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this seems to go to great length in imposing liability on the state, still, it is within the spirit of the act, and the result does not stand alone in uniqueness. The expansion of governmental activities and the every-day contact a citizen is required to have with these activities creates a need for legislation with results comparable to that reached in the instant case. The State of New York has provided for that need, and in so doing has set an example that may well be followed by other states.

TRUSTS — ANNUITIES — ANNUITANTS' CLAIM FOR PRINCIPAL SUM

A testator bequeathed annuities to named non-profit corporations for the benefit of his nieces for their lives. The annuitants claimed the right to take the principal sum bequeathed rather than the annuities. Held, that the annuitants cannot take the principal sum since the named corporations have a clear interest in the bequests of which they cannot be deprived by being compelled to turn over the entire fund to the annuitants. Gilbert v. Findlay College, 74 A.2d 36 (Md. 1950).

English courts, since 1797, have followed the rule that where an absolute annuity is given in a will, the annuitant has the right to elect to take the principal sum bequeathed for purchase of the annuity, in lieu of the annuity. The courts reason—that enforcement of the purchase of the annuity would be nugatory and vain since the annuitant could sell the annuity the minute after it was purchased. In early American cases on this subject, the courts of Massachusetts and New York adopted the English reasoning and applied their rule. Despite a testator's direction to the contrary, the rule was applied and the annuitant was given the right of election

12. See Jackson v. State, 261 N.Y. 134, 138, 184 N.E. 735, 736 (1933) (in which the court said, "The statute constitutes a recognition and acknowledgment of a moral duty demanded by the principles of equity and justice.").

13. Metildi v. State, supra note 9 (failure of building inspector to warn workmen of dangerous condition of building being demolished was negligence sufficient to state a cause of action); Kittle v. State, 345 App. Div. 401, 284 N.Y. Supp. 657 (3d Dep't 1935), aff'd, 272 N.Y. 420, 2 N.E.2d 850 (1936) (failure to warn invitee of danger in state park, or to erect guard rails constituted negligence creating liability against state); Tortora v. State, 244 App. Div. 861, 279 N.Y. Supp. 794 (3d Dep't), aff'd, 269 N.Y. 167, 199 N.E. 44 (1935) (having undertaken to furnish prisoners with heated shelter, state was liable for injury caused by negligent operation of stove).


if the annuity was absolute; but, if there was a conditional limitation, a gift-over or a remainder, it would not apply.

The English rule has been recognized to be in opposition to the generally well established view of the American courts permitting the testator's intent to govern in the disposition of his property. New York adopted the English rule to conform with the American view by enacting laws which prohibit the annuitant from electing to take the principal sum unless the testator expressly provides for such right. Other states have accomplished the same thing by judicial decisions, thus making great inroads on the English rule.

The testator's direct bequest of the annuities to the named corporations in the principal case distinguishes it from a similar case directing the purchase of annuities from named missionary societies, as well as from previous cases in which the testator has directed the trustees, administrators, or executors to purchase annuities. This direct bequest to the named corporations indicates that the testator intended these institutions to have the benefit of anything which remained of the principal at the death of the annuitant. The annuitant's right of election is defeated and the testator's intention is carried out by ruling that the corporations named in the will have a vested interest in the annuities. Placing this case within the established exception to the English rule, since the annuity is not absolute, distinguishes it from those instances where the intention of the testator is

9. E.g., Chaffin v. Chaffin, 149 Mass. 19, 20 N.E. 454 (1889) (leading case); Pearce v. Pearce, 199 Ala. 491, 74 So. 952 (1917); In re Yates' Estate, 170 Cal. 254, 149 Pac. 555 (1915); Jacobson v. Mankato Loan & Trust Co., 191 Minn. 143, 253 N.W. 365 (1934).
10. N.Y. DECEDEENT ESTATE LAWS § 47-6.
15. See Parker v. Cobe, supra note 2; In re Cole's Estate, supra note 3; In re Bertuch's Will, supra note 4; In re Goodman's Will, 64 N.Y.S.2d 76 (Surr. Ct. 1946).
16. 28 HALSbury's LAWS OF ENGLAND, § 348 (2d ed. 1938) (The established exception is if there is a gift-over then the rule will not be applied).
carried out in cases of absolute annuities,\(^1\) even though at times it would be unreasonable to do so.\(^2\)

In annuity cases of this type the courts have usually dismissed the problem by citing the American authority\(^3\) and granting the annuitant the right of election. This case, however, although not attacking the right of election in a direct manner, circumvents it by placing it within the established exception\(^4\) and thus weakens its effectiveness. In so doing, the court evidences the current trend of carrying out the testator's intent, when it can be determined, in cases where annuitants seek the right of an election, contrary to that intent, under the English rule.

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**TRUSTS — JUDICIAL SETTLEMENT OF ACCOUNTS — INDISPENSABLE PARTIES**

Upon the death of one of two co-trustees, an action was brought for judicial settlement of accounts. The trust company, sole plaintiff and executor of the deceased trustee's estate, named as defendants only the beneficiaries of the trust and itself. An executor's claim by the trust company for trustee's commissions was disallowed. The beneficiaries of the deceased trustee's estate moved for an order to vacate final judgment. \(\text{Held, motion denied.}\) The beneficiaries of a deceased trustee's estate, who are not beneficiaries of the trust itself, are not indispensable parties to an action for judicial settlement of accounts. \(\text{United States Trust Co. of N.Y. v. Bingham, 92 N.E.2d 39 (N.Y. 1950).}\)

The relationship of a trustee to the \textit{cestui que trust} is that of a fiduciary. It is the duty of the trustee to protect the trust not only from the claims of third parties, but also as to the claims of co-trustees.\(^1\) Similarly, an executor is held to the same high level of conduct in the discharge of his duties. Executors have a duty to assert all claims in favor of the estate.\(^2\) However, there is nothing in the office or obligations of executors that precludes them from acting as trustees upon other trusts and for other beneficiaries, if the transaction is not inconsistent with the duties which they owe as trustee.\(^3\) However, beyond any intrinsic conflict of duties, there are procedural safeguards accorded to the beneficiaries of the different estates when one, in one capacity, sues or joins himself in another capacity.

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3. Parker v. Cobe, \textit{supra} note 2; \textit{In re Cole's Estate, supra} note 5.
4. See note 16 \textit{supra}.

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2. \textit{In re Kohler, 231 N.Y. 353, 132 N.E. 114 (1921).}