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USE OF THE TERM "FREEHOLDER" IN  
PENNSYLVANIA

The recent case of *In re Annexation of a Portion of Abington Township to Borough of Jenkintown*,<sup>1</sup> brings one of the two definitions of the term "freeholder" to the attention of the Pennsylvania Bar and students of law.

This word has had two different meanings in Pennsylvania law depending usually on the purpose of the statute using the term. It has one definition when used in reference to municipal problems, such as in petitions for annexation and the like, and another definition when used in connection with exemption from arrest, stay of execution, or *capias ad respondendum*. Part One of this note will deal with the former meaning and Part Two with the latter definition of the term "freeholder".

**Part One**

*In re Annexation of a Portion of Abington Township to Borough of Jenkintown*,<sup>2</sup> is the latest case interpreting the meaning of the word "freeholder" in reference to a statutory requirement that an annexation petition be signed by "a majority of the freeholders of the territory proposed to be annexed."

The Township of Abington appealed from an order dismissing its complaint against an ordinance of the Borough of Jenkintown annexing a portion of the township to the borough, the ordinance being passed pursuant to a petition to the borough council under Section 425 of the General Borough Code of 1927.<sup>3</sup> This section provides that:

"Any borough may, by ordinance, annex adjacent land situate in the same or any adjoining county, upon petition of a majority of the freeholders of the territory proposed to be annexed."

The petition for annexation was filed by the executors and trustees of a certain estate and by another person. It

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<sup>1</sup>101 Pa. Super. Ct. 227 (1931).

<sup>2</sup>101 Pa. Super. Ct. 227 (1931).

<sup>3</sup>Act of May 4, 1927, P.L. 519, sec. 425, 53 P.S. sec. 12461.

averred that they were all freeholders situate in Abington Township. Appellant's first two grounds of appeal were that the requirements for annexation were not complied with because (1) the petition for annexation was not signed by a majority of the freeholders of the territory proposed to be annexed; and (2) the petitioners were not resident freeholders of the territory proposed to be annexed. Mr. Justice Gawthrop in delivering the opinion of the Superior Court held as to the first point that:

"We do not doubt that an executor and trustee can be a freeholder within the meaning of that term as used in the section of the General Borough Act of 1927 relating to the annexation of territory."<sup>4</sup>

Therefore the trustees and executors were held to be freeholders within the meaning of the General Borough Code and as such were proper petitioners for annexation.

In answer to appellant's second contention the court said:

"The contention that the petitioners must be resident freeholders of the territory to be annexed is unsound. The requirement of Section 425 of the Act is that the petitioners be 'freeholders' of the territory proposed to be annexed. The language is unambiguous and requires no judicial construction. *Devore's Appeal* (56 Pa. 163) supra, relied on as sustaining the contention that the petitioners must be resident freeholders, construed the Act of April 3, 1851, P.L. 325, which required that petitioners should be residents of the territory sought to be annexed."<sup>5</sup>

It was also decided by the court that where the boundary of the borough was the side of a road and did not include the road, owners whose title extended to the middle of the road were freeholders within the meaning of the Borough Code. On other grounds the proposed ordinance was adjudged null and void.

In defining who is a freeholder Mr. Justice Gawthrop

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<sup>4</sup>101 Pa. Super. Ct. 227, 231, 232 (1931).

<sup>5</sup>101 Pa. Super. Ct. 227, 234 (1931).

adopted the definition used in the case of *Mountrville Borough*,<sup>6</sup> which is the following:

"At common law he who has the actual possession of land for life, or a greater estate, is a freeholder. It is evidently in this sense that the term is used in the act under consideration (i.e., the Act of April 1, 1834, P.L. 163, which relates to incorporation of boroughs). He who holds, and not he who will hold, the estate, is the freeholder. This must be so; otherwise, if the present holder of the estate were opposed to the incorporation of a borough, and the remainderman who is to hold it in the future were in favor of it, the latter might impose upon the former his proportion of the costs of incorporation and the increased taxes and other expenses growing out of the same, not only without his consent but in spite of his opposition. Surely the Legislature did not intend such a result."<sup>7</sup>

In the case of *Denny v. Bellevue Borough*,<sup>8</sup> an injunction was sought to decree null and void an ordinance annexing part of Ross Township to the Borough of Bellevue on the ground that it was not in fact signed by a majority of the freeholders in the annexed district. In addition to holding that tenants in common are each freeholders and must be counted in ascertaining the total number of freeholders, the court said:

"A freeholder is one having title to real estate, and the amount or value of his interest therein is immaterial."<sup>9</sup>

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<sup>6</sup>31 Pa. Super. Ct. 18, 22 (1906), which in turn adopted language used in *Clippinger v. Creps*, 2 Watts 45 (Pa.-1833). For other definitions of a freeholder see: 3 Words & Phrases (1st series) 2969, 2970; *Ibid.* (3rd series) Vol. 3, pp. 802, 803; and 27 C.J. 896.

<sup>7</sup>101 Pa. Super. Ct. 227, 232 (1931).

<sup>8</sup>18 Pa. Dist. 839, 56 Pitts.L.J. 25 (Pa.-1908).

<sup>9</sup>18 Pa. Dist. 840—an obvious misstatement since a freehold estate is one for life or greater. On the same page the court erroneously states: "A freehold is an estate in real property, or inheritance, or for life, or for a term". (boldface ours). According to Blackstone's classification of estates and the generally accepted cases an estate for a term of years is not an estate of freehold. On the question as to whether husband and wife holding land as tenants by the entirety are each freeholders the only decided cases hold that in

Purchasers holding lots under articles of agreement for purchase of land have been held not to be freeholders.<sup>10</sup> Moreover, freeholders and taxable inhabitants are not synonymous.<sup>11</sup>

A case recognizing the two uses of the term "freeholder" in Pennsylvania is that of *Bethlehem Borough Extension*,<sup>12</sup> wherein there was a motion to quash an ordinance and proceedings for the extension of borough limits on the ground that the petition was not signed by a majority of "freeholders" within the limits to be annexed. In the course of its opinion the court noted the following:

"The designation of freeholders as petitioners does not imply that they must be such as have an unencumbered estate and entitled to the privilege of stay of execution or exemption from arrest. It is intended to describe the quantity of interest which the tenant has in the tenement, measured by its duration and extent, according to its technical and common law signification, indicating a permanency of tenure to be affected by the proposed change. A freeholder has either an estate for life or in fee, and a person who has an interest less than this is not a landowner."<sup>13</sup>

In short, then, a freeholder, within the meaning of that term as used in statutory requirements for annexation

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such an instance husband and wife are each to be treated as freeholders, and not both as but one freeholder. See *In re Village of Holcomb*, 97 Misc. Rep. 241, 162 N. Y. Supp. 848 (1916); *Maitlen v. Barley*, 174 Ind. 620, 92 N.E. 738 (1910); *Bilder v. Robinson*, 73 N.J.E. 169, 175, 67 Atl. 828 (1907). At *Chrostwaite on Pennsylvania Borough Law* (1929 ed) at page 784 states that "tenants by entireties, husband and wife, probably count as one freeholder," but cites no cases for his statement. Although the New York viewpoint is the better one in view of the trend of the married woman property acts, it is submitted that in Pennsylvania a contrary result might be reached when the question arises, since Pennsylvania courts consistently hold that in an estate by the entirety "there is but one estate and in contemplation of law it is held by one person" and the Married Woman Property Acts of 1848 and 1893 have not changed this rule: *Gasner v. Pierce*, 286 Pa. 529, 134 Atl. 494 (1926).

<sup>10</sup>*Ward v. Borough of Carrick*, 61 Pitts.L.J. 523 (Pa.-1913).

<sup>11</sup>*Ephrata Borough Annexation Petition*, 41 Lanc. 513 (Pa.-1929).

<sup>12</sup>25 Pa. C. C. 209 (1901).

<sup>13</sup>25 Pa. C. C. 209 (1901).

petitions and the like, is one who has a life estate or a greater estate.

### Part Two

The term "freeholder" has added requirements in reference to the staying of execution or exemption from arrest. For these purposes a statutory definition of the term was enacted in the early days of the Commonwealth. The Act of March 20, 1725,<sup>14</sup> provides that:

"No freeholder, inhabiting in any part of this province, who hath resided therein for the space of two years, and has fifty acres of land, or more, well cleared or improved, or hath a dwelling-house worth fifty pounds current money of America, in some city or township within this province, clear estate, or hath unimproved land to the value of fifty pounds like money, shall be arrested or detained in prison by any writ of arrest, or *capias ad respondendum*, in any civil action, unless it be in the king's case, or where a fine is or shall be due to the king, his heirs, or successors; or unless they be such freeholders as by this act are made liable to be arrested."

This Act was revived by the Act of April 14, 1838.<sup>15</sup>

Mr. Justice Arnold notes in *Logan v. O'Neill*,<sup>16</sup> three propositions, to wit:

"1. A person who possesses land (freehold) of the value of fifty pounds (\$133.33) is entitled to exemption from suit by *capias* and arrest thereon without regard to the amount of the plaintiff's demand, and a *capias* issued against such a person will be abated.

"2. If a defendant's property is encumbered but it is sufficient to pay the incumbrances and satisfy the debt or damages demanded, the defendant will be discharged on common bail."<sup>17</sup>

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<sup>14</sup> Sm.L. 164, sec. 1, 12 P.S. sec. 251. Originally this act was strictly construed but tendency now is toward more liberal construction. See *Bolig v. Herman*, 20 Pa. Dist. 256 (1910).

<sup>15</sup> P.L. 457, sec. 2. See *Lynd v. Biggs*, 1 Clark 18 (Pa.-1842).

<sup>16</sup> 34 W. N. C. 280 (Pa.1894). See excellent treatment of this Act in *Patton's Pennsylvania Common Pleas Practice* (2nd Ed.-Myers and Reese) at pp. 79, 80.

"3. The court will dispose of a motion to abate a *capias* or discharge on common bail in a summary manner either by examination of the title papers and records or by affidavits, depositions and official searches."

The case of *Ehrhart v. Bear*,<sup>18</sup> which interpreted Section 3 of the Act of March 20, 1725 providing that if the court abate the writ because of the arrest of a freeholder the defendant shall be allowed thirty shillings cost, held that the thirty shillings costs are not to be reckoned in sterling but in Pennsylvania currency where a shilling was worth thirteen and one-third cents, making the amount allowable Four Dollars.

It is submitted that the second proposition enunciated by the case of *Logan v. O'Neill*, *supra*, has not been followed by the latter cases, and apparently is no longer the law. To quote from Patton's Pennsylvania Common Pleas Practice:

"Judge Arnold held (in *Logan v. O'Neill*) that if the defendant's equity in the premises were sufficient to meet the plaintiff's claim he was entitled to be discharged; yet there are some cases in which the courts have applied the rule that the defendant's real estate must be absolutely clear of encumbrance in order to entitle him to be exempt from arrest. In other words the fact that the difference between the assessed valuation and the encumbrance may far exceed the debt, makes no difference, the property must be clear. This is the rule that is regularly applied to a stay of execution on the ground of freehold."<sup>19</sup>

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<sup>17</sup>See also *Bolig v. Herman*, 20 Pa. Dist. Ct. 256 (1910). This is not the rule when freehold is pleaded for stay of execution: Patton's Practice, *supra*, 79. An application of a freeholder for exemption may be made within a reasonable time after the arrest even after defendant had entered bail: *Desuian v. Zefcak*, 22 Pa. C. C. 77 (1899).

<sup>18</sup>20 Pa. Dist. Ct. 140 (1910).

<sup>19</sup>Patton's Practice, *supra*, 79, 80. See also *Filter v. LaBreure*, 1 S. & R. 363 (Pa.-1815); *Wolfe v. Yohn*, 1 Lanc. R. 194 (Pa.-1883); *Lay v. Meerhoff*, 2 West. 53 (Pa.-1911). It is to be noted that the exception of suits for fines refers only to suits on recognizances, or for a fine actually due the state. It does not extend to action *trespass vi et armis*, although a fine be due the Commonwealth therein

So long as the defendant possesses unencumbered property of the above mentioned value, he is privileged from arrest, even though plaintiff's demands greatly exceed that amount.

In reference to the Act of 1725, therefore, a freeholder may be said to be one who possesses a clear unencumbered estate worth at least One Hundred Thirty-Three Dollars and Thirty-Three Cents and has been a Pennsylvania resident for at least two years.

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upon the judgment: *Hudson v. Howell*, 1 Dall. 310 (Pa.-1788); *Buchanan v. Jones*, 3 W.N.C. 302 (Pa.-1877); *McGuigan v. McCarthy*, 6 W.N.C. 253 (Pa.-1878). As to proceedings when a freeholder is improperly arrested see Act of March 20, 1725, 1 Sm.L. 164, sec. 3, 12 P.S. sec. 253.