the nature of this type of claim, instances are few where the plaintiff can surmount the formidable burden of proving a valid contract to bequeath personal property or one to devise real property which satisfies the Statute of Frauds, as the claimant is not a competent witness and other witnesses are often no longer available. The long and well established principle in²¹ Pennsylvania that wages for domestic services and board bills are presumed to be paid at stated intervals confronts many of these claimants. When a claim for such services is presented against a decedent's estate, extending over any length of time, the burden is on the claimant to rebut the presumption of payment. However, where the plaintiff does succeed in overcoming these great difficulties of proof, it seems that the measure of damages should be the value of the property promised to be devised and not merely the value of the services rendered.

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¹⁹ 309 Pa. 505, 164 A. 617 (1932).

²⁰ 152 Pa. Super. 586, 23 A. 2d 86 (1943).

²¹ *Cummiskey's Estate*, 224 Pa. 509, 73 A. 916 (1909); *Winfield v. Beaver Trust Co.*, 229 Pa. 530, 79 A. 138 (1911); *Sear's Estate*, 313 Pa. 415, 169 A. 776 (1934); *In re Monson's Estate* 160 Pa. Super. 631, 53 A. 2d 909 (1947).