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TRUSTS AND ESTATES - RELATIONSHIP BY AFFINITY-MEANING OF THE WORD "STEPCHILD" IN A TAX STATUTE

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TRUSTS AND ESTATES — RELATIONSHIP BY AFFINITY — MEANING OF THE WORD "STEPCHILD" IN A TAX STATUTE—A widower with two children married Sarah Bordeaux and predeceased her. A child of the marriage died in infancy. The two children were raised by Sarah as if she had been their natural mother. A strong filial relationship developed, and at the death of Sarah in 1949, the bulk of her property passed to the two children by will. The inheritance tax division of the tax commission contended that the relationship by affinity had been terminated and that the children, no longer being "stepchildren," were not entitled to the lower tax rates under Class A of the inheritance tax statute of Washington.[1] The lower court rendered a judgment adverse to the inheritance tax division, and the inheritance tax division appealed. *Held,* affirmed. The rule that the death of a spouse without issue terminates the relationship by affinity should not be applied to limit the meaning of the word "stepchild" as used in this statute. *In re Bordeaux' Estate,* (Wash. 1950) 225 P. (2d) 433.

[1] Wash. Rev. Stat. (Rem. Supp. 1943) §11202.

Affinity is "the connection existing, in consequence of marriage, between each of the married persons and the kindred of the other,"[2] as contrasted to consanguinity. The concept arose in England out of the canon law and was a bar to marriage, just as was relationship by consanguinity. It also became a ground for the disqualification of jurors. However, in the latter respect, it came to be accepted that the death of a spouse without issue terminated the relationship by affinity; although for purposes of determining the right to marry, the tie of affinity was apparently never broken.[3] Thus at the early common law, affinity developed as two separate concepts. In the United States, the general rule that the relationship terminates upon the death of a spouse without issue in determining jurors' qualifications has generally been followed,[4] and this rule has even been extended to determine the qualifications of judges.[5] However, the rule that the relationship never terminates for purposes of determining what constitutes incest has not been applied and the rule as it pertains to jurors has been extended to cover these cases also.[6] This has been due partially to a failure to observe the earlier distinction. Through reiteration in the jury and incest cases, it has been accepted sometimes as a general rule that affinity is terminated by the death of a spouse without issue.[7] It was so held by the earlier Washington case of *In re Raine's Estate*,[8] which is overruled by the principal case. With the advent of cases arising under workmen's compensation acts and statutes regulating insurance policies issued by fraternal benefit societies, many courts recognize that the different situation presented renders the rule that death of a spouse terminates the relationship by affinity inapplicable.[9] This is usually on the grounds that the legislature did not intend that the limitation should be applied.[10] Some federal cases[11] have advanced the position that whether or not the relationship has been terminated is a question of fact to be determined according to

[2] 1 BOUVIER'S LAW DICTIONARY, Rawle's 3d ed., 159 (1914).

[3] Mounson and West's Case, 1 Leo. 89, 74 Eng. Rep. 82 (1588).

[4] See Steele v. Suwalski, (7th Cir. 1935) 75 F. (2d) 885, for a comprehensive list of citations.

[5] However, courts sometimes refuse to apply the rule that living issue of the marriage prevents termination of the relationship by affinity. This is particularly true in determining the qualifications of judges. Zimmerer v. Prudential Ins. Co., 150 Neb. 351, 34 N.W. (2d) 750 (1948).

[6] In at least one case the opposite result was reached, and it was accepted as a general rule that relationship by affinity never terminated. Spear v. Robinson, 29 Me. 531 (1849).

[7] 2 C.J. 379. Also see Million, "Relationship by Affinity," 22 BOST. UNIV. L. REV. 558 (1942).

[8] 193 Wash. 394, 75 P. (2d) 933 (1938) (construing an earlier inheritance tax statute).

[9] Jones v. Mangan, 151 Wis. 215, 138 N.W. 618 (1912); Hummel v. Supreme Conclave I.O.H., 256 Pa. 164, 100 A. 589 (1917); McGaughey v. Grand Lodge A.O.U.W., 148 Minn. 136, 180 N.W.1001 (1921); Lewis v. O'Hair, (Tex. Civ. App. 1939) 130 S.W. (2d) 379, which involved an inheritance tax statute similar to the one in the principal case.

[10] But see Simcoke v. Grand Lodge A.O.U.W., 84 Iowa 383, 51 N.W. 8 (1892), which relied solely on Spear v. Robinson, supra note 6.

[11] Steele v. Suwalski, supra note 4; Benefield v. United States, (D.C. Tex. 1945) 58 F. Supp. 904.

whether or not the relative by affinity has continued to maintain his position in the family group. In view of its history, the court in the principal case is clearly correct in concluding that no absolute rule exists, except in the jury and incest situations, to the effect that relationship by affinity ceases upon the death of a spouse without issue.[12] It is not apparent whether the court in rejecting the death-of-a-spouse rule would then hold, in the absence of clearly expressed legislative intent, that the relationship never terminates. It is submitted that the better considered view is that termination of the relationship by affinity depends upon the cessation of membership in the family group.[13]

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[12] Principal case at page 449.

[13] See also the opinion of the court in the principal case, which presents an excellent history of the subject and contains almost all of the relevant citations.