Volume 42
Issue 4 *Dickinson Law Review - Volume 42, 1937-1938*

6-1-1938

In Re: Report of the Committee of Law of Decedents' Estates and Trusts of the Pennsylvania Bar Association

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NOTES

IN RE: REPORT OF THE COMMITTEE ON LAW OF DECEDENTS' ESTATES AND TRUSTS OF THE PENNSYLVANIA BAR ASSOCIATION

FOREWORD

In the January, 1938 number of the Pennsylvania Bar Association Quarterly, at page 84 and following, is published a report of the Committee on the Law of Decedents' Estates of the Pennsylvania Bar Association and embodying a number of suggestions for the consideration of the Committee in its report to the Bar Association at the June, 1938 meeting at Bedford. To consider these suggestions a meeting of the Committee was held in Philadelphia on Friday, May 6, 1938, at the office of the Chairman, John R. Umsted, Esq., at which time the several topics as suggested were considered in separate reports as assigned to the respective members of the Committee. The full report is now in course of preparation for presentation to the Association, and it is hoped that for the information of the profession it will be possible to publish the entire report.

In view of the discussion in the Dickinson Law Review recently of the topic of Adoption, the following report as submitted may be of interest to the readers and especially in view of the case of *Fisher vs. Robinson,* the latest emanation from our Supreme Court. The Report is as follows:

PENNSYLVANIA BAR ASSOCIATION COMMITTEE ON DECEDENTS' ESTATES AND TRUSTS

SUGGESTION NO. 15

Suggestion No. 15 is as follows:

> "A suggestion as to the advisability of an Act of Assembly clarifying the situation with respect to the rights of adopted children so as to make their status under the Wills Act, Intestate Act and Inheritance (Tax) Act together with that of their descendants the same as that of natural born children."

The above assignment has been given to the present writer in view of the article in the October, 1937 number of the Dickinson Law Review entitled:

"Concerning Adoption and Adopted Persons as Heirs in Penn'a." See 42 Dickinson Law Review, page 12 and following.

This article was written responsive to *Cave's Estate,* 326 *Pa.* 258, 192 *A.* 460, decided by the Supreme Court May 17, 1937 and also recorded as a lower court decision in 27 *D.* & *C.* 646. It would be the work of supererogation to repeat what has been said in the above article, but for the information of the members of the Committee an effort will be made to supply those members who do not have copies of the particular law review. Suffice it to say, that the emphasis in that article was placed upon the fact that adoption, by whatever process wrought, creates a status recognizable by the law, but the rules of law as applied to the particular status of adoption are found in the statutes of Pennsylvania and the decisions of law construing the same.

Cave's Estate, supra, is an instance of judicial interpretation of the meaning of Section 16 of the Intestate Act of 1917, 20 PS Sections 101 and 102, and held that where the decedent died intestate, unmarried and without issue and survived by four nephews and by the adopted daughter of a deceased nephew, the adopted child of the deceased nephew was entitled to take by representation the share of her deceased adopting parent in the estate of the decedent under the terms of the Intestate Law of 1917 and the provisions of Section 16, supra. Said STERN, J., inter alia:

> "The language of clause (a) of section 16 (20 P.S. section 101) is greatly strengthened and emphasized by that of clause (b) 20 P.S. section 102. Nothing could be more sweeping than the provisions: 'The person adopted shall, for all purposes of inheritance and taking by devolution, be a member of the family of the adopting parent or parents . . . Adopted persons shall not be entitled to inherit or take from or through their natural parents, grandparents, or collateral relatives.' This severs the child from his natural family tree and engrafts him upon that of his new parentage 'for all purposes of inheritance.' The evident purpose of this legislation is lost by the interpretation given to the act by the court below."

The importance of *Cave's Estate,* supra, is first, that it differentiates, explains and reconciles successively the cases of *Russell's Estate,* 284 *Pa.* 164, 130 *A.* 319, *Cryan's Estate,* 301 *Pa.* 386, 152 *A.* 675, and *Reamer's Estate,* 315 *Pa.* 148, 172 *A.* 655; and second, it establishes the judicial interpretation of section 16 (b) of the Intestate Act as meaning that adopted children of collaterals are entitled to take as next of kin when by the facts they stand in the adopted relationship as such next of kin.

Russell's Estate, supra, held that under section 15 (b) of the Wills Act of June 7, 1917, P. L. 403, 20 PS 252, the word "Issue" did not include the adopted child of a niece of the testator, and *Reamer's Estate,* supra, held that

the adopted daughter of a predeceased sister of the decedent was not related by consanguinity to decedent, and consequently first cousins of the decedent were entitled to letters of administration under section 2 (c), as amended, of the Fiduciaries Act of June 7, 1917, P. L. 447, 20 PS 343.

These two cases will form the base of a recommendation for statutory clarification and will be referred to hereafter.

Since *Cave's Estate,* supra, our Supreme Court has rendered another decision on the matter of adoption and again throws light upon Section 16 of the Intestate Act of 1917, although this statute was not directly in point. In *Fisher* vs. *Robinson, — Pa. —,* 198 *A.* 81, decided March 21, 1938, the facts were that Mary H. Robinson had three children by her first husband, William Robinson. She was divorced from the latter on January 21, 1901 and the following April 3, of the same year, she married Dr. D. E. Fisher. On January 21, 1906 Dr. Fisher by decree of Court of Common Pleas of Fulton County, Pennsylvania, adopted one of the children of Mary H. Robinson and on the record this child was named D. Edward Fisher. On the 24th of January, 1906 Mary Robinson Fisher deserted her husband and Dr. Fisher obtained a divorce absolute. On February 26, 1936 Dr. Fisher died and by will devised a piece of real estate to his adopted son, D. Edward Fisher. The latter in turn died intestate, unmarried and without issue, August 30, 1936, seised at the time of his death of the real estate in question and leaving as his nearest collateral or adoptive relative James B. Fisher, a brother of Dr. Fisher. His mother, Mary H. Robinson, also survived him and in an action of ejectment brought by James B. Fisher against Mary H. Robinson to obtain possession of this particular piece of realty the question of the title resolved itself into a discussion and determination of the effect of the Fisher adoption above outlined. The lower court held that Mary Robinson took the real estate in title as the mother of the decedent, but the Supreme Court reversed, holding that under the facts James B. Fisher, the brother of Dr. Fisher and the adoptive uncle of the decedent, was the latter's next of kin by adoption, and entitled so to take the real estate.

Said LINN, J.:

> "It would perhaps not be disputed that, if Mary Robinson had not been married to Dr. Fisher at the time he adopted her son, the case would be ruled in plaintiff's favor by what was said in *Cave's Estate,* 326 *Pa.* 358, 192 *A.* 460. But the learned court below was of opinion that, as D. Edward Fisher was the son by a former marriage of the then wife of Dr. Fisher, 'the intention of a husband adopting his wife's child would be not to cut off her rights (of inheritance) as natural mother and to make the child his child

> to the exclusion of her, but rather to make the child their child, and to assume merely the role of father and to share with his wife, as natural mother of the child, the responsibility of caring for and rearing the child.' . . . . He also said, 'It is probable that a stepfather would become so attached to his stepchild that he would want to make him his own, but it would be most improbable that a mother would consent to that procedure if the effect would be that the child would be no longer hers. The predominating intention in such cases must be to bring the household into one legal, as well as actual, family, but this could not result if the rights of the mother were cut off.' Accordingly, he concluded that on the death of the adopted son, the inheritance passed out of the family of Dr. Fisher (thus excluding his brother) and vested in the natural mother.
>
> "We think this is not a proper construction of section 16 of the Intestate Act, 20 P.S. sections 101, 102, which governs the case."

Mary Robinson Fisher was not a petitioner in the adoption proceedings instituted by her husband, but she did sign the consent clause of the petition. The Court followed *Cave's Estate,* supra, in holding that the adoption severed the child from the natural family tree and engrafted him upon that of his new parentage for all purposes of inheritance and that under the provisions of Section 16 the mother as the actual mother of the decedent had lost her status by the adoption and was precluded from taking as a natural relative, and on the other hand D. Edward Fisher by the adoption lost his former status and became engrafted, as it were, into the Fisher family and, therefore, his nearest relative by adoption was James B. Fisher, his adoptive uncle, who, under the provisions of Section 16 (b) was entitled to inherit and take to the exclusion of the decedent's natural parents.

It may be noted that the ejectment suit was by James B. Fisher against Mary H. Robinson and William Robinson, her divorced husband, but service was not obtained upon William Robinson. Therefore, the present decision did not adjudicate the rights of William Robinson, if any, as the natural father of the decedent. Another comment is concerning the remark of LINN, J., as follows:

> "If we should now assume that, prior to the divorce, defendant could have been regarded as an adoptive relative within the meaning of the statute, that relation was completely severed by the divorce."

This observation is no doubt correct as a proposition of law, but if it is assumed that Mary Robinson Fisher joined her husband, Dr. D. E. Fisher, in the adoption proceedings of her own son, then it would seem to follow that the adopted child would have been lifted out of the Robinson status completely and placed in the Fisher status so that in theory of law he would have become the child of Dr. Fisher and Mary Robinson Fisher with the same legal effect as though he had been born of their marriage. In this aspect of the case and a subsequent divorce, Mrs. Mary Robinson Fisher would have been entitled to take the real estate left by D. Edward Fisher, not by virtue of being the natural mother but in her new role as one of the adopting parents.

Another case to which reference is made is that of *Henner's Estate,* 19 *D. & C.* 563 (1933), wherein it was held that the Act of May 15, 1925, P. L. 806, 72 PS Section 302, in the use of the term "adopted children," referred only to those adopted by the decedent himself and that others in the lineal line receiving a legacy or share in an estate, although through the channels of adoption, would have to bear the rate of 10% instead of 2% as the death transfer tax. This case will also be included in the matter of a statutory recommendation.

RECOMMENDATIONS

In the light of the above cases and the discussion, it would appear to the writer that the recent decisions of *Cave's Estate* and *Fisher vs. Robinson* have very well clarified the terms of Section 16 of the Intestate Act, wherein its clear language was distorted by prior decisions, which adhered too closely to the past and failed to follow the legislative enactments in their more comprehensive terms.

Nevertheless, *Russell's Estate, Reamer's Estate,* and *Henner's Estate* ought to be obviated in their results through some form of statutory action.

In view of the Statutory Construction Act of May 28, 1937, P. L. 1019, it is suggested that a very simple way is by amendment of the later Act and the embodying in the same of legislative definitions of the words "descendants," "issue," "lineal heirs," and "degrees of consanguinity," in such a way as to make it clear that these words, unless otherwise expressly defined to the contrary by the particular document in which they were contained, should be presumed to include adopted persons.

If such words and phrases were inserted by amendment, together with any others appropriate but which do not at present occur to the writer, the law of adoption would then be brought into rather perfect alignment to the end that the rule of law would be that when a person was properly adopted he would be considered by the law for all purposes of inheritance, either under intestacy

or testacy, as though he were actually of the blood of the person adopting and as though he had been born in lawful wedlock as the child of such adopting parent.

The statutes which would be affected particularly are section 15 (b) of the Wills Act of June 7, 1917, P. L. 413, 20 PS 252, as construed in *Russell's Estate,* supra, Section 2 (c) of the Fiduciaries Act of June 7, 1917, P. L. 447, as amended, 20 PS 343, and applied in *Reamer's Estate,* supra, and Section 1 of the Act of May 15, 1925, P. L. 806, 72 P.S. 2302 as construed in *Henner's Estate,* supra.

Respectfully submitted,

A. J. White Hutton,

of Committee

APPLICATION OF THE FAIR TRADE LAWS

It is our purpose to call attention to the application of the statutes, called Fair Trade Acts, which are directed against the uneconomic practice of predatory price-cutting carried on in various fields of commercial enterprise. A producer or regional distributor of articles of trade creates, over a period of years, by advertising and otherwise, valuable good will for its products. These products, coming ultimately into the hands of retailers for sale to the consumer, are sold under the distinctive trade-marks, brands, and names of the producer. The latter thus becomes identified with its product in the minds of the public and it is to these marks that the good will is incidental. Ordinarily, such products are sold at a uniform, well-known market price; but some retailers, in order to create the impression that other goods sold in their stores are sold at a reduced price, sell the well-known articles at prices conspicuously lower than their established price. This practice attracts to their stores consumers to whom the retailers sell their other merchandise at prices sufficiently high to meet the loss and achieve a general profit. Such activity injures the good will built up by the producer or distributor and causes serious damage to its business.[1]

[1]For an excellent discussion of the economic importance and effect of fair trade legislation, see 24 Calif. Law Rev. 640.