



Presumption of Death (Scotland) Act 1977

1977 CHAPTER 27

5 Effect on property rights of recall or variation of decree

- (1) Subject to the following provisions of this section, a variation order shall have no effect on rights to or in any property acquired as a result of a decree under section 2 of this Act.
- (2) Notwithstanding the generality of subsection (1) above, where a decree under section 2 of this Act has been varied or recalled by a variation order, the court shall make such further order, if any, in relation to any rights to or in any property acquired as a result of that decree as it considers fair and reasonable in all the circumstances of the case; but no such further order shall affect any income accruing between the date of that decree and the date of the variation order.
- (3) In considering what order shall be made under subsection (2) above, the court shall, so far as practicable in the circumstances, have regard to the following considerations, namely:—
 - (a) that, in the case of any property which is being or has been administered under a trust, any person who on account of the variation order would, apart from subsection (1) above, have been entitled to rights to or in any such property, or any person deriving right from him, shall be entitled to have made over to him by the trustee in full satisfaction of these rights only—
 - (i) the said rights to or in any such property or other property for the time being representing it which is still in the hands of the trustee at the date of the variation order, and
 - (ii) the value, as at the date of distribution, of the said rights to or in any such property which has been distributed;
 - (b) that any capital sum paid by an insurer as a result of the said decree (other than a capital sum which has been distributed by way of an annuity or other periodical payment) or any part of such sum should be repaid to the insurer if the facts in respect of which the variation order was pronounced justify such repayment.

- (4) The court shall not make an order under subsection (2) above unless application for the variation order has been made to the court within the period of five years beginning with the date of the decree under section 2 of this Act.
- (5) Where any person who has acquired rights to or in any property as a result of a decree under section 2 of this Act, or any person deriving right from him, enters into a transaction with another person whereby that other person acquires in good faith and for value any right to or in that property or any part of it, the transaction and any title acquired under it by that other person shall not be challengeable on the ground that an order under subsection (2) above has been made in relation to that property.
- (6) A trustee shall be liable to any person having entitlement by virtue of an order under subsection (2) above for any loss suffered by that person on account of any breach of trust by the trustee in the administration or distribution of the whole or any part of the property, except in so far as the liability of the trustee may be restricted under any enactment or by any provision in any deed regulating the administration of the trust.
- (7) Nothing in this section shall apply to estate duty or capital transfer tax which falls to be repaid as a result of a variation order having been pronounced.