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## Report of Probate Legislative Committee

Wyoming State Bar

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## REPORT OF PROBATE LEGISLATIVE COMMITTEE

Your committee on probate legislative matters begs to report: That either through lack of initiative of your committee chairman or the indifference of the committee members, your committee's report will not be as comprehensive as it should be. Your chairman upon receipt of the names of the members on the committee, deeming it advisable and prompted by the initial enthusiasm of his appointment divided the committee membership into groups representing the Judicial Districts in which the members resided and appointed a vice-chairman for each District. He asked these vice-chairmen to call their group together and discuss needed changes in the Probate Code and forward recommendations to the Chairman. However to my disappointment and embarrassment, these groups have failed to function and were it not for timely letters from President McConnell, Hon. V. J. Tidball, Mr. A. L. Taliaferro and Mr. Clyde Watts, I fear the report of your committee would reach a new low as committee reports go.

These letters all indicated that changes were needed in the provisions of the Code in relation to widow's exemption; family allowance; partial distribution; and determination of heirship and they will be taken up separately in the order named.

**WIDOW'S EXEMPTION:** Section 88-2904 as amended by Session Laws of 1943, Chapter 8, provides, "Resident of state leaving widow, widower or minor children shall have set over to them all property exempt from execution; including the homestead and such property shall not be subject to payment of debts except expenses of administration, last sickness and funeral expenses and if decedent shall not have any or all the property specified under exemption laws, they shall be entitled to the value of such exempt property either in money or other property, as they may prefer." There appears to be two divergent theories—One that the law should remain as it now stands and the other would amend the statute and in those cases where no property exists which comes within the exemption laws or homestead is absent then widow and minor children would take nothing. It being the feeling that as the law now stands that it works a hardship on the creditors and is unjust to them. The others feel that this is not the case and it is well known that the law provides exemption or if not known that it is easily ascertainable.

**FAMILY ALLOWANCE:** Suggested that family allowance be restricted to conform to statute authorizing closing of estates within six months. However, in looking at Section 88-2901, there does not seem to be any definite time limit and is therefore under supervision of the Court and if an unreasonable length of time elapses it could be terminated by an order of the Court. Judge Tidball has suggested that this section should be amended by eliminating the words "until

letters are granted and the inventory is returned" and substitute "until the Court, having jurisdiction over the probate of the decedent's estate shall otherwise order." There being no apparent reason or no showing the intention of the legislature in placing these words in the statute and the substitution of the words suggested would be more fitting.

**HOMESTEADS:** Suggested that Sec. 88-3001 be amended by inserting after the words "the Court or Judge must, by order," "as provided in Sections 88-2904 and 88-2905." It seems that this section remains as it did in the original probate code when no procedure was prescribed for setting over the homestead except that upon the return of the inventory, the Court made an order setting it over without notice to anyone. This amendment would make this section conform to the procedure prescribed in the two sections just preceding it.

Suggested that Sec. 88-3002 be amended by adding to it "In fixing the value of the homestead, the appraisers shall determine its net value over any encumbrances on the homestead, and if its net value is not more than \$2500, and the claimant elects to take the homestead with the encumbrances thereon, and the owner of such encumbrances agrees to look to the homestead claimant for payment, without making a claim against the estate of the decedent, the homestead may be set over to the persons entitled thereto with the encumbrances thereon. If the net value of the homestead be appraised at more than \$2500, the person entitled thereto, upon paying the difference into the estate or allowing the executor or administrator to deduct the difference from the claimant's inheritance, if there be such of sufficient amount, shall be entitled to have the homestead set over as in other cases."

**PARTIAL DISTRIBUTION:** Article 35. It has been called to the committee's attention that clarification should be made in regard to partial distribution in this respect that as the statutes now stand anyone claiming to be an heir can request a partial distribution and is permitted to do so before the Court has determined who the heirs are and consequently there is the possibility that distribution may be made to one who is not an heir and also there may be more heirs than are known at the time of distribution and one asking for distribution would receive more than they were entitled to. The remaining heirs should be protected by requiring the petitioner to give bond for protection of the other heirs as well as the creditors of the deceased. There is some thought that perhaps the entire article as to partial distribution should be repealed as in the majority of probate cases there is no need for partial distribution as in most cases an estate can be closed within the statutory time period. In case article is left in the code, then at the time of hearing of petition for partial distribution there should be a determination by the Court as to who the heirs are.

**HEIRS OF DECEDENT:** Article 41. As this article now stands there is nothing which specifically says that Probate side of the District Court shall have jurisdiction over determination of heirship, so it is suggested that Section 88-4101 should be amended by adding thereto, "The District Court, sitting in Probate, shall have jurisdiction over such petition and the proceedings to determine heirship pursuant thereto."

Section 88-4102 and as amended by Chapter 79, Session Laws of 1945, be amended to read: "Upon filing such petition the District Court, Clerk or Commissioner thereof, shall by order fix a time for hearing said petition, not less than 30 days nor more than 40 days subsequent to the date of said order, and notice of time and place" and remainder of section remain as it now reads. It is felt that fixing the time should be fixed after making the order rather than from the date of filing the petition, thus it would conform more like the ordinary procedure in probate matters and also eliminate the possible neglect of attorneys in preparing a notice of hearing.

Undoubtedly, there are many other changes that would and are necessary to make our Probate Code more workable and practical which brings your committee to make a suggestion for a more workable procedure for future committee's. From our experience we have found that committees as now constituted are unwieldy due to size of membership and diversity of residence which results in few accomplishments. We make as a suggestion that future committees be reduced in size and membership restricted to those living in the same community thus enabling the members to get together frequently and secure results from their deliberations.

Respectfully submitted,

Probate Legislative Committee,

By Samuel Corson,

Chairman.

### Supplement to Report of Probate Legislative Committee

It was suggested that Section 88-107 be so amended that the bond of the sole legatee should be fixed in the sum of the appraised value of the property and that if the legatee be the surviving spouse then the homestead exemption shall be exempt from the payment of all the debts of the testator but such legatee shall in any event pay the expenses of last sickness, burial and expenses of administration.

It also suggested that there should be added to the probate code provision whereby in the case of the death of the husband and wife at the same time and other like cases that their estates may be probated in one probate proceeding and doing away with the necessity of having two separate proceedings. Such provision is made in the Utah

Code and has proven very satisfactory. The Utah statute reads as follows:

“In all cases where the estate left by a deceased person has descended from another deceased person whose estate has never been probated, or where two or more deceased persons held property during their lifetime as tenants in common, and neither estate has been probated, and where the heirs are the same, the court may grant letters of administration upon such estates jointly, and they may be administered the same as if they were but one estate.”

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## REPORT OF COMMITTEE ON COMPREHENSIVE CURATIVE ACT

October 18, 1946.

The report of your committee on a Comprehensive Curative Act for the validation of deeds and other instruments affecting the title to real estate will be brief for the reason that the question has been discussed before and most of you have had an opportunity to read the Nebraska Comprehensive Curative Act and the papers leading up to its passage. Also, we are all more or less familiar with the purpose and effect of such acts.

The Nebraska Comprehensive Curative Act was passed in 1941 and was the result of intensive study by a committee of the Nebraska Bar assisted by Dean Emeritus Henry H. Foster of the Nebraska College of Law and Rufford G. Patton, author of Patton on Titles. From a number of Nebraska attorneys we have found that the act is workable and effective and as was said last year by the chairman of the committee which drafted the act it—

“is practical in the very simplicity of its application, dependable in its careful respect for constitutional limitations, and at the same time probably as comprehensive in its scope as one could be made without leaving the course charted by constitutional compass. Its full usefulness is now in the hands of the Bar.”

We have curative acts in Wyoming the latest being Chapter 46, Session Laws of Wyoming, 1935, which has been beneficial but which is limited in its scope by being fragmentary and in being applicable only to specific defects and not formal defects generally. It is further fast becoming antiquated being effective, even in its limited scope, to defects in deeds or conveyances prior to January 1, 1925, over twenty-one years ago.

We have been able to locate only one decision of our Supreme Court based on this Act. In the case of *Black v. Beagle* (1943) 59