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Recovery for Wrongful Death

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in the Pennsylvania law. It is impossible to foresee all the problems of interpretation involved, but in providing for joinder in circumstances presenting "any common question of law or fact" a wide latitude appears to have been granted. The apparent purpose of the act is remedial—to avoid a multiplicity of suits and to expedite trial of cases. In that respect it is comparable to the Scire Facias Act to join additional defendants.¹⁰

In *Vinnacombe v. City of Philadelphia*¹¹ it is said that this latter act is to be strictly construed to advance the legislative purpose. A similar statement of construction is to be expected concerning act No. 404.

Section 2 grants to the Court a wide discretion which will frequently need to be exercised in order to avoid confusion and improper results. By this grant of discretion the legislature has refused to concern itself with the details of application and has placed upon the Courts the responsibility for the practical efficiency of the act. The judicial administration of this discretion may serve the purpose of discouraging litigation over procedural matters.

Section 3 is a statement of general existing law. It is not to be expected that any change is intended to be effected in the rules relating to joinder of parties in appellate proceedings, and it appears obvious that there is no intent to provide for trial of issues between plaintiffs.

It is submitted that the legislative purpose would be more certainly and fully accomplished by a further act to eradicate any grounds for delay in bringing issues to trial because of alleged non-joinder or misjoinder of parties. A model as adopted in New Jersey is found in the English Rules of Court.¹²

W. O. Garber

RECOVERY FOR WRONGFUL DEATH

Our legislature has again widened the scope of our laws regulating the recovery of damages for injuries resulting in death. Under the act which went into effect on April 1, 1937,¹ to the persons entitled to recover damages for injuries causing death has been added the personal representative of the decedent.

The act provides that *if none of the above relatives (husband, widow, children, or parents of the deceased) are left to survive the decedent, then the per-*

¹⁰1929; Apr. 10, P. L. 479, 12 P. S. 141.

¹¹ 297 Pa. 564.

¹²(Order 16, r. 11). No action shall be defeated by the non-joinder or misjoinder of parties, but new parties may be added and parties misjoined may be dropped, by order, at any stage of the cause, as the ends of justice may require. N. J. (P. L. 1912, p. 378).

¹Act number 48.

sonal representative shall be entitled to recover damages for reasonable hospital, nursing, medical, funeral expenses, and expenses of administration necessitated by reason of injuries causing death.

Apparently the basic purpose of this amendment is to protect a class of creditors, (namely, hospital, doctors, nurses, undertakers, and the personal representative) from loss because there is no proper person to sue. It is to be regretted, however, that the legislature made it a prerequisite of such a suit that the other persons entitled to sue must be dead. This provision prevents recovery, and hence, protection of these creditors, where there is living a husband, widow, children, or parents of the decedent: first, in all cases where it is sought to recover expenses of administration; and, second, where the surviving relative has not complied with the provisions of the act of 1927, P.L. 992, where it is sought to recover for funeral expenses. Thus, in a number of cases the payment of these claims is contingent upon the size of the estate. The injustice of this is brought home more forcibly since it is apparent that these expenses are directly attributable to the wrongdoer and there is little if any reason to protect him from damages which his wrongful act has caused.

In connection with these instances where there can be no recovery under the direct provisions of the acts, an interesting problem is created by reason of a recent decision of our Supreme Court.² Chief Justice Kephart says, concerning the prior wrongful death act, at page 153 of the opinion, that, "It would seem just and proper that, when a prior class has no beneficial interest in the proceeds of the recovery, but retains only the nominal right to sue and does not exercise such right, those who are beneficially entitled should not be barred thereby from prosecuting their claim. A proper procedure would be to allow them to use, as plaintiff, the name of the person entitled to bring the suit." The question is thus presented as to whether or not such a use action is available to the personal representative. It is submitted, however, that the answer to this problem lies in the express provision of the act, that, *if none of the above relatives are left to survive the decedent*, then and only then is the personal representative entitled to sue.

There is also a problem which arises from the language of the act itself. The act provides that the personal representative can recover damages for . . . *expenses of administration necessitated by reason of injuries causing death.*

If the framers of the act are to be taken to mean what they say, it will be necessary for the personal representative to point to the expenses of administration which he wishes to recover and show that they were incurred because the decedent died from certain injuries rather than a disease, or similar cause. It is apparent that the cause of a person's death has no effect upon the expenses of administration except perhaps the cost of the suit for damages. It is the fact

²McFadden v. May, 325 Pa. 145.

that the person has died which gives rise to expenses of administration.

However, it should be noted that the words "necessitated by reason of injuries causing death" certainly are needed to limit hospital, nursing, medical, and, perhaps, funeral expenses. A reasonable interpretation of the act, therefore, might be that these limiting words were not meant to modify "expenses of administration" and, hence, should be regarded, as to them, as mere surplusage. Thus, the personal representative should be permitted to recover all the expenses of administration.

There is, however, a third interpretation which might be placed upon these words. The legislature could have meant those expenses of administration which are incurred by the personal representative to put him in a position so that he is legally entitled to maintain the suit.

Although three possible interpretations of the act have been suggested, it is submitted that the most reasonable interpretation is the one which permits the personal representative to recover all expenses of administration. This conclusion is further strengthened by the fact that the amendment was not created to permit a recovery for general damages for wrongful death, but only for those damages which are necessary to protect a certain class of creditors of which the personal representative is made a member. If this is true, he should be protected as to all expenses and not merely those which are occasioned in obtaining the legal right to sue, or the mere cost of the suit itself.

Although the amendment is neither as complete nor as clear as could be desired, it has wrought a much needed change in the pre-existing law by enlarging the class of persons entitled to recover and the recoverable damages for injuries resulting in death.

C. M. Koontz