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Names - Change - Rights of Petitioner and Sufficiency of Reason

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Five states, Colorado, Montana, New York, North Dakota and Texas,[15] aware of the inherent danger of incriminating circumstantial evidence, require some type of direct evidence. This statutory requirement eliminates any question as to the quantum or type of evidence necessary in North Dakota. This seems to be the logical approach, especially in those jurisdictions demanding the death penalty. Further appeal may result in the reversal of the decision here, but if not, legislation of the type found in North Dakota may necessarily result.

R. STEFANSON.

NAMES — CHANGE — RIGHTS OF PETITIONER AND SUFFICIENCY OF REASON. — Petitioner sought to change his surname from Rusconi to Bryan. A reason for the petition was the wife's distaste of the Italian heritage. The lower court upheld the objection of petitioner's relatives, that the petition was an "un-American" affront to persons of Italian origin. The Supreme Court of Massachusetts in reversing *held* that the right to change one's name is very broad; that objections of "un-Americanism" and the alleged affront to Italian people, did not constitute legal cause for denial of the petition. *In re Rusconi's Petition*, 167 N.E.2d 847 (Mass. 1960).

At common law mere adoption and use of a name constituted a permissible change without resorting to legal proceedings, if such change was not for a dishonest purpose.[1] State statutes were not meant to abrogate this common law right,[2] but rather to aid and facilitate recording such change.[3] The problem of statutory name change lies in the fact that the change is generally not a question of right but one of judicial discretion.[4] Several states have enacted statutes in this respect, which are in general agreement as to the requirements for name change.[5] In North Dakota an application to change a name

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of supposed offenders, charged with the murder of persons who survived their alleged murderers."

15. Colo. Rev. Stat. § 40-2-3 (1953) ". . . nor shall any person suffer the death penalty who shall have been convicted on circumstantial evidence alone."; Mont. Rev. Codes Ann. § 94-2510 (1947) "No person can be convicted of murder or manslaughter unless the death of the person, alleged to have been killed, and the fact of the killing by the defendant as alleged, are established as independent acts; the former by direct proof, and the latter beyond a reasonable doubt."; N.Y. Pen. Law § 1041 (1944) "What proof of death required — No person can be convicted of murder or manslaughter unless the death of the person alleged to have been killed and the fact of killing by the defendant, as alleged, are each established as independent facts; the former by direct proof, and the latter beyond a reasonable doubt."; N.D. Rev. Code § 12-2788 (1943) "Independent Facts Necessary to Prove Guilt. No person can be convicted of murder, manslaughter nor of aiding suicide, unless the death of the person alleged to have been killed and the fact of the killing by the accused as alleged, are established as independent facts, the former by direct evidence and the latter beyond a reasonable doubt."; Tex. Pen. Code art. 1204 (1925) "No person shall be convicted of any grade of homocide unless the body of the deceased, or portions of it, are found and sufficiently identified to establish the fact of the death of the person charged to have been killed."

1. See, *e. g.*, Smith v. United States Casualty Co., 197 N.Y. 420, 90 N.E. 947 (1910); Petition of Merolevitz, 320 Mass. 448, 70 N.E.2d 249, 250 (1946).

2. Reinken v. Reinken, 351 Ill. 409, 184 N.E. 639 (1933); Huff v. State Election Bd., 168 Okla. 277, 32 P.2d 920 (1934).

3. See *In re* Ross, 8 Cal.2d 608, 67 P.2d 94 (1937); *In re* Cohen, 142 Misc. 852, 255 N.Y. Supp. 616, 617 (Sup. Ct. 1932).

4. Don v. Don, 142 Conn. 309, 114 A.2d 203 (1955); Binford v. Reid, 83 Ga. App. 280, 63 S.E.2d 345 (1951); *In re* Taminosian, 97 Neb. 514, 150 N.W. 824 (1915).

5. Examples of such enactments are: Cal. Code Civ. Proc. tit. 8, §§ 1275, 77, 78 (1955); Ga. Code Ann. c. 79-5 (1937); Ill. Ann. Stat. c. 96 (1958); Neb. Rev. Stat. § 61 (1958); N.D. Rev. Code § 32-2802 (1943).

must be made by petition, stating that the applicant is a resident of the county, and giving the cause for which the change is sought.[6]

In the absence of fraud an application for change of name should be granted.[7] But in one instance, petitioner's allegation of "un-Americanism", as his reason for desiring change, had to be stricken from the petition before it would be granted.[8] This seems to be rather technical. Without a showing of fraud the court should offer a speedy and recorded change of name — any name of the petitioner's choice.[9]

D. M. DELABARRE.

RIPARIAN RIGHTS — INLAND WATERS — RIGHT OF AN OWNER OF LAND ABUTTING ON INTER-TRACT LAKE TO THE USE OF THE ENTIRE SURFACE. — Plaintiff brought an action to enjoin the defedant from constructing and maintaining a fence through and across two lakes and from taking water from one of the lakes for irrigation purposes. The trial court found that the waters overlying each owner's portion of the lake beds were the private property of the owner and subject to his exclusive control. It further found that the defendant's use of the lake water for irrigation was reasonable. On appeal, the Supreme Court of Minnesota reversing the judgment in part *held* that the plaintiff was entitled to an injunction against the defendant who had erected the fence across the lake. *Johnson v. Seifert*, 100 N.W.2d 689 (Minn. 1960).

Title to the unmeandered, intertract land in controversy was conveyed to Minnesota by the Swamp Land Act.[1] An individual may be vested with a fee simple title to this subaqueous land.[2] The English rule that non-navigable lake bottoms are susceptible of private ownership has been applied in most jurisdictions.[3] In the jurisdictions recognizing private ownership, it has been held that an owner of a segment of the lake bed was restricted to the use of the water overlying his land while he pursued the usual recreations of

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6. N.D. Rev. Code § 32-2802 provides: "Any person desiring to change his or her name may file a petition in the district court of the county in which such person may be a resident, setting forth: 1) That the petitioner has been a bona fide resident of such county for at least six months . . . 2) The cause for which the change of the petitioner's name is sought; and 3) The name asked for. . . ."

7. See *In re* Ross, 8 Cal.2d 608, 67 P.2d 94 (1937); *In re* Slobody, 173 N.Y. Supp. 514 (Sup. Ct. 1918); Bates, *Change of Name, Legitimation, and Adoption*, 19 Tenn. L. Rev. 418 (1946); Note, 26 Calif. L. Rev. 268 (1938); Note, 24 Tul. L. Rev. 496 (1950); Comment, 16 N.C. L. Rev. 187 (1938).

8. *In re* Cohen, 142 Misc. 852, 255 N.Y. Supp. 616 (Sup. Ct. 1932).

9. See Petition of Buyarsky, 322 Mass.. 335, 77 N.E.2d 216, 218 (1948); *In re* Slobody, 173 N.Y. Supp. 514 (Sup. Ct. 1918).

1. Swamp Land Act, 9 Stat. 519 (1850), 43 U.S.C. § 982-988 (1958) "To enable the several States . . . to construct the necessary levees and drains, to reclaim the swamp and overflowed lands therein — the whole of the swamp and overflowed lands, made unfit thereby for cultivation, and remaining unsold on or after the 28th day of September, A.D. 1850, are granted and belong to the several States respectively . . ."

2. 43 U.S.C. § 983 (1958) ". . . at the request of the governor of any State in which said swamp and overflowed lands may be, to cause patents to be issued to said State therefor, conveying to said State the fee simple of said land."

3. Crutchfield v. F. A. Sebring Realty Co., 69 So.2d 328 (Fla. 1954); Bannon v. Logan, 66 Fla. 329, 63 So. 454 (1913); Sanders v. DeRose, 207 Ind. 90, 191 N.E. 331 (1934); State Game & Fish Commission v. Louis Fritz Co., 187 Miss. 539, 193 So. 9 (1940); Walden v. Pines Lake Land Co., 126 N.J. Eq. 249, 8 A.2d 581 (1939).