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Abstracts of Recent Cases

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37 S.E.2d 563 (1946). Both North Carolina, N.C. Acts, 1955, ch. 813, § 5, and West Virginia, W. Va. Acts, 1959, ch. 47, have since amended their statutes so that they now purport to extend to an adopted child the same legal status as that of a legitimate child.

In the *Stewart* case, the West Virginia court looked to the rights of the adopted child under the adoption statute in constructing the testator's intent. Unlike the court in the instant case, the West Virginia court applied the statute in effect at the time of adoption. The West Virginia court impliedly would have admitted the adopted child to the class of "heirs" or "legal heirs." *Wheeling Dollar Savings & Trust Co. v. Stewart, supra* at 712. There is a split of authority as to which adoption statutes are controlling where the statutes are not expressly retroactive. Annot., 18 A.L.R. 2d 960 (1951).

Recognizing the merit of the progressive minority holding and the liberal bent of some of the majority, it would appear that the Supreme Court of Appeals of West Virginia might now go either way in delineating the rights of an adopted child under a stranger's will. In any event a prudent attorney would be well advised to have his client expressly state his intent as to adopted children so that the instrument will not be left to construction in the courts.

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ABSTRACTS

Due Process—Jurisdiction—Minimum Contact Not Satisfied

P, a resident of West Virginia, brought this action for personal injury sustained from the exploding of a defective pipe which *D*, a Texas corporation, sold to a company that used it in its business in West Virginia. Under W. VA. CODE ch. 31, art. 1, § 71 (Michie 1961), *P* obtained substituted service of process and brought this action in West Virginia. *P* offered no evidence that *D* was incorporated in, ever did business in, or ever made a contract to be performed in West Virginia. *D* moved to dismiss for lack of jurisdiction. *Held,* motion to dismiss sustained. Mere commission of a tort did not establish the necessary "minimum contacts" to afford jurisdiction; and the West Virginia statute, in conferring jurisdiction over *D*, resulted in an extraterritorial application of law in

derogation of due process. *Mann v. Equitable Gas Co.,* 209 F. Supp. 571 (N.D. W. Va. 1962).

In order that a foreign corporation may be subjected to the jurisdiction of a state for service of process, the courts have developed the rule of minimum contacts. *International Shoe Co. v. Washington,* 326 U.S. 310 (1945). The requirements for minimum contact vary and must be applied to each factual situation. *Orange-Crush Grapico Bottling Co. v. Seven-Up Co.,* 128 F. Supp. 174 (N.D. Ala. 1955); 65 W. VA. L. REV. 63 (1962); 59 W. VA. L. REV. 369 (1957). In 59 W. VA. L. REV. 369 (1957), the author criticizes the West Virginia statute, W. VA. CODE ch. 31, art. 1, § 71 (Michie 1962), and intimates that the statute will be restricted in its application in the light of case decisions on a similar North Carolina statute. 2B N.C. STAT. § 55-38.1 (Michie 1950).

Under the West Virginia statute, any party to a contract to be performed wholly or partly in this state is subject to personal service in any court action on the contract. In the instant case, the requirement is not met because no act transpired in West Virginia and therefore the case does not fall within the statute.

Real Property—Effect of the Rule in Shelley's Case on Conveyances in West Virginia Today

The Illinois Supreme Court held that the Rule in Shelley's Case was not applicable since the word "heirs" meant that group of persons who were to take at the termination of the life estate and not "heirs" in an indefinite succession. The court stated, however, that although the Rule in Shelley's Case was abolished in Illinois in 1953, the rule was in force when the deed was executed and would have been given full effect, if applicable. *Arnold v. Baker,* 185 N.E.2d 844 (Ill. 1962).

It was believed that the Rule in Shelley's Case was abolished when West Virginia was formed since the Virginia statute, which supposedly abolished the rule in that state, was carried over to West Virginia as a part of its law. But in *Carter v. Reserve Gas Co.,* 84 W. Va. 741, 100 S.E. 738 (1919), the court held that the statute did not extend to a conveyance to a person for life with a remainder mediately, not immediately, to his heirs. Under this strict construction, the court held that the statute only contemplated the situation where there was a taking by a person for his life and

after his death by his heirs. In 1931, the Rule was completely abolished by statute. W. VA. CODE ch. 36, art. 1, § 14 (Michie 1961).

If the Supreme Court of Appeals of West Virginia should follow the reasoning of the court in the instant case, it is presumed that it would hold that the rule would apply to transfers made in West Virginia prior to 1931 wherein a person was given a freehold estate with a mediate remainder to his heirs.

Timber—Right to Remove Timber for a Reasonable Time After Expiration of the Contract

P, grantee of a deed that conveyed certain timber rights, brought an action for damages against *D,* grantor, for restraining him from removing severed timber from the property. Under the deed, timber was conveyed to *P* for a period of fifteen years and at the end of the fifteen years, all the rights of the grantee terminated and any uncut timber reverted to the grantor without any notice or action. The deed also provided that the grantee would have an additional year to remove any "lumber" that was manufactured during the fifteen year period. *P* attempted to remove severed timber after the fifteen year period elapsed. The trial court awarded damages to *P. Held,* reversed. The grantee's title was defeasible and by his failure to remove severed timber, he forfeited his right to the severed timber. The additional one year only applied to "lumber" and not severed "timber." *Mace v. Carpenter,* 127 S.E.2d 254 (W. Va. 1962).

The accepted rule allows removal of timber within a reasonable time after the expiration of the contract where the purchaser has severed the timber within the allotted time and has thereby converted it from real estate to personalty. An exception to this rule is if the parties stipulate otherwise in the contract. *Lange & Crist Box & Lumber Co. v. Haught,* 132 W. Va. 530, 52 S.E.2d 695 (1949); *Knight v. Smith,* 84 W. Va. 714, 100 S.E. 504 (1919); *Null v. Elliott,* 52 W. Va. 229, 43 S.E. 173 (1902).

In the instant case, the contract did not provide expressly that severed timber would revert to the grantor, but the court held that the contract implied that such severed timber would pass with the uncut timber. The court reached the conclusion that the contract

negated any reasonable time to remove any of the timber after the termination of the lease with the sole exception of the additional one year for manufactured lumber.

Wills—Denial of Right of Renunciation to Administrator of Incompetent Widow

Husband left a will which provided that the remainder of his estate be placed in trust and the income be paid his widow. Widow was incompetent and died before any renunciation of the will. A petition was brought by the administrator of the widow's estate to determine whether the will should be renounced. The probate court denied the petition. *Held,* affirmed. The right to renounce a will is personal and died with the surviving spouse regardless of her incompetency in the absence of fraud, concealment, or conflicting interest of her representative. *Rock Island Bank & Trust Co. v. First Nat'l Bank,* 185 N.E.2d 890 (Ill. 1962).

The substance of the decision of the instant case is that the legal representative of an incompetent widow, after her death, has no right to exercise any election with regard to the will of the incompetent's spouse. In the case of an incompetent, only the guardian ad litem with the consent of the probate court may have the will renounced, and in the absence of such action, even the incompetent widow has no right of renunciation. *Boyer v. Bealor,* 271 F.2d 845 (D.C. Cir. 1959); *Mead v. Phillips,* 135 F.2d 819 (D.C. Cir. 1943); Annot., 147 A.L.R. 322 (1943).

The instant case represents the weight of authority concerning judicial construction of statutes on this subject. The Supreme Court of Appeals of West Virginia has not construed the West Virginia statute which affords a surviving husband or wife the right to renounce his spouse's will in the same factual context as the instant case. W. VA. CODE ch. 42, art. 3, § 1 (Michie 1961).

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