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Article 30

Trusts--Revocation under Section 23 of the Personal Property Law (McKnight v. Bank of N.Y. and Trust Co., 254 N.Y. 417 (1930))

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extended liability to all vendors regardless of whether or not they prepared the goods or knew of its contents.[9] In the principal case, though the choice of merchandise was made by the buyer and was delivered to him in its original sealed package, recovery was allowed under subdivision 2. Responsibility was thus placed upon the party to the contract best able to protect himself against a wrong of this type and to recoup himself, in case of loss, against the manufacturer. Since from the nature of the transaction the dealer could readily foresee the injurious consequences for a breach of his obligation, the buyer is not limited to the recovery of the difference in value of a good loaf and a bad one but is entitled to consequential damages.[10]

R. L.

TRUSTS—REVOCATION UNDER SECTION 23 OF THE PERSONAL PROPERTY LAW.—Plaintiff, by deed of trust conveyed her personal property to the defendants. She directed them to pay the income arising therefrom to her for life and on her death to certain named beneficiaries. The settlor also provided that if the income was insufficient for her support the trustees had the power to apply as much of the principal as necessary for her well-being. *Held*, that such a trust was irrevocable under section 23 of the Personal Property Law notwithstanding the insertion of such a provision in the deed. McKnight v. Bank of N. Y. and Trust Co., 254 N. Y. 417, 173 N. E. 568 (1930).

Under the present statute a trust of personalty is revocable by the creator thereof only upon the consent of all the persons beneficially interested therein.[1] Any interest which is alienable, descendable, or devisable is a beneficial interest.[2] A vested or contingent remainder is alienable.[3] Hence, one possessing such a remainder is beneficially interested, and so it has been held.[4] Where he is the sole beneficiary it is revocable, since there is no outstand-

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[9] *Supra* note 7.

[10] N. Y. Personal Property Law, Sec. 150, Subds. 6 and 7; 2 Williston, Sales, *supra* note 2, Secs. 614, 614a; Swain v. Schieffelin, 134 N. Y. 471 (1892); Dushane v. Benedict, 120 U. S. 630, 7 Sup. Ct. 696 (1887); Gearing v. Berkson, 223 Mass. 257, 111 N. E. 785 (1916).

[1] Revocation of trusts upon consent of all persons interested. Upon the written consent of all the persons beneficially interested in a trust in personal property or any part thereof heretofore or hereafter created, the creator of such trust may revoke the whole or such part thereof, and thereupon the estate of the trustee shall cease in the whole or such part thereof.

[2] Robinson v. N. Y. Life Insurance Co., 75 Misc. 361, 133 N. Y. Supp. 257 (1911).

[3] New York Security v. Schoenberg, 177 N. Y. 556, 69 N. E. 1128 (1904).

[4] Whittemore v. Equitable Trust Co., 250 N. Y. 298, 165 N. E. 454 (1929).

ing beneficial interest in any one,[5] even though at the creation thereof he declared it to be irrevocable.[6] Where a trust is created and certain infant children have acquired a vested interest it is irrevocable irrespective of whether they sign a release or not, since infants can not give their consent.[7] The instant case establishes a sound rule. It also puts an end to the conflicting rules that have heretofore existed in the Appellate Division. One group of cases following an earlier case [8] held a trust to be revocable where the creator thereof reserved the right to dispose of the corpus by will with the provision that it was to go to those who would take as if he had died intestate in the event he failed to exercise such right of disposition.[9] The other group held that if the settlor provided for the next of kin to take in case of failure to appoint by will the trust was irrevocable on the ground that the next of kin took a vested remainder.[10] A recent case [11] declined to follow the rule as established by the first group of cases in the Appellate Division though the deed provided that in case of failure to appoint by will the property was to descend to those who would take under the statute of distribution. This case provided that those persons who would take if settlor had died intestate had a beneficial interest. It is to be noted that the facts are very similar to those cases in the first group and the Court reached an opposite conclusion. When this recent case was in the Appellate Division [12] the justices there held that it was like the first group and thus revocable. When it reached the Court of Appeals, Judge Crane speaking for an unanimous court held the case similar to those of the second group and reversed.[13] The instant Court chooses to follow the rule as set forth in that case,[14] and states that the rule in the first group of cases in the Appellate Division is inapplicable.

J. M. P.

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[5] Phelps v. Thompson, 119 Misc. 875, 198 N. Y. Supp. 320 (1st Dept. 1922); Boucicault v. Leubuscher, 124 Misc. 232, 207 N. Y. Supp. 1 (1924); Cram v. Walker, 173 App. Div. 804, 160 N. Y. Supp. 486 (1st Dept. 1916); Aranyi v. Bankers Trust Co., 201 App. Div. 706, 194 N. Y. Supp. 614 (1st Dept. 1922).

[6] *Ibid.*

[7] Gage v. Irving Trust Co., 222 App. Div. 92, 225 N. Y. Supp. 476 (2nd Dept. 1922); Whittemore v. Equitable Trust Co., 250 N. Y. 298, 165 N. E. 454 (1929).

[8] Whittemore v. Equitable Trust Co., 162 App. Div. 607, 147 N. Y. Supp. 1058 (1st Dept. 1914).

[9] Cruger v. Union Trust, 173 App. Div. 791, 160 N. Y. Supp. 480 (1st Dept. 1916).

[10] Court v. Bankers Trust, 172 App. Div. 955, 160 N. Y. Supp. 477 (1st Dept. 1916); Crackanthorpe v. Sickels, 156 App. Div. 753, 141 N. Y. Supp. 370 (1st Dept. 1913).

[11] *Supra* note 4.

[12] Whittemore v. Equitable Trust, 223 App. Div. 693, 229 N. Y. Supp. 440 (1st Dept. 1928).

[13] *Supra* note 4.

[14] *Ibid.*