

NEW YORK SURROGATE'S COURT

In re the Estate of Goodwin

16 Mills Surr. 513 (1916) · Decided May 15, 1916

OPINION

FOWLER, J.

Fowler, S.— The executors of the decedent's estate have appealed from the order fixing tax, and contend that the appraiser erred in refusing to deduct trustees' commissions from the assets of the estate in ascertaining the value of the taxable interests of the legatees.

The appraiser deducted executors' commissions, but refused to deduct in addition thereto the commissions claimed by the executors in their capacity as trustees. The testator directed the payment of his debts and funeral expenses and then bequeathed certain articles of personal property to his wife. He also bequeathed to her "ten one-hundredths of all the rest, residue and remainder" of his estate, "provided she survive me for the period of one year." He gave thirty-six one-hundredths of his estate to "those of the executors of this will who shall accept the office of trustee" in trust to pay the income thereof to his wife, quarterly, during her life; upon her death he gave the said thirty-six one-hundredths to Walter L. Goodwin, Philip L. Goodwin and Henry S. Robinson in trust to collect the income and pay it quarterly in equal portions to his three sons.

It is apparent from the language of the will that the testator contemplated separate duties for his executors and trustees. As executors it was their duty to collect the assets of the estate, pay the debts and general legacies, divide the residuary estate in accordance with the directions contained in the will, then pay the aliquot parts to the legatees entitled thereto, and the remaining thirty-six one-hundredths to such of the executors as signify their willingness to act as trustees of this fund.

They are therefore entitled to commissions as executors upon the entire estate, and to commissions as trustees upon the thirty-six one-hundredths constituting the trust fund directed to be held for the benefit of his wife.

The two trustees, however, who hold the trust fund during the life of decedent's wife are not entitled to extra commissions for acting as trustees of this fund after her death and prior to the termination of the three trust funds into which it shall be divided, but Henry S. Robinson, who is designated by the testator to act as trustee of the trust fund after the death of the testator's wife, is entitled to full trustee's commissions upon the value of the trust funds which will be received and paid out by him.

The appraiser also erred in ascertaining the value of the surviving life estate of each of the decedent's son® in the trust fund held for the benefit of decedent's wife during her life. The interest of each of the sons in this fund is a surviving life estate in -one-third thereof, and not a surviving life estate in twelve -one-hundredths thereof as reported by the appraiser.

The order fixing tax will be reversed, and the report of the appraiser remitted to him for correction a® indicated. Order reversed.