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WILLS AND TRUSTS

COLEMAN KARESH*

Contract to Make Will

The Supreme Court, in the period under review, had before it two cases involving contracts to make a will. In *Looper v. Whitaker*,¹ the area of law involving mutual and reciprocal wills was enlarged. The action, which was for specific performance, was brought by a surviving husband against the administrator *c.t.a.* and the devisees of his deceased wife. The complaint alleged that the husband and wife had made reciprocal wills pursuant to contract, and that the wife had breached the contract by revoking her will and making another will in different terms. The lower court, without prior reference to a master or submission of issues to a jury, found that there had been a contract and held for the plaintiff, but the Supreme Court reversed, declaring that the facts did not support the existence of a contract. The Court reiterated the requirement that the evidence to establish an alleged contract to make a will must be clear and convincing, and that the proof here fell short of that standard. Moreover, the Court lays down the rule that reciprocal provisions in separate wills — even of husband and wife — are not “‘in the absence of a recital that they are made pursuant to a contract, in themselves sufficient evidence of an enforceable contract between the testators for the execution of the wills.’” “It may be said . . . that it is within common knowledge that many married couples make reciprocal wills, but it does not follow from that alone, or from the agreement to do so, that each spouse is thereby bound against revocation or subsequent alteration of his or her will, *without notice to the other.*” (Italics added.)

The words just emphasized seem to indicate that it is the Court's view that even if there had been a contract, either testator could revoke on notice; and there is a similar intimation in other language in the opinion: “It is not clear and convincing that there was a contract by which the testatrix was bound not to alter or revoke her first will, at least without

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1. 231 S. C. 219, 98 S. E. 2d 266 (1957).

notice to respondent." The right to revoke upon notice certainly has ample authority;² and there is some authority that where the first to die has revoked his will even without notice the survivor has no enforceable rights, on the theory that the survivor has the opportunity to revoke his own will and is not prejudiced by the other's act.³ It seems to be assumed, however, in the present case that where there are mutual wills, or a joint will, made pursuant to contract, the survivor may enforce the contract despite revocation by the other if there has been no notice of revocation during the joint lives of the parties. The South Carolina case of *Turnipseed v. Sirrine*⁴ would seem to support the assumption.

The second contract-to-will case was one in which there was clearly a contract to devise, but specific performance of the contract was refused. In *Large v. Large*⁵ the plaintiff sought specific performance of a contract embodied in a "deed" executed by his natural parents to the named defendant and her husband (whose administratrix the former was), under which the natural parents surrendered the custody of the plaintiff, then two years old. The "deed" provided that the foster parents agreed that the child should "by proper devise and bequest be made equal with their own children in the distribution of their estates." The foster father died intestate, without children, and survived by his wife, three sisters and a brother; and this action followed to impress a trust upon his property and for specific performance in the form of a decree declaring the plaintiff entitled to one-half of the property. The defendants, the heirs, contended that the plaintiff was not entitled because his conduct had been "unworthy, undutiful and unfilial." The master's finding that the plaintiff should be denied relief because of such conduct was affirmed by the circuit judge in a decree setting out various instances of disobedience, misconduct, violation of law, friction, etc. These acts began when the plaintiff was fourteen years of age. The holding was based principally upon the ground that since spe-

2. See 169 A. L. R. 9, 50 *et seq.* (1947). There is dictum to this effect in *Wilson v. Gordon*, 73 S. C. 155, 159, 53 S. E. 79 (1905).

3. See 169 A. L. R. 9, 52 (1947). The English case of *Stone v. Hoskins*, Prob. Div., 1905 [1905] p. 194 best represents this view.

4. 57 S. C. 559, 35 S. E. 757, 76 Am. St. Rep. 580 (1900). A, niece, and B, aunt, made mutual reciprocal wills pursuant to contract. It was alleged and apparently proved that they had expressly agreed that the wills were to be irrevocable. A revoked her will, leaving another. B was held entitled to specific performance.

5. 232 S. C. 70, 100 S. E. 2d 825 (1957).

cific performance is addressed to the conscience and discretion of the court, the court, in that exercise, did not see fit in the light of the plaintiff's behavior to reward him with enforcement of the contract. In addition the circuit judge declared that "[a]lthough not expressly stated, there is implied a consideration in the deed of the society, companionship and filial obedience of the Plaintiff."

The Supreme Court affirmed the concurrent findings of fact of the master and the circuit judge as to the nature of the plaintiff's conduct. Because of the insufficiency, or perhaps lack, of exception challenging the holding of the implication of required filial obedience in the contract, the Supreme Court stated that "whether or not the premise thus stated is a sound principle of law, applicable generally to contracts of this nature, is a matter we need not decide. Its correctness is not challenged by the exception here, and it is therefore the law of the case."⁶

6. It is not clear whether the implied condition or consideration mentioned by the circuit judge, or the Supreme Court's reference to the decree's holding that "in the deed . . . there was implied an agreement that appellant would when old enough to do so, render filial obedience to his foster parents and give to them his companionship and filial devotion," denotes an interpretation of the contract showing such an intention, or whether it means a constructive condition implied in law. There are no cases in South Carolina dealing with the problem of whether as a matter of interpretation or constructive condition an agreement to devise property to a child in consideration of the surrender of custody carries with it the implication of filial obedience. For that matter there is no sizeable amount of authority on the point, and the authorities cited by successful counsel in annotations on the subject deal in the main with filial service, affection and society as such part performance as to render an oral contract enforceable, or point to them as acts not computable in money value and amenable to specific performance on that account. What is or ought to be the law in this State, aside from general considerations of Equity's withholding its award from an unworthy suitor in its discretion, is a matter of argument.

The case is interesting from several aspects. Even if the plaintiff had not been guilty of unfilial behavior, a literal application of the contract would leave him helpless, since the foster parents agreed that the plaintiff "should be made equal with their own children in the distribution of their estate." The foster parents had no children, and there was therefore no basis for equal distribution. Of course, if the plaintiff had been *adopted*—as distinguished from his custody having been transferred, see *Hatchell v. Norton*, 170 S. C. 272, 170 S. E. 341 (1933)—he would have taken as an heir despite his unworthiness. If he had been adopted and there had been no contract to devise, he could have been effectively disinherited without regard to his conduct. 97 A. L. R. 1018 (1935). Paradoxically, if he had been adopted and there had been a contract to devise, and if the adoptive parent had not willed his adoptive son anything but had died intestate, the child apparently would take as an heir in the face of his misconduct. There are considerations, too, of a non-legal character. Why should there be an implied consideration or condition of filial obedience? The child whose custody has been relinquished by his natural parents, although the beneficiary of the contract, has made no such promise, nor have his parents made it for him—except as one reads it

Contest — Undue Influence

The rule that a contest in the circuit court as to the validity of a will presents legal — as distinguished from equitable — issues was followed in *Harris v. Berry*.⁷ In that case the testator's wife, who had been principal beneficiary under her husband's earlier will, instituted an attack upon the later will. The parties by-passed trial in the probate court and proceeded directly in the circuit court, a procedure sanctioned under the authority of *Muldrow v. Jeffords*.⁸ The issue of mental capacity was decided in favor of the proponent of the will, but the jury found that the will was the result of undue influence on the part of one of the beneficiaries. The Supreme Court declared that "whether a case of 'will or no will' in the circuit court arises by appeal or by consent after waiver of the probate court hearing, the issues submitted to the jury as to mental capacity and undue influence are, under the settled law of this state, treated as factual issues in a law case; and the jury's finding will not be disturbed on appeal if there is any evidence to sustain it." The Court restates the usual definitions of undue influence — in substance that undue influence invalidating a will "must be such as to overcome the testator's wishes and to substitute for them those of the other person"; "and that the mere influence of affection and attachment, or the mere desire of gratifying the wishes of another, will not vitiate a testamentary act unless that act was the result of coercion or importunity beyond the testator's power to resist." It concluded that while "the question posed above is a very close one under all of the evidence here" the evidence was sufficient to carry the case to the jury.⁹

into the contract. The foster parent, disappointed as he may be in the child, has at least had for many years the companionship of the infant and then of the boy: is the ultimate disappointment to outweigh those years of parental pleasure to override the fact that the natural parents gave up their child in return for a promise clearly expressed? A parent may, in his freedom of testation, punish the unruly child by disinheriting him; but the same freedom of testation permits him to cut off the worthy and perhaps needy child and to bestow his bounty upon the unworthy and undeserving one. And if he dies intestate, the rain of succession falls on the good and the bad alike (except for the faithless wife and the homicidal heir).

7. 231 S. C. 201, 98 S. E. 2d 251 (1957).

8. 144 S. C. 509, 142 S. E. 602 (1927).

9. But see the statement in *Smith v. Whetstone*, 209 S. C. 78, 83, 39 S. E. 2d 127 (1946): "But the circumstances relied on to show it [undue influence] must be such as, taken together, point *unmistakably and convincingly* (italics supplied) to the fact that the mind of the testator was subjected to that of some other person, so that the will is that of the latter, and not of the former." The Supreme Court here reversed a

Although the evidence was thus sufficient for the consideration of the jury, the Supreme Court reversed, because of error on the part of the trial judge in refusing to admit in evidence letters written by the testator to certain beneficiaries which indicated a lack or diminution of affection for his wife and which thus had a distinct bearing on the question of undue influence. The trial judge was held to have taken an erroneous view of the Dead Man's Statute,¹⁰ upon which he based his rejection of the proffered evidence.

Applicability of Non-Claim Statute

In *Wallace v. Timmons*¹¹ the Supreme Court had occasion for the first time to consider in a substantial way the operation of the non-claim statute.¹² The plaintiff, ancillary receiver of insolvent insurance company, sued the defendant, individually and as executrix of her deceased husband, seeking an accounting and the recovery of an alleged trust fund which had come to her from her husband. The allegations were that the husband was the agent of the insurance company and that the terms of the agency agreement made him a trustee and the moneys received by him trust funds; and that at the time of his death there were certain special bank deposits in his name in which funds collected for the company had been commingled. The testator had died in 1948, in which year administration was commenced; the plaintiff had filed a claim in 1951, which had never been acted upon in any way. This action was brought in 1956.

The circuit judge sustained a demurrer to the complaint principally on the ground of failure to file a claim within the period of the non-claim statutes (then eleven months following the first notice to creditors),¹³ taking the general position

jury's finding of undue influence. For one of the best expressions as to the reasons for non-reviewability of fact findings in a will contest, see *In re Solomon's Estate*, 74 S. C. 189, 54 S. E. 207 (1906).

10. CODE OF LAWS OF SOUTH CAROLINA, 1952 § 26-402. For a discussion of this phase of the case see the subject of Evidence in this survey.

11. 232 S. C. 311, 101 S. E. 2d 844 (1958).

12. CODE OF LAWS OF SOUTH CAROLINA, 1952 §§ 19-473, 19-474.

13. Since reduced to five months. Acts 1956, No. 767, § 7. The amendment thus reducing the time for presentation of claims does not simply strike out *eleven* months and substitute *five*. The original statute [§ 19-474] reads: "All claims of creditors of such estate shall upon the expiration of eleven months after the publication of the notice prescribed in § 19-473 be forever barred unless before the expiration of such period an account thereof duly attested, shall have been filed with such executor or administrator or with the judge of probate of the county in which such estate is being administered." * * * The 1956 amendment reads "All claims of creditors of such estate shall not later than the expiration of

that the statutes destroyed all legal and equitable claims, not presented in time and on the further ground of laches. The Supreme Court reversed, holding that, taking the allegations of the complaint to be true for purposes of the demurrer, the action was one to recover a trust fund and that for that reason the non-claim statutes had no application; that the statutes have reference "to the claims of creditors, and relate to debts of the testator payable from his estate"; that if there were in fact such a trust fund it was not a part of decedent's estate, to which the statutes were directed.¹⁴ There was error, also, the Court held, in the lower court's conclusion on demurrer that there was laches. Aside from the general matter of the method of, and the circumstances for, raising the question of laches, the Court held that "[e]ven if it appears from the complaint that there has been a long delay in instituting the suit, the court should not decide the question on a demurrer if there are allegations in the pleading tending to show explanation or excuse for the delay", and that the issue of laches could be disposed of only upon a hearing of the facts.

Administrator De Bonis Non

In *In re Estate of Nettles*¹⁵ the unusual feature of objection to appointment of an administrator *d.b.n.* on the ground of

five months after the first publication of the notice prescribed in § 19-473, be filed, duly attested, with such executor or administrator or with the judge of probate of the county in which such estate is being administered. * * * It is to be noticed that the amendment does not expressly undertake to bar the claim as does the earlier legislation, but it is doubtful, to say the least, that the legislature intended to convert the statute from a non-claim statute into something else, particularly when it is considered that the general purpose of the extensive amendatory legislation of 1956 was to shorten the period of the administration of estates.

14. The opinion in this case followed a rehearing after a prior opinion rendered in August, 1957 (Westbrook Advance Sheets, August 24, 1957, No. 17339). The prior opinion likewise held that there was error in sustaining the demurrer but gave as one of the grounds that the statutes applied "only to claims against the estate as distinguished from claims against the assets in the hands of the distributee." In other respects the prior opinion parallels the later one, which is reviewed. The later opinion does not specifically declare that the earlier opinion is withdrawn, but it is rather obviously intended to do so, a conclusion borne out by the fact that the former opinion has not been published in the reports.

As to the necessity of presentation of claims for property held in a fiduciary capacity, see 21 AM. JUR., *Executors and Administrators* §§ 353, 354 (1939). See also § 921. A host of questions will arise anew in this case, such as whether the filing of the claim with the executrix in 1951 (although late) created an election; whether the inability to identify the fund specifically restores the application of the non-claim statutes; whether a constructive trust arose, and, if so, if and when the statute of limitations began to operate.

15. 231 S. C. 214, 97 S. E. 2d 987 (1957).

estoppel was presented. The original administratrix, wife of the intestate, had been granted a discharge in due course. Thereafter two surety companies, sureties on the bonds of the deceased husband as principal, sought to reopen the estate by the appointment of an administrator *d.b.n.*, whom they nominated, on the ground that after the granting of the discharge the defalcations of the principal, a teller in the obligee bank, had been discovered; and that the sureties thereafter had discharged their liability to the bank and had obtained an assignment of the bank's claims to them. The former administratrix resisted the application on the ground that representatives of the sureties had acquiesced in or consented to her discharge and that the sureties were on that account estopped to seek the new appointment.

The probate court denied the application for appointment but it was reversed by the circuit court. The Supreme Court upheld the lower court, holding, as did the court below, that the facts did not justify either waiver or estoppel; that while the representatives of the sureties did not object to the discharge, they were not in a position at the time to know of the facts establishing liability of the principal to the bank; and that under the circumstances it could not be said that there had been the voluntary relinquishment of a known right which is the essence of waiver, nor had there been present the elements required for an estoppel. The Court further observed, in answer to an argument that the sureties as subrogees were in no better position than the bank — which it was contended was estopped because of its failure to object to the discharge — that the bank knew no more of the ultimate liability of the principal than the sureties did.¹⁶

16. There is no basic impediment to reopening an estate by the appointment of an administrator *d.b.n.* after the original administrator has been discharged. *McNair v. Howle*, 123 S. C. 252, 116 S. E. 279 (1922), where it is said that the effect of a discharge is to vacate the office of the representative but is not an adjudication that the estate has been fully administered. What course the administration of the reopened estate in this case has taken this writer has not undertaken to ascertain, but there are undoubtedly interesting questions that it has posed or will pose. While the administrator *d.b.n.* in this case was the nominee of claimants and in a certain sense subservient to them, the duty to the distributees, including the wife, remains unimpaired including the duty to defend. The matter of the presentation of claims within the period of the non-claim statute must necessarily arise and introduces the same, and even broader, problems as those appearing in *Wallace v. Timmons*, reviewed above. The sureties' remedies here were two-fold: indemnity and subrogation. The sureties would probably justify the non-presentation of their claims for indemnity within the non-claim period on the ground that the claims were contingent—a point not yet passed on locally

Receivership

The rare instance of an administration being instituted and carried on by means of a receivership appears in *Vasiliades v. Vasiliades*.¹⁷ Since the case is primarily concerned with receivership as such, the case will be limited here to the aspects of administration. The plaintiff, claiming to be the wife of the intestate by virtue of a ceremony in Greece, alleged that she and the defendants were the heirs and distributees of the intestate, who had left a large real and personal estate; that no administration had been had, and that the defendants, one of whom was sued individually and as administrator [*sic*] de son tort, had taken exclusive possession of the property, without accounting to her; that the defendants were hostile to her and had instituted suit in Greece to invalidate her marriage. The complaint asked that the Court of Common Pleas assume jurisdiction of the estate, appoint a receiver with power and direction to administer the estate; and for partition, and other relief that might be equitable. The circuit judge appointed a receiver, with direction to administer. Thereafter a lengthy series of legal maneuvers took place, which culminated, in part, in dissolution of the receivership by the lower court. The Supreme Court held this action to be proper, holding in substance that since the appointment of a receiver is largely discretionary with the court to which application is made, revocation of the appointment is likewise discretionary, and under the circumstances was justified in this case.¹⁸

in the interpretation of the statute. See 21 AM. JUR., *Executors and Administrators* § 365 (1939). See also for general discussion of the South Carolina statute, 2 S. C. L. Q. 354-359 (1950). As subrogees of the bank, which did not present a claim within the allowable period, their position would probably be that the bank was under no duty to present its claim because liability to it was based upon misappropriation and breach of trust—a point also not passed on in this State and as to which there is elsewhere a division of authority. See 21 AM. JUR., *Executors and Administrators* § 354 (1939).

If the administrator *d.b.n.* were to allow the sureties' claims and was upheld in so doing, the problem then would become one of refunding by the distributees. See *McNair v. Howle*, *ante*; 41 MICH. L. REV. 920 (1943).

17. 231 S. C. 366, 98 S. E. 2d 810 (1957).

18. Neither the lower court nor the Supreme Court in this case discusses the propriety of the receivership as a means of original administration, with all that such an administration entails—including advertising for creditors, furnishing an inventory, obtaining an appraisal and so on. In view of the receiver's removal, any discussion would be academic. No doubt a receiver may be appointed to *conserve* the property before administration, 21 AM. JUR., *Executors and Administrators* § 1005 (1939), but that function is quite different from an actual administra-

A ground of exception made by the plaintiff was the lower court's refusal of the receiver's motion for discovery and appraisal of assets. The Supreme Court upheld this course of action, holding that the question raised was sufficiently disposed of by the fact of the receiver's dismissal. Further, the Court held that the lower court had "by its early orders assumed jurisdiction to administer the personal estate of decedent but subsequent developments moved it to relinquish that jurisdiction, and the action remains one to partition real estate.¹⁰ In the matter of the estates of decedents the Court of Common Pleas and the Probate Court have concurrent jurisdiction. . . . No sound reason is advanced against the propriety of relinquishment by the court of jurisdiction of the personal estate of the decedent. The receiver had made no substantial progress in administration of it. The probate court is open for application for administration. The real estate will remain subject to the jurisdiction of the court, without the expense and harassment of the respondents that receiver-ship inevitably entails."

tion, and there seems no reason to permit a receiver to go beyond conservation and control of the property pending appointment of the personal representative. There seem to be no cases in this State of pre-administration appointment of a receiver, so that the question of how far his authority can extend—or what he can be directed to do—has necessarily not arisen. There is no question, as the Court points out later in its opinion, that with respect to the estates of deceased persons, the Court of Common Pleas has concurrent jurisdiction with the probate court, and once assumed by either court its jurisdiction will not, in most cases, be disturbed by the other. The writer has earlier made the following comments (2 S. C. L. Q. 13, 50, note [1949]), for what they are worth: "The principle of Common Pleas concurrence with the Probate Court runs the scale of the latter's jurisdiction, including the probate of wills (at least in solemn form), accountings, sale of land in aid of assets, allotment of dower, matters touching upon minors and lunatics and the administration of their estate. It is doubtful if the Court of Common Pleas could, or would, admit a will to probate in common form, grant letters testamentary or of administration, revoke letters, receive returns in the absence of litigation, or do many of the routine acts of administration devolving upon the Probate Judge."

Receivership *after* the inception of administration, where the estate has been mishandled by the representative, is not uncommon in this State, and once appointed the receiver performs virtually all the administrative duties of the representative. See, among others, *Ex parte Galluchat*, 1 Hill Equity 148 (1833); *Gadsden v. Whaley*, 14 S. C. 210 (1880); *Harman v. Wagner*, 33 S. C. 487, 12 S. E. 98 (1890); *Smith v. Heyward*, 115 S. C. 145, 104 S. E. 473 (1920).

19. But the partition would have to await the grant of administration and the making of the administrator a party unless all debts had been paid, or a showing made that there was sufficient personal property in the representative's hands for the purpose, or due permission made in the decree for payment of debts—CIRCUIT COURT RULE 54.

Action for Accounting — Parties

The question whether in an action for accounting brought by a single distributee against the administrator of an estate the court could compel a joinder of all the other distributees, at the instance of the administrator, was answered in the affirmative in *Singleton v. Singleton*.²⁰ Such a joinder was ordered by the circuit court and the action thus taken was affirmed on appeal. The plaintiff's objection that the circuit court's order was an abuse of discretion was disposed of by the Court's noting that the plaintiff's counsel had already made an appearance in the probate court on behalf of most of the heirs to resist the administrator's application for discharge, and that on general principles all the distributees, having an interest in the subject matter, could properly be brought in.²¹ All could be joined as plaintiffs, the Court observed,²² and if any refused to become plaintiffs they could be joined as defendants. The appellant's plaint that to make the other distributees parties would place an undue burden upon him was dismissed out of hand by the Court; and the further complaint of burdensomeness because of the non-residence of some of the parties was rejected, the Court calling attention to the pertinent Code section (§ 10-451) relating to service upon non-residents where the subject matter is personal property within the State.

20. 232 S. C. 441, 102 S. E. 2d 747 (1958).

21. Citing CODE OF LAWS OF SOUTH CAROLINA, 1952 §§ 10-202, 10-203, 10-204, 10-219, relating to making and bringing in of parties.

22. Citing *Black v. Simpson*, 94 S. C. 312, 77 S. E. 1023, 46 L. R. A. (N. S.) 137 (1913), holding that several distributees, who had been paid unequal amounts, could unite in an action against the administrator to redress a breach of trust.

It would seem that while all the distributees could join as plaintiffs or a single distributee plaintiff could make the remainder defendants, or, as indicated in the reviewed case, the court could compel the joinder of all, all the distributees are not *necessary* parties, so that a suit by a single distributee cannot be said to be defective as lacking in parties when the others are not joined. See 21 AM. JUR., *Executors and Administrators* § 479 (1939); 34 C. J. S., *Executors and Administrators* § 849 (1942). So much seems implicit in the present case. See, also, as holding that all the distributees may join, *Tucker v. Tucker*, 13 S. C. 318 (1860); and *Stallings v. Barrett*, 26 S. C. 474, 2 S. E. 483 (1886), where it is said in a concurring opinion "There can be no doubt that several distributees . . . may unite in demanding an account, in which they are all interested, from the administrator, and that such is the proper practice, rather than that each distributee should, in a separate action, demand from the administrator an account and payment to him of his share of the balance found due by him upon such accounting." It would seem that the latter practice, while deprecated, is not forbidden. See *Tucker v. Tucker*, *ante*.

Sale by Fiduciary to Self

In *Scurry v. Edwards*,²³ a case noteworthy for its analysis of the doctrine of part performance in relation to oral contracts for the sale of land, the Court was confronted with the problem of a conveyance made by the committee of an incompetent to himself of an interest in land owned by the incompetent. The transaction was upheld principally upon the ground that there was a prior contract — which though oral was taken out of the Statute of Frauds by part performance — between the committee (as an individual) and his brother, for the transfer of the latter's land to him. The brother had thereafter died intestate without having made the agreed transfer and was survived, among others, by the ward. For all practical purposes the committee was fulfilling the prior contract, and this the Court sanctioned, upon the familiar ground recognized in the law of trusts that the court would later approve what it would have approved if applied to in the first instance. In leading up to this conclusion, however, the Court took occasion to point out that "a guardian has no authority to sell real estate of his ward without an order of court, and that the courts will subject to the most rigid scrutiny a transaction whereby a guardian purchases or otherwise acquires his ward's property."²⁴

Legislation

No great amount of or far-reaching legislation in the area of wills and trusts was enacted during the 1958 session of the General Assembly.

Section 19-531 of the 1952 Code, relating to the filing of returns by executors and administrators, as amended by the Act of 1956²⁵ reducing the period of the first return to five months and succeeding returns to six months, was further amended by Act²⁶ approved April 11, 1958, so as to permit an executor or administrator, with the consent of the probate

23. 232 S. C. 53, 100 S. E. 2d 812 (1957).

24. It may be pointed out also that, like the guardian of an infant, *McDuffie v. McIntyre*, 11 S. C. 551 (1878), the committee of a person *non compos mentis* has no title to the ward's property. *McCreight v. Aiken*, 3 Hill Law 338 (1837); *Cathcart v. Sugeneheimer*, 18 S. C. 123 (1882). The conveyance, therefore, by the committee conveyed nothing. This is to be contrasted with an unauthorized transfer by a trustee, or an improper transfer by a trustee to himself, where the transferee gets at least a voidable title—the trustee having it to begin with.

25. Act No. 767.

26. Act No. 894.

judge, to file the first return eleven months after appointment and thereafter every twelve months.

By Act No. 826, approved March 31, 1958, Section 9 of Act No. 767 of the Acts of 1956 was repealed, and section 19-555 of the 1952 Code was amended so as to increase from five hundred dollars to one thousand dollars the size of the personal estate which the probate judge might distribute in lieu of formal administration upon an intestate estate. Act No. 826 is in reality a clarifying or curative statute, since it embodies almost identically the Act of 1956 which it repeals. That Act was not specifically designated as a repealer of Section 19-555, nor did it purport to amend it. By implication it did, however, but the 1958 Act makes plain the legislative intention on the subject.