



**PennState**  
Dickinson Law

**DICKINSON LAW REVIEW**  
PUBLISHED SINCE 1897

---

Volume 44  
Issue 2 *Dickinson Law Review - Volume 44,*  
*1939-1940*

---

1-1-1940

## Review of Pennsylvania Legislation 1939 - Property Real: "Spite Fences"

Harold S. Irwin

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

---

### Recommended Citation

Harold S. Irwin, *Review of Pennsylvania Legislation 1939 - Property Real: "Spite Fences"*, 44 DICK. L. REV. 121 (1940).

Available at: <https://ideas.dickinsonlaw.psu.edu/dlra/vol44/iss2/19>

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](mailto:lja10@psu.edu).

credit to the heir or devisee on the assumption that he owned the land clear of all non-record debts; that the heir or devisee would be unable to obtain credit because of his ownership; that he could not safely make improvements to the property; and that it would practically force him to sell the property immediately after the statutory period had elapsed.

The court held that it was the intention to limit the lien not merely to bona fide purchasers for value, but also as to heirs and devisees. The ruling of the court was so eminently sound that it has been followed without question in later cases: *Quigley v. Beatty*, 4 Watts 13; *Hemphill v. Carpenter*, 6 Watts 22; *Commonwealth v. Pool*, 6 Watts 32; *Bailey v. Bowman*, 6 W. & S. 118; *Wallace's Appeal*, 5 Pa. 103; and *Loomis' Appeal*, 29 Pa. 237."

In *Watts' Estate*,<sup>7</sup> it is said:

"Retrospective laws and state laws divesting vested rights, unless ex post facto or impairing the obligation of contracts, do not fall within the prohibition contained in the Constitution of the United States, however, repugnant they may be to the principles of sound legislation."

It thus appears that one may not rely upon the loss of a municipal lien as one may upon the loss of certain private liens. The former may always "reattach," while the latter, once lost, are gone irretrievably.

JOSEPH P. MCKEEHAN\*

## IX. PROPERTY

### a. Real: "Spite Fences"

The Act of June 22, 1917<sup>1</sup> made it unlawful for the owner or occupant of improved premises in any suburban district of the City of Philadelphia to erect any fence of a greater height than four feet if the additional height was unnecessary or when the fence was maliciously erected, elevated and maintained for the purpose of annoying the owner or occupant of the adjoining premises. Such a fence was declared to be a private nuisance and its erection, etc. made a misdemeanor. This act was either improper and unconstitutional local legislation under the Pennsylvania Constitution and a violation of the Fourteenth Amendment to the Federal

---

<sup>7</sup>336 Pa. 151, 155, 7 A. (2d) 329, 331 (1939).

\*Professor of Law, Dickinson School of Law.

Constitution, or else the malicious and spiteful characteristics of the residents of suburban Philadelphia made the evil of "spite fences" one peculiarly prevalent in that district as compared to the rest of the state. Even though not interdicted by the legislature, it is possible that our courts could hold that "spite fences" were improper and actionable throughout the rest of the state by holding such malicious erection an unreasonable use of land and hence a violation of the rights of the adjacent owner.<sup>2</sup>

The Act of May 26, 1939,<sup>3</sup> removes the anomaly of having such reasonable legislation so peculiarly local in application and extends its beneficent effect to the suburban district of any city or borough in Pennsylvania. A reasonable question might be raised as to the wisdom and validity of confining the Act to suburban areas and in not applying it to city and borough areas. It may even be argued that the suburban restriction applies only to cities and not to boroughs although this argument seems untenable.

#### b. *Personal: Share Accounts of Federal Savings and Loan Associations*

Federal savings and loan associations are corporations chartered by the Federal Government to perform the same functions as Pennsylvania building and loan associations. The Act of June 24, 1939,<sup>1</sup> makes certain provisions in regard to the issuing of share accounts in such associations.

Section 1 provides for the issuing of share accounts in the name of minors not less than sixteen years of age. It authorizes the association to pay the dividends and the repurchase value to such minor on his or her receipt and forbids interference by parent or guardian in his capacity as such. This provision is the same as the one for deposits in banking institutions except that the latter does not contain the sixteen years of age requirement.<sup>2</sup>

Section 2 (A) provides that dividends and repurchase value shall not be paid to less than all where share accounts are issued in the names of two or more persons, unless a different arrangement has been made either at the time of subscription or later, if the association is given written notice thereof. This provision merely codifies the common law rule as to tenants in common or joint tenants of personal property. No agency of one for another is implied, but there may be such an agency expressly created. The provision would seem to forbid paying a proper proportional share to each on his separate receipt unless such was provided for by express agreement, thus precluding involvement of the association in any disputes as to the proper share of one or more of the concurrent tenants. This

---

<sup>2</sup>See Blewitt, *Enjoyment of Property as Affected by Malice and Negligence*, 39 DICK. L. REV. 221.

<sup>3</sup>P. L. 231, 53 PURD. STATS. (Pa.) § 4231.

---

<sup>1</sup>P. L. 746, 7 PURD. STATS. (Pa.) § 819-902 *et. seq.*

<sup>2</sup>Act of May 15, 1933, P. L. 624, Art. IX, Sec. 902 as amended, 7 PURD. STATS. (Pa.) § 819-902.

provision is the same as the one for deposits in banking institutions except that the latter does not contain a provision for written notice.<sup>3</sup>

Section 2 (B) provides that where share accounts have been issued in the names of two or more persons and subscribed for under an arrangement that dividends or repurchase value may be paid on the receipt of less than all of the persons, the association may so pay even though one or more of the persons may be dead, and the association has knowledge of that fact. Why this should not be equally true where the separate payment arrangement has been made after subscription and the association has been given written notice thereof is inexplicable. This distinction may give rise to unfortunate losses to such associations unless the distinction is noted and complied with by the association. It is believed that this provision does not attempt to say that such accounts are necessarily joint tenancies with the right of survivorship between the owners but merely makes the agency so created at subscription one that is not revoked by death of an owner even though the association has knowledge of the death. This provision is identical with the one for deposits in banking institutions.<sup>4</sup>

Section 2 (C) provides that the Section is not to affect share accounts in the names of husband and wife. It is believed that this provision is due to an excess of caution and that the same results would be reached under the common law in the case of tenancies by entireties in share accounts. Payments would have to be made to both properly, for no agency is implied from the fact of marital relation, and the husband's control over the tenancy has long since ceased to exist. If registered in the names of husband "or" wife an agency would be implied, and there may be an express agency created when the registration is husband "and" wife.<sup>5</sup> After the death of either, the other would take by survivorship and payment to that one would be proper.<sup>6</sup> There is a similar provision in the statute controlling banking deposits.<sup>7</sup>

Section 3 provides that where shares are issued in the name of one as trustee for another and no other notice of the existence and terms of the trust is given the association, dividends and repurchase value shall be paid to the beneficiary in the event of the death of the one named as trustee, if the beneficiary be not less than sixteen years of age. This provision seems to be a recognition of the "tentative trust" doctrine as applied to bank deposits and providing for its application to these share accounts. It presumes that all shares so issued are so-called "tentative trusts" in the absence of notice in so far as it affects payment by the association on the death of the trustee. The provision is the same as the one applying to

---

<sup>3</sup>*Id.*, Sec. 903 (A). See *Romig v. Milton Bank*, 26 Pa. D. & C. 41 (1936).

<sup>4</sup>*Id.*, Sec. 903 (B).

<sup>5</sup>*Berhalter v. Berhalter*, 315 Pa. 225, 173 Atl. 172 (1934); *Madden v. Gosztonyi Savings and Trust Co.*, 331 Pa. 476, 200 Atl. 624 (1938).

<sup>6</sup>*Supra*, note 4.

<sup>7</sup>Act of May 15, 1933, P. L. 624, Art. IX, Sec. 903 (C) as amended, 7 PURD. STATS. (Pa.) § 819-903 (C).

deposits in banking institutions except that the latter does not contain the age restriction and requires the other notice of the trust to be in writing.<sup>8</sup>

HAROLD S. IRWIN\*

## X. PUBLIC UTILITIES

Several changes were made in the Public Utility Law of 1937.<sup>1</sup> Section 2, subsection 6, was amended by excluding from the definition of a "common carrier by motor vehicle" the following: "Transportation of property by the owner to himself, or to purchasers directly from him, in vehicles owned and operated by the owner of such property" (this provision is clearly unnecessary, for such a person is not a common or contract carrier and could not constitutionally be regulated by the Commission); any person furnishing transportation to school children exclusively; and any person using, or furnishing for use, dump trucks for the transportation of ashes, rubbish, excavated and road construction materials. This amendment was accomplished by the passage of two separate acts, neither of which referred to the other. The Act of June 15, 1939,<sup>2</sup> added paragraphs (b) and (c), while the Act of June 21, 1939,<sup>3</sup> added paragraph (b) (sic!).<sup>4</sup>

Section 2, subsection 7, was amended by excluding from the definition of a "contract carrier by motor vehicle" the following: independent contractor hauling exclusively for an agricultural cooperative association; the owner or operator of a farm transporting agricultural products from or farm supplies to such farm (which person would clearly be a private carrier and not constitutionally subject to Commission regulation); independent contractor hauling agricultural products or farm supplies exclusively for one or more operators or owners of farms; a person furnishing transportation of school children exclusively; and any person using or furnishing for use dump trucks for the transportation of ashes, rubbish, excavated or road construction materials.<sup>5</sup>

Section 2, subsection 10, was amended by adding a proviso that no property owned by any municipal corporation of the Commonwealth shall be subject to the Commission's jurisdiction or the terms of the Act, except as elsewhere expressly provided.<sup>6</sup>

---

<sup>8</sup>*Id.*, Sec. 904.

\*Professor of Law, Dickinson School of Law.

---

<sup>1</sup>Act of May 28, 1937, P. L. 1053, 66 PURD. STATS. (Pa.) § 1101.

<sup>2</sup>P. L. 390.

<sup>3</sup>P. L. 636.

<sup>4</sup>See 66 PURD. STATS. (Pa.) § 1102.

<sup>5</sup>Act of June 15, 1939, P. L. 387, 66 PURD. STATS. (Pa.) § 1102.

<sup>6</sup>Act of March 21, 1939, P. L. 10, 66 PURD. STATS. (Pa.) § 1102.