

NEW YORK SURROGATE'S COURT

In re the Estate of Brady

6 Mills Surr. 356 (1908) · Decided February 15, 1908

SUMMARY

The Surrogate’s Court considered a motion to vacate an order appointing a substituted trustee under James Brady’s will. The court held that it had jurisdiction to appoint the trustee because the petition alleged the relevant facts, the interested parties appeared, and the Supreme Court’s later assumption of jurisdiction did not divest the Surrogate’s Court of authority.

CASE DETAILS

COURT	New York Surrogate's Court
WRITING FOR THE COURT	Ketcham, S.
JURISDICTION	New York
DECIDED	February 15, 1908
DISPOSITION	other
PROCEDURAL POSTURE	Motion to vacate an order appointing William E. Philips as substituted trustee under the will of James Brady.
STANDARD OF REVIEW	The court reviewed the validity and jurisdictional basis of the Surrogate's Court's appointment order on the motion to vacate.
PRECEDENTIAL VALUE	Published New York Surrogate's Court opinion

TOPICS

- probate procedure
- trusts
- subject matter jurisdiction
- trustee duties
- statutory interpretation

PRACTICE AREAS

- Probate
- Trusts
- Surrogate's Court jurisdiction
- Civil procedure

QUESTIONS PRESENTED

- Whether the Surrogate's Court had jurisdiction to appoint a substituted trustee after the death of the sole surviving trustee.
- Whether the Supreme Court's later appointment of an agent or representative to carry out the trusts ousted the Surrogate's Court's previously acquired jurisdiction.

3. Whether the citation's failure to expressly state that appointment of a new trustee was sought deprived the Surrogate's Court of jurisdiction despite the interested parties' general appearances.
4. Whether the deceased trustee's executor had the right or capacity to initiate the proceeding for appointment of a substituted trustee.

HOLDINGS

1. The Surrogate's Court had jurisdiction to appoint a successor trustee under Code of Civil Procedure section 2818 when the sole surviving trustee of a testamentary trust died.
2. A later assumption of jurisdiction by the Supreme Court did not divest the Surrogate's Court of jurisdiction that had already attached through the petition, the subject matter, and the parties.
3. The citation's omission of an express reference to the requested trustee appointment did not invalidate the appointment because the petition alleged the relevant facts and the interested parties appeared generally.
4. The deceased trustee's executor was at least a proper party and could invoke the Surrogate's Court's jurisdiction; in any event, the appearances of all interested parties validated the court's jurisdiction over the appointment.

KEY QUOTATIONS

"The earlier act must be taken as modified and, if necessary, repealed with respect to any of its provisions inconsonant with the last legislative utterance." (360)

"It is idle for them, when they have grasped notice, to say that it was not given." (362)

FACTUAL BACKGROUND

James Brady's will created trusts requiring annual income payments to Virginia Washington Post and Annie Hulse, with the remainder of each beneficiary's share passing to her issue upon her death. Virginia Washington Post died on August 18, 1907, and the sole surviving trustee, John B. De Cue, died on September 29, 1907. Henry O. M. Ingraham, the deceased trustee's executor, filed an accounting petition seeking settlement of the account and appointment of a substituted trustee; all persons interested in the accounting and trusts were cited and appeared. After the petition was filed, the Supreme Court appointed the Farmers' Loan and Trust Company as its agent to carry out the trusts, but the Surrogate's Court subsequently entered the challenged appointment order.

PROCEDURAL HISTORY

The executor of the deceased sole surviving trustee filed an accounting petition that also requested appointment of a substituted trustee. The interested beneficiaries were served with a citation directed to the accounting and appeared without answering. The Surrogate's Court then appointed William E. Philips as substituted trustee. The beneficiaries moved to vacate the appointment, arguing that the Surrogate's Court lacked power to act, that the Supreme Court's later intervention ousted its jurisdiction, that the citation was inadequate, and that the executor lacked capacity to initiate the proceeding.

DISPOSITION

other

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