
Volume 33
Issue 4 *Dickinson Law Review - Volume 33,*
Issue 4

3-1-1929

Widow's and Children's Exemption in Pennsylvania

W. Robert Thompson

Follow this and additional works at: <https://ideas.dickinsonlaw.psu.edu/dlra>

Recommended Citation

W. R. Thompson, *Widow's and Children's Exemption in Pennsylvania*, 33 DICK. L. REV. 253 (1929).
Available at: <https://ideas.dickinsonlaw.psu.edu/dlra/vol33/iss4/7>

This Article is brought to you for free and open access by the Law Reviews at Dickinson Law IDEAS. It has been accepted for inclusion in Dickinson Law Review by an authorized editor of Dickinson Law IDEAS. For more information, please contact lja10@psu.edu.

complainant to the defendant was not paid, the purchase money to be applied on account of the amount so due.

Rule 8. *United Drug Company v. Kovacs*,¹⁴ is an authority for the rule that while a court of equity which has obtained jurisdiction for any purpose will ordinarily round out the whole circle of controversy between the parties, still it cannot do this as to a right based on a statute which clearly specifies an entirely different jurisdiction for establishing and enforcing the liability.

A full and complete discussion of the application of this maxim cannot be presented in a few rules as stated above, but, the author feels that these rules cover the vast majority of the cases wherein the maxim has been followed.

W. HUDSON R. UNGER.

WIDOW'S AND CHILDREN'S EXEMPTION IN PENNSYLVANIA.—“The widow shall remain in her husband's capital mansion house for forty days after his death during which time her dower shall be assigned. These forty days are called the widow's quarantine.”¹ Thus originated what today in Pennsylvania is known as the “widow's and children's exemption.” The purpose of such an allotment is to protect the family from financial distress in the period immediately following the death of the husband or father, so that one bereavement be not followed by another - loss of subsistence.²

The present statutory authorization allowing the widow's exemption is Section 12a of the Fiduciaries Act of 1917³ which, in effect, provides that the widow, or children, in case of no widow, shall *retain* property or the proceeds thereof in the amount of five hundred dollars.. Section 6 of the Intestate Act of 1917⁴ providing that one year's wilful and malicious desertion by a wife shall forfeit her interest in the deceased's estate has no application in determining the validity of a widow's claim for exemption under the Fiduciaries Act.⁵

¹⁴279 Pa. 133 (1924).

¹Blackstone's Commentaries. Vol. 2, Ch. 8, Page 135.

²*Sipes v. Mann*, 39 Pa. 414 (1861); *McGovern's Estate*, 19 Berks (Pa.) 347 (1927).

³P. L. 447.

⁴P. L. 829.

⁵*Braum's Estate*, 86 Pa. Super. 245 (1926); *Stauffer's Estate*, 89 Pa. Super. 531 (1926).

The widow's exemption is neither a title nor interest passing under the intestate laws,⁶ nor an estate of inheritance⁷ but is a pure gratuity by force of law,⁸ an independent bounty,⁹ dependent upon residence within this Commonwealth¹⁰ and the family relationship.¹¹ Since the right has the above characteristics, it follows that a demand for the same is necessary.¹²

The widow then, as a general rule, can take her exemption when it appears that she has discharged her duties as a wife. The fact that there has been a separation and the husband has secured a divorce void in Pennsylvania¹³ or has left the wife without just cause¹⁴ will not debar the widow's claim. The widow may elect to claim her exemption in addition to a bequest in her late husband's will.¹⁵

The claim for exemption on the part of the widow is barred where the wife is living apart from her husband without such reasonable cause as would have entitled her to a divorce.¹⁶ That being the rule, it follows that where the separation is by mutual consent there can be no valid claim for exemption.¹⁷ So, where the wife has voluntarily and wilfully deserted the husband,¹⁸ likewise where there has been a formal separation and release, the widow's claim is barred.¹⁹ In the case of a widow having secured a divorce *a menso et thoro*, her right of exemption is cut off,²⁰

⁶Hildebrand's Estate, 262 Pa. 112 (1918); Stauffer's Estate, *supra*.

⁷Hildebrand's Estate, *supra*; Buckland's Estate, 239 Pa. 608 (1913); Peeble's Estate, 157 Pa. 605 (1893); Stauffer's Estate, *supra*.

⁸Sipes v. Mann, *supra*; Stauffer's Estate, *supra*.

⁹Note 7.

¹⁰Platt's Appeal, 80 Pa. 501 (1876).

¹¹Crawford's Estate, 81 Pa. Super. 222 (1923); Lane's Estate, 6 Dist. (Pa.) 618 (1897). Leading Case.

¹²Andrew's Estate, 10 Erie (Pa.) 9 (1926).

¹³Platt's Appeal, 80 Pa. 501 (1876).

¹⁴Terry's Appeal, 55 Pa. 344 (1867); Schwartz's Estate, 10 D. & C. (Pa.) 674 (1925).

¹⁵Peeble's Estate, *supra*; Compher v. Compher, 25 Pa. 31 (1855); Wittel's Estate, 10 Erie (Pa.) 80 (1928).

¹⁶Nye's Appeal, 126 Pa. 341 (1889). Leading Case.

¹⁷Stauffer's Estate, *supra*; Crawford's Estate, *supra*.

¹⁸Braum's Estate, *supra*; Ross' Estate, 6 Kulp (Pa.) 521 (1892).

¹⁹Speidel's Appeal, 107 Pa. 18 (1884); Odiorne's Appeal, 54 Pa. 175 (1867).

²⁰Hettrick v. Hettrick, 55 Pa. 290 (1867); Fyock's Estate, 9 Lanc. L. R. (Pa.) 89 (1875).

and where the widow has relied on a voidable divorce for thirty years the result is the same.²¹

Since it has been shown when the widow may and may not take the exemption, it is now fitting to consider the children's right to exemption. Where there is no widow,²² and the surviving children have maintained the family relationship with the lately deceased widower,²³ they are entitled to the exemption of five hundred dollars. This is so even though the children are adult and are not dependent upon him for support.²⁴ An interesting problem arises in the case of an adult daughter, married, who together with her husband is maintaining the family relationship with her father. There are no appellate decisions on the question and the inferior courts are in conflict. In *Steele's Estate*,²⁵ the court held such children not to be within the purview of the act. The reason assigned was that the act had in view the aid of financially distressed widows and children. On the other hand, in *Stephenson's Estate*,²⁶ the opposite result was reached. The latter case seems more sound because the right to take the exemption is not dependent upon the financial status of the widow, the statute being silent on that point. Therefore, the right of the children to take the exemption, in absence of a widow, should not be dependent upon their extrinsic means of support.

Concerning the interesting question as to whether surviving children can take from a widow's estate, the courts have swayed from one side to the other by various *obiter dicta*, the final result being found in the three following cases. The first, *King's Appeal*,²⁷ held that the children could not take the exemption from their mother's estate where the father survives and by *dictum* says that children can never take from their mother. The next,²⁸ limited the above case and held that children could take their exemption when their father had been absent for seven years (presumably dead). The last,²⁹ in turn limited

²¹*Limber's Estate*, 284 Pa. 346 (1925).

²²*Alexander's Estate*, 13 Phila. (Pa.) 564 (1878).

²³*Geheringer's Estate*, 10 D. & C. (Pa.) 279 (1927).

²⁴*Geheringer's Estate*, *supra*; *Hornberger's Estate*, 30 Dist. (Pa.) 907 (1921); *Lane's Estate*, *supra*.

²⁵13 Phila. (Pa.) 398 (1880).

²⁶41 C. C. (Pa.) 260 (1913). See also *Hornberger's Estate*, *supra*.

²⁷84 Pa. 345 (1877).

²⁸*Hime's Appeal*, 94 Pa. 381 (1880).

²⁹*Wanger's Appeal*, 105 Pa. 346 (1884).

the second case so that where a wife has been devised property which is bound by liens, on the widow's death the claim of the creditors is superior to that of the children.

What amounts to a waiver or release of the widow's right to retain her exemption? Clearly, the right is released by an ante-nuptial agreement,³⁰ waiving all rights in her husband's estate and the result is the same in the case of a post-nuptial agreement.³¹ There is no definite time for making the claim, but it must be made before the estate has so changed, that expense and embarrassment would result from the allowance of the claim.³² Of course, she has no right of exemption where she has married again, without receiving her claim.³³ If the widow has taken part of the five hundred dollars from the personalty and has made no claim for the remainder due her, prior to a sale of the realty, she will be deemed to have waived her right,³⁴ as where she has made a claim antagonistic to the funds from which she now seeks her exemption.³⁵

As a general rule, the widow's and children's exemption is allowed regardless of whether the decedent died testate or intestate, or whether the estate is solvent or insolvent.³⁶ The widow's claim takes precedence to debts not liens,³⁷ judgments that are liens,³⁸ distraint of landlord on a lease made by the decedent,³⁹ mechanic's liens,⁴⁰ tax claims,⁴¹ funeral expenses of the decedent,⁴² and claims of the United States for overpayments made to the decedent for disabilities received in the late war.⁴³ However, there

³⁰Tiernan v. Binns, 92 Pa. 248 (1879).

³¹Haendler's Estate, 81 Pa. Super. 168 (1923).

³²Lane's Estate, *supra*.

³³Burk v. Gleason, 46 Pa. 297 (1863).

³⁴Hutman's Appeal, 81 Pa. 329 (1876). See also Baskin's Appeal, 38 Pa. 65 (1860) and Davis' Appeal, 34 Pa. 246 (1859).

³⁵Countryman's Estate, 151 Pa. 577 (1892).

³⁶Baldy's Appeal, 40 Pa. 328 (1861); Hill v. Hill, 32 Pa. 511 (1859); Compber v. Compber, *supra*.

³⁷Hill v. Hill, *supra*.

³⁸Kauffman's Appeal, 112 Pa. 645 (1886); Notter's Appeal, 45 Pa. 361 (1863); Spencer's Appeal, 27 Pa. 218 (1856).

³⁹Sweeney v. Dumont, 36 C. C. (Pa.) 552 (1909).

⁴⁰Hildebrand's Appeal, 39 Pa. 133 (1861).

⁴¹Allentown's Appeal, 109 Pa. 75 (1885).

⁴²Weir's Estate, 20 Phila. (Pa.) 146 (1891); Luke's Estate, 17 Phila. (Pa.) 517 (1885).

⁴³Jones' Estate, 84 Pa. Super. 170 (1924).

are two cases in which the widow's claim is not superior. Where the decedent had executed a mortgage, the mortgagee has priority over the claim of the widow,⁴⁴ and the costs of the administration also take priority to the right of the widow.⁴⁵ The reason assigned in the last case is that such expenses are incurred in the ascertainment of the amount of the estate without which, the estate has not legal existence.⁴⁶ It is submitted, however, that since the purpose of the exemption is to furnish subsistence *until* the estate has been ascertained, the exemption should take precedence to the costs of the administration of the estate.

W. ROBERT THOMPSON.

CREATION AND TAXATION OF JOINT BANK DEPOSITS—The first situation to be considered is the case in which a deposit is made in a bank by one person in the names of two others. If these two persons are not husband and wife the deposit will create a joint-tenancy. At common law the right of survivorship was an incident of a joint-tenancy. But this right of survivorship has been abolished by the Act of March 31, 1812, 5 Sm. L. 395.¹ Thus, a mere deposit in the names of two persons not husband and wife would by virtue of the Act of 1812 create a joint-tenancy without the right of survivorship. Therefore, upon the death of one of the persons in whose name the deposit is made, the decedent's interest in the fund would not vest in the survivor by operation of the right of survivorship, and could, consequently, be subjected to an inheritance tax. But if in the creation of the joint-tenancy it has been provided² that the right of survivorship shall apply, then upon the death of one of the joint-tenants, the survivor is deemed to be the sole owner by virtue of the right of survivorship³ and a tax levied upon the decedent's interest in the fund is improper. The reason for this is that the Act

⁴⁴Kauffman's Appeal, *supra*; Allentown's Appeal, *supra*; Nerpel's Appeal, 91 Pa. 334 (1879).

⁴⁵McIntyre's Estate, 44 C. C. (Pa.) 111 (1915).

⁴⁶Weir's Estate, *supra*.

¹Mardis, *Admr. v. Steen*, 293 Pa. 13, 16.

²Arnold v. Jack's *Admr.*, 24 Pa. 57 (right of survivorship given by direction of testator); *Redemptorist's Fathers v. Lawler*, 205 Pa. 24; *Kerr v. Verner*, 66 Pa. 326; *Jones v. Cable*, 114 Pa. 586; *Lentz v. Lentz*, 2 Phila. 148 (by implication of words in will).

³Mardis, *Admr. v. Steen*, *supra*.