THE ENIGMA OF GENERAL POWERS OF APPOINTMENT

By I. D. CAMPBELL*

As part of a scheme of disposition a settlor or testator may purport to confer on another person power to appoint property to beneficiaries selected by that person. A general power, authorizing a person to appoint property in such manner as he may think fit (even to himself or his estate), has been familiar to conveyancers for centuries. When a general power is conferred by will its effect in substance is to delegate to the person so named the testator's power to direct the disposition of his property upon his death. A decision which is not the personal decision of the testator regulates the disposition of his estate. It may be said that the testator's power has in such a case been exercised, but in one sense the exercise is purely formal. The crucial decision is not made by the testator but by his nominee when the testator himself may long have been in his grave.

If one reads the early history of wills, and the special functions of the 'ordinary' in early English law, one is not in the least surprised that a general power of appointment was evolved and came to form an integral part of many a testamentary disposition. The notion that this might entail a delegation of a purely personal and non-delegable power would be quite foreign to English legal minds up to medieval times and much later. Indeed, no feeling of incongruity seems to have found expression until the twentieth century. It was then perceived that the creation by will of a general power of appointment was not easily reconciled with current theories of testamentary power. Eventually, after a period of rapidly rising doubt, it came to be asserted that a general power of appointment could not be validly conferred by will.

Probably the best statement of the dilemma is contained in the article by D. M. Gordon Q.C. on 'Delegation of Will-Making Power'.[1] He cites case after case in the House of Lords and the Privy Council in which it has been asserted that a testator cannot delegate to others the disposition of his property. One example will here suffice. In *Chichester Diocesan Fund v. Simpson*[2] Lord Simonds said:

> It is a cardinal rule, common to English and to Scots law, that a man may not delegate his testamentary power. To him the law gives the right to dispose of his estate in favour of ascertained or ascertainable persons. He does not exercise that right if in effect

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[1] (1953) 69 *Law Quarterly Review* 334. [2] [1944] A.C. 341, 371.

he empowers his executors to say what persons or objects are to be his beneficiaries. To this salutory rule there is a single exception. A testator may validly leave it to his executors to determine what charitable objects shall benefit so long as charitable and no other objects may benefit.

'Delegation' in this context is not used in any narrow and formal sense. It is, of course, unquestioned that, except in having his will signed for him by another person in his presence and by his direction, a testator cannot delegate any part of the task of 'will-making'. But the non-delegation rule, if its exists, plainly goes very much further. It prohibits a testator from allowing the judgment of others to determine the destination of his estate.

The writer of the foregoing article conceded that there were several grounds on which the validity of powers of appointment might be rested. There were two cases[3] in which it had been held, in the Chancery Division, that general powers of appointment constitute exceptions to the rule against delegation. It had been settled practice for centuries to insert such powers in wills – powers which were valued because they enabled testators the better to provide for contingencies. In many cases the courts had by implication recognized that general powers might be validly created by will.[4] 'Even the quoted expressions of law lords against delegation, though they were no doubt directed against powers, were all uttered in cases where the findings made against powers were actually based on their uncertainty.'[5] Nevertheless the writer of the article considered that those who denounced the insertion of powers in wills had the better of the argument on principle, and that though powers had proved their convenience in the past their very purpose was impossible to justify under the Wills Act.[6]

[3] *Re Hughes, Hughes v. Footner* [1921] 2 Ch. 208. *Re Park, Public Trustee v. Armstrong* [1932] 1 Ch. 580.

[4] This assumption was made by the House of Lords in *Beyfus v. Lawley* [1903] A.C. 411; by the High Court of Australia in *Learmonth v. Union Trustee Co. of Australia Ltd.* (1940) 14 *Australian Law Journal* 167; by the New Zealand Court of Appeal in *Alexander v. Alexander* (1909) 28 N.Z.L.R. 895; and *In re Kensington* [1949] N.Z.L.R. 382. Reference may also be made to the Legacy Duty Act, 1796 (U.K.), s. 18, in which the Legislature assumed that a 'general and absolute power of appointment' might be given by will; and to *A.-G. v. Upton* (1866) L.R. 1 Exch. 224, in which the Court of Exchequer interpreted s. 4 of the Succession Duty Act, 1853 (U.K.) as being applicable to a general power of appointment created by will.

[5] (1953) 69 *Law Quarterly Review* 341.

[6] To explain the continued use of powers of appointment for so long without question the writer says (p. 334): 'by the time the [Wills] Act was passed the practice of inserting such powers in wills was so thoroughly ingrained in the law by long usage that it occurred to no one that the Act made a

The crucial issue may accordingly be framed as follows: is delegation *per se* a fatal objection? This very question recently came before the Supreme Court of New Zealand in *In re McEwen, McEwen v. Day.*[7] The testator – as if wishing to be the guinea pig in an experiment for D. M. Gordon's benefit – gave the residue of his estate to his executors and trustees S. D. and W. J. S. on trust as follows:

> UPON TRUST for such person or persons (including the said S. D. and W. J. S. either jointly or severally for themselves personally and beneficially and absolutely free of any trust express or implied) as my Trustees may by any deed or deeds at any time or times within a period of ten years from the date of my death appoint AND in default of any such appointment or appointments and in so far as the same shall not extend UPON TRUST for my son R.A.M.

On an originating summons for interpretation of the will it was submitted that this clause was invalid as amounting to a delegation of will-making power. The Supreme Court (Gresson J.) rejected this submission and held that the power was validly given.

Gresson J. first examined the will to see whether this was a mere power or a power in the nature of a trust. He held it was a mere power. Although the power was exercisable by the executors and trustees of the will they had a complete discretion as to exercising it or not, and were expressly empowered to exercise it in their own favour.[8] Moreover, there was an express provision by way of trust

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difference.' But did the Act make a difference? It was an empowering, not a disabling, statute. In what way did the Act restrict the powers enjoyed by testators before 1837?

[7] [1955] N.Z.L.R. 575. The case is the subject of comment in (1955) 31 *New Zealand Law Journal* 151, 166, 205.

[8] D. M. Gordon, *op. cit.*, p. 343, says: 'A general power does not enable the holder to exercise it in his own favour unless it is given in gross; when it is given to a trustee, he cannot appoint to himself: *Re Chapman, Hales v. Attorney-General,* [1922] 2 Ch. 479.' But the case cited is no authority for the author's proposition. It merely estabishes that if a testator gives the residue to his executors or trustees for such purposes as they think fit, they hold it as trustees for the next of kin. Whether a donee of a power may appoint to himself is a question of the construction of the power. In *McEwen's* case the will was explicit, and no such question of construction arose. There is no rule of law that forbids the testator from including the donees of the power among the possible appointees simply because they are the executors and trustees of his will. Marshall, 'The Astor Trust' *(Current Legal Problems* 1953) 151, 159, says: 'The essence of a general power of appointment is that the donee should be able to appoint to himself, a result which a trustee is debarred by his office from achieving.' As the *McEwen* case shows, this statement is an oversimplification.

in default of appointment. This completely negatived the implication of any trust.[9]

If a power is coupled with a trust it must satisfy two requirements in regard to certainty: (i) those to whom appointment may be made must be so defined that the court can say whether any appointment that the donee of the power might make would be within the scope of the power;[10] (ii) those to whom appointment may be made must be so defined that the whole range of objects eligible for selection can be ascertained by the donee of the power before deciding what appointment he should make.[11] Where, as here, there is merely a discretionary power which there is no duty to exercise, the second of these requirements is not applicable.[12] The first requirement is clearly satisfied in every case of a general power: an appointment to any person must of necessity be within the scope of the power.

The learned Judge considered whether it was a general, special, or intermediate power, and concluded that it was general. There was power to appoint to any person or persons including the donees of the power. The restriction as to the time within which the power had to be exercised did not qualify the generality of the power during the specified period.

The argument that the clause in the will was invalid as a delega-

[9] It may be doubted whether a *general* power of appointment can ever be coupled with a trust. It is difficult to suppose that the donor intends such a power to be regarded as in the nature of a trust, or that its exercise has been made a duty by the requisition of the will. If a power coupled with a trust is not exercised, the Court will exercise it (applying 'equality is equity' in default of other guidance); but this course is not open if the power is general. As to special powers see *Re Weekes' Settlement* (1897) 1 Ch. 289; *In re Combe, Combe v. Combe* [1925] Ch. 210; *In re Perowne, Perowne v. Moss* [1951] Ch. 785.

[10] See cases cited in the article by D. M. Gordon, *supra.*

[11] *In re Ogden* [1933] Ch. 678; 102 L.J.Ch. 226; 149 L.T. 162; 49 T.L.R. 341. *In re Gestetner Settlement* [1953] Ch. 672; *Re Coates* [1955] 1 All E.R. 26. *Inland Revenue Commissioners v. Broadway Cottages Trust* [1955] 1 Ch. 20. On the *Gestetner* case see Kennedy, 'Pure Power and Power in Trust', (1954) 7 *University of New Brunswick Law Journal* 7. The second requirement, though often stated as one of certainty, is not strictly a matter of certainty at all. It is a question of what is practicable and possible. For example, if trustees are to appoint to 'any person other than X' there is no uncertainty about the persons to whom appointment may be made. The boundaries are crystal clear. The fatal weakness lies in the impossibility of reviewing the field of those who are unquestionably candidates. In *Tatham v. Huxtable* (1950) 81 C.L.R. 639, 649, Fullagar J. criticized *Re Park* [1932] 1 Ch. 580 and *Re Jones, Public Trustee v. Jones* [1945] Ch. 105 on the ground that in those cases there was no class designated with certainty. It is respectfully suggested that this is to confuse the two separate requirements mentioned above and to find uncertainty where none exists.

[12] *In re Gestetner (supra); Re Coates (supra).*

tion of will-making power was based on the proposition that a general power of appointment conferred by will is irreconcilable with 'the fundamental principle . . . that the testator must by the terms of his will himself dispose of the property with which the will proposes to deal'.[13] The article in the *Law Quarterly Review*, the authorities there mentioned, and others to the same effect, were cited. Of these the Judge observed:

> They are indeed a formidable array of statements of principle apparently quite inconsistent with the validity of a general power of appointment by will. In some of these pronouncements, the exception in favour of charities is recognized, and, in some, exception in favour of special powers; but in none is the generality of the statement of principle qualified in favour of general powers of appointment.[14]

The learned Judge nevertheless held that the conferring by will of a general power of appointment was either not truly a delegation at all or was an exception to the anti-delegation principle. He reached this conclusion in reliance on the cases already mentioned[15] in which judges in England had so held. He proceeded:

> It appears to me that a power of appointment can be held valid as not offending against the prohibition upon delegating testamentary power upon either of two principles, one, that the giving of a power of appointment does not amount to a delegation if there is indicated with sufficient particularity the class of persons or objects to be benefited: that they are ascertained or ascertainable. . . . The other principle upon which general powers of appointment have been supported is that it is equivalent to property and that such a disposition in accordance with the established practice as to general powers of appointment is to be treated as a disposition by the testator of the property: that, since the donee can give the property subject to the power to himself if he so chooses, the testator has in fact disposed of it by his will. . . . The donee is for all practical purposes in the position of beneficial owner of the property since he can dispose of it as freely and effectually as if it were his own.[16]

[13] *Chichester Diocesan Fund v. Simpson (supra,* n. 2) per Viscount Simon L.C., 348.

[14] *Ibid.*, 578. [15] 15 n. 3, *supra.*

[16] [1944] A.C. 341, 581. But it was held that the power of appointment in the present case could not be supported as 'equivalent to property' because the power was vested in two persons. On this point the Court followed *In re Churston Settled Estates* [1954] 1 Ch. 334; [1954] 1 All E.R. 725. In the cases holding that general powers of appointment constitute an exception to the rule against delegation the exemption is uniformly based on the proposition that the donee has virtually been made the owner of the property and that

The Judge agreed that the passages that had been cited condemning delegation appeared to state in emphatic and unambiguous language that a testator cannot delegate the right to make a disposal of any part of his estate. But, he said:

> these were pronounced in cases in which there was a discretion given to trustees in the execution of their trust, in short, where there was a trust and not a mere power. I do not think these pronouncements should be understood as denying the well-established law with respect to powers of appointment by will, a power which, if delegation it be, is too firmly embedded in the law to be swept away in an oblique fashion. I do not think the passages cited should be torn from their context, divorced from the particular situation with which the Court was confronted, and treated as pronouncements true in all circumstances and with no qualifications save such as in some of the passages are mentioned. All the cases which gave rise to the observations cited were cases where the power was fiduciary; it was in each case a trust in the strictest sense—one which failed for uncertainty. It must ever be remembered that a trust and a power of appointment differ. There is no duty to exercise a discretionary power; it is not a trust; and the general principles which make a trust void for uncertainty since no one can enforce it, have no application.[17]

It was accordingly held that the power in question, being a mere collateral power with no uncertainty in its scope and no restriction on its generality, was valid. The principle of *In re Gestetner Settlement*,[18] where the power was created by a settlement *inter vivos*, was extended and applied to a power created by will. The non-delegation rule, whatever its true scope or meaning, was held not to invalidate this general power.

Is this an end of the problem of delegation of testamentary power? Far from it. In the first place there are the obvious limitations on the scope of this decision as a binding precedent. But

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there has in effect been a testamentary disposition and not a delegation. See, for example, *Tatham v. Huxtable (supra,* n. 11) 653, per Kitto J. But an exception so stated has the flavour of paradox. If the rule against delegation requires that the choice of beneficiaries shall be the testator's own, it is passing strange that the rule, though infringed when a restricted choice is allowed, is not infringed when the testator empowers the donee to select any living soul, even a person utterly unknown to the testator. Moreover, as is shown by these cases and by others such as *In re Bransbury* [1954] 1 W.L.R. 496, the courts are on the verge of denying that a general power is a power at all. In *A.-G. v. Upton (supra,* n. 4) 231, Baron Bramwell, referring to a *general* power of appointment, said: 'I do not mean to deny or to cast any doubt on the rule of law that an appointee takes his estate from the donor of the power'. Has this ceased to be so?

[17] [1944] A.C. 341, 583. [18] [1953] Ch. 672; [1953] 1 All E.R. 1150.

even if it be followed, considerable mysteries still remain, and peace may not be had until at least some of them are solved. Marshall[19] suggested that such serious inroads had been made into the rule against delegation of testamentary power that it was questionable whether the rule itself ought to be retained. A more pressing question is to discover how much of the rule remains and what it now means. The difficulties include the following:

(1) *The mystery of the studied silences.* D. M. Gordon summarizes the leading statements of the rule against delegation in these words:

> It may be noted that in the above ten quotations from eight law lords, two (Lords Robertson and Halsbury) make no exceptions to the no-delegation rule; four (Lords Cave, Simon, Porter and Simonds) except only the power to select charities, only two (Lords Haldane and Macmillan) make a further exception for other special powers, and none makes any exception for general powers of appointment. All lay down principles inconsistent with general powers, and Lords Haldane and Macmillan (twice each) more directly imply that general powers are bad, by expressly stating that powers to choose charities and other special powers are the only exceptions to the no-delegation rule.[20]

If, as the Supreme Court of New Zealand has now held, a testator by a suitably phrased power of appointment may empower his executors to dispose of his estate as they wish, and if this has actually been the law of England for decades, what explanation can be offered of the fact that not one of these judgments—not even those which specifically mentioned exceptions—made any mention of general powers of appointment, the greatest 'delegation' of all?

(2) *The mystery of the vanishing rule.* In several statements of the rule against delegation special powers of appointment were stated to be exceptions.[21] *In re McEwen (supra)* holds that the rule does not invalidate general powers of appointment. To what, then, does the rule apply? It will not do to say that it applies where a power of appointment is coupled with a trust, because the rule does not prevent the creation of special powers whether fiduciary or not,[22] and a fiduciary general power seems to be a contradiction in terms.[23] Gordon says:

[19] *Op. cit.*, (n. 8), p. 163. [20] *Op. cit.*, p. 339.

[21] See, e.g., Lord Haldane in *Houston v. Burns* [1918] A.C. 337, 342; Lord Macmillan in *A.-G. of New Zealand v. New Zealand Insurance Co. Ltd.* [1936] 3 All E.R. 888, 890.

[22] It was stated in *In re Bransbury, (supra,* n. 15), 499, that every special power is fiduciary: but this dictum is completely at variance with authority.

[23] See n. 9.

> Analysis seems to make it plain that there cannot possibly be an anti-delegation rule to which both general and special powers of appointment are exceptions; for then the exceptions would eat up the rule. The giving of powers of appointment is the only form of delegation of any real importance; so when anyone supports an anti-delegation rule he is really objecting that powers of appointment are invalid. An anti-delegation rule is really an 'anti-powers' rule.[24]

What is the solution to these mysteries? The answer here suggested is that the anti-delegation rule is only a familiar rule about trusts and powers dressed up in a new guise. It is mainly in cases of fiduciary special powers that the dicta about delegation are to be found. The rule, in reality, is no more than a metaphorical restatement of the requirement that a special power of appointment, if fiduciary, is invalid unless in favour of a sufficiently certain class of beneficiaries. This interpretation accords with the decision of the High Court of Australia in *Tatham v. Huxtable*.[25] The clause in question in that case was construed as a special power in the nature of a trust and it was held invalid. This decision was squarely based on the doctrine that there can be no delegation of testamentary power. This doctrine the Court interpreted as meaning that a testator in committing to another the selection of beneficiaries within a limited field, must define with certainty the limits of the field. It is submitted that the rule means just that and nothing more.

One of the considerations strongly supporting this interpretation is that it thereby becomes possible to have one rule applicable to wills and settlements alike. The rule as commonly formulated is a rule against delegation of testamentary power. A rule so framed is inapplicable to settlements *inter vivos*. If the only rule against delegation is one prohibiting the use of general powers of appointment in a will, a general power so conferred would be invalid, whereas a similar power conferred by a settlement would be good. The rule against delegation would then be arbitrary in its operation and incongruous in its results. But if the rule is in truth no more than a requirement of certainty in a class from whom beneficiaries may be selected it applies equally to all types of disposition. If home-made conveyances were as common as home-made wills is it not probable that there would have been judicial decisions exactly parallel to those condemning delegation by testators? Here are some extracts from these hypothetical decisions:

[24] *Op. cit.*, p. 342. [25] See n. 11.

> The general rule is clear that if you are giving away your property you must declare your wishes and not leave it in wide and uncertain terms to some one else to make a settlement for you.
>
> A man cannot diminish his estate by giving away his property unless he really gives it away. He cannot leave it in vague terms to some one else to decide what he shall give away and to whom it shall be given.
>
> The law, in according the right to dispose of property *inter vivos* by gift or trust, is exacting in its requirement that the settlor must define with precision the persons or objects he intends to benefit.

It is conceived that all of these statements are good law; that judicial statements in this form are difficult to find simply because attempts at delegation in transactions *inter vivos* are comparatively rare; but that decisions on powers – especially the *Gestetner* line of cases on mere powers – do in substance declare the law in precisely the sense suggested. When the problem has appeared in a case on a will, the court has naturally tended to state the rule in terms of testamentary power, and such statements have tended to obscure the true scope and basis of the rule. It is founded not on the personal nature of testamentary power, but on the minimum requirement for an effective disposition of any kind. If it confers a discretion to select, the area of selection must be defined with certainty.

This view of the rule also offers a possible explanation of those 'studied silences'. If the rule is expressed as here proposed, a general power of appointment conferred by will is *not* an exception to the rule. There is no uncertainty in the range of possible objects of a general power, and such a power may accordingly be conferred without in any way infringing a rule that prohibits selection from ill-defined and uncertain groups. Moreover, on this view the use of general powers in wills can be supported without relying on half-truths about the nature of general powers and their equivalence to property.

The conclusion which seems to be supported by all considerations but one[26] is that there is in truth no separate and distinct rule forbidding delegation by a testator of decisions affecting the distribution of his estate. In spite of much talk about delegating testamentary power there is no rule peculiar to testamentary disposition. Instead, there is simply a rule that no settlor and no testator may by means of either power or trust delegate to others the selection

[26] i.e., the devastating objection that the highest tribunals have not so expressed themselves.

of beneficiaries from a limited but uncertain class.[27] This interpretation is consistent with the actual decision in all the cases cited, accords well with existing and past legislation, imposes no arbitrary restriction on testamentary power, creates no incongruity between wills and settlements, preserves to the full the immense advantage of general powers, overturns no established practice of conveyancers, and opens the way to no new perils. This should be commendation enough. But who shall thrust the assorted perorations of their Lordships on delegation of testamentary power into this nutshell? And once in, who (to echo Lord Macnaghten[28]) shall keep them there?

COMMENTARY

The author sent a copy of this article to Mr D. M. Gordon Q.C. and asked for his comments. With his permission the following passages are quoted from his letter in reply:

'I can see that you and I differ fundamentally on the desirability of unrestricted delegation by powers in wills, the benefit of which I think you see as unalloyed. My view is that powers are capable of serious abuses, which will tend to grow. But I also say that they contravene the whole spirit and purpose of the Wills Act. Our divergence on this point is explained by this passage from your note:[6]

> . . . did the Act make a difference? It was an empowering, not a disabling statute. In what way did the Act restrict the powers enjoyed by testators before 1837?

The answer to that is that before the Wills Act a testator could make an oral ('nuncupative') will of personalty, if he had three witnesses. A summary of the early law can be found in 2 Bl. Comm. 500 ff. The Wills Act required all wills (with only exceptions for soldiers' wills, etc.) to be in writing and witnessed with very strict formality. All these requirements are thrown away if a testator can make a merely *pro forma* will, leaving the making of his real will to a nominee after his death, who need observe none of the formalities of the Act. Clearly, if an intending testator gave a power of attorney to another to draw up and sign a will for him, this would be bad. And if a will leaves the disposition of the whole estate to be made under a power of appointment, there is no difference in substance between the two transactions.

[27] The rule requiring ability to review the whole class, exemplified in *Inland Revenue Commissioners v. Broadway Cottages Trust (supra,* n. 11) is an additional rule applicable to fiduciary powers.

[28] *Van Grutten v. Foxwell* [1897] A.C. 658, 671.

'You express the view that the law as to powers in settlements and in wills ought to be the same. I do not see why. Settlements are not governed by statute; so there seems to be no objection to their containing wide powers; but with wills the statute makes all the difference.

'Even from a strictly non-legal and practical view I feel that unrestricted delegation in wills can be badly abused, and that it will tend to be more abused, as the practice grows of having trust companies act as executors and trustees, when they also draw wills, as they increasingly do. As you probably know, trust companies have a great fondness for prolonged trusts, and arrogating as much power to themselves as they can. I feel that conditions may reach the point where people about to make wills should be protected against the wiles of trust companies, and discouraged from shuffling off their responsibilities.

'Powers of encroachment are probably the most objectionable of all powers, since they are often given, not to impartial trustees, but to interested persons for their own benefit, and they usually enable the holder in effect to revoke in whole or in part dispositions already made by the testator.

'I feel that the present mare's-nest that the conflicting cases and dicta present is no mere accident, and that the denunciations of delegation are not to be explained away as a mere misstatement of the principles enunciated in such cases as *Re Gestetner*.

'If one merely looks for the best justification one can for the muddle, then your solution is probably as good a one as any. But my feeling is that there is no rational ground on which the present practice can be justified; no compromise principle that can be justified logically, and that it may as well be faced that legislation is the only cure for the muddle. If there is no third choice between (i) banning all powers in wills, and (ii) allowing unrestricted delegation, then I am by no means convinced that the second solution is the better.

'To revert to principles, apart from legislation – I feel it is just as objectionable to have a wide-open power of delegation through powers in gross as a wide-open power through trust powers.

'I do not feel too happy about *Re Gestetner* which seems to have started a new theory that was only inchoate before. Though it is intelligible enough, I do not know where it is going to lead us, and it seems to me it is developing distinctions which can grow to be very arbitrary and bring about irrational results. For instance if A makes the following will:

> I appoint B my executor and leave all my property to such persons and in such shares as he shall see fit.

I think there is no decision under which this could be held invalid. If A's will reads:

> I leave all my property to B in trust to divide the same among such persons as he shall see fit.

then *Re Gestetner* seems to hold that unless a person to take in default is named, the will is void for setting up an indefinite trust. I find it hard to accept a principle that gives such diverse results to two dispositions that differ so little in substance. I feel that both these dispositions should be void as evasions of the Wills Act.

'Regarding your note 8—in stating the principle of *Re Chapman* I felt and still feel that there was no need to state that the principle can be excluded by express language.'

THE EVOLUTION OF THE AMERICAN CASEBOOK

By H. A. J. FORD*

THIS article is the outcome of a request to review Cases on *Decedents' Estates*[1] edited by Professor Max Rheinstein.[2]

Designed for use in a forty class-hours' course of the University of Chicago Law School the work is concerned with such topics as intestate succession, rights of surviving spouse, execution and revocation of wills, probate and administration, transactions *inter vivos* which have testamentary effects, problems of interpretation and the techniques of estate planning and will drafting. An Australian lawyer looking into this volume would find much law with which he is familiar although he might occasionally be intrigued by some aspects of American law as, for example, the preservation and strengthening of dower in a number of American states. The form of the book would, however, be more striking than its subject matter. While it consists of some text written by the editor the bulk of the work is made up of judgments and opinions of courts, extracts from law review articles by various authors, notes referring the reader to reports, law review articles etc., and problems.

If, for example, he looks at chapter 7, dealing with the formalities of execution of witnessed wills, he will find a short opening section written by the editor dealing with the policies underlying formal requirements relating to wills. Following this is a number of questions and references. After these there appears a four-page extract from a law review article by Professor Lon L. Fuller, in which the functions performed by legal formalities are considered. Then follows the text of various statutory provisions prescribing formalities required for wills. These include the Statute of Frauds, the Wills Act 1837, New York's Decedent Estate Law, Pennsylvania's statutory provision and the Model Execution of Wills Act 1940 drafted under the auspices of the Commissioners on Uniform State Laws. After these, each element of the formal requirement is treated by providing cases. For the most part only the court opinion is printed and headnotes do not appear.

To a person nourished on a steady diet of text-books this book could appear somewhat unfinished. But therein lies its value to American teachers as a teaching tool. In what follows hereafter an attempt is made to show the evolution of the modern American

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[1] Second edition, The Bobbs-Merrill Co. Inc., Indianapolis, 1955, pp. i-xv, 1-875. No price stated. Copy supplied by the publishers.

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