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Saul J. McGrane

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**Effect Of Subsequently Probated Will Upon
Bona Fide Purchaser From The Heirs**

*Matthews v. Fuller*¹

On June 20, 1944 the Orphans' Court for Charles County passed an order declaring that Amelia Roy had died intestate. Letters of administration were granted to her sister after she had stated that no will of decedent had been found, although a diligent search had been made. Amelia had died seized of certain land, which her heirs at law sold to the defendant (a *bona fide* purchaser) after entry of the Orphans' Court order declaring Amelia's intestacy. Eight years later, a will purporting to be that of Amelia Roy, dated 1936, was found in the files of a deceased attorney, and filed for probate. This paper, which was admitted to probate on September 2, 1952, gave the land to a nephew, and not to the persons who took as heirs at law.

¹ 209 Md. 42, 120 A. 2d 356 (1956).

The nephew brought ejectment against the defendant.² At the trial, it was agreed that neither of the parties involved had any knowledge of the existence of the will prior to its discovery in 1952. The lower court protected the *bona fide* purchaser of the land against the devisees under the will. The Maryland Court of Appeals affirmed, noting that "[t]his case falls in a blank spot in the testamentary statute law of this State and is one of first impression in this Court."³

There are surprisingly few cases in the United States that have involved the above problem. Of the few cases that have been adjudicated, there seems to be an almost even split in authority as to whether the *bona fide* purchaser should be protected.⁴ Some of these cases have afforded the *bona fide* purchaser protection on such grounds as laches, fraud, or special statutes.⁵ Maryland, however, has no statute of limitations fixing the time within which a will must be offered for probate;⁶ the defense of fraud was not present, as neither party had notice of the existence of a will; nor does Maryland have any controlling special statutes. Conceding that "... the title of a devisee to real estate generally relates back, upon probate of the will, to the date of death of the testator",⁷ the Court held that the heirs, who did not have the legal title, had effectively sold and conveyed the interests of the devisee. Despite this apparent incongruity it is submitted that the Court of Appeal's ruling was a good practical solution to an unusual problem. The key to the problem exists in the fact that the estate was "administered as an intestate estate", and such administration was "relied upon" by the purchaser.⁸

In the case of realty the primary purpose of having an estate administered is to give creditors of the deceased ample opportunity to have their claims heard, and thus clear the estate of its liabilities.⁹ After the claims have

² The nephew had waited until limitations had run on the time for filing a caveat, and then instituted the ejectment suit, *ibid* 47.

³ *Supra*, n. 1, 47.

⁴ 22 A. L. R. 2d 1107, 1109, listing cases favoring the devisee from Arkansas, Illinois, Iowa, Kentucky, and North Carolina. Cases *contra*, protecting the *bona fide* purchaser are listed from Arkansas, Georgia, Illinois, Mississippi, Oklahoma, Tennessee, and Wisconsin.

⁵ *Dodd v. Holden*, 205 Ark. 817, 171 S. W. 2d 948 (1943); *Hayes v. Simmons*, 136 Okla. 206, 277 P. 213 (1928); *Hadden v. Stevens*, 181 Ga. 165, 181 S. E. 767 (1935).

⁶ *Sewell v. Slingluff*, 57 Md. 537, 555 (1882).

⁷ *Matthews v. Fuller*, 209 Md. 42, 50, 120 A. 2d 356 (1956).

⁸ *Supra*, n. 4, 1115, *et seq.* for cases emphasizing this point.

⁹ 8 Md. Code (1957), Art. 93, §§109, 110, 111.

been presented, and the court has reached its conclusions and issued its final decree clearing the estate of its indebtedness, the record of the proceeding is made public notice to everyone, and all persons are bound to know the facts it discloses. Thus, if everyone is afforded an opportunity to know the record of the estate, and is charged by law to know the same, the purchaser from the heirs should be justified in assuming that the deceased died intestate and that the heirs had power to convey a good legal title.¹⁰ Possibly, the adoption of this rule appears harsh to the innocent devisee under the will, who knew nothing of its existence until after the sale of the land by the heirs at law. However, if such a rule is not adopted, a *bona fide* purchaser of land from the heirs of a deceased person could not be certain that he has an indefeasible title to the land, as a will might later be found. This is especially true in Maryland, where there is no statute of limitations on the probate of a will.¹¹ Only after twenty years of adverse possession would the danger of the probate of a lost will be removed. The Wisconsin court stated this very aptly:

“To hold that a *bona fide* purchaser [of intestate property] under the circumstances in this case cannot rely upon an adjudication of intestacy or upon a final decree would have a tendency for an unlimited time, in effect, to suspend the power of alienation.”¹²

If the policy of protecting the *bona fide* purchaser as against the devisee is the one to be followed, is this not in effect denying the effectiveness of the probate? The immediate answer to this question should be no. The will can and should be probated at the earliest opportunity,¹³ and the relation back doctrine should be applied to all devises and bequests not involving rights of intervening *bona fide* purchasers. It should be remembered that the judicial finding of intestacy is not a bar to the probate of a lost will. But a court should not enforce the relation back doctrine if the application of this doctrine is inequitable.¹⁴

¹⁰ Van Bibber v. Reese, 71 Md. 608, 18 A. 892 (1889); Simpson v. Cornish, 196 Wis. 125, 218 N. W. 193 (1928).

¹¹ Sewell v. Slingluff, 57 Md. 537, 555 (1882).

¹² Simpson v. Cornish, *supra*, n. 10, 204.

¹³ Pilert v. Pielert, 202 Md. 406, 96 A. 2d 498 (1953). 8 Md. Code (1957), Art. 93, §373; 3 Md. Code (1957), Art. 27, §127.

¹⁴ Steljes v. Simmons, 170 N. C. 42, 86 N. E. 801 (1915); 48 A. L. R. 1035; Jones v. Nichols, 280 Mo. 653, 216 S. W. 962 (1919).

The additional question arises whether a *bona fide* purchaser should similarly be protected in the situation in which there has been no administration of the intestate estate. There is no question that heirs have the power to sell land, according to the common law doctrine that real property descends directly to them upon the death of the intestate.¹⁵ No administration is needed, although such a proceeding is most desirable in order to clear the property of the decedent's debts.¹⁶ Even though the heirs have the power to sell the land, the good faith purchaser in this type of case should not be protected, since he did not act in reliance on a judicial finding that the deceased died intestate and therefore took only the interest the heirs had to sell.¹⁷ The heirs' interest did not rest upon a judicial determination either that the land was free from debt or that the decedent died intestate. The only interest the heirs could convey by sale was a defeasible estate.¹⁸ If a subsequently discovered will is probated the heirs are divested of this estate, which in turn divests the good faith vendee.¹⁹ The vendee relied on no court order or decree²⁰ and assumed the risk that a will might later be found. As there was no administration, the buyer relied not on a judicial finding but on the representations of the heirs that they had power to sell, and the doctrine of *caveat emptor* should apply.²¹

¹⁵For an excellent history of title by descent see: 3 WASHBURN, REAL PROPERTY, 5 (1887).

¹⁶*Supra*, n. 9.

¹⁷As far back as 1855, in *Far. & Plan, Bank v. Martin*, 7 Md. 342 (1855), it was held that in Chancery sales, the only thing sold was the interest of the parties to the proceeding, and the doctrine of *caveat emptor* applied.

¹⁸*Ibid.*, 345. See also *Brown v. Wallace*, 2 Bland 585 (Md. 1830).

¹⁹*Reid's Adm'r. v. Benge*, 112 Ky. 810, 66 S. W. 997 (1902), held that where an heir took the property, and seven years later a will was found, the devisee under the will had a vested interest, and to divest that interest there must be either a conveyance, prescription, or estoppel in some form.

²⁰*Van Bibber v. Reese*, 71 Md. 609, 614, 18 A. 892 (1889):

"We hold, therefore, when the records of the Orphans' Court, made in conformity with the law, show a final settlement of the personal estate, and when the settlement indicates that all proved debts and the costs of administration have been paid in full, and that there is still a balance in the hands of the executor or administrator, a purchaser is justified in assuming, if he have not actual knowledge to the contrary, that all debts have been paid and that the land is exonerated from its conditional liability. Should he, under these circumstances, purchase, in good faith and for value, from the heir or devisee, he will be protected as a *bona fide* purchaser, in the strictest sense of the term, even though debts amounting to more than the personal estate should afterwards be discovered."

²¹For partition cases where the court has sold only the title the parties have, see *Scarlett v. Robinson*, 112 Md. 202, 76 A. 181 (1910); *Slowthower v. Gordon*, 23 Md. 1 (1865); *Supra*, n. 17.

In the discussion above, two basic problems have been considered. The first is the situation where the heirs at law sell to a *bona fide* purchaser after a judicial finding of intestacy but prior to the discovery of a will. In this case the good faith purchaser should be protected because of his reliance on the court's ruling of intestacy.²² The second situation arises where the heirs at law sell to a good faith purchaser, there having been no administration of the estate prior to the discovery of a will. Here, it was conceded that the *bona fide* purchaser should not be protected, as there was no reliance upon a judicial finding. With these two situations in mind, one might speculate as to the solution in a case where the heirs themselves, after having administered the estate and entered into possession, are faced with the discovery of a lost or innocently misplaced will. The courts in such a case, where there is no innocent third party involved, should not protect the heirs at law whether the estate has been administered or not. Although it might seem that this answer departs from a policy of protecting persons who rely on a judicial finding of intestacy, the reasoning behind the answer is not inconsistent with this basic premise. It cannot be said the heirs at law relied upon the court's order. They took as a matter of right and not on the faith of a judicial finding. The element of reliance is missing, and thus protection from a subsequently found will need not be afforded the heirs at law, who have not conveyed to a *bona fide* purchaser.

The result reached in the instant case makes the administration of an estate the pivot upon which a good faith purchaser, buying land from the heirs after an adjudication of intestacy, can place his confidence. Thus administration of the estate of an intestate is important for two reasons:

- (1) Land will be conclusively cleared of liability for intestate's debts.
- (2) A *bona fide* purchaser for value from the heirs will be protected against a subsequently discovered will.

Unless administration is made the conclusive act upon which the purchaser in good faith can rely alienation of intestate property may be hampered for at least twenty years.²³

SAUL J. McGRANE

²² *Supra*, n. 20; *Matthews v. Fuller*, 209 Md. 42, 120 A. 2d 356 (1956).

²³ *Simpson v. Cornish*, 196 Wis. 125, 218 N. W. 193, 204 (1928).