

ment.¹¹ The attitude of the New York courts favors this trend away from the ordinary search for "intention."¹²

The ruling on the taxes and carrying charges is hard to justify. Ordinarily, they are properly paid out of income. But an exception is made in the case of unproductive land,¹³ taxes and carrying charges being properly chargeable to principal.¹⁴ The taxes on urban vacant land rapidly appreciating in value, such as was involved in this case, might well have surpassed the total income from the productive property. It is hard to believe that a testatrix who went to the trouble of creating a trust for the life tenant would intend that the remaindermen "grow rich at the expense of the life tenant,"¹⁵ but so the Illinois court construed her intention.

Workmen's Compensation—Right of Employee's Illegitimate Children to Compensation—[Wyoming and Pennsylvania].—Non-resident, alien, illegitimate children of a workman, who was killed during and in the course of his employment, and for whose support the workman had made regular and substantial remittances to the mother, sought compensation under the Wyoming Workmen's Compensation Act,¹ according to which a non-resident alien child of a workman may under certain circumstances receive compensation. Upon appeal from an award to the plaintiffs, *held*, reversed. *In re Dragoni*.²

Workmen's compensation was sought by the illegitimate child of the wife of a workman, who was killed during and in the course of his employment. The child was living in the family of his mother's husband, and his claim for compensation was based on a provision of the Pennsylvania Workmen's Compensation Act,³ according to which compensation may be granted to a "step-child" of a workman. On appeal from a judgment for the plaintiff, *held*, affirmed. *Union Trust Company v. Union Collieries Co.*⁴

"terms of the trust" as the "manifestation of intention of the settlor" as indicated by written or spoken words or conduct of the settlor in the light of all the circumstances, seems to lead one back to the policy of seeking the intention of the settlor by examination of all sorts of evidence.

¹¹ For an interpretation of the Restatement as abandoning the intention test, see 35 Col. L. Rev. 306, 308 (1935); 40 Yale L. J. 275, 278 (1930).

¹² "The distinction between this case and cases where there is no imperative power of sale or equitable conversion; where the testator *directs* the trustees to sell *only* in their discretion and where it is, therefore, said that the only inference is that testator intended to benefit the principal of his estate . . . may not ultimately prevail," Pound, J., in Matter of Jackson, 258 N.Y. 281, 291, 179 N.E. 406, 500 (1932).

¹³ But see Matter of Satterwhite, 262 N.Y. 339, 186 N.E. 857 (1933) which seems to agree with the view of the instant case on taxes where there was no imperative direction to sell unproductive property in the will. The New York courts, however, would undoubtedly have construed this will as they did in Furniss v. Cruikshank, 230 N.Y. 495, 130 N.E. 625 (1921).

¹⁴ Patterson v. Johnson, 113 Ill. 559 (1885); Hite v. Hite, 93 Ky. 257, 20 S.W. 778 (1892); Bogert, *op. cit. supra* note 3, at § 804; 2 Perry, Trusts and Trustees § 554 (7th ed. 1929).

¹⁵ *In re Montgomery*, 99 Misc. 473, 474, 165 N.Y. Supp. 1069, 1070 (1917).

¹ Wyo. Rev. Stat. 1931, c. 124, §§ 106-7, k., as amended by Laws of 1935, c. 100, § 2.

² 79 P. (2d) 465 (Wyo. 1938).

³ Purdon's Pa. Stat. 1931, Title 77, § 562.

⁴ 200 Atl. 267 (Pa. Super. Ct. 1938).

The Wyoming statute makes no mention of what the term "children" shall include other than to define the word as "immediate offspring,"⁵ and this provision the court held to have no effect other than that of excluding from the operation of the Act, grandchildren and other more remote offspring of the workman. From a survey of the definition of the word "children" in cases dealing with the interpretation of wills⁶ and statutes such as wrongful death acts,⁷ workmen's compensation acts of other states,⁸ and of other statutes, the court concluded that the word "children," when used in a statute without further explanation, did not include an illegitimate child of a man.

In nearly every state the legislatures have improved the legal status of illegitimate children in one respect or another,⁹ but only two states have gone so far as to declare that illegitimate children shall have all the rights and privileges of legitimate offspring.¹⁰ The courts are justified, therefore, in their reluctance to deviate from the traditional interpretation of the words "child" and "children," when they appear without qualification in statutes. To apply those terms to illegitimate children in workmen's compensation laws or other statutes in a jurisdiction which has not assimilated the status of illegitimate children to that of legitimate children in every respect would constitute a guess as to the intentions of the legislature. If, therefore, a legislature intends an illegitimate child to receive workmen's compensation upon the death of his father, it has to say this expressly in the statute. Where, however, the position of an illegitimate child has been assimilated to that of a legitimate child in his relation to his mother, an award of workmen's compensation in the event of the death of his mother appears justified under a statute which merely grants workmen's compensation to the children of a woman without expressly mentioning illegitimate children.

The Pennsylvania decision reported *supra* is an application of this latter principle since the court based its conclusion, that upon the marriage of the workman and the child's mother the child had become the workman's step-child, upon a Pennsylvania statute which provides that the relationship between the mother and her illegitimate child shall be the same as if the child was born in lawful wedlock.¹¹ Although the Pennsylvania court cited no authority from other jurisdictions to substantiate its decision in this case, the result it reached is exactly in line with decisions based upon corresponding facts in other jurisdictions.¹²

⁵ Wyo. L. 1935, c. 100, s. 2.

⁶ Here the court cites *Wilkinson v. Adam*, 1 Ves. & Bea. 422, 462, 35 Eng. Rep. 163, 179 (1813). But see *Rhode Island Hospital Trust Co. v. Hodgkin*, 48 R.I. 459, 137 Atl. 381 (1927), and cases therein cited.

⁷ Citing *Marshall v. Wabash Ry. Co.*, 120 Mo. 275, 25 S.W. 179 (1894).

⁸ Citing *Bell v. Terry & Tench Co.*, 177 App. Div. 123, 163 N.Y. Supp. 733 (1917); *Scott v. Independent Ice Co.*, 135 Md. 343, 109 Atl. 117 (1919); *Murrell v. Industrial Comm'n*, 291 Ill. 334, 126 N.E. 189 (1920); *Staker v. Industrial Comm'n*, 127 Ohio St. 13, 186 N.E. 616 (1933).

⁹ See 4 Vernier, *American Family Laws* § 242 ff. (1936), and references cited therein.

¹⁰ *Arizona and North Dakota*, *op. cit. supra* note 9, at § 242.

¹¹ *Purdon's Pa. Stat.* 1931, Title 11, § 1.

¹² See *Lunceford v. Fegles Const. Co.*, 185 Minn. 31, 239 N.W. 673 (1931); *Larsen v. Harris Structural Steel Co.*, 230 App. Div. 280, 243 N.Y. Supp. 654 (1930); *Simpson v. State Compensation Com'r*, 114 W.Va. 814, 174 S.E. 329 (1934).