Chapter 2: Trusts and Estates

Emil Slizewski
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§2.1. Execution of wills: Attestation. It has been stated that attesting witnesses to a will must bear witness to those things which the statute requires for a writing to be a valid will.1 It is clear, however, that a will may be validly executed even though it is signed by the testator out of the presence of the witnesses. If the instrument is signed by the maker, who later acknowledges his signature to the witnesses, such acknowledgment is held to be the equivalent of a signing in their presence. When the maker signs the writing not in the presence of the witnesses but later acknowledges the instrument to be his will, there may or may not be a valid attestation.

In Nunn v. Ehlert2 it was held that a declaration by the testator that a writing was his will did not make for a proper execution when he concealed his previously affixed signature from the witnesses. This was not an acknowledgment of a signature but of the fact that the writing was signed. From the facts of the case it was apparent that the concealment was intentional.

In Tredick v. Bryant3 the testator folded the will prior to its being subscribed by witnesses. His signature, because of the fold, could not be seen. The will was under the control of each witness while he or she signed, and no witness was told not to look at it or was prevented from looking at it or its contents. The Supreme Judicial Court concluded that the will was not legally executed because the case could not be distinguished in principle from Nunn v. Ehlert.

In the 1956 Survey year the case of Dunham, Petitioner,4 which is quite similar to the Bryant case, came before the Supreme Judicial Court. The testator requested two persons to witness a will previously signed by him. His signature was visible and seen by both of them when they subscribed. Later on, he requested a third person to witness the instrument he said was his will. When this witness signed, the

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2 218 Mass. 471, 106 N.E. 163 (1914).
3 269 Mass. 50, 168 N.E. 162 (1929).
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paper was so folded that the testator's signature was not visible. In his report of the material facts the probate judge recited that the third witness did not see the testator's signature and was not restrained or prevented from lifting the paper to see it.

The Court found the will to be validly executed, pointing out that the signature was not actively hidden or concealed from the third witness. It said: “The failure of a witness to see the testator's signature which is written on the face of the instrument which the testator declares to the witness is his will, due to the fact that the signature of the testator is unintentionally withdrawn from the view of the witness by a fold in the instrument, does not render void the execution of the instrument as a will.”

This case would seem to overrule Tredick v. Bryant on the facts except for the Court's statement: “We infer from the findings of the judge that the instrument was handed to [the third witness] for his signature and that he put the instrument in the position in which it was when he signed.” In the Bryant case it was the testator who folded the will. In view of the material facts reported by the lower court it is difficult to see how this was a necessary inference to be drawn. However, it would seem that since the other witnesses had seen the testator's signature, there was no attempt to conceal the signature intentionally when the third witness subscribed the folded will. If the maker's signature had been visible but not seen when the witness signed, the execution would have been valid. It would be an extremely fine distinction to draw if we were to treat differently the situation where, due to the physical position of a folded paper, the signature is not visible but can be seen by the slight act of straightening out the paper.

§2.2. Proof of will. It is common knowledge among probate practitioners that an uncontested will may be allowed on the testimony of only one attesting witness. Indeed, if all the heirs assent in writing, a will may be probated without any testimony whatsoever. However, in the case of a contest all witnesses to the will must testify if available, and if any are dead or out of the jurisdiction, secondary evidence of execution and attestation may be introduced.

In Goodwin v. Riordan, an instrument purporting to be a will was written and signed by one who was apparently in the navy. Immediately below his signature appeared the signatures of three persons together with their service designations. In the probate proceeding one of the witnesses testified that the signature was his but that he had no memory of the time, place, or circumstances attending the signing. It appeared that another witness was dead and the third witness was living in Georgia. The attorney for the proponent decided

6 Ibid.
to proceed without the testimony of the absent witness. The Supreme Judicial Court affirmed the denial of probate of the instrument on the ground that the proponent failed to sustain the burden of proving proper execution.

The Court remarked that a presumption of execution according to the requirements of the wills statute would arise on proof of all signatures despite failing memories of witnesses; and this would be so even though there were no attestation clause. These signatures could be proved to be genuine by handwriting comparison, and the Court pointed out that it might have been possible to authenticate the signatures of the unavailable witnesses by comparing them with signatures of enlisted men that the United States Government might have.

If there were no available evidence of genuineness of the signatures it might be that there would be a presumption of regularity of execution arising from the appearance of the signatures on the instrument. If there were such a presumption, it would be negatived in this case by the proponent's failure to call the out-of-state witness or to use other avenues of proof.

To permit a presumption of due execution to arise solely from the appearance of the signatures on a purported will, and despite availability of proof of their authenticity, would seem to conflict with the policy of our statute of wills which requires not only the signing by the testator but also the attestation and subscription by at least three competent witnesses.

§2.3. Old age assistance: Liability of estate. Before 1941, Massachusetts cities and towns could not recover for old age assistance upon any implied contract theory. In the absence of mistake, accident, or fraud, the only possible way that the town could be reimbursed for payments to the aged was by an action on a bond which had to be filed with the board of public welfare in certain instances.

General Laws, c. 118A, §4A, authorized recovery of old age assistance payments in an action of contract if the recipient or his estate is in possession of funds not otherwise exempt (i.e., real estate the assessed value of which exceeds $3000). The case of Dartmouth v. Paull held that when funds are exempt in the hands of the recipient of assistance, on his death, the funds pass to his estate retaining the quality of exempt property. The town could not recover the amount expended for old age assistance in an action against the executor.

In Town of Dennis v. Cook the Supreme Judicial Court concluded

2 The Court cited Scarff v. Scarff, [1927] Ir. R. 13. Where witnesses to a will could not be located, the Irish court held that there was a presumption of regularity of execution if a reasonable search for the witnesses proved fruitless.

8 G.L., c. 118A was further amended by Acts of 1951, c. 801, §4, providing for a lien on real estate.
that where real estate assessed under $3000 was sold by the administrator pursuant to G.L., c. 202, §1, for a sum in excess of the assessed valuation, the proceeds of the sale retained its status of exempt property and so passed to the intestate's heirs. The Court stated that though the funds are "assets in the hands of the executor or administrator in like manner as if they had originally been part of the personal property of the deceased," 6 and are subject to the payment of debts, that fact does not make such proceeds the equivalent of non-exempt funds which can cause the claim for aid furnished, otherwise unenforceable, to become enforceable. The Court remarked that the rule of the Paull case is not affected by the sale of real estate for an amount above the exemption figure.

A more complicated problem arose in Town of Shrewsbury v. Murphy.7 Anna Daley died intestate in May, 1951, leaving an estate consisting of two parcels of real estate. Anna's sister and sole heir, Ellen, died in October, 1951, and in December of that year the defendant was appointed administrator of both estates. Acting as administrator of Anna's estate, the defendant sold the real estate by license of the Probate Court. The assessed valuation of the property was under $3000, but the proceeds of the sale, even after payment of debts, were in excess of the statutory exemption. In an action brought by the town under G.L., c. 118A, §4A to recover for assistance furnished to Ellen, the Supreme Judicial Court upheld a judgment for the administrator on the ground that the action was prematurely brought. The defendant retained the funds as administrator of the estate of Anna and had not yet passed over the funds to himself in his capacity as administrator for the estate of Ellen. The Court, however, went on to observe that the town would have a good claim in case suitable proceedings were brought after the proceeds of the sale came into the hands of the defendant as administrator of the estate of Ellen.

Of course, realty descends directly to the heir at law without any intervention on the part of the decedent's personal representative. If there were no sale by Anna's administrator, the Paull case would preclude recovery by the town in an action of contract. If the sale were made by Ellen's administrator, the Cook case would control and the proceeds in excess of the statutory exemption would retain the exempt status of the land. But the sale here was by the defendant acting as administrator of Anna who was not the beneficiary of the town's assistance.

The Supreme Judicial Court resolved the problem as one involving the construction of G.L., c. 202, §19, which authorized the sale by Anna's administrator and which provides:

6 G.L., c. 202, §1.
§2.4. Savings bank trusts: Proof. Because of the ambiguous nature of the transaction whenever a savings account is opened in the name of the depositor in trust for another, there has been a mass of litigation involving these arrangements. Among the various motivations for them may have been the desire of the depositor to avoid bank rules as to limits on accounts, statutory limits, maximum coverage by the Federal Deposit Insurance Corporation, or the desire to create a trust for the benefit of another.

Because of the informal nature of the usual transaction, the Massachusetts law has so crystallized as to require not only an intent to create a trust but also notice of the account to the intended beneficiary before a valid trust will come into existence.¹

In 1956 the Supreme Judicial Court held in the case of Berger v. Berger² that it was error for a master to exclude evidence to the effect that a subscription to bank shares in trust for another was made after the subscriber purchased shares in her own name and was told by the bank clerk that she had already subscribed to the limit allowed by law but that she could open an account as trustee for another. The excluded evidence tended to show that the intent necessary for the creation of a trust was lacking.

The same case decided that the subscriber could testify as to her own intention to impose any enforceable duties on herself with respect to the account and as to her intent to make any gift. Proof of intent to create a trust being necessary for the creation of a trust, the subscriber may testify as to this material fact to be proved, and it should make no difference that such testimony is self-serving.³

§2.5. Revocable trusts: Testamentary disposition. In *Ascher v. Cohen* a married woman desired to put her property beyond her husband’s reach without any present knowledge on the part of her husband and children as to what she was doing. She conveyed stock of a closely held corporation in trust to herself, and another as co-trustees. She reserved the power to alter, amend, and revoke the trust. The trust instrument provided that the trustees were to pay her the net income and so much of the principal as she might request. There were contingent remainders over to her children.

The Supreme Judicial Court affirmed a decree of the lower court dismissing a petition brought by her husband after her death to recover the stock as assets of his wife’s probate estate. The Court found the arrangement to be non testamentary and one which deprived the husband of any interest in the stock.

It seems to be settled Massachusetts law that if a settlor actually divests himself of legal title in his lifetime, but reserves such powers as to give him full practical control over the trust assets during his lifetime, the disposition is inter vivos. The question to be answered is whether the transfer is in good faith or merely illusory.

In *National Shawmut Bank v. Joy* the Court pointed out that despite the several powers reserved to the donor the trustee still had active duties to perform and remarked: “We need not decide whether the trust would have been valid had the trustee been reduced to passive impotence, or something near it.” In the *Joy* case it appeared that the trustee had at least the duty to collect and pay over income to the trustor and the discretion to make distributions of principal to him during his life. In the *Ascher* case the trustees had the duty to pay the entire income to the settlor during her life, but she alone had the power to consume principal. It should not make any difference that she was also a co-trustee. In *Greeley v. Flynn*, involving a revocable voluntary declaration of trust of a savings account, the Court did not seem greatly concerned with the fact that the trustee was “reduced to passive impotence.” In the light of the *Flynn* case, it appears that a disposition is inter vivos if there is an intent to create an equitable interest in another during the lifetime of the settlor notwithstanding the reservation of full powers to divest and control the disposition during the donor’s lifetime and despite the lack of active duties of management on the part of the trustee.

Since the trust in the *Ascher* case involved a formal execution of a trust instrument and a transfer of the res to trustees, no notice was required for the creation of beneficial interests in the cestuis. Nor is it of any legal significance that the trustor’s motive may have been

3 315 Mass. at 476, 53 N.E.2d at 125.
5 310 Mass. 23, 36 N.E.2d 394 (1941).
§2.6. Construction: Gaps in dispositive provisions. Experienced draftsmen of wills and trusts know that it takes many hours of hard work and much imagination to draft dispositive provisions for an estate plan so as to take care of all foreseeable contingencies. The failure to provide expressly for the events that actually happen after a plan goes into operation makes for the great bulk of construction problems that call for court litigation. This 1956 Survey year had the usual share of suits involving interpretation of instruments involving gaps in dispositive clauses.

In Balcom v. Balcom the testator's will, written by a layman, gave his entire estate to his wife and then recited that the failure to provide for his children was intentional. Then followed the final clause: "Should death occur to us both at the same time, what then remains is to be divided equally between our two children, Frances Sheridan Balcom and Warren Sheridan." The testator's wife died about three months after the execution of the will, more than a year before he died. In addition to Frances and Warren named in the will the testator left a third child, a daughter by a former marriage, who sought a distributive share of her father's estate through intestacy.

A majority of the Court gave the estate to Frances and Warren to the exclusion of the third child. It construed the simultaneous death clause relating to the deaths of testator and his wife to mean that the two children named in the will were to take if the wife died first. Emphasis was placed on the previous clause intentionally omitting the children and the general presumption against intestacy. The majority declared:

The significant words in the clause under consideration are "occur" and "at the same time." The time to which reference is made necessarily means the time when the testator shall die. By a transposition of words and a change of time the clause will read, "Should at the same time death have occurred to us both." It will then plainly express the meaning which we attribute to the testator.

Although the courts should be reluctant to imply gifts and transpose clauses in order to arrive at a symmetrical and plausible estate plan for a testator, it does not appear that the majority exceeded the proper bounds of interpretation. The testator expressed a preference for the two children named in his will and it seems unlikely that he meant the gift to them to take effect only on the very remote con-
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tingency that he and his wife should die at the same time. This apparent general desire to benefit them alone should prevail over what seems to be an inconsistent clause expressly designed to cover the unusual case. The dispositive provisions were simple in structure and inartistically drafted by a non-lawyer.

The Court also looked at the general dispositive scheme set out in a will to imply a further limitation in the case of Fay v. Fay. There the testator left the residue of his estate in trust to be divided into as many parts as there were children of his living at the time of his death or who had died before him leaving issue living at his death. He directed the trustees to hold these shares for the lives of such children and issue and twenty years thereafter, paying the income to the children and to the issue per stirpes. On the death of each beneficiary his portion of the income was to be paid to his lawful issue as he might appoint by will and in default of appointment to the issue equally. The will then provided that if any beneficiary died without leaving issue surviving him, his share of income was to be divided among his brothers and sisters as he might designate by will and in default of appointment to his brothers and sisters equally or to the issue of a deceased brother or sister by right of representation. If there were no brothers or sisters or issue of deceased brothers or sisters, then the income was to be divided among the beneficiary's aunts and uncles and their issue by right of representation. There was a provision to the effect that if any of the testator's sons or their male issue should not have a definite occupation their share of the income was to be limited.

All of testator's children survived him. One son, Joseph, died leaving no issue and exercised his power to appoint income equally in favor of his other two brothers, Prescott and Rodman, excluding his sister. Rodman then died leaving issue, expressly stating in his will that he did not wish to exercise his power of appointment. It was held that Rodman's original share of income and the share which Joseph appointed to him merged to be disposed of on his death in the same manner as the one-fourth share he originally received.

The Court, realizing there was a gap in the dispositive scheme expressed in the will, thought it was the desire of the testator to keep income distributions in the direct line of his descendants until the direct line was exhausted. His primary, though not clearly expressed, purpose was to provide for his issue only during the maximum period permitted by the Rule Against Perpetuities.

In Flaherty v. Gray the Court filled in a glaring gap in a trust created by four Boston newspapers to provide retirement benefits for their employees. Each company was to contribute to the fund, and the employees, upon becoming eligible for retirement, were to receive designated sums monthly. The trust indenture had no provision setting out the duties of the trustees in case any of the newspaper com-

panies defaulted in making contributions. One of the newspapers defaulted and the Supreme Judicial Court decided that the trustees had no power to make payments to the otherwise eligible employees of the company in default.

It was found that the underlying purpose of the creators of the trust was to create a sound funded pension plan. The parties to the plan realized that if they did not all contribute the agreed amounts to the trust and if the retirement payments were made when due, the plan would not be actuarially sound and in time would collapse.

§2.7. Construction: Redundancy. Although sparsity of language and extreme generality make for the usual problems of interpretation, occasionally redundancy and cumbersomeness of structure in dispositive schemes lead to litigation. Such a situation appeared before the Court in Old Colony Trust Co. v. Kennard.1 There the testatrix made four bequests of $10,000 to certain persons and gave $3000 to another. It was then provided that if the total of these pecuniary legacies exceeded one half of the total amount of the cash and securities in her estate on the date set for distribution, the $3000 legacy was to be paid in full and the $10,000 legacies were to abate proportionately to the extent necessary to keep the total of the pecuniary bequests within a sum not exceeding one half the value of the cash and securities. In the fifteenth paragraph of her will she gave two charities “one half of the cash and securities at market value remaining in the hands of my executor at the date set by it for distribution of my estate.” The residue of the estate was left equally to the four persons designated to take the $10,000 legacies.

In a petition for instructions on the question whether the pecuniary legacies should be paid before the charities should receive one half of the cash and securities, the Supreme Judicial Court upheld the Probate Court’s ruling that they should not.

It was argued by the residuary legatees that such a construction would make the four $10,000 legacies to them redundant, but the Court responded by saying:

Such cumbersomeness of structure as is here manifested does not of itself require that the will be construed so as to remove it. The principle that construction shall be such as to make all parts of the instrument operative does not require that a will be construed to avoid redundancy. This is not a case where an absolute gift will be defeated by giving effect to a later equivocal expression of a contrary tendency.2

The fifteenth paragraph was found to be unambiguous. What remained in the hands of the executor at the date set by it for distribution necessarily included the amounts required to pay the pecuniary legacies. The word “remaining” did not require a reference to the preceding dispositions in the will. It meant what was left after

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payment of funeral expenses, administration expenses, and claims against the estate.

Although the word "remain" is one which usually appears in a residuary clause, and as such has reference to what is left for distribution among the residuary beneficiaries after all prior gifts have been satisfied, the word did not appear in the residuary bequest in this will. The bequest of one half of the cash and securities to the charities would seem to be either a specific or general legacy. The residuary clause followed this gift.

§2.8. Duty of trustee: Self-dealing; Measure of liability. Before 1935 it was a breach of trustee's duty for a Massachusetts trust company to deposit trust funds in its commercial department pending their distribution to the beneficiaries. 1 In that year the General Court enacted G.L., c. 172, §54, which permitted a trust department to deposit trust funds in the commercial department of the same company provided that specified security was first transferred to the trust department. However, with the decision of New England Trust Co. v. Triggs 2 it appears that a trust company which exercises its statutory privilege to hold trust property in its own commercial department will find itself accepting increased responsibilities which it might not otherwise have.

In this case the corporate fiduciary sold securities of a certain trust and deposited the proceeds in its own commercial department to await distribution to the beneficiaries. Since there were certain legal questions pending, the money remained in this department for two and one-half years earning no interest. The Supreme Judicial Court reversed the probate judge's finding that the failure to invest the money for so long a period was a willful breach of trust, but went on to hold the corporate trustee liable. It found that reasonable prudence would have required the trustee to put the cash to work at a time when it was established beyond doubt that there would be a delay of at least six months in the distribution of the trust fund. The trust company was held liable "to account for the profits which resulted from such withholding, or alternatively for the fair value of the use of the money, after the date when the money should have been invested ..." 3

The Court said that apart from the effect of the fiduciary's deposit in its own commercial department, the trustee would not have been surcharged because of the presence of an exculpatory clause in the trust instrument. But this clause, which provided, "Each of my trustees . . . shall be liable for his own receipts, payments and willful defaults and for nothing else . . . nor for errors in judgment," was held insufficient to excuse the trustee from accounting for profits which accrued to it. The reference to "receipts" seemed to the Court to be capable of such a construction as to require an accounting, and the strong policy against gain by a trustee at the expense of the trust


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should militate against an interpretation which would permit profits to be retained.\textsuperscript{4}

There was no evidence that any profit actually accrued to the trustee, but the Court equated profit with the opportunity for profitable use:

What the trustee had, which belonged to the trust, was the opportunity for the profitable use of the fund. We think it would be contrary to public policy to allow the trustees to enjoy this with an obligation to pay compensation left solely dependent upon an outcome profitable to the trustee. What the trustee would have had to pay for the like use of a like amount from other sources is a measure of the advantage to the trustee. This is "in hand" in the sense that it would otherwise have been paid out and is substantively in this respect like a receipt from or profit on the trust fund . . . \textsuperscript{5}

Once it is admitted that there is a breach of trust and the breach results in the failure to make a gain which otherwise would have been available to the beneficiaries, the trustee may be held liable for the profit which would have been realized.\textsuperscript{6} It should make no difference that there was neither actual loss nor gain to the trust. In the Triggs case, however, because of the exculpatory clause it was necessary for the Court to find a profit or "receipts" before the clause could be made inoperative. The Court seemed to go somewhat beyond the decided cases in treating the opportunity for profit as the equivalent of profit.\textsuperscript{7}

Admitting an unexcused breach of trust, it seems entirely proper for a court to give the cestuis the alternative remedies of holding the trustee accountable either for any profits from the failure to invest or for the gain that would have arisen had the investments been made when they should have been. Since the failure to invest funds within a reasonable time by itself would not make the trustee liable in the Triggs case in view of the exculpatory clause, the Court had to limit the remedy available to the beneficiaries to accountability for profit or its equivalent accruing to the trustee. Having control of trust funds which might be used by the trust company for investment profitable to itself gave the fiduciary a financial advantage which was thought to have monetary value.

\textsection{2.9. Finality of decrees allowing accounts.} In the years prior to the enactment of G.L., c. 206, \textsection{24,\textsuperscript{1}} the finality of a decree allowing a trustee's interim account depended upon the question whether the petition was for the allowance or for the determination and adjudica-

\textsuperscript{4} I Restatement of Trusts \textsection{222(2)}.
\textsuperscript{5} 1956 Mass. Adv. Sh. at 786, 135 N.E.2d at 551.
\textsuperscript{6} 2 Scott on Trusts \textsection{205 (2d ed. 1956)}.
\textsuperscript{7} The Court cited McIntire v. Mower, 204 Mass. 233, 90 N.E. 567 (1910). There the executor occupied one of the houses in the estate and was charged with the value of the occupancy. It would seem that he actually received a material benefit measured by the fair rental value.

\textsection{2.9. \textsuperscript{1} Inserted by the Acts of 1938, c. 154.}
tion of the account. This statute was designed to do away with this tenuous distinction and make all decrees on applications for allowance of accounts unimpeachable, except for fraud and manifest error, provided the proper notice was given to all interested parties.

Questions involving the scope of and the finality of decrees allowing interim accounts came up for consideration in Old Colony Trust Co. v. Mabbett. In a petition for the allowance of the trustee's tenth to thirteenth accounts, objection was raised by a guardian ad litem to the twelfth and thirteenth accounts. Accounts one through five were determined and adjudicated in 1935, and in 1939 the sixth to ninth accounts were allowed under the 1938 statute.

The first account reported the purchase of bonds of three different railroads and the twelfth and thirteenth accounts reported the sale of these bonds at considerable losses. The judge of the Probate Court charged the trustee with the loss resulting from the sale of the securities of one railroad on the ground that, when they were purchased, the chairman of the board of directors of the corporate fiduciary was also a director of the railroad company. He ruled that, since this fact of interlocking directorship was unknown at the time the prior accounts were allowed, there was no prior adjudication.

With regard to the bonds of the other two railroads he found that the trust company made use of "Moody's Bond Ratings"; that at the time of purchase they had an "A" rating with Moody; that the rating was changed to "Ba" by Moody in the early 1930's. The judge then ruled that ordinary prudence would require the trustee to sell the obligations within thirty days after they received the Ba rating and charged the fiduciary with so much of the loss as equaled the difference between the sale price and the amount they would have brought had they been sold thirty days after the Ba rating.

The Supreme Judicial Court reversed the lower court, holding that the judge wrongfully passed on items which were previously adjudicated when he surcharged the trustee for the losses shown in the twelfth and thirteenth accounts. The decrees of allowance of the first nine accounts precluded inquiry into the propriety of the purchase of the bonds and their intention during the period covered by these accounts. The Court found no evidence of fraud or manifest error and pointed out that it was not improper for the trustees to carry these bonds in the accounts at book value despite substantially lower market value.

Although it might be objected that entering investments at book or inventory value in many successive interim accounts may be misleading to beneficiaries who very often are unfamiliar with the technicalities of accounting and the problems of investments, the Court recognized that this was the widespread practice among fiduciaries. Apparently,

3 Newhall, Settlement of Estates 167-169 (1949 Supp.).
it is up to the cestuis to examine the accounts and make any objections at the hearing where they may also require the trustee to testify as to the actual value of the investments.\(^6\)

The Court did not discuss the issue of dual capacity involving the purchase of bonds of the railroad where the fiduciary's chairman of the board was also a director but merely recited that the purchase of such bonds was not fraud. The facts appear to fall short of the type of self-dealing which is objectionable for a fiduciary. It appeared that the bonds were purchased on open market at the prevailing price, and the amount bought was in no way a significant part of the total obligations issued by the railroad. Whatever relationship existed between the railroad and the trustee because of the interlocking directorship was extremely insignificant and indirect. It would be hard to find that the trustee was under a real temptation to consider its own advantage to the detriment of the beneficiaries.\(^6\)

\section*{§2.10. New legislation.} Chapter 316 of the Acts of 1956 increases from $10,000 to $25,000 the minimum distributive share of a surviving spouse in the estate of an intestate decedent who leaves no issue. It leaves the share that the surviving spouse is entitled to by electing to take against the will as it was under the old law (e.g., the first $10,000 outright), and is made applicable to decedents dying after January 1, 1957.

Chapter 187 requires the registers to give notices of decrees and orders of Probate Courts to the attorneys of record or to any party who has appeared personally and given his address. This act makes mandatory what most registers were accustomed to do as a matter of courtesy.

Chapter 317 extends the statute setting up an informal probate proceeding for small estates to the estates of persons who were receiving relief, support, or assistance at death.

General Laws, c. 262, §40, which was amended in 1955, when the filing fees were increased, was further amended by Acts of 1956, c. 632. It is now provided that the fee for the petition for allowance of an account is $5 for each year where the gross value in schedule A is $10,000 or more; where the gross value is more than $1000 and less than $10,000, $5 per year, but the fee shall not exceed $10: where the gross value is $1000 or less, no fee.

In 1954 the Supreme Judicial Court recognized that, if an intestate distributive share were sent to a distributee residing in a country under Communist control, such share would be largely confiscated, and the Court required the foreign resident to appear personally in court to claim his share.\(^1\) Chapter 257 of the Acts of 1956 provides for a way to benefit such a foreign legatee or distributee by sending him necessaries of life. It reads:


\(^6\) See 1 Restatement of Trusts §170.

\section*{§2.10.} 1 Petition of Mazurowski, 331 Mass. 33, 116 N.E.2d 854 (1954).
Whenever payment of a legacy or distributive share is to be made to a person who is domiciled in a country or state outside of the United States or its territories, in which the court, in its discretion, finds that there is not a reasonable assurance that such legatee or distributee will actually receive payment of his legacy or distributive share in substantially full value, the court, upon petition of the executor, administrator, or an interested party, or in its discretion, may order that such legacy or distributive share be paid, in whole or in part, to said executor, administrator, or interested party for use by him in the purchase of goods in the form of necessaries of life, food, clothing and medicines, to be sent to such legatee or distributee through a recognized public or private agency, upon his written request, order, or assignment.