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Correspondence: Accountant's Duty to Uncover Questions of Law

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Correspondence

ACCOUNTANT'S DUTY TO UNCOVER QUESTIONS OF LAW

Editor, The Journal of Accountancy:

SIR: In the July, 1925, issue of the JOURNAL OF ACCOUNTANCY you were kind enough to print an address which I had given in Columbus on June 6, 1925, entitled, "The Accountant's Duty to Uncover Questions of Law." Today a case has been reported which bears directly upon one phase of that article and I think it might be of interest to some of your readers.

On page 34 I referred to a case, decided the day before the address was given, which held that apportionment between principal and income should be made as of the day when the securities representing the residue which was left in trust were turned over to the trustee. This was a decision by the appellate division, a high court in New York, but it was so unusual that reversal by the court of appeals seemed likely. The comments on it on page 34 were as follows:

"It should be noted that this case has not yet reached the highest court in New York. It was decided first by the surrogate, who is the probate judge, and his decision has just been reversed by the next higher court in the line of appeal. If it is carried still higher by a further appeal, it is entirely possible that the law as we understand it today will not be the law a few months hence. . . . The court's opinion was not highly satisfying. It consisted chiefly of a statement of its understanding of precedent cases on the strength of which the court felt constrained to decide as it did, although both the majority opinion and a concurring opinion expressed the judges' personal preference for the date of death."

What was predicted has come to pass. In the issue of the *New York Law Journal* for December 30, 1925, appears the unanimous decision of the court of appeals reversing the appellate division (matter of United States Trust Company, estate of Bird). In its opinion the court of appeals said:

"We certainly did not hold or intend to hold that in all cases the date of the creation of the trust was fixed by the time the executors actually delivered the trust funds to the trustee, or if executors and trustee were one, the time when they segregated the trust funds or made appropriate entries on their books. . . . We fail to find in this will any indication such as existed in the Ladd and Heye cases of an intention to postpone the creation of the trust to some future date. On the other hand, the clear intent was that the beneficiaries should receive the income from the testator's death. Therefore the trust was created as of that time and the apportionment should be made as of the same day."

We may now go back to our comfortable understanding of the law before it was temporarily disturbed by the appellate division on the 5th of last June.

Yours truly,

HAROLD DUDLEY GREELEY.

New York, December 30, 1925.