

December 1938

Wills--Witnesses--Whether Acknowledgement of Signature Meets Requirement That Witness Sign in the Presence of Each Other

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Recommended Citation

R. B. G., *Wills--Witnesses--Whether Acknowledgement of Signature Meets Requirement That Witness Sign in the Presence of Each Other*, 45 W. Va. L. Rev. (1938).

Available at: <https://researchrepository.wvu.edu/wvlr/vol45/iss1/12>

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knowledge and ability in legal matters¹⁴ and who should not be discouraged by the court from applying such knowledge and ability to the problems of the estate.

A. F. G.

WILLS — WITNESSES — WHETHER ACKNOWLEDGMENT OF SIGNATURE MEETS REQUIREMENT THAT WITNESSES SIGN IN THE PRESENCE OF EACH OTHER. — *A* prepared a will for *B*, which *B* executed at the same time *A* signed as witness. Ten days later, in the presence of *B* and *A*, *C* signed as witness after *B* acknowledged the will to be his and *A* acknowledged his signature as witness. *Held*, that the signing by *A* was in conformity with the provision of the statute¹ stipulating that witnesses must sign in the presence of each other. *Wade v. Wade*.²

The problem raised here is strictly one of statutory interpretation. A literal interpretation of the words "in the presence of" would seem to indicate that the witnesses must sign in the physical presence of each other.³ Cases interpreting similar statutes have held that failure of strict compliance with the letter of the statute made the will void.⁴ Other authority says that the requirement of "presence" will be met if the signing is done in such a manner that each witness is in a position to see the other sign if he desires to do so.⁵

In the instant case the court cites with approval cases which give a liberal interpretation to statutory requirements that the witnesses sign in the presence of the testator⁶ and applies the principle laid down in those cases to the West Virginia requirement that witnesses sign in the presence of each other. The principle, developed in the cited cases and approved by the court in the instant case, is

¹⁴ It is interesting to compare with this the attitude of the court in the case of *Owen v. Stoner*, 148 Miss. 397, 114 So. 613 (1927), where it is argued that the very fact that an attorney is chosen to serve as executor or administrator indicates that it was intended that his legal services should be rendered to the estate gratuitously.

¹ W. VA. REV. CODE (Michie, 1937) c. 41, art. 1, § 8.

² 195 S. E. 339, 115 A. L. R. 686 (W. Va. 1938).

³ 1 HARRISON, WILLS AND ADMINISTRATION (1927) 105.

⁴ *In re Moxon's Estate*, 234 Mich. 170, 207 N. W. 924 (1926); *Peeson v. Coronel*, 45 Philippine 216 (1923); *Coque v. Sioca*, 43 Philippine 405 (1922); *Roberts v. Welch*, 46 Vt. 162 (1873).

⁵ *Blanchard's Heirs v. Blanchard's Heirs*, 32 Vt. 62 (1859).

⁶ *Sturdivant v. Birchett*, 10 Gratt. 67 (Va. 1853); *Cunningham v. Cunningham*, 80 Minn. 180, 83 N. W. 58, 51 L. R. A. 642, 81 Am. St. Rep. 256 (1900); *Cook v. Winchester*, 81 Mich. 581, 46 N. W. 106, 8 L. R. A. 822 (1890); *Riggs v. Riggs*, 135 Mass. 238, 46 Am. Rep. 464 (1883).

that under certain circumstances acknowledgment of a signature is tantamount to signing "in the presence of." Just what the exact limits of the circumstances would be is indefinite except the requirement that there be no indicia of fraud. In its adoption and application of the principle the court has extended the doctrine far beyond that of any of the cases it cited. Most of the decisions held that witnesses signing in the next room with immediate subsequent acknowledgment were "in the presence of,"⁸ but none have gone so far as to say that acknowledgment ten days later amounted to signing as is required by the statute. However, on the facts of the instant case, it does not seem that the principle is particularly strained. Furthermore, the court definitely limits the application when it says that it is confined to cases where the circumstances preclude any possibility of fraud.

Such interpretation of the statute is probably contrary to the accepted doctrine⁹ that provisions of statutes governing transfer and disposition of property should be rigidly adhered to. Nevertheless, the interpretation certainly can not be said to defeat the purpose of preventing fraud which is generally held to be the motivation of such legislative regulation,¹⁰ and viewed in this light is a forward step in judicial interpretation.

After all, it is the province of the court to see that the manifest intent of the legislature is carried out. It certainly would appear that rigid application of a rule to the extent that the purpose of the testator is lost, is far less desirable than the result reached here.

R. B. G.

WORKMEN'S COMPENSATION — AGGRAVATION OF HERNIA UNDER WEST VIRGINIA STATUTE. — A workman in the employ of a subscriber to workmen's compensation by lifting a heavy piece of slate in the course of his employment suffered an aggravation of hernia which, although existent from childhood, had not interfered seriously with his work. Death resulted from the operation performed for relieving the ensuing strangulated hernia. The dependent

⁷ *Sturdivant v. Birchett*, 10 Gratt. 67 (Va. 1853).

⁸ *In re Lane's Estate*, 265 Mich. 539, 251 N. W. 590 (1933).

⁹ *McKee v. McKee's Ex'r*, 155 Ky. 738, 160 S. W. 261 (1913). It is interesting to note that this case is cited in appellant's brief for the proposition that purpose of statute is only to prevent fraud but case holds that strict conformance is required. *Walker v. Walker*, 342 Ill. 376, 174 N. E. 541 (1930).

¹⁰ *Green v. Crain*, 12 Gratt. 252 (Va. 1855).