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NOTES

INCORPORATING NON-TESTAMENTARY DOCUMENTS INTO A WILL

Testamentary disposition of property is a creature of statute,[1] and thus compliance with the statutory formalities is generally necessary. Several exceptions to this general proposition are frequently recognized. Where a will is validly executed, most courts[2] will permit it to incorporate the terms of other documents if certain requirements[3] are met. In

1. 1 Page, Wills § 25 (3d ed. 1941).
2. See cases 21 A.L.R.2d 220, 8 A.L.R.2d 614, 3 A.L.R.2d 682, 144 A.L.R. 714.
3. In order to validily incorporate an extrinsic document three requirements must be met by the will:
   (1) The will must refer to the document which is to be incorporated as one which is already in existence
   (2) The reference to the document must be in language explicit enough to identify it.
   (3) The language of the will must show an intention on the part of the testator to incorporate the document into the will and to make it a part thereof.
   In addition two more requirements must be met:
   (a) The document must have actually been in existence at the time of the will.
   (b) The document must answer the description thereof given in the will.
   Liney v. Cleveland Trust Co., 30 Ohio App. 345, 165 N.E. 101 (1928).

addition, many courts will also permit a testamentary disposition to be controlled by independent acts under the doctrine of independent significance or non-testamentary acts.[4] In certain situations a draftsman may find it advantageous to utilize these non-testamentary prodedures. For example, by use of incorporation by reference in a will, it is possible to make valid gifts to trusts without the necessity of setting out the entire trust agreement verbatim. The purpose of this paper is to determine the status of these "exceptions" in Wyoming and the degree to which a draftsman is probably justified in relying on them.

A recently enacted Wyoming statute[5] specifically allows a gift by will to be controlled by a non-testamentary trust instrument. Similar legislation has also been enacted in nine other states.[6] The Wyoming statute permits a testator to devise or bequeath property to an existing trust even though the trust is amendable or revocable subsequent to the execution of the will. The statute should solve the difficulties formerly encountered in achieving similar results under the doctrines of incorporation by reference and independent significance.[7] The statute provides that the testamentary property will pass in accordance with the terms of the trust as amended if the amendment is made in writing "at any time before or *after* the making of the will and *before* the death of the testator." (emphasis added).[8] "Unless the will provides otherwise . . ."[9] the property received will be governed according to the terms of the trust existing at the date of the testator's deah. Thus, it would seem

4. The validity of the devise or bequest is upheld on the theory that the disposition is ascertainable from facts having significance apart from their effect upon the disposition of the property devised or bequeathed in the will. Thus, where a bequest is "to the woman I may marry" extrinsic evidence is admissable to ascertain the identity of the beneficiary in the same manner as if the devise or bequest were "to all my children." See Atkinson, Wills § 81 (2d ed. 1953).

5. § 1, c. 180, S.L. of Wyo. 1957. § 2-53, W.S. 1957. By a will signed and attested as provided in this act (section) a testator may devise and bequeath real and personal estate to a trustee of a trust which is evidenced by a written instrument in existence when the will is made and which is identified in the will, even though the trust is subject to amendment, modification, revocation or termination. Unless the will provides otherwise the estate so devised and bequeathed shall be governed by the terms and provisions of the instrument creating the trust including any amendments or modification in writing made at any time before or after the making of the will and before the death of the testator.

6. Connecticut: Conn. Gen. Stats. § 45-173 (1958); Illinois: Ill. Rev. Stat. c. 3, § 194(a) (1957); Indiana: Ind. Stat. Ann. § 6-601(j) (Burns 1953 Repl.); Mississippi: Miss. Code § 661.5 (1958 Supp.); Nebraska: R.S. § 30-1806 (1957 Supp.); North Carolina: G.S. § 31-47 (1959 supp.); Oregon: Ore. Rev. Stat. § 114.070 (1957); Pennsylvania: Pa. Stat. Ann., tit. 20, § 180.141 (Purdon, Supp. 1958); Wisconsin: Wis. Stat. § 231.205 (1957). For a comparative analysis of these statutes see McClanahan, Bequests to an Existing Trust, 47 Calif. L. Rev. 267, 295 (1959); Comment, 57 Mich. L. Rev. 81, 91 (1958).

7. Atwood v. Rhode Island Hospital Trust Co., 275 Fed. 513, 24 A.L.R. 156 (1st Cir. 1921); President and Directors of Manhattan Co. v. Janowitz, 260 App. Div. 174, 21 N.Y.S.2d 232 (1940); contra, Montgomery v. Blankenship, 217 Ark. 357, 231 S.W.2d 51, 21 A.L.R.2d 212 (1950); Old Colony Trust Co. v. Cleveland, 291 Mass. 380, 196 N.E. 920 (1935); compare, In re Synder's Will, 125 N.Y.S.2d 459 (1953).

8. § 2-53, W.S. 1957.

9. Ibid.

that the testator can provide in his will that amendments to the trust occurring after his death will be effective.

There is no restriction in the statute as to the kinds of trusts which may be the subject of the testamentary disposition. The devise or bequest may be to a trust created by another person. This broad interpretation becomes a useful tool in estate planning in that it allows a trust created by one member of a family to be incremented by other members of the family. The testamentary gift may be made to charitable[10] as well as private trusts since there is no language in the statute restricting it to a particular type of trust.

Although the statute permits the incorporation of a trust which is subject to revocation or termination, it makes no provision as to the disposition of the property in the event the trust is revoked or terminated. Since the second sentence makes no reference to revocation or termination, it can be argued that a devise or bequest to a trust subsequently revoked is valid unless a new will is executed.[11] If subsequent revocation or termination is said to preclude incorporation of the trust the problem arises as to what will happen to the property since there is no statutory provision for an alternative disposition of the property. According to the principles of lapse applied to wills the property might pass by the residuary clause of the will; however, it is also possible that the property would pass as intestate property if the incorporation occurred in the residuary clause. Intestate succession may be preferable where a trust created by the testator has terminated or been revoked, but where the terminated trust has been created by someone else, the testator may wish the beneficiaries of the trust to be the recipients of the property rather than his heirs. In the absence of a clear legislative mandate, the draftsman should anticipate this problem and provide for an alternative disposition of the property in the event the devise or bequest is declared invalid or the trust is terminated or revoked.

The Wyoming statute differs in several respects from both the doctrine of incorporation by reference or the doctrine of independent significance. The statute provides that "a testator may devise or bequeath real and personal estate *to a trustee of a trust* which is evidenced by *a written instrument in existence* when the will is made and which is *identified* in the will." (emphasis added).[12] Insofar as it is required that the trust instrument must be in existence and identified in the will, the statute coincides with the doctrine of incorporation by reference.[13] The statute appears

10. For an application of the doctrine of incorporation by reference to a bequest for charitable uses see Linney v. Cleveland Trust Co., 30 Ohio App. 345, 165 N.E. 101 (1928). The Commissioner's comment on the Indiana statute similar to § 2-53, W.S. 1957 states that it is limited to public charitable trusts. Ind. Stat. Ann. § 6-601 (j) (Burns 1953 Repl.).
11. See Fifth-Third Union Trust Co. v. Wilensky, 70 Ohio App. 73, 70 N.E.2d 920 (1946).
12. § 2-53, W.S. 1957.
13. See note 3 supra.

to permit a mere identification of the trust in the will. Under the doctrine of incorporation by reference, however, unmistakable language setting out the testator's intention to actually incorporate the document is necessary.[14] The fact that the devise or bequest is to be made to the trustee of a trust seems to presuppose the existence of a valid and subsisting trust at the time of the execution of the will. This requirement is a deviation from the common law doctrine permitting incorporation of an extrinsic writing into the will since it is the *terms* of the trust instrument which are incorporated into the will, not the trust itself. On the other hand, the omission of a requirement by the statute that the size of the trust corpus be substantial precludes an interpretation that the statute is a legislative statement of the doctrine of independent significance. In order for this doctrine to be operative the existing trust must be more than nominal.[15] Thus, under the statute it would seem possible to create a nominal trust and subsequently execute a will which would pour over the estate of the testator subject to informal amendments to the trust made after the will has been drawn. Practice of this nature is inadvisable since it is nothing more than a testamentary disposition of the estate without meeting the requirements of the statute of wills, and the entire transfer at death is subject to being declared invalid.[16]

In *Clark v. Citizens National Bank of Collingswood*[17] testator executed an inter vivos trust agreement and later in the day a will. Although the residue of the estate was bequeathed to the trust, the trust res was not delivered to the trustee until three days later. The court stated that it was unnecessary to decide whether the doctrine of incorporation by reference was adopted in New Jersey since one of the essential elements was lacking, i.e., "the existence of a valid trust on the date of the execution of the will."[18] The court had apparently confused the elements of incorporation by reference which requires the existence of a trust agreement only with independent significance. If the Wyoming statute is strictly construed, a *Clark* type bequest would be invalid since no trust existed on the date of the execution of the will. It would then become necessary to determine whether or not the statute abrogates the common law doctrine of incorporation by reference. A correct interpretation of the doctrine would sustain the validity of the bequest since a trust instrument would be in existence at the time of the execution of the will. Since

14. Some courts have tended to relax full compliance with all of the requirements of the doctrine. E.g., In re Estate of Dimmit, 141 Neb. 413, 3 N.W.2d 752, 144 A.L.R. 704 (1942); *cf.* Wells Fargo Bank and Union Trust Co. v. Superior Court, 32 Cal.2d 1, 193 P.2d 721 (1948).

15. Professor Palmer suggests that the statute requires a substantial corpus. Palmer Testamentary Disposition to the Trustee of an Inter Vivos Trust, 50 Mich. L. Rev. 33, 69 (1951).

16. Atwood v. Rhode Island Hospital Trust Co., 275 Fed. 513, 24 A.L.R. 156 (1st Cir. 1921).

17. 38 N.J. Super. 69, 118 A.2d 108 (1955); *cf.* Montgomery v. Blankenship, 217 Ark. 357, 230 S.W.2d 51, 21 A.L.R.2d (1950) (invalid trust incorporated by reference).

18. Ibid. .....N.J. Super. at ....., 118 A.2d at 113.

the statute provides that "a testator may devise and bequeath"[19] property, it is possible to conclude that the legislature, by using permissive language, did not intend the statute to be in derrogation of the common law. The legislative purpose in enacting the statute was to facilitate dispositions at death through the use of non-testamentary trust agreements, thus it would seem that the statute provides a cumulative method of affecting this purpose.

In situations where a devise or bequest to an existing trust falls without the statute as well as where the testator attempts to incorporate the terms of other non-testamentary documents into his will reliance must be placed on common law authority supporting this practice. There are no reported decisions by the Wyoming Supreme Court taking cognizance of the doctrine of incorporation by reference; however, it is submitted that the doctrine is a fact of Wyoming common law by virtue of the legislative adoption of the common law of England as of the year 1606.[20] In *Molineux v. Molineux*,[21] the earliest reported case of incorporation by reference, testator had granted several annual rent-charges to his three youngest sons by deed during his lifetime but had never executed the deeds by livery of seisin. By his will testator devised the annuities to the children "as expressed in several writings signed by my hand."[22] It was held that the reference to the deeds was a good devise within the first Statute of Wills.[23] Although the *Molineux* case was decided in 1607[24] it is declaratory of the common law existing in England after the passage of the first Wills Act in 1540.[25] At the time of the decision the only requirement for testamentary validity was that the will be in writing. In 1677 the English Statute of Frauds[26] was passed requiring that wills of land be signed and attested by witnesses, and in 1837 the English Wills Act[27] required all wills to be signed and witnessed. The later enacted Wyoming

19. § 2-53, W.S. 1957.
20. The Wyoming Court has indicated that the common law of England in force in 1607 except so far as modified by judicial decisions and except as is inconsistent with the law of Wyoming is the law of this state. In re Smith's Estate, 55 Wyo. 181, 192, 97 P.2d 667, 681 (1940). However, the Court has also indicated that the year of adoption of the English common law is 1606. State v. Foster, 5 Wyo. 199, 208, 38 Pac. 926, 928 (1894). The earlier date is correct since § 8-17, W.S. 1957 adopts the common law existing in England prior to the fourth year of the reign of James I. The King acceded to the throne on March 24, 1603. Table of British Regnal Years, Black's Law Dictionary. Since the first year of the reign of James I began in 1603, the fourth year of his reign began in 1606. This date concides with the granting of the Virginia charter in 1606 when the common law of England was transplanted into this country. See Penny v. Little, 2 Scammon (Ill.) 301, 304 (1841).
21. 4. Cro. JAC. 144, 79 Eng. Rep. 126 (1607). The case is also reported in Noy 117, 74 Eng. Rep. 1082 (1607).
22. Ibid. 4. Cro. JAC. at 144, 79 Eng. Rep. at 126.
23. The actual reference in Noy 117, 74 Eng. Rep. 1082 is to "32 H. 6. of Wills." This reference is an obvious mistake since the first Wills Act was 32 Hen. VIII, c. 1 (1540) as supplemented by 34 & 35 Hen. VIII, c. 5 (1543).
24. It is interesting to note that the case was first entered on the Rolls in 1605. Hillary Term, 2 JAC. 1. Roll 360. See 4 Cro. JAC. at 144, 79 Eng. Rep. at 126.
25. Supra note 23.
26. 29 Cr. II c. 3 (1677).
27. 7 Wm. IV & 1 Vict. c. 26 (1837).

Wills Statute[28] substantially reflects these same requirements. In spite of these statutory changes the English courts have continued to permit non-testamentary documents to be incorporated into a will;[29] however, corresponding to the development of the wills statutes the doctrine of incorporation evolved from the single requirement that any writing would suffice to include the concepts that the writing had to be in existence, that it must be referred to as being in existence, that it must be identified in the will and that an intention to incorporate the writing must be shown by the language of the will. Although the doctrine of incorporation by reference has been adopted in Wyoming in its most primitive form and has been dormant ever since, the doctrine would follow the pattern of development of being modified by judicial decisions of all the various jurisdictions, and the Wyoming Supreme Court is "at liberty to adopt that interpretation which seems best."[30]

The recognition of the doctrine of incorporation by reference as part of the common law of Wyoming is further supported by the fact that it is accepted in most states[31] and has been expressly rejected only in Connecticut,[32] Louisiana,[33] New Jersey,[34] and New York.[35] Connecticut has enacted legislation giving partial approval to the doctrine,[36] whereas the other states achieve similar results on other grounds.[37]

The Wyoming Supreme Court has indicated by way of dictum in *In re Nelson's Estate*[38] that a will, invalid by reason of undue influence at the time of execution, may be validated by a subsequently executed codicil.[39] Although some courts allow an invalid will to be republished by a validly executed codicil,[40] Professor Atkinson criticizes these decisions and states that the doctrine of revival by republication should be restricted to instances wehere a *revoked* will is revived by codicil.[41] It is his contention that technically an invalid will cannot be revived by republication since "one cannot restore that which has never had life,"[42] and the only proper justification for giving effect to the former invalid will is on the ground of incorporation by reference. Thus, if the dictum in the *Nelson* case

28. §§ 2-47 and 2-50, W.S. 1957.
29. In re Schintz's Will, (1951) Ch. 870. For a discussion of the history of the doctrine of incorporation by reference see Lauritzen, Can a Revocable Trust be Incorporated by Reference, 45 Ill. L. Rev. 583 (1950).
30. In re Smith's estate, 55 Wyo. 181, 192, 97 P.2d 667, 681 (1940).
31. See cases 21 A.L.R.2d 220, 8 A.L.R.2d 614, 3 A.L.R.2d 682, 144 A.L.R. 714.
32. Hatheway v. Smith, 79 Conn. 506, 65 Atl. 1058 (1907).
33. Sucession of Ledet, 170 La. 449, 128 So. 273 (1930).
34. Murray v. Lewis, 94 N.J. Eq. 681, 121 Atl. 525 (1923).
35. Booth v. Baptist Church, 126 N.Y. 215, 28 N.E. 238 (1891).
36. Conn. Gen. Stat. § 45-173 (1958).
37. Hessman v. Edenborn, 196 La. 575, 199 So. 647 (1940); Swetland v. Swetland, 102 N.J. Eq. 294, 140 Atl. 279 (1928); Matter of Rausch, 258 N.Y. 327, 179 N.E. 755 (1932); In re Lawler's Will, 195 App. Div. 27, 185 N.Y.S. 726 (1920).
38. 72 Wyo. 444, 266 P.2d 238 (1954).
39. Ibid. 72 Wyo. at 475, 266 P.2d at 250.
40. E.g., Cook v. White, 43 App. Div. 388, 60 N.Y.S. 153 (1899) affirmed 167 N.Y. 588, 60 N.E. 1109 (1901).
41. Atkinson, Wills § 90 p. 467.
42. Ibid.

were to be technically interpreted, it would seem to be a statement of judicial approval of the doctrine of incorporation by reference.

It is generally accepted that a testator may make a devise or bequest which is dependent upon an act having significance apart from the will itself.[43] The typical situations in which the doctrine of non-testamentary act is applied are the so-called "servant" and "box cases" where extrinsic evidence is deemed admissable to identify someone caring for the testator at his death[44] or to identify the contents of a container, room or house.[45] The doctrine of independent significance has been extended in certain instances to situations where the testator has made a bequest to an inter vivos trust when it is impossible to sustain the testamentary gift under the doctrine of incorporation by reference on the theory that even though the trust instrument is non-testamentary the act of creating the trust has significance apart from the will.[46] Although the doctrine of independent significance has found acceptance even in those states which specifically reject incorporation by reference[47] the draftsman should be cautious of placing reliance upon the doctrine of independent significance until there is an indication of judicial approval by the Wyoming Court.

Prior to the enactment of the statute authorizing property passing by will to be governed by the terms of a trust instrument[48] the Wyoming legislature passed a bill authorizing transfers of property to charitable uses.[49] To this extent the statute is declaratory of the common law since the statute of Chartitable Uses[50] had already been adopted as part of the common law of Wyoming.[51] It is further provided[52] that a testator may incorporate by reference either a charitable or community trust[53] agree-

43. Atkinson, Wills § 81.
44. E.g., Dennis v. Holsapple, 148 Ind. 297, 47 N.E. 631 (1897).
45. E.g., Hastings v. Bridge, 86 N.H. 247, 166 Atl. 273 (1933).
46. In re York's Estate, 95 N.H. 435, 65 A.2d 282, 8 A.L.R.2d 611 (1949).
47. Swetland v. Swetland, 102 N.J. Eq. 294, 140 Atl. 279 (1928); Matter of Rausch, 258 N.Y. 327, 179 N.E. 755 (1932).
48. § 2-53, W.S. 1957.
49. §§ 1-4, c. 9, S.L. of Wyo. 1949. §§ 34-93 — 34-96, W.S. 1957.
50. 43 Eliz. I, c. 4 (1601).
51. § 8-17, W.S. 1957. Town of Cody v. Buffalo Bill Memorial Ass'n., 64 Wyo. 468, 196 P.2d 369 (1948).
52. § 34-94, W.S. 1957. No such gift, bequest or devise contained in any will executed in accordance with the requirements of law shall be deemed invalid by reason of the incorporation by reference in the will of any written or printed resolution, declaration or trust agreement, identified as existing prior to to the execution of such will, and adopted or made by any corporation or corporations authorized by law to accept and execute trusts, creating a trust to assist, encourage and promote the well being or well doing of mankind, or of the inhabitants of any community, provided that a copy of such resolution, declaration or deed of trust, certified by the secretary or assistant secretary, or other officer or officers, of such corporation or corporations under its or their corporate seal or seals, shall have been filed for record in the office of the secretary of state of the State of Wyoming, the secretary of state being hereby authorized and directed to receive and record such resolution, declaration or deed of trust, upon payment of the fees provided by law.
53. A community trust is a plan or resolution in the form of an elaborate trust agreement adopted by one or more banks or trust companies. "Donations by bequest, devise, grant, etc., are made to one of the trustees selected by the donor, which trustee becomes responsible for managment and investment, but not for

ment into a will. The use of words "incorporation by reference" leaves for judicial determination the elements of the doctrine with which there must be compliance with the exception that it is expressly required that the trust agreement be identified in writing prior to execution of the will.[54] In the event that the trust is subject to amendment after the date of the execution of the will or after the death of the testator, the devise or bequest will still be valid.[55]

As prerequisites for applicability of the statute[56] the declaration of trust incorporated into the will must have been adopted by one or more corporations authorized by law to accept and execute trusts,[57] and a copy of the trust agreement must also have been filed with the Secretary of State.[58] No provision is made, however, for incorporating the articles or by-laws of a charitable corporation. In *Town of Cody v. Buffalo Bill Memorial Ass'n.*[59] the Supreme Court of Wyoming indicated that if a gift is made to a charitable corporation with a specific condition or purpose appended the property received would be held in trust.[60] Thus, if a bequest is made "to the University of Wyoming Student Welfare Foundation,"[61] the testamentary gift will be held by the University in accordance with the terms of the Student Welfare Foundation, a declaration of trust adopted by a charitable corporation, which the testator in effect incorporated into his will by reference. The statutes in this respect parallel the attitude of the Wyoming Court; however, the legislature has further provided that the trust agreement must be filed with the Secretary of State. It was also stated in the *Buffalo Bill* case that it is possible to make an absolute gift to a charitable corporation in which event the property received would be held in accordance with the articles or by-laws of the corporation, however; it was further indicated that where an absolute conveyance is made to such a corporation with nothing more an implied trust would arise unless the trust concept were absolutely negated.[62]

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distribution of income or principal, which is exclusively under the control of the Distribution Committee, subject of course, to the directions of the donor." Jeffreys v. International Trust Co., 97 Colo. 188, 48 P.2d 1019 (1935). For a discussion of the objective and working of the community trust plan see 4 Scott, Trusts § 358; Bogert, The Community Trust: A Service Opportunity for Lawyers, 41 A.B.A.J. 587 (1955).

54. § 34-94, W.S. 1957.

55. § 34-95, W.S. 1957. Any gift, devise or bequest so made . . . shall be valid and effectual, notwithstanding . . . that such resolution, declaration or deed of trust, has been or may be amended in accordance with the provisions thereof.

56. Supra note 52.

57. The statute governing legal investments of a Wyoming trustee is applicable to "every individual, bank or trust company." § 4-16, W.S. 1957. It is possible that the word "individual" encompasses a charitable corporation. See Note, 12 Wyo. L.J. 130, 134 (1958).

58. Supra note 52.

59. 64 Wyo. 468, 196 P.2d 369 (1948).

60. Ibid. 64 Wyo. at 491, 196 P.2d at 377.

61. See In re Gilchrist's Estate, 50 Wyo. 153, 58 P.2d 431 (1936).

62. Supra note 60.

The manner in which property donated to charitable corporations is held becomes significant in determining whether the principal may be expanded for corporate purposes or whether the corporation is limited to the use of interest which is earned by the fund. Since there is no clear line of decision regarding the manner in which gifts to charitable corporations are held,[63] it becomes necessary for the draftsman to explicitly state how the testator intends such corporations should receive testamentary gifts.

As already indicated it is possible that a devise or bequest incorporating a charitable or community trust by reference would fail to comply with the terms of the statutes permitting such testamentary gifts if a copy of the trust agreement had not been filed with the Secretary of State. Nevertheless, charitable trusts are favorably regarded by the courts,[64] and the gift by will would probably be sustained on one of three grounds. The devise or bequest could fall within the statute permitting testamentary dispositions to be governed by a trust instrument[65] since the later enactment is not restricted to private trusts and the legislative intent was to provide a cumulative method of increasing the corpus of an existing trust.[66] In some instances it could be held that the gift by will was to a charitable corporation with a condition annexed; therefore, the corporation would receive the property in trust in accordance with the principles announced in the *Buffalo Bill case*.[67] The testamentary gift could be sustained on the ground that the creation of the trust was a non-testamentary act. The doctrine of independent significance could also be applied in situations where the will fails to identify the trust agreement as being in existence prior to the execution of the will.

Although incorporation by reference is probably a fact of Wyoming common law, the conservative draftsman will no doubt want to limit the incorporation of non-testamentary documents into a will to trust instruments in accordance with the practices prescribed by the legislature until judicial approval has been given the doctrine with regard to other documents. The same "wait and see" atttiude should also be taken toward reliance upon the doctrine of independent significance. In the meantime, when a will is drawn incorporating a trust agreement the limits of the statutes should be recognized, and the will should be drafted in a manner that will obviate problems likely to arise because of the shortcomings of the statutes.

THOMAS E. LUBNAU

63. E.g., Animal Rescue League v. Bourne's Assessors, 310 Mass. 330, 37 N.E.2d 1019, 138 A.L.R. 110 (1941); *cf.* Wellesley College v. Attorney General, 313 Mass. 722, 49 N.E.2d 220 (1943).

64. Bentley v. Whitney Benefits, 41 Wyo. 11, 281 Pac. 188 (1929).

65. § 2-53, W.S. 1957.

66. See text at note 19 supra.

67. 64 Wyo. 468, 196 P.2d 369 (1948).