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Parent and Child--Effect of Payment by Bank of Child's Deposit to Parent Not a Legal Guardian

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the plaintiff's land and garnered information as to the location of oil in the general neighborhood. Under a shooting permit, he would have been privileged to do exactly that. He did not receive the option that forms a vital part of the consideration in a selection lease. Evidence of the value of a selection lease has no bearing on the measurement of the value of the privilege to make tests on the plaintiff's land unless the option may be separately evaluated, and no attempt was made to do this. It would seem, therefore, that the evidence was irrelevant. The court thought it admissable because of a certain Code provision[13] allowing the jury great discretion in the assessment of damages in a case in quasi contracts.[14] Since the damages are to be measured by the value actually taken, it would seem that the jury, regardless of its discretion, should be limited in its consideration to that value, and evidence, otherwise irrelevant, should not be rendered relevant by this provision.

—STEPHEN AILES.

PARENT AND CHILD — EFFECT OF PAYMENT BY BANK OF CHILD'S DEPOSIT TO PARENT NOT A LEGAL GUARDIAN. — Defendant bank had paid out a deposit belonging to infants, to their father, without their consent. The father had not qualified as their legal guardian. Plaintiff brought an action on behalf of the infants to recover the amount of the deposit. There was a finding of fact that the fund represented not earnings of the children but gifts to them by their parents. The circuit court gave judgment for the defendant and the plaintiff brought error. *Held,* the bank had paid the funds to one not the legal guardian of the infants and was liable to them for the amount of the deposit. Reversed and remanded. *Fleshman v. Bank of Marlinton.*[1]

This decision is perfectly sound but the circumstances of the case present a situation subject to misinterpretation on the part of the business community.

At common law the father is the natural guardian of his infant children[2] and, in the absence of good and sufficient cause,[3] is

[13] LA. REV. CIV. CODE (Merrick's 3d ed. 1925) art. 1934.
[14] 71 F. (2d) 772, 774.

[1] 173 S. E. 775 (W. Va. 1934).
[2] Rust v. Vanvacter, 9 W. Va. 600 (1876); Green v. Campbell, 35 W. Va. 698, 14 S. E. 212 (1891).
[3] State v. Rueff, 29 W. Va. 751, 2 S. E. 801 (1886).

entitled to their custody,[4] control,[5] services,[6] or earnings[7] and the care of their education.[8] While at common law the father and by statute the parents equally, are entitled to the earnings of the minor,[9] this does not apply to money earned in the service of the United States army or navy when such service is with the consent of the parents,[10] nor to any earnings when the infant has been emancipated.[11]

The natural guardian has no authority or responsibility as such, in regard to the child's property.[12] Only an appointed guardian, who has given bond, as required by law, is entitled to the possession, care and management of his ward's estate.[13] The powers, rights and duties of the natural guardian are not affected by the appointment of a legal guardian unless the parents are shown to be unfit for the trust.[14] The legal guardian has the power to sell the personal property of his ward.[15] This is particularly true when the property is perishable and liable to waste.[16] He is entitled and bound to take possession of and manage all of his ward's property, real and personal.[17] The power to lease the land naturally follows,[18] but an oil lease, being in effect a sale of a part of the *corpus* of the estate, cannot be made by a guardian without an order of the court.[19] He has no power to sell or mortgage the land of his ward,[20] nor by his acts or agreement impose a lien or encumbrance upon it[21] except by order of the court. If a guardian has expended money for his ward's necessaries he is entitled to

[4] Green v. Campbell, *supra* n. 2; Hurley v. Hurley, 71 W. Va. 269, 76 S. E. 438 (1912), wherein the court quoted with approval the holding and reasoning of: Rust v. Vanvacter, *supra* n. 2.

[5] See State v. McDonie, 89 W. Va. 185, 197, 109 S. E. 710, 715 (1921).

[6] Taylor v. C. & O. Railroad Company, 41 W. Va. 704, 24 S. E. 631 (1896).

[7] Halliday v. Miller, 29 W. Va. 424, 1 S. E. 821 (1887); Adkins v. Hope Engineering and Supply Co., 81 W. Va. 449, 94 S. E. 506 (1917).

[8] Rust v. Vanvacter, *supra* n. 2.

[9] W. VA. REV. CODE (1931) ch. 44, art. 10, § 7.

[10] Gapen v. Gapen, 41 W. Va. 422, 23 S. E. 579.

[11] Weese v. Yokum, 62 W. Va. 550, 59 S. E. 514 (1907).

[12] McDodrill v. Pardee & Curtin Lumber Co., 40 W. Va. 564, 21 S. E. 878 (1895).

[13] W. VA. REV. CODE (1931) ch. 44, art. 10, § 7.

[14] Green v. Campbell, *supra* n. 2.

[15] Hunter v. Lawrence, 52 Va. 111 (1854).

[16] Buskirk v. Sanders, 70 W. Va. 363, 73 S. E. 937 (1912); W. VA. REV. CODE (1931) ch. 44, art. 10, § 9.

[17] Truss v. Old, 27 Va. 556 (1828); Logan Planing Mill v. Aldredge, 63 W. Va. 660, 60 S. E. 783 (1908).

[18] Truss v. Old, *supra* n. 17.

[19] Wilson v. Youst, 43 W. Va. 826, 28 S. E. 781 (1897).

[20] Hobaek v. Miller, 44 W. Va. 635, 29 S. E. 1014 (1898); Logan Planing Mill Co. v. Aldredge, *supra* n. 17.

[21] W. VA. REV. CODE (1931) ch. 44, art. 10, § 13.

reimbursement.[22] Such necessaries include necessary repairs to the dwelling, repairs to fences, necessary food and clothing and a common school education[23] but not a collegiate education,[24] or permanent improvements to the ward's estate.[25]

It seems to be the theory of the law that if an infant is the owner of property, real or personal, a guardian should be appointed who will act under bond. Although, in the principal case, the bank had apparantly acted in good faith it had not discharged its legal obligation. The case is consistent with all common law decisions and legislation relating to infants. They give real effect to the deeply-rooted policy of our law to protect infants.

—R. DOYNE HALBRITTER.

TAXATION — FEDERAL INCOME TAX — RIGHTS TO SUBSCRIBE TO STOCK OF ANOTHER CORPORATION AS TAXABLE GAIN. — The directors of the X corporation, a guaranty company, determined to organize the Y corporation, a fire insurance company, since the X corporation was not chartered to do such business. The X corporation's agents were to sell the new fire insurance policies. Of the capital stock of the Y corporation the board of directors of the X corporation resolved to purchase 50,000 shares at $40 per share, and further resolved that "rights" to purchase 25,000 of these should be issued pro rata to its common stockholders. The X corporation sent the rights to their shareholders, received the purchase price on the exercised rights and paid the money to the Y corporation. The Y corporation issued the certificates of stock directly to the subscribing purchasers. The rights were listed on the Baltimore Stock Exchange. The respondent received his pro rata share of the rights and exercised them. The petitioner assessed the fair market value on the date of receipt thereof at $1.02 per right, and claimed that this amount was a taxable gain to be included in the respondent's gross income. From a decision of the Board of Tax Appeals favoring the respondent,[1] the petitioner appealed. *Held,* the receipt of rights to subscribe to stock of

[22] Myers v. Myers, 47 W. Va. 487, 35 S. E. 868 (1901).
[23] Buskirk v. Sanders, *supra* n. 16.
[24] Campbell v. O'Neill, 69 W. Va. 459, 72 S. E. 732 (1911).
[25] Buskirk v. Sanders, *supra* n. 16.

[1] 28 B. T. A. 285 (1933).