

NEW YORK SURROGATE'S COURT

In re the Estate Bowen

72 Misc. 2d 43 (1972) · Decided November 30, 1972

SUMMARY

The court construed a will provision directing the remainder of a testamentary trust to the heirs and next of kin by representation of two primary remaindermen who predeceased the life beneficiary. Applying constructional preferences concerning survivorship and considering extrinsic evidence, the court held that only heirs and next of kin who survived the life beneficiary were entitled to the remainder.

CASE DETAILS

COURT	New York Surrogate's Court
WRITING FOR THE COURT	Nathan B. Sobel
JURISDICTION	New York
DECIDED	November 30, 1972
DISPOSITION	other
PROCEDURAL POSTURE	The successor trustee petitioned the Surrogate's Court for construction of a will provision governing distribution of the remainder of a testamentary trust.
STANDARD OF REVIEW	De novo construction of the will and testamentary trust instrument.
PRECEDENTIAL VALUE	Published New York Surrogate's Court opinion; persuasive authority subject to the precedential hierarchy of New York courts.

TOPICS

- probate procedure
- trust administration
- estate administration
- intestacy
- estate planning

PRACTICE AREAS

- probate
- trusts
- estate planning

QUESTIONS PRESENTED

1. Whether the heirs and next of kin designated as substitutional remaindermen had to survive the life beneficiary in order to receive the remainder.

2. Whether the relevant class of heirs and next of kin was to be determined as of the deaths of the primary remaindermen or as of the life beneficiary's death.
3. Whether adoptive children could participate in the distribution class.

HOLDINGS

1. The will requires the heirs and next of kin of Marian Mathewson and George Holt to survive Pauline H. Bowen Essaye in order to take the remainder.
2. The relevant heirs and next of kin are those who survived Pauline H. Bowen Essaye, the life beneficiary, rather than persons determined as of the earlier deaths of Marian Mathewson and George Holt.
3. The court approved the stipulation providing for distribution to adoptive children and stated that such inclusion would have been required by law even without the stipulation.

KEY QUOTATIONS

“Where the remaindermen are members of a vertical class, i.e. a class which may comprise more than one generation (such as “issue”, “descendants”, “next of kin” or “heirs”), the presumption is the other way, i.e. a presumption that survivorship is required arises.” (45)

“The will is construed to require payment of the remainder interest only to those heirs and next of kin who survived the life beneficiary.” (46)

FACTUAL BACKGROUND

Ellen H. Bowen's 1902 will created a residuary trust for the life benefit of her granddaughter, Pauline H. Bowen Essaye. The will directed that, upon Pauline's death, the trust principal be paid to Bowen's sister Marian C. Mathewson and brother George C. Holt, or, if either was not then living, to that person's heirs and next of kin by representation. Marian died in 1905 and George died in 1931, both before Pauline died in 1971, requiring the court to determine whether their substitutional heirs and next of kin had to survive Pauline to take.

PROCEDURAL HISTORY

Chemical Bank, as successor trustee, sought construction of paragraph Fourth of Ellen H. Bowen's will after the life beneficiary died. The court determined when the heirs and next of kin of two deceased primary remaindermen had to be ascertained and approved the proposed distribution, including distribution to adoptive children pursuant to a stipulation.

DISPOSITION

other

CASES CITED

- Connelly v. O'Brien, 166 N.Y. 406
- Matter of United States Trust Co. (Hoyt), 179 App. Div. 923, aff'd, 223 N.Y. 617

- Matter of Young, 62 Misc. 2d 86, 89
- Matter of Bogart, 62 Misc. 2d 114, 119-120
- Matter of Sweazey, 2 A.D.2d 292
- Matter of Sayre, 1 A.D.2d 475, aff'd, 2 N.Y.2d 929
- Matter of Hylin, 30 N.Y.2d 805, aff'g 38 A.D.2d 704
- Matter of Potter, 68 Misc. 2d 745
- Matter of Johnson, 26 N.Y.2d 858
- Matter of Snowden, 31 N.Y.2d 322
- Matter of Henderson, 64 Misc. 2d 280, 285