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PROPOSED AMENDMENTS TO THE DECEDENTS' ESTATES LAWS

By

A. J. WHITE HUTTON*

Under date of July, 1955 the Subcommittee on Decedents' Estates Laws of the Joint State Government Commission of the General Assembly of the Commonwealth of Pennsylvania submitted a report to the Commission proposing amendments to the following laws which had been previously compiled in the deliberations of the Subcommittee and presented to the Joint State Government Commission with favorable recommendations. These laws are as follows:

- Intestate Act of 1947
- Wills Act of 1947
- Estates Act of 1947
- Fiduciaries Act of 1949
- Act of 1935, May 7, P. L. 130
- Fiduciaries Investment Act of 1949
- Banking Code
- Register of Wills Act of 1951
- Incompetents' Estates Act of 1951
- Orphans' Court Act of 1951
- Orphans' Court Partition Act of 1917

Importance of the Report

This present report of the Subcommittee is of interest to the legal profession not only because of the innate importance of the proposals but also for the reason that in concise pamphlet form it affords handy information concerning the activities of the Subcommittee and the Joint State Government Commission in the field of that great body known as Decedents' Estates Laws.

In fact it is humbly submitted as the opinion of the present writer that the functions of the Joint State Government Commission are such that if they were more generally used and specifically by the present administration, many proposals of grave importance to our Commonwealth and of an obviously non-political nature, and properly so for the public welfare, would be solved by this Commission detached and free from the rancor of partisan politics.

Some History

The Joint State Government Commission was created by Act of 1937, July 1, P. L. 2460, as amended 1939, June 26, P. L. 1084; 1943, March 8, P. L. 13,

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as a continuing agency for the development of facts and recommendations on all phases of government for the use of the General Assembly. (Emphasis added).

Referring particularly to the work on laws under the general topic of this article, it is stated in the introduction to the pamphlet that the initial director to the Joint State Government Commission to study and revise the laws relating to decedents' estates was contained in Senate Resolution Serial No. 46, Session of 1945, and that pursuant to this directive the Commission submitted to the General Assembly drafts of an Intestate Act, a Wills Act, an Estates Act, and a Principal and Income Act, all of which were enacted in 1947 and published with comments in the Commission's Report entitled Decedents' Estates Laws of 1947.

In 1949 a fiduciaries act and a fiduciaries investment act, submitted by the Commission in response to the directive contained in Senate Resolution Serial No. 34, Session of 1947, were enacted and published with comments in the Commission's Report entitled Decedents' Estates Laws of 1949.

Finally as directed by House Concurrent Resolution No. 74, Session of 1949, the Commission submitted to the General Assembly drafts of an Incompetents' Act, a Register of Wills Act, and an Orphans' Court Act and an Estate Tax Apportionment Act, all of which were enacted in 1951. As is stated in the introduction to the present report, these acts and comments are contained in the Commission's Report, Decedents Estate's Laws of 1951.

It is further observed that the above acts have been amended from time to time and suggestions for further amendment have been made by members of the legal profession.

Pursuant to the authority vested in the Commission by the Act of 1937, and its amendment already referred to, the Commission instituted a review of the Decedents' Estates Laws of the Commonwealth and the amendments proposed thereto, with a view to recommending to the General Assembly such amendments as might be deemed desirable for the better working of these laws.

To facilitate the study the Commission under authority of the Act of 1943, March 8, P. L. 13, Section 1, created the Subcommittee on Decedents' Estates Laws and appointed as advisors a group of twenty-eight judges and lawyers, including all those who had served with the Commission's Decedents' Estates Advisory Committee when the above acts were drafted.

The present proposals for amendment have been submitted by judges, lawyers and others at the invitation of the Commission and have been reviewed by the Commission and the Advisors, and the present report contains the proposals with comments of the Advisory Committee. If there are any further suggestions and recommendations they should be addressed to the Secretary of the Advisory Committee, M. Paul Smith, Esq., 60 East Penn Street, Norristown, Pa.

On the Subcommittee on Decedents' Estates Laws there are also members of the Senate and the House who attend the sessions of the Subcommittee and render

invaluable aid in the compilation of proposals by reason especially of their experience in legislative matters and procedure.

It is not the purpose of the present article to go into extensive details in discussing the proposals as submitted for the reason that time does not permit of any detailed discussions, and further at the present writing most, if not all, of these proposals have been drafted into Senate Bills under date of August 2, 1955 and have been referred to the Committee on Judiciary General, and later on when, as and if these proposals are translated into legislative enactments, a further article may be composed pointing out the essential changes as made.

The recommended amendments taken up in the order of their presentation in the report of the Subcommittee are as follows:

INTESTATE ACT OF 1947.

The Intestate Law of Pennsylvania is founded upon the legislation of 1833, 1917 and 1947. The history of this legislation indicates a progressive reform in the original common law concepts of the descent of property, real and personal. No changes in the several acts have been more striking as illustrating the legislative breadth of view than that pertaining to the shares of the spouses and a study of all of the acts is essential to a comprehensive and intelligent concept of the present enactment.

A reference to the Act of April 24, 1947,¹ provides as follows: as to the surviving spouse:

"No Issue. The first \$10,000.00 in value and one-half of the estate if the decedent is survived by no issue."

It is proposed that subdivision 3 be amended to read as follows:

"No Issue. The first ten thousand dollars in value and one-half of the balance of the estate, if the decedent is survived by no issue. *In case of partial intestacy, any amount received by the surviving spouse under the will shall satisfy pro tanto the ten thousand dollar allowance;*"

the amending language being italicized.

As stated in the comment, this amendment prevents the surviving spouse provided for in part by the will from receiving an excessive share in what does not pass by will.

Section 10 of the Act,² is to be amended by adding after Section 9 three new sections, viz., Sections 10, 11 and 12, to read as follows:

Section 10. Spouse's Allowance; Procedure.—The ten thousand dollar allowance shall be set aside and awarded in distribution to the surviving spouse, or his successor in interest, in the same manner as other distributive shares of the estate are awarded, without any right in the surviving spouse to choose particular real or personal property in satisfaction thereof. Nothing herein shall be construed as limiting the right

¹ PA. STAT. ANN. tit. 20, § 1.2 (1950).

² PA. STAT. ANN. tit. 20, § 1.10 (1950).

of the surviving spouse and other distributees to demand that property not theretofore sold be distributed in kind to them.

Section 11. Procedure to Establish Title to Real Property When Spouse Claims Entire Estate.—A surviving spouse entitled under the provisions of this act to the entire estate of the decedent shall have it awarded to him in the same manner as a lesser share of the estate would be so awarded.

Section 12. Property Distributable to the Commonwealth.—When the estate is distributable to the Commonwealth as statutory heir under the provisions of this act, it shall be reduced to cash in all cases by the personal representative and awarded by the court in distribution to the Commonwealth and paid by the personal representative through the Department of Revenue into the State Treasury.

Section 4 of the Amending Act specifies that it shall take effect January 1, 1956 and shall apply to real and personal estates of all persons dying on or after that day, providing further that Sections 10, 11 and 12 of the Intestate Act of 1947 being repealed hereby shall nevertheless remain in effect as to the estates of persons dying on or after January 1, 1948 and prior to January 1, 1956.

This proposed amending act is now before the Senate of the General Assembly known as No. 690, Session of 1955, having been introduced August 2, 1955 and referred on the same day to Committee on Judiciary General.

WILLS ACT OF 1947.

It is proposed to amend the Wills Act of 1947 by revising and changing provisions relating to foreign wills, divorce, inter vivos trusts and insurance affecting right of spouse taking against a will, rights of adopted persons and illegitimates in lapsed and void devises for legacies, and appointment of guardian of property passing to a minor upon testator's death whether or not passing under the will.

These changes affect Section 4, Clause (2) of Section 7, Subsection (b) of Section 8, Subsection (a) of Section 12, and Clauses (6) and (7) of Section 14 of the Act of April 24, 1947.⁸ Also affected are Clause (11) of Section 14 of the Act, which is repealed, and Subdivision (b) of Section 18 which is amended.

Section 4 of the Wills Act of 1947, provides as follows:

"No will shall be valid unless proved by the oaths or affirmations of two competent witnesses."

It is proposed to add to this section the following:

"(b) *Foreign Execution.* A written will of a testator domiciled outside of Pennsylvania, but within the United States, executed and proved in accordance with the law of his domicile shall be effective as to property within Pennsylvania.

The Committee adds the following comment:

"This subsection covers the case of a will probated in another state and in accordance with the law of that state, even though the method of

⁸ See, PA. STAT. ANN. tit 20, § 180.1 (1950) and following for the Wills Act of 1947 generally,

proof as set forth in the probate record is not in compliance with the method of proof required for the wills of Pennsylvania decedents. It has been difficult to prove such wills in Pennsylvania, especially after a lapse of many years after the death of the testator. Note the amendment of Section 306 of the Register of Wills Act of 1951 to conform with the addition of this subsection."

Section 7, Subdivision (2) pertaining to the effect of a divorce of the testator on the provisions of a will in favor of or relating to his spouse so divorced, clarifying the language so as to eliminate any question concerning the rights of the divorced spouse if the will as probated includes provision for the surviving spouse, thus voiding possible confusion as to what should be probated, striking out the words in the subdivision specifying that the provisions in question be thereby revoked and substituting there for the words "thereby become ineffective for all purposes."

Section 8 is amended so as to embody further details in the determination of the share of a surviving spouse who has elected to take against the will and particularly in view of any one or more conveyances which he has elected to treat as testamentary. This as stated in the comment is an amendment to make clear that **the surviving** spouse who has elected against a conveyance will not be unduly favored.⁴

Section 12 is to be amended by eliminating the word "widow" and substituting the words "surviving spouse", thus to conform with Section 211 of the Fiduciaries Act of 1949 under which the widower as well as the widow may be entitled to a family exemption.

Section 14 of the Act is proposed to be further amended as to subdivision (6) pertaining to adopted children, construing clauses (8), (9) and (10) of this same section relating to lapsed and void devises and legacies and the construction and interpretation of the will containing the same.

Subdivision (7) of section 14 is to be likewise amended along the same lines and where the provision in the will applies to illegitimates.

Clause (11) of Section 14 is to be repealed and Subdivision (b) of Section 18 pertaining to testamentary guardians is amended.

These amendments are to take effect January 1, 1956 and shall apply only to the wills of all persons dying on or after that day. As to wills of persons dying before that day the existing law shall remain in full force and effect.

This proposed amending act is now before the Senate of the General Assembly known as No. 689, Session of 1955, having been introduced August 2, 1955 and referred on the same day to Committee on Judiciary General.

⁴ Bosler's Estate, 44 Schuyl. L. R. 188 (1948) and also § 11 (b) of the Estates Act of 1947 as amended.

ESTATES ACT OF 1947.

It is proposed to amend Estates Act of 1947 by revising and changing provisions relating to power of Court to terminate trusts heretofore created, release or disclaimer by beneficiaries of spendthrift trust, income accumulations, conveyances to defeat marital rights, and inter vivos trusts and insurance affecting right of spouse taking against a will. It would not be expedient at this time to discuss in detail the various provisions proposed by way of amendment, but it may be pointed out that Section 2 and Subsection (a) of Section 3 of the Act as now existent will be affected, the former by providing that the Court having jurisdiction of a trust *heretofore or hereafter created* may act in the matter of termination under certain circumstances as outlined.⁵ And Section 3 (a) will be changed by adding the following words at the end thereof:

“unless as a result of the release or disclaimer the released or disclaimed income will pass to one or more of the beneficiaries’ descendants.”

The comment states that this amendment gives Pennsylvania residents a greater latitude in making their estate plans and avoiding unnecessary Federal taxes without losing the protection the conveyer intended to provide for the beneficiaries and their families.

Other sections are also amended, notably Section 6 pertaining to Income Accumulations — When Valid; also Section 11 on the matter of Conveyances To Defeat Marital Rights.⁶

These amendments are to take effect January 1, 1956 and except as set forth in Sections 2, 3 and 9 of the Act amended hereby shall apply only to conveyances effective on or after that day. As to conveyances effective before that day the existing law shall remain in full force and effect.

This proposed amending act is now before the Senate of the General Assembly known as No. 691, Session of 1955, having been introduced August 2, 1955 and referred on the same day to Committee on Judiciary General.

FIDUCIARIES ACT OF 1949.

It is proposed to amend the Fiduciaries Act of 1949 by revising and changing provisions relating to “first complete advertisement of the grant of letters”, payment of accrued pensions without letters, amount of estates distributed on petitions, family exemptions, place for grant of letters, inventory and appraisement and objections thereto, claims against decedents, against personal representatives and against decedents’ property, awards to non-resident beneficiaries, presumption of release or extinguishment, and amount of minors’ estates administered without guardian.

⁵ See a Footnote to Bosler Estate 378 Pa. 333 at 339, 107 A. 2d 443 at 444 (1954).

⁶ See Auch Estate, 4 Fid. Rep. 113 and Brown Estate, 5 Fid. Rep. 113; See also under this general topic article by Judge Van Roden entitled “Rights of Surviving Spouses to Share in Assets Transferred by Decedent in his Lifetime”, 25 PA. BAR ASS. QU. 51 (1954), 58 DICK. L. REV. 70 (1953).

Referring briefly to these proposals, it is noted that Section 102, is amended for the clarification of Sections 702, 731 and 732, defining with particularity the meaning of the phrase "first complete advertisement of the grant of letters", as this matter pertains in "counties having no legal publication" and stating that the phrase means the "first of the three times that the grant of letters is advertised in a newspaper" and in counties having a legal publication it means when it has been advertised on at least one occasion "in both the newspaper and in the legal publication."

Section 201 concerning Payment of Wages or Salary to Family is amended by adding the words "or pension" thus including a form of stipend to which the decedent was entitled and clarifying what was actually intended when the section was originally drafted.

Section 202 concerning Settlement of Small Estates on Petition, is amended by adding the words "or any accrued pension" and striking out one thousand dollars and substituting therefor fifteen hundred dollars.

Section 211 concerning the Exemption Rights of Spouse and Children is further clarified by striking out the words "form a part of the decedent's" and substituting therefor "are members of the same" referring in both instances to household, so as to bring out the meaning that the children who are members of the same household "as the decedent" may retain or claim an exemption.⁷

Section 301 adds amendatory language to the effect that where the decedent had no domicile within the Commonwealth and no property located therein for the purposes of service of process, administration may be raised in any county of the Commonwealth and when so done, the issuance by the Register of letters will be exclusive.

Sections 401 and 402 under Article IV of the Act, treating of Inventory and Appraisalment, is amended by striking out "and Appraisalment" and thus eliminating the appointment of appraisers by the personal representative and placing upon such representative the duty of determining and stating in figures opposite each item of the inventory its fair value as of the date of the decedent's death, which means that the representative is required to use his own judgment in determining the valuation.

Section 403 pertaining to Supplemental Inventory is appropriately amended to coincide with the amendments of the two previous sections.

Section 405 is added by amendment following Section 404, providing for objections to inventory, thus setting at rest a question which was somewhat confusing as to when objections might be filed to an inventory.⁸ The amendment provides that such objections may be filed at any time up to and including the time fixed by Rule of Court for making objections to the first account of the representative.

⁷ Cf. Calhoun Estate, 1 Fid. Rep. 162.

⁸ See Rodger's Estate, 379 Pa. 494, 108 A. 2d 924 (1954).

Section 613 pertaining to Statutes of Limitation is clarified and the last sentences added eliminate the question raised in some cases as to whether the statute of limitations on a tort claim is reduced to one year after the decedent's death.⁹

Section 731 is amended to provide for the substitution of fifteen hundred dollars for one thousand dollars in small estate and providing that the expiration of one year shall be "from *the date of the first complete advertisement of the grant of letters.*"¹⁰

Section 732 treating of distribution At Risk of Personal Representative is amended both as to personal and real property as well as liens and charges, and there follows in the report a comprehensive and excellent review of the particular situation involved and which should be read carefully.

A new section, numbered 737, Award to Nonresident Beneficiary, is also added, and Section 804, treating of Presumption of Payment Release or Extinction is amended by interpolating the word "agreement" together with the other descriptive language of the items as covered in the section.

Section 1001 on the subject, When Guardian Unnecessary, is amended by substituting fifteen hundred dollars for one thousand dollars, the present sum.

These amendments are to take effect January 1, 1956. It is now before the Senate of the General Assembly known as No. 697, Session of 1955, having been introduced August 2, 1955 and referred on the same day to Committee on Judiciary General.

ACT OF 1929, MAY 14, P. L. 1721 (NO. 563).

The above Act of 1929 is recommended for amendment making the consent deemed to have been given by nonresident operator or owner of a motor vehicle involved in an accident or collision within the Commonwealth for appointment of the Secretary of the Commonwealth as his agent for service of process irrevocable and binding upon his personal representative, providing for service of process when the nonresident operator or owner has died prior to the commencement of an action and making changes to conform with existing law. The substance of this amendatory legislation is to change the appointment of the Secretary of Revenue as the receiving agent of the nonresident to that of the Secretary of the Commonwealth, and further providing for the service of process upon not only the nonresident operator or owner of a motor vehicle but also in case of his death prior to the commencement of action brought pursuant to the section in question, service of process shall be on the personal representative, executor or administrator of such nonresident motorist, in the same manner and on the same notice as is provided in the case of a nonresident motorist, and providing further details relative to such process.

This proposed amending legislation is now before the Senate of the General

⁹ Cf. *Donahue v. Knaus*, 169 Pa. Super. 372, 82 A. 2d 532 (1951).

¹⁰ See *Goldberg Estate*, 4 Fid. Rep. 264.

Assembly, known as No. 687, Session of 1955, having been introduced August 2, 1955 and referred on the same day to Committee on Judiciary General.

ACT OF 1935, MAY 7, P. L. 130

The Act of 1935 is recommended for amendment as follows, making the consent deemed to have been given by a nonresident operator or owner of an aircraft involved in an accident or collision within this Commonwealth for appointment of the Secretary of the Commonwealth as his agent for service of process irrevocable and binding upon his personal representative, providing for service of process when the nonresident operator or owner has died prior to the commencement of an action, and making changes to conform with existing laws.

The suggested amendment is the companion-piece of legislation with that of the Act of 1929, May 14 (P. L. 1721) *supra*, and presents the same general situation of appointment as agent of the said nonresident of the Secretary of the Commonwealth instead of the Secretary of Revenue, and the other portions of the amendatory matter assimilate the process to the case of the operator or owner of aircraft.

This proposed amending act is now before the Senate of the General Assembly, known as No. 686 Session of 1955, having been introduced August 2, 1955 and referred on the same day to Committee on Judiciary General.

FIDUCIARIES INVESTMENT ACT OF 1949.

The Fiduciaries Investment Act is recommended for amendment as follows, by making further provision respecting the qualification of common stock for investment where there is a predecessor or constituent corporation and by changing the requirements of an interest-bearing deposit by providing that it be fully insured by the Federal Deposit Insurance Corporation.

This proposed amending act is now before the Senate of the General Assembly, known as No. 688, Session of 1955, having been introduced August 2, 1955 and referred on the same day to Committee on Judiciary General.

BANKING CODE

The Banking Code is recommended for amendment as follows, by further providing for the power of the bank and trust companies to establish and maintain mortgage investment funds and setting forth in the respective sections various specifications concerning the creation of mortgage funds, the investment of funds, temporary investments, participating accounts, reserves, income, liquidation of mortgage fund and providing that the provisions of this act shall be applicable to mortgage investment funds heretofore or hereafter created.

This proposed amending act is now before the Senate of the General Assembly, known as No. 695, Session of 1955, having been introduced August 2, 1955 and referred on the same day to Committee on Judiciary General.

REGISTER OF WILLS ACT OF 1951.

The Register of Wills Act is recommended for amendment by changing the procedure on probate of wills probated outside of the Commonwealth.

Referring to the discussion of the proposed amendments to the Wills Act, particularly Section 4 (a) and (b), giving the general rule and following with particular provisions for foreign execution, the proposed amendment to the Register of Wills Act broadens the scope of Section 306 thereof, providing specifically for procedure incident to the probate of such foreign wills, and this explanation is set forth in the comment, and it is provided in Section 2 of the amendatory act that it shall go into effect January 1, 1956.

This proposed amending act is now before the Senate of the General Assembly, known as No. 692, Session of 1955, having been introduced August 2, 1955 and referred on the same day to Committee on Judiciary General.

INCOMPETENTS' ESTATE ACT

It is recommended that the law providing for the administration of incompetents' estates exclusively by the Orphans' Court be a new re-enactment of Senate Bill No. 6, Session of 1951, as introduced with only the amendment to Section 631 indicated before. See the several comments relative to this proposal as set forth in the Report and also the Case of *Tarbotton Estate*.¹¹

This proposed amending act is now before the Senate of the General Assembly known as No. 696, Session of 1955, having been introduced August 2, 1955 and referred on the same day to Committee on Judiciary General.

ORPHANS' COURT OF 1951.

The Orphans' Court Act of 1951 is recommended for amendment, conferring exclusive jurisdiction on the Orphans' Court over the administration and distribution of incompetents' estates, and on the Orphans' Court of Philadelphia County over inter vivos trusts and revising the procedure on and effect of jury trials and the availability of jurors. This proposed legislation is in part complimentary to the proposed amendment of the Incompetents' Estate Act, *supra*; and also the conferring of jurisdiction on the Orphans' Court of Philadelphia County over inter vivos trusts and also providing for the problems of jury trials in the Orphans' Court and the amendments to Sections 745 and 746. These particular suggestions anent jury trials should be read and studied very carefully by the practitioner.¹²

This act shall take effect January 1, 1956. This proposed amending act is now before the Senate of the General Assembly known as No. 693, Session of 1955, having been introduced August 2, 1955 and referred on the same day to the Committee on Judiciary General.

¹¹ 4 Fid. Rep. 328, annotated, FIDUCIARY REVIEW (1954).

¹² See Simon Will, 381 Pa. 284, 113 A. 2d 266 (1955) and also some articles of a few years ago upon the same subject and the kindred one of judicial functions in *Will Cases*, published in the Dickinson Law Review.

ORPHANS' COURT PARTITION ACT OF 1917.

The recommendation concerning the Orphans' Court Partition Act of 1917 is that it be repealed as applying to the partition and valuation and sale of real estate of persons who died after December 31, 1949.

This act shall take effect January 1, 1956. In the comment it is stated in explanation of this proposed legislation that since the Fiduciaries Act of 1949 has included real estate in the accounting and it can be awarded in distribution, or sale thereof can be made for purposes of distribution under authority of Section 734 of the Fiduciaries Act, it appears that there is no need for a separate act covering real estate of a decedent. After real estate has been awarded in distribution, partition thereof can be had under procedural Rules 1551 and following.

This proposed legislation is now before the Senate of the General Assembly known as No. 694, Session of 1955, having been introduced August 2, 1955 and referred on the same day to Committee on Judiciary General, to take effect January 1, 1956.

CONCLUSION.

The foregoing pages have been written hastily, but nevertheless it is hoped that the matters discussed will be of interest to the legal profession and that practitioners will be on the alert relative to the passage of the several bills. As these matters are not controversial and all aim to an improvement of the body of the law in the opinion of the Report of the Subcommittee, it is anticipated and hoped that they will be speedily enacted and approved by the Governor. Those sufficiently interested may apply to the Legislative Reference Bureau for copies of these Senate Bills.

