



1972

Wills and Trusts

Charles O. Galvin

Follow this and additional works at: <https://scholar.smu.edu/smulr>

Recommended Citation

Charles O. Galvin, *Wills and Trusts*, 26 Sw L.J. 16 (1972)
<https://scholar.smu.edu/smulr/vol26/iss1/3>

This Article is brought to you for free and open access by the Law Journals at SMU Scholar. It has been accepted for inclusion in SMU Law Review by an authorized administrator of SMU Scholar. For more information, please visit <http://digitalrepository.smu.edu>.

WILLS AND TRUSTS

by

Charles O. Galvin*

I. WILLS

Construction. The courts try to avoid partial intestacy in the construction of wills, but the failure of a testator to make a complete disposition of his property will result in partial intestacy. In *Sowell v. Heins*¹ the testatrix directed that a portion of her estate be held in trust to provide for named beneficiaries "for as long as they live." No provision was made for the disposition of the remainder; therefore, the court affirmed a declaratory judgment that the decedent died intestate with respect to such remainder. In *Wilson v. Phillips*² the husband died leaving his property and his wife's community interest in trust for her for life, with remainder over for a charitable purpose. The wife's will affirmed the husband's will in one paragraph, and specifically excepted her separate property from the operation of her husband's will. In the next paragraph of her will, however, she devised to the same trustees "all of the property owned by me at my death, of whatsoever nature or kind and wherever situated . . ." The trial court held that the testatrix died intestate as to her separate property. The court of civil appeals reversed, holding that the testatrix's intent was apparent from a reading of the whole will and that the words above quoted must be construed to mean the entire estate of the testatrix. In a similar situation in *White v. Eastman*³ a testator declared in his will that all of his property was community property, when in fact he had separate life insurance policies payable to his estate. The will had a residuary clause devising and bequeathing to his wife "all [his] property." The court held that the residuary clause effectively passed both the separate and the community property to the wife, notwithstanding the earlier erroneous declaration that all of his property was community.

*Welch v. Trustees of Robert A. Welch Foundation*⁴ also involved the question of partial intestacy. Sarah, a resident of South Carolina, died leaving property to a charitable trust created by the will of her brother, Robert. The South Carolina Supreme Court held that Sarah's disposition was an invalid attempt to create a trust by incorporation, and that Sarah died intestate as to the property devised to the trust.⁵ Sarah's will was also filed for probate in Texas, because Texas land and minerals were involved, and Texas law governs descent, alienation, and transfer of real property situated within the state. In holding that Sarah created a valid charitable trust by will the Texas court made an important distinction between the doctrine of *incorporation by reference* and the doctrine of *facts of independent significance*.⁶ The court found that the testatrix intended to create a charitable trust, and that the will of her brother, Robert A. Welch,

* B.S.C., Southern Methodist University; M.B.A., J.D., Northwestern University; S.J.D., Harvard University. Dean and Professor of Law, Southern Methodist University.

¹ 466 S.W.2d 862 (Tex. Civ. App.—Dallas 1971), *error ref. n.r.e.*

² 459 S.W.2d 212 (Tex. Civ. App.—Fort Worth 1971).

³ 461 S.W.2d 184 (Tex. Civ. App.—Eastland 1970).

⁴ 465 S.W.2d 195 (Tex. Civ. App.—Houston [1st Dist.] 1971), *error ref. n.r.e.*

⁵ *South Carolina Nat'l Bank v. Copeland*, 248 S.C. 203, 149 S.E.2d 615 (1966).

⁶ See A. SCOTT, TRUSTS §§ 54.2, 54.3 (2d ed. 1956) for a comparison of the two doctrines.

could be referred to for the purpose of determining facts of independent significance with respect to the charitable trust, the trustees, and its purposes.

The question of whether an interest is vested or contingent often involves subtleties of distinction that are difficult to explain. In *Bloodworth v. Bloodworth*,⁷ J. C. died in 1929, left property to a twenty-year trust, and disposed of the trust remainder by providing that his "children, or their descendants, shall be entitled to the property." He further provided that if any of his children should die *without* issue, the survivors would take the real estate and the "rents, bonuses and royalties . . . derived therefrom." If any of the children died *with* issue, then the child (or children) of such deceased child would take his (or their) parent's share. The trust terminated in 1969, and J. C. Jr. died in 1970 without issue. The issue was whether the defeasance clause operated after the twenty-year term. If it did, J. C. Jr.'s interest terminated; if it did not, J. C. Jr.'s interest became part of his estate. The court construed the defeasance clause as operative only within the period of the existence of the trust. The words "rents, bonuses and royalties" are identified with a trust in administration. Once the twenty-year trust term had elapsed, the estate vested in the children, including J.C. Jr., in fee simple. The court noted the general policy of resolving any doubt in favor of vested rather than contingent interests. *Bloodworth* should be contrasted with *Miles v. San Angelo National Bank*,⁸ in which the validity of a contingent interest was sustained. T.N.'s will provided for a trust for the life of his son, T.N. Jr., with the remainder over to the children of T.N. Jr., share and share alike. The trustee was to "continue to handle" the trust until the youngest child became twenty-one. T.N. Jr. died in 1966, and his youngest surviving child, Thomas, died in 1969 at the age of fifteen. The question was whether fifteen-year-old Thomas's interest in the trust was defeated by his death before age twenty-one; if not defeated, he had a vested interest that would pass to his heirs-at-law (which included his natural mother). The court recognized the general principle favoring the earliest possible vesting of an estate, but held that it was apparent from a reading of the entire will that the intention of the testator was that only his son's children should ultimately come into possession of the estate. Therefore, because Thomas died while the trust was still in existence, his interest remained contingent and subject to defeasance.

In *Burton v. King*⁹ a resident of Tennessee died seized of oil properties in Texas. His will directed that trustees under the will deliver the income from the oil property to several named parties for life, but contained no specific direction for the disposition of the property on termination of the trust. The court found no intent to grant beneficiaries of the trust more than a life estate, and held that the beneficiaries under the residuary clause of the decedent's will were entitled to the trust remainder.

The words "heirs," "bodily heirs," "heirs of his body," and the like were considered in other cases. A grant in a deed to a designated person for life "and at her death unto her children (or child) and their heirs per stirpes and assigns forever" was held to create a life estate with remainders to the class designated.

⁷ 467 S.W.2d 218 (Tex. Civ. App.—Eastland 1971), *error ref. n.r.e.*

⁸ 465 S.W.2d 452 (Tex. Civ. App.—Austin 1971), *error granted.*

⁹ 459 S.W.2d 663 (Tex. Civ. App.—Tyler 1970), *error ref. n.r.e.*

The use of the words "per stirpes" to modify the word "heirs" changed "heirs" to a word of purchase rather than limitation.¹⁰ In *Davis v. Waldron*¹¹ a testamentary trust provision stated that upon termination of the trust, the property was to go to testator's son or daughter. If either one *predeceased* the testator, then the share was to go to such child's "bodily heirs." A son survived the testator, but died before the trust terminated, leaving natural children and an adopted child. The court held that the adopted child, not being a *bodily* heir, would have been excluded had his father *predeceased* the testator; however, since his father had *survived* the testator, but died before the trust terminated, the adopted child was entitled to share as an heir. In another case¹² a devise to "HORACE WREN for life and upon his death to the heirs of his body in fee" was held to be a devise of a fee simple under the Rule in Shelley's Case. Although the Rule was abrogated in Texas as of January 1, 1964,¹³ the will in question became operative before that date, and the Rule was accordingly applied.

A devise of described personal and real property "to become the property of my Husband Jackson M. Norris" followed by "[i]t is also my will and desire that all above mentioned property at my Husband's (Jackson M. Norris) death shall go to the Methodist Orphans Home at Waco, Tex." created a life estate with remainder over to charity.¹⁴ In *Glass v. Skelly Oil Co.*¹⁵ life tenants under a will were held "owners of the soil" within the purview of the Texas Relinquishment Act¹⁶ and were entitled to execute valid oil and gas leases without joinder of the remaindermen. Moreover, under the terms of the will giving them "all bonuses, delay rentals and royalties accruing from production" they were entitled to receive all income from the property as their own. In another case¹⁷ the word "and" in "in fee simple absolutely, *and* undivided one-half interest" was construed as "an." In addition, a specific bequest to a son of "all cash, notes" was held to prevail over a residuary clause in which the son's share was one-half. In another clause in which a life estate was given to one person with the provision that upon his death, "I give and devise *the same* to my son . . . and *the same* shall vest in him in fee simple absolutely," the word "same" was construed to mean the same property, not the same life estate. In *Selder v. Stewart*¹⁸ the phrase "any cash, after expenses and debts are paid" was held to mean cash only, and not interests which could be converted into cash.

Testamentary Capacity and Undue Influence. In *Duke v. Falk*¹⁹ the testator was

¹⁰ *Kritser v. First Nat'l Bank*, 463 S.W.2d 751 (Tex. Civ. App.—Beaumont), *error ref. n.r.e.*, 467 S.W.2d 408 (Tex. 1971).

¹¹ *Davis v. Waldron*, 463 S.W.2d 458 (Tex. Civ. App.—Beaumont 1971).

¹² *Harrison v. San-Tex Lumber Co.*, 459 S.W.2d 502 (Tex. Civ. App.—San Antonio 1970).

¹³ Ch. 199, § 1, [1963] Tex. Laws 542 (codified at TEX. REV. CIV. STAT. ANN. art. 1291a (Supp. 1972)).

¹⁴ *Norris v. Methodist Home*, 464 S.W.2d 677 (Tex. Civ. App.—Waco 1971), *error ref. n.r.e.*

¹⁵ 469 S.W.2d 237 (Tex. Civ. App.—El Paso 1971).

¹⁶ TEX. REV. CIV. STAT. ANN. art. 5367 (1962).

¹⁷ *Holliday v. Smith*, 458 S.W.2d 106 (Tex. Civ. App.—Corpus Christi 1970), *error ref. n.r.e.*

¹⁸ 461 S.W.2d 239 (Tex. Civ. App.—Dallas 1970), *error granted.*

¹⁹ 463 S.W.2d 245 (Tex. Civ. App.—Austin 1971).

ninety-three years old when he executed a self-proved will in the offices of an attorney. He died at age ninety-four, and a contest was filed asserting undue influence and lack of testamentary capacity. The case proceeded primarily on the issue of testamentary capacity, and in this connection evidence was presented that a guardian had been appointed to handle the affairs of the testator before his death. The court pointed out that nothing in the guardianship proceedings was determinative of the testator's soundness of mind to make a will, and that the jury had the guardianship proceedings before them in their deliberations and found in favor of the proponents of the will. On all the evidence, therefore, the court sustained the finding of testamentary capacity. In another case²⁰ reference was made to a federal court proceeding in which the testator had allegedly been adjudicated a mental incompetent. The will was denied probate, even though the proponents were prepared to offer testimony that there had been no adjudication of insanity. The court held that it was error to exclude such testimony and remanded for a new trial.

In *Gottschald v. Reaves*²¹ the wife offered for probate a will in which she was named sole devisee and independent executrix of her husband's estate. She also offered a codicil in which the children of the husband's prior marriage were left one dollar each. Although the wife had been present when the codicil was executed, the court held that the evidence of undue influence was only meager. Because such evidence must be reasonably satisfactory and convincing, the trial court's decision in favor of the proponent was affirmed. *Green v. Goans*²² involved two wills, one made in 1964, the other in 1966. The evidence was conflicting about whether the testator was afflicted with insane delusions. The testator's attorney testified that the testator appeared normal when the will was made; on the other hand, a psychiatrist testified that the testator had had delusions since 1964. The jury was instructed on the issues of testamentary capacity and insane delusions. However, in the instruction on testamentary capacity the trial judge made no reference to insane delusion, and he submitted only the question of the testator's testamentary capacity to the jury. The court of civil appeals accordingly remanded the case for further findings on the issue of insane delusion.

Probate and Administration. Several technical amendments to the Texas Probate Code went into effect on January 1, 1972. Some of the provisions affected are: (1) notice and proof of service;²³ (2) nontermination of powers of attor-

²⁰ *Collins v. Collins*, 464 S.W.2d 910 (Tex. Civ. App.—San Antonio 1971), *error ref. n.r.e.*

²¹ 457 S.W.2d 307 (Tex. Civ. App.—Houston [1st Dist.] 1970). For another case in which undue influence was raised more than forty years after probate, see *Chapal v. Vela*, 461 S.W.2d 466 (Tex. Civ. App.—Corpus Christi 1970).

²² 458 S.W.2d 705 (Tex. Civ. App.—El Paso 1970), *error ref. n.r.e.* See also *Lindley v. Lindley*, 384 S.W.2d 676 (Tex. 1964).

²³ TEX. PROB. CODE ANN. § 33 (Supp. 1972). Subsections (c) through (f) were amended, while subsections (i) and (j) are new. Subsection (i) sets out the requirements for proof of service, and specifies that in all cases such proof shall be filed before the hearing. Under subsection (d), as amended, any interested person may request notice or citation. The new subsection (j) provides that all fees and costs of this notice procedure shall be borne by the person requesting notice, and that the clerk of the court may, in his discretion, require a deposit therefor. The notices are to be sent by ordinary mail, and any failure to comply with the request shall not be held to invalidate any proceeding.

ney by disability;²⁴ (3) proceedings to declare heirship;²⁵ (4) requisites of a self-proved will;²⁶ (5) probate proceedings;²⁷ and (6) accounting.²⁸

*Grieder v. Grieder*²⁹ involved a holographic will. Two witnesses swore that they were familiar with the handwriting of the deceased, but failed to state that the instrument offered for probate was entirely in the handwriting of the testator. Later, the probate court corrected the record *nunc pro tunc*. On appeal to the district court, the witnesses testified to the handwriting *and* that the document was wholly in the handwriting of the decedent. Thus, the district court was not concerned with the validity of the actions of the probate court in correcting its records, but rather with the issue of whether the instrument was entitled to probate on a trial de novo. The court of civil appeals sustained the district court's finding that the instrument was properly admitted to probate. In *Short v. Short*³⁰ the proponents of the will called a substitute executor named in the will as a witness, and the contestants objected on the grounds that such testimony was inadmissible under the Dead Man's Statute.³¹ The court held that the statute was inapplicable to a substitute executor. In another case³² involving the

²⁴ *Id.* § 36A. This provision, apparently based on UNIFORM PROBATE CODE § 5-501, is directly contrary to the common-law principles of agency law. It is, however, a welcome change. Section 36A provides that if the power of attorney so specifies, the disability of the principal will *not* terminate the agency relation.

²⁵ *Id.* §§ 48, 49. By the addition of subsection (b) section 48 has been amended to provide that upon the application for a determination of heirship filed within four years of the decedent's death, the court may determine whether a need for administration exists. The amendments in section 49 are largely for the purpose of making its terms consistent with those of subsection 48(b). For example, the term "applicant" has replaced the term "petitioner."

²⁶ *Id.* § 59. The amendments to this section also provide some clarification of the effect of a self-proved will. Except for the recognized benefit of admission to probate without the testimony of the witnesses, a self-proved will is to be treated no differently than a will not self-proved. The amendment further elaborates that a self-proved will, like a will not self-proved, may be contested, revoked, or amended by codicil.

²⁷ *Id.* §§ 72, 73, 81, 87, 95. Section 72(b) prescribes the procedure to be followed when any interested person requests the court to issue a citation to the person whose supposed death must be proved by circumstantial evidence. The personal representative, once appointed, may be directed to make a search for the supposed decedent by notifying law enforcement, public welfare, or private investigative agencies of his disappearance. All costs of employing a private investigative agency shall be borne by the estate.

Section 73(b) provides that a bona fide purchaser for value of property from the heirs of a decedent who died more than four years before the purchase shall obtain good title if he had no knowledge of the existence of a will. The interest obtained shall be that which the heirs would have had if no will existed; and it shall be upheld as against the claims of any takers under any will thereafter offered for probate.

Section 81, which specifies the content of an application for letters testamentary, has received some alteration. No longer must the names, ages, marital status, residence, and relationship to the decedent of each heir or devisee (if known) be included in the application for probate of a written will. However, the above information must appear in an application for probate of a written will *not produced*.

Section 87 now provides that when the parties so stipulate, the court in any contested proceeding may dispense with the requirement that testimony taken in open court upon a hearing on an application for probate be committed to writing, sworn to, and filed by the clerk.

Section 95 has been entirely rewritten, resulting in extensive provisions for the probate of a foreign will.

²⁸ *Id.* § 149A. This new section provides for an accounting to be made by an independent executor when so demanded by any interested persons. It is meant to serve as a remedy apart from, but in addition to, those provided for in sections 148 and 149.

²⁹ 467 S.W.2d 241 (Tex. Civ. App.—Beaumont 1971), *error ref. n.r.e.*

³⁰ 468 S.W.2d 164 (Tex. Civ. App.—Tyler 1971), *error ref. n.r.e.*

³¹ TEX. REV. CIV. STAT. ANN. art. 3716 (1926).

³² *Gentry v. Sellers*, 468 S.W.2d 525 (Tex. Civ. App.—Dallas 1971).

Dead Man's Statute, the court held that the contestants had waived the Statute by calling adverse parties as witnesses, and that the contestants were entitled to take their depositions although other potential contestants had not joined the contest.

In *Gilmer v. Harris*³³ the court held that oaths filed by co-executrices were sufficient, although in swearing to perform all the duties as executrices under the will they did not refer to the codicil. The court in *Farr v. Bell*³⁴ declined to hold that the district judge abused his discretion in refusing to believe witnesses who stated that they were familiar with testatrix's handwriting and that the will was in her handwriting. In *Jones v. Ives*³⁵ an instrument in the handwriting of the testatrix was admitted to probate as her last will although she used the precatory word "desire" rather than usual mandatory words.

In *Hebert v. Probate Court No. 1*³⁶ the district court was sustained in refusing to issue a writ of prohibition against the probate court to prevent distribution of the assets of the estate. The appellant made no appeal from the original order of the probate court, and the court held that the writ of prohibition, an extraordinary remedy granted only in extreme cases of necessity, cannot be a substitute for an appeal. In another procedural case³⁷ the court of civil appeals rejected the appellant's contention that on certiorari to the probate court a district court may only review errors of law, and upheld the admission of the will to probate.

In *Neel v. Seaman*³⁸ the independent executrix of the estate of Neel, a deceased lawyer, sued Seaman, with whom Neel was associated in the practice of law, to recover a portion of legal fees for services rendered in connection with the estate of one Harvey. The Corpus Christi Bank and Trust, independent executor of Harvey's estate, was not made a party in the suit against Seaman. The trial court rendered judgment in favor of the Neel estate, but the court of civil appeals reversed on the grounds that the bank was an indispensable party under rule 39.³⁹ The supreme court, however, held that the bank did not have a "joint interest" in the settlement of the controversy between Neel and Seaman and, therefore, was not an indispensable party.

In *Gross National Bank v. Merchant*⁴⁰ the widow of the deceased, as independent executrix, awarded herself a widow's allowance and family allowance for one year that consumed the nonexempt proceeds of the sale of the homestead. The court held that a judgment creditor's lien was properly extinguished. In an

³³ 460 S.W.2d 215 (Tex. Civ. App.—Fort Worth 1970).

³⁴ 400 S.W.2d 431 (Tex. Civ. App.—Dallas 1970), *error ref. n.r.e.* In fact, no witness testified to seeing the testatrix write the will in question.

³⁵ 462 S.W.2d 610 (Tex. Civ. App.—San Antonio 1971), *error ref. n.r.e.*

³⁶ 466 S.W.2d 849 (Tex. Civ. App.—Houston [14th Dist.] 1971). In another case an independent executor was required by the probate court to remove the homestead from administration and surrender its possession to decedent's wife. *Held*: The probate court lacked jurisdiction to make such an order. *Torres v. Torres*, 462 S.W.2d 423 (Tex. Civ. App.—El Paso 1970). *See also Hutchins v. Seifert*, 460 S.W.2d 955 (Tex. Civ. App.—Houston [14th Dist.] 1970), *error ref. n.r.e.*, in which an order for a temporary administrator was denied as against an independent executor who was not disqualified.

³⁷ *Jedlicka v. Wilkins*, 459 S.W.2d 956 (Tex. Civ. App.—Tyler 1970), *error dismissed*.

³⁸ 466 S.W.2d 278 (Tex. 1971), *rev'g* 461 S.W.2d 659 (Tex. Civ. App.—Corpus Christi 1970).

³⁹ TEX. R. CIV. P. 39.

⁴⁰ 459 S.W.2d 483 (Tex. Civ. App.—San Antonio 1970).

other case⁴¹ a widow who paid the joint income tax liability of herself and her husband was held entitled to recover from his estate one-half the amount with interest at six percent until paid.

In *Small v. Small*⁴² a claim against the estate in the form of two promissory notes was allowed. It was held that the Dead Man's Statute did not prohibit the payee's testimony that the signature was the decedent's, because such an identification could not be deemed a "transaction" within the statute.

In another case⁴³ a letter acknowledging a debt of the decedent and promising repayment to the creditor by will was held sufficient to justify a claim against the estate for the amount of the debt plus six percent interest thereon from the date of the death of the decedent.

Joint and Mutual Wills. Parties may execute the same document as a joint will, which each may or may not intend to be a contract binding on the other. Similarly, separate documents may be executed as mutual wills. If the will is contractual, then upon the death of one, the other is bound not to revoke the will. The answer to the question of whether such a contract exists must be supplied by the facts surrounding the execution of the document. In *Moore v. Vines*⁴⁴ the requisite agreement was lacking. In *Magids v. American Title Insurance Co.*⁴⁵ the case was remanded to hear testimony concerning the circumstances surrounding the execution of reciprocal wills to determine the presence or absence of a contract.

Equitable Right of Election. If a testator disposes of property not his own, and the true owner accepts benefits under the will which he would not otherwise enjoy, then an election has been made by the true owner, and his property is treated as passing under the will. This frequently happens with regard to community property in cases in which the husband seeks to dispose of the wife's interest, and her acceptance of benefits under the husband's will will cause her community property to pass under his will. Thus, if the husband gives the wife a life estate in the entire community with remainders over, and she accepts the benefits of the entire life interest, then she has effectively disposed of the remainder interest in her community property and thereafter has only a life estate in the entire property.⁴⁶

Heirship. Daughters of a decedent contended that they were heirs of the decedent, who was the alleged common-law husband of their mother; but, in fact, the decedent was married to another woman and could not have been their mother's common-law husband. Therefore, the daughters, as illegitimate chil-

⁴¹ *Strange v. Rubin*, 456 S.W.2d 416 (Tex. Civ. App.—Dallas 1970), *error ref.*

⁴² 464 S.W.2d 734 (Tex. Civ. App.—Dallas 1971), *error ref. n.r.e.*

⁴³ *Richardson v. Richardson*, 458 S.W.2d 508 (Tex. Civ. App.—Eastland 1970), *error ref. n.r.e.*

⁴⁴ 461 S.W.2d 642 (Tex. Civ. App.—Dallas 1970), *error granted.*

⁴⁵ 459 S.W.2d 238 (Tex. Civ. App.—Houston [1st Dist.] 1970), *error granted.* The court reiterated the rule of *Wagnon v. Wagnon*, 16 S.W.2d 366 (Tex. Civ. App.—Austin 1929), *error ref.*, that the mere facts of simultaneous execution before the same witnesses and mutuality of terms will not prove a contract.

⁴⁶ *Lawrence v. Coffield*, 468 S.W.2d 544 (Tex. Civ. App.—Austin 1971).

dren, could not inherit from their father.⁴⁷

In *Young v. Marlin National Bank*⁴⁸ heirship was determined by the county court. However, this finding did not relieve a bank from liability to the administrator of the estate for paying the decedent's deposits to the heirs.

II. TRUSTS

On May 10, 1971, conforming amendatory legislation⁴⁹ went into effect which brings all charitable trusts in line with Internal Revenue Code sections 4942 to 4945 and 508(e),⁵⁰ which were enacted by Congress in 1969 to effect stricter requirements on charitable trusts for federal tax purposes.

In a case of first impression, *Shellberg v. Shellberg*,⁵¹ the parties contracted to create a trust for ten years. Later one party sought to revoke his interest. Although the Texas Trust Act provides that a trust is revocable unless the instrument expressly makes it irrevocable,⁵² the court held that the provision does not apply to a contractual trust based on valuable consideration.

In *Westerfield v. Huckaby*⁵³ the grantor of a trust, a single woman, acknowledged that she held certain real property in revocable trusts for the benefit of one Huckaby. The challenge to the trusts that they were merely illusory was rejected, because the doctrine of illusory trusts does not apply when no question of community property or forced heirship is involved.⁵⁴

In *Lokey v. Texas Methodist Foundation*⁵⁵ the plaintiff, one of the three members of a committee designated to direct the distribution of charitable funds, sought to cancel the trust. The court held that the plaintiff had no interest in the trust and no visitorial rights to attack the trust. Moreover, the Attorney General is a necessary party to such actions.⁵⁶ *Steves v. United Services Automobile Ass'n*⁵⁷ involved the question of a self-dealing trustee. The trustee acquired property from the trust, contracted to sell it, and then sought specific performance against the purchaser. The court held that because he had come into court with unclean hands, he was not entitled to the equitable remedy.

In *Vaughn v. Gunter*⁵⁸ the supreme court, in a per curiam opinion refusing an application for writ of error, held that the word "children" in two trusts created after 1951 included adopted children. In *Gonzalez v. Gonzalez*⁵⁹ the husband's estate in a testamentary trust under a joint will was held to be clearly separated from the wife's estate, which later came into administration. The trust provisions applied only to the husband's estate.

⁴⁷ *Wells v. Hames*, 464 S.W.2d 393 (Tex. Civ. App.—Houston [14th Dist.] 1971), error ref. n.r.e.

⁴⁸ 458 S.W.2d 506 (Tex. Civ. App.—Waco 1970).

⁴⁹ Ch. 117, §§ 1-6, [1971] Tex. Laws 886-87, amending TEX. REV. CIV. STAT. ANN. art. 7425a-2, §§ 1-5 (1960).

⁵⁰ INT. REV. CODE OF 1954, §§ 4942-45, 508(e).

⁵¹ 459 S.W.2d 465 (Tex. Civ. App.—Fort Worth 1970), error ref. n.r.e.

⁵² TEX. REV. CIV. STAT. ANN. art. 7425b-41 (1960).

⁵³ 462 S.W.2d 324 (Tex. Civ. App.—Houston [1st Dist.] 1971), error granted.

⁵⁴ See *Land v. Marshall*, 426 S.W.2d 841 (Tex. 1968).

⁵⁵ 468 S.W.2d 945 (Tex. Civ. App.—Austin 1971), error granted.

⁵⁶ TEX. REV. CIV. STAT. ANN. art. 4412a (1966).

⁵⁷ 459 S.W.2d 930 (Tex. Civ. App.—Beaumont 1970), error ref. n.r.e.

⁵⁸ 461 S.W.2d 599 (Tex.), refusing error in 458 S.W.2d 523 (Tex. Civ. App.—Dallas 1970).

⁵⁹ 457 S.W.2d 440 (Tex. Civ. App.—Corpus Christi 1970), error ref. n.r.e.