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RECENT CASES

CONTRACTS—CONSIDERATION—FORBEARANCE TO SUE. Defendant widow married the plaintiffs' father two months prior to his death, and his insurance policies were made over to her immediately after the marriage. In compromise of threatened action to have the marriage declared void and to have the change of beneficiary invalidated, the widow consented to take one-third of the proceeds of the insurance and one-third of the estate of the decedent. Defendant now claims the compromise agreement lacked consideration, and the children seek specific performance of the compromise. *Held:* There was an enforceable agreement since the plaintiffs had relinquished claims which were "at least doubtful". *Jones v. Reese*, 191 Wash. 16, 70 P. (2d) 811 (1937).

The cases on the question of relinquishment of claims as consideration for a promise have been classified by one authority into two groups: (1) "Those which make the test the honesty of the claimant, provided the invalidity of the claim, in law or fact, is not perfectly obvious," and (2) those "which lay down the older rule, without qualification, that the claim forborne must be reasonably doubtful in fact or law." I WILLISTON ON CONTRACTS (rev. ed. 1936) § 135. Under both views good faith is required, the difference being in whether the emphasis is placed upon the subjective honesty of the claimant, or upon the reasonableness of the doubtful claim, viewed objectively. As the above writer has said, (§ 135) "Even in those states whose courts lay the principal stress on the honesty and good faith of the claimant, forbearance is insufficient consideration if the claim forborne is so lacking in foundation as to make its assertion incompatible with both honesty and a reasonable degree of intelligence." Where the stress is placed on "reasonable doubtfulness", the claim is viewed objectively. If, to a person of reasonable intelligence, the claim would appear to be groundless, good faith will not be found.

The previous Washington cases on this point have made the test the "reasonable doubtfulness" of the claim asserted. *Sanford v. Royal Ins. Co.*, 11 Wash. 653, 40 Pac. 609 (1895); *Nicholson v. Neary*, 77 Wash. 294, 137 Pac. 492 (1914); *Cunningham v. Wilk*, 150 Wash. 512, 273 Pac. 527 (1929); *Gainsburg v. Garbarsky*, 157 Wash. 537, 289 Pac. 1000 (1930). In the first three of these cases the honesty of the one asserting the claim was doubtful, and the court might have reached the same result under the "honesty" test. In the *Gainsburg* case, if the claimant was honest, the claim was so obviously groundless that the same result could have been reached under the qualification to the "honesty" test that the claim was "so lacking in foundation as to make its assertion incompatible with honesty and a reasonable degree of intelligence."

In the instant case the court again lays down the rule of the *Nicholson* case, *supra*, pointing out that there were valid grounds upon which the claimants might have contested the widow's claims in that the beneficiary of an insurance policy may attack the validity of the change in beneficiary on the ground that it is not the act of the insured; or they might have sought a decree adjudging that the purported marriage was in fact no marriage at all. The conclusion is that "it cannot be held that the appellants' claims were not at least doubtful." The court also discusses the honesty of the claimants under the "family settlement" doctrine, concluding that "the claimants, or at least some of them, were honestly

of the opinion that they could maintain an action which would probably result in their recovery of a greater amount . . . of their father's estate than they would receive if no such claim were asserted." In none of the cases has the court decided that an agreement is without consideration if the relinquished claim was asserted in good faith, and was not obviously invalid. When a case presenting such a set of facts arises, *quaere:* will the Washington court approve the "honesty" test?

D. W. G.

ESCROW AGREEMENTS—STATUTE OF FRAUDS. *P*, grantor, seeks specific performance of a contract to sell and purchase real property. Deed and check in payment therefor were both deposited in escrow to be delivered respectively to *D*, grantee, and *P* upon performance of a condition by *P*. The escrow agreement was not in writing. *D* had written several letters to *P* containing the material facts of the agreement. *Held:* These letters constituted a sufficient memorandum to bar the operation of the Statute of Frauds, and there was a valid escrow. No consideration was given to the fact that the condition was to be performed by the grantor. There was a *dictum* to the effect that "an agreement to deposit an instrument in escrow may be made orally" citing as authority 10 R.C.L. 623 and 21 C.J. 868. *Conner v. Helvik*, 73 P. (2d) 541 (Mont. 1937).

It is submitted that the *dictum* referred to does not follow the great weight of authority. The authorities cited by the court refer to the *conditions* of the escrow and not to the escrow agreement itself. 10 R. C. L. 622, § 3; *cf.* 10 R. C. L. 623-4, § 5; also *cf.* 21 C. J. at 866, § 2, and 21 C. J. 868, § 7. It is generally held that where there exists a previous valid contract to convey, the conditions upon which the deed is deposited may rest in and be proved by parol. See *Nichols v. Opperman*, 6 Wash. 618, 34 Pac. 162 (1893); *Campbell v. Thomas*, 42 Wis. 437, 24 Am. Rep. 427 (1877); *Minnesota etc. Land Co. v. Hewitt Inv. Co.*, 201 Fed. 752 (1913). But it is submitted that an enforcible escrow for the sale or exchange of real property should depend wholly for its validity upon an agreement in writing or some sufficient memorandum to avoid the Statute of Frauds (part performance aside). *McLain v. Healy*, 98 Wash. 489, 168 Pac. 1, L. R. A. 1918A 1161; *Foulkes v. Sengstacken*, 83 Ore. 118, 163 Pac. 311 (1917); *Collins v. Kares*, 52 S. D. 143, 216 N. W. 880 (1928); *Main v. Pratt*, 276 Ill. 218, 114 N. E. 576 (1916); *Blue v. Conner* (Texas Civ. App. 1918), 219 S. W. 533 (1918); *Anderson v. Messenger*, 158 Fed. 250 (1907); *Masters v. Clark*, 89 Ark. 191, 116 S. W. 186 (1909). *Contra: Macy v. Mielenz*, 27 N. M. 261, 199 Pac. 1011 (1921). See R. W. Aigler, *Is a Contract Necessary to Create an Effective Escrow?* (1918) 16 MICH. L. REV. 567, contending that a written contract is not necessary. See to the same effect Professor Tiffany (1914) 14 COL. L. REV. 399.

To constitute an escrow satisfying the above principle there must be more than mere written instructions. There must be a writing executed by both parties or by the party to be charged, see *Palmer v. Stanwood Land Co.*, 158 Wash. 487, 291 Pac. 342 (1930).

As to what constitutes a sufficient written memorandum to prove the escrow agreement, greater confusion exists. A note in 100 A. L. R. 210 takes the position that if a deed containing substantially the provisions of an oral contract of sale of land is delivered in escrow so that it has passed into the possession of a stranger for delivery to the grantee upon the happening of some event or the performance of some condition and is beyond the control of the grantor, the contract is taken out of the

Statute of Frauds. *Tharaldson v. Everts*, 87 Minn. 168, 91 N. W. 467 (1902); *Cannon v. Handley*, 72 Cal. 133, 13 Pac. 315 (1887); *Minnesota & O. Land Co. v. Hewitt Inv. Co.*, 201 Fed. 752 (1913).

There is no case directly in point in Washington. However, it would seem that if a deed does contain the terms of the contract, the Washington court would recognize this rule. *McLain v. Healy*, 98 Wash. 489, 168 Pac. 1, L. R. A. 1918A 1161; *In re Edwall*, 75 Wash. 391, 134 Pac. 1041 (1913); *cf.* note 100 A. L. R. 216.

The Washington Supreme Court has held, as did the Montana court in the instant case, that letters containing the essential terms of a contract to sell land can constitute a sufficient memorandum of an escrow agreement to satisfy the Statute of Frauds. *Bronx Inv. Co. v. Nat'l Bank of Commerce*, 47 Wash. 566, 92 Pac. 380 (1907).

W. J. W.

EVIDENCE — PRIVILEGED COMMUNICATIONS — PHYSICIAN AND PATIENT. Plaintiff sought specific performance of an oral contract to make a will. By the terms of the alleged contract, plaintiff was to care for the deceased as long as he should live, in consideration for decedent's promise to devise and bequeath to the plaintiff all his property. To prove this contract, plaintiff called as a witness the physician who had attended decedent, who testified that on two occasions the decedent had told him of the arrangements with the plaintiff, one time specifically detailing the agreement. The physician admitted that these statements were elicited from decedent in the course of prescribing for him, and in response to a suggestion that decedent go to a hospital where he could receive proper care. *Held:* The testimony of the physician was a privileged communication within REM. REV. STAT. § 1214, the information acquired being necessary to enable the physician to prescribe or act for the patient. Judgment was granted the plaintiff, however, on proof of the contract by the testimony of another witness. *Resor v. Schaefer*, 93 Wash. Dec. 95, 74 P. (2d) 917 (1938).

At common law this privilege did not exist. 5 WIGMORE, EVIDENCE (2d ed. 1923) § 2380. It is of statutory origin, and in some jurisdictions is limited in its application to civil cases. *People v. Griffith*, 146 Cal. 339, 80 Pac. 68 (1905). The Washington statute, REM. REV. STAT. § 1214-4, provides: "A regular physician or surgeon shall not, without the consent of his patient, be examined in a civil action as to any information acquired in attending such patient, which was necessary to enable him to prescribe or act for the patient." The statute has been applied to criminal actions under REM. REV. STAT. § 2152, providing that the rules of evidence in civil actions shall be, so far as practicable, applied in criminal prosecutions. *State v. Miller*, 105 Wash. 475, 178 Pac. 459 (1919).

The privilege exists in about one-half of the United States, and nearly all statutes, either expressly or by judicial construction, require that the communication, to be privileged, must be necessary to enable the physician to treat the patient. 5 WIGMORE, EVIDENCE (2d ed. 1923) § 2380 *et seq.* There has been a sharp diversity of opinion as to what is deemed "necessary" within the wording of the statute. Since this statute is in derogation of the common law, it would seem naturally to follow that it should be strictly construed, yet the majority of states, including Washington, give it a liberal construction. See *State v. Miller*, *supra*. It has been held that statements by the patient to the physician as to the details of the accident in which the injury was sustained were not privileged.

Green v. Terminal Ry. Ass'n etc., 211 Mo. 18, 109 S. W. 715 (1908); *Grossnickle v. Avery*, 85 Ind. App. 443, 152 N. E. 288 (1926). A physician can testify that a patient, being treated for an accident, was intoxicated, since this is not necessary to treatment for the injury. *State v. Townsend*, 146 Kan. 982, 73 P. (2d) 1124 (1937). But a few states have held everything divulged to a physician while the physician-patient relation exists is privileged. *McRae v. Erickson*, 1 Cal. App. 326, 82 Pac. 209 (1905); *Battis v. Ry. Co.*, 124 Iowa 623, 100 N. W. 543 (1904); *Brayman v. Russell & Pugh Lumber Co.*, 31 Ida. 140, 169 Pac. 932 (1917). Indiana has gone to the extent of holding that "it is conclusively presumed that a physician will ask a patient only as to matters necessary to treatment." *Pennsylvania Co. v. Marion*, 123 Ind. 415, 23 N. E. 973, 7 L. R. A. 687, 18 Am. St. Rep. 330 (1890).

If the physician makes an examination for the purpose of prescribing treatment, the results of such examination are privileged. *Strafford v. Northern Pacific Ry. Co.*, 95 Wash. 450, 164 Pac. 71 (1917); and it has been held that it was immaterial whether the physician did in fact prescribe or treat the patient. *Wesseler v. Great Northern Ry. Co.*, 90 Wash. 234, 155 Pac. 1063 (1916); but if the examination is made for the purpose of having the physician testify at a trial, clearly no privilege exists. *Strafford v. Northern Pacific Ry. Co., supra.* Likewise if the examination is made at the instance of the adverse party, and submitted to by the patient, there is no privilege. *State ex rel. Berge v. Superior Court*, 154 Wash. 144, 281 Pac. 733 (1921); *Osborn v. Seattle*, 142 Wash. 25, 252 Pac. 164 (1927).

A further conflict exists as to whom shall be the judge of whether the information communicated by a patient to his physician is necessary for treatment. Some decisions hold it is a matter to be decided by the trial court. *In re Redfield*, 116 Cal. 637, 48 Pac. 794 (1897); *Booren v. McWilliams*, 26 N. D. 558, 145 N. W. 410, ANN. CAS. 1916A, 388 (1914). A New York case held that the trial judge was the sole judge as to whether the information was necessary for the professional treatment, notwithstanding the physician's statement to the contrary. *Griffiths v. Metropolitan St. Ry. Co.*, 171 N. Y. 106, 63 N. E. 808 (1902). Other decisions holding the trial court to be the judge are *Kaskovich v. Rodestock*, 107 Neb. 116, 185 N. W. 343 (1914); *Madsen v. Utah Light & Ry. Co.*, 36 Utah 528, 105 Pac. 799 (1909); *Green v. Terminal Ry. Ass'n Etc., supra.* On the other hand, what is apparently a numerical minority of decisions hold the physician to be the judge as to whether the information acquired was necessary for treatment. *McRae v. Erickson, supra; Redmond v. Industrial Ben. Ass'n*, 150 N. Y. 167, 44 N. E. 769 (1896). Washington, while never directly deciding this point, seems in accord with the minority. In *Johns v. Clark*, 138 Wash. 288, 244 Pac. 729 (1926), a physician had attended the patient, and later made an examination of the patient for the purpose of testifying. The physician testified that he could not separate the knowledge acquired from this examination from that which he learned at the time he attended the patient. The court held the evidence was properly excluded, emphasizing the testimony of the physician as to his inability to disconnect what he learned on the two occasions. It is suggested that the court should be the sole judge of whether the information acquired was necessary for treatment. To do otherwise would be to place the entire application of the statute in this respect within the hands of the physician.

The physician-patient privilege has been widely criticized by commentators and text-writers, practically from the time of the first statute in New York in 1828. 5 WIGMORE, EVIDENCE (2d ed. 1923) § 2380 *et seq.*; 1 GREENLEAF, EVIDENCE (16th ed. 1899) § 247a; 5 JONES, COMMENTARIES ON EVIDENCE (2d ed. 1926) § 2189. See also Purrington, *An Abused Privilege* (1906), 6 COL. L. REV. 375.

The basis for the privilege has been said to be "to facilitate and make safe full and confidential disclosure by patient to physician, of all facts, circumstances, and symptoms, untrammeled by apprehension of their subsequent enforced disclosure and publication on the witness stand, to the end that the physician may form a correct opinion and be enabled safely and efficaciously to treat his patient." *In re Breundl's Will*, 102 Wis. 45, 78 N. W. 169 (1899). This reason has been often quoted in later decisions sustaining the privilege. But it is certainly doubtful if people would be deterred from seeking medical help because of the possibility of disclosure in court. At least in England and in one-half of the United States this has not been the result. Moreover, only rarely is a fact communicated to a physician confidential in any real sense. Most persons discuss their ailments and operations very freely. Their reticence to discuss them more often than not comes to the fore only when in court it is to their interest to suppress the facts.

The social policy behind such a privilege seems greatly overshadowed by the injustices which too often result from suppression of relevant evidence. Any rule which shuts out the truth as this does should only be recognized when considerations of policy very clearly require it.

A committee of the California Code Commission in *A Tentative Draft of a Partial Re-Codification of the California Law of Evidence*, drafted in 1937, recommends the complete abrogation of the physician-patient privilege. The argument in support of such recommendation expresses the view of the text-writers. As Professor Wigmore phrases it, "Certain it is that the practical employment of the privilege has come to mean little but the suppression of useful truth—truth which ought to have been disclosed and would never have been suppressed for the sake of any inherent repugnancy in the medical facts involved." 5 WIGMORE, EVIDENCE (2d ed. 1923) § 2380, p. 209.

In the instant case, it is very plain that the absence of the privilege would not have deterred the decedent from making full disclosure of the facts here held "necessary for treatment", and it is rare indeed when the allowance of the privilege can be reasonably said to have advanced the cause of public health. L. W. T.

EXEMPTIONS—PROCEEDS OR AVAILS OF LIFE INSURANCE—INCOME DERIVED FROM EXEMPT PROPERTY. Defendant was a beneficiary of life and accident insurance policies amounting to $120,000. With part of this sum defendant purchased an annuity from an insurance company, and deposited another sum with a bank in trust to invest and pay the income to her. Plaintiff, judgment creditor at the time the insurance money was received, garnisheed defendant and joined the bank and insurance company as co-defendants. Defendant filed a claim of exemption alleging that the properties in the hands of the garnishees were the "proceeds or avails" of the policies and under REM. REV. STAT. § 7230-1 were exempt from liability. *Held:* The property purchased solely with the insurance money, together with the interest and dividends derived therefrom, are "proceeds or avails" of the insurance policies and are exempt. *Northern*

Savings and Loan Ass'n v. Kneisley, 93 Wash. Dec. 338, 76 P. (2d) 297 (1938).

Although it is the general rule that exemption statutes are to be liberally construed in order to carry into effect the legislative purpose, *State ex rel McKee v. McNeill*, 58 Wash. 47, 107 Pac. 1028, 137 Am. St. 1038 (1910); *Northwestern Mutual Life Insurance Co. v. Chehalis County Bank*, 65 Wash. 374, 118 Pac. 326 (1911); *Lemagie v. Acme Stamp Works*, 98 Wash. 34, 167 Pac. 60 (1917); *Arbogast v. Linz*, 180 Wash. 315, 39 P. (2d) 615 (1935); yet, no property is exempt unless made expressly so by statute. No assumed legislative policy can justify the courts in adding to the statutory lists of exemptions or in extending them by implication. *In re Brown's Estate*, 123 Cal. 399, 55 Pac. 1055 (1899); *Bull v. Case*, 165 N. Y. 578, 59 N. E. 301 (1901); see also 2 COUCH CYL. OF INSURANCE LAW (1929 ed.) 936.

The courts, with one exception, have held that there is no exemption of property purchased with exempt proceeds of insurance policies. This result has been reached under statutes exempting "all money, or other benefits, charity, relief, or aid", *Bank of Brimson v. Graham*, 335 Mo. 1209, 76 S. W. (2d) 376; 96 A. L. R. 399 (1934); *Pefly v. Reynolds*, 115 Kan. 105, 222 Pac. 121 (1924); *Bull v. Case*, 165 N. Y. 578, 59 N. E. 301 (1901); "proceeds", *J. S. Merrill Drug Co. v. Dixon*, 131 Ky. 212, 115 S. W. 179, 24 L.R.A. (N.S.) 118 (1909); and, "money received by, or payable, to, a surviving wife or child". *Ross v. Simser*, 193 Minn. 407, 258 N. W. 582 (1935).

An exception to the holding of the above cases is found in *Cook v. Allee*, 119 Iowa 226, 93 N. W. 93 (1903) where, under a statute exempting "avails", it was held that the exemption extended to property purchased with the insurance money. This decision was affirmed without discussion in *Booth v. Martin*, 158 Iowa 434, 139 N. W. 888 (1913); and, now, the result of *Cook v. Allee, supra*, is enacted in Sec. 4009 of the Iowa Code.

In the instant case it was said that the words "proceeds or avails" made the Washington statute broader than that of any other state and that apparently, the legislature intended a sweeping exemption. Statutory differences in wording do afford a convenient basis for distinction, yet, the presence of the word "avails" would not seem to be a valid means of distinguishing those statutes of other states exempting "proceeds", "money received by, etc.", "all money or other benefits, charity, relief, or aid." WEBSTER'S DICTIONARY makes no distinction in meaning between "avails" and "proceeds" and, in fact, defines the former term by the use of the latter. However, up to the point of holding that the stocks and bonds purchased with the insurance money are exempt there is the authority of *Cook v. Allee, supra*, and *Booth v. Martin, supra*, decided under a statute substantially similar to that of Washington.

But in holding that the interest and dividends derived from such exempt property remains exempt as "proceeds or avails of the insurance money" the court goes further than even the Iowa cases and would seem to be adding a new exemption to the statute. The liberal construction given was not necessary to carry into effect the legislative purpose in enacting the statute for that was amply taken care of by holding exempt the property purchased with the insurance money. The case raises the interesting question of whether or not income derived from the exempt income would also be a "proceeds or avails" of the insurance policy. In

the words of dissenting Judge Robinson, "It seems to me that, in taking this last step, the majority departs from the realm of statutory interpretation and enter the field of judicial legislation, in that they, in effect add to the words 'proceeds or avails of life insurance', used by the legislature, these further words 'and the proceeds and avails thereof'."

R. A. H.

WILLS—SPECIFIC OR DEMONSTRATIVE LEGACY. Testatrix' will contained a bequest of $5000 to *M*, to be paid "as and when received from my former husband under and by virtue of that certain agreement made and entered into on November 8, 1931, whereby my husband agreed to pay me the sum of twenty-five thousand dollars, said contract being in connection with divorce proceedings instituted by me against my former husband." *Held:* This bequest is a specific legacy and the legatee is entitled only to the amount actually received by the executors out of the specified fund. *In re Preston's Estate*, 73 P. (2d) 369 (Ore. 1937).

The general rules concerning the nature and effect of specific legacies, payable by or out of a designated fund only, and the nature and effect of demonstrative legacies, payable out of a named fund first, and then out of the general assets, are clear and well settled. However, their application to the facts of this case was the occasion of some difficulty. Courts favor the construction of ambiguous clauses as creating demonstrative legacies. *In re Noon's Estate*, 49 Ore. 286, 293, 88 Pac. 673 (1907). Nevertheless, the question whether a legacy is specific, demonstrative or general is essentially one of intent. *Gildersleeve v. Lee*, 100 Ore. 578, 198 Pac. 246 (1921); *In re Doepke's Estate*, 182 Wash. 556, 47 P. (2d) 1009 (1935).

The court, in the instant case, considered the words "as and when received" to be controlling, importing a contingency, without the occurrence of which the bequest must fail. The words have never before been so construed in this connection, the most nearly analogous case being *In re Blake's Estate*, 157 Cal. 448, 108 Pac. 287 (1910), where it was decided that the words "as and when" imported a contingency when a bequest was to be paid upon the legatee's reaching a certain age. The present case goes farther, however, when it interprets the same words as creating a condition precedent to the existence of the fund itself.

It is possible that the case unduly stresses the significance of the words "as and when received." The bequest itself provided that the money was to be paid from the proceeds of the specified contract, and the circumstances of the case show a definite intent that only that source should be charged with payment. It is, of course, true that no direction out of what fund the legacy is to be raised will render the legacy specific, unless the clear intent was to transfer all or part of the same identical fund. 4 SCHOULER, WILLS, (6th ed. 1923) p. 2556. However, when that intent does appear, the court has no choice but to declare the legacy specific. *In re Jepson's Estate*, 181 Cal. 745, 186 Pac. 352 (1919). In the case under discussion, it is submitted that the bequest can reasonably be construed as disposing of the corpus of the fund itself. The words "as and when" can fairly be said to relate to the time of payment only. By what seems to be a strained construction, the court arrived at a proper result; but it is suggested that a sounder basis for the decision lies in recognizing that the bequest itself provided for a gift of the corpus of the fund, to the extent of $5000, if that much should be received, as this alone would be sufficient to make the legacy specific. H. B. S.

WORKMEN'S COMPENSATION — BENEFICIARIES — DEPENDENTS OF FEMALE WORKERS. Plaintiffs, children under the age of sixteen, having an able-bodied father, seek, through their father, to recover under the workman's compensation act for the death of their mother. *Held:* They are entitled to recover under REM. REV. STAT. § 7679 (a) (1), which provides for compensation for a widow or invalid widower and children under sixteen years of age of a deceased workman. *Epley v. Dept. of Labor and Industries*, 191 Wash. 162, 70 P. (2d) 1032, 73 P. (2d) 521 (1937).

The statute, REM. REV. STAT. § 7673 provides that the act shall exclude every other remedy for injuries falling within its scope. *Peet v. Mills*, 76 Wash. 437, 136 Pac. 685, Ann. Cas. 1915D 154, L. R. A. 1916A 358 (1913). On the strength of this provision, a party seeking relief under the wrongful death act, REM. REV. STAT. §§ 183 and 183-1, was denied recovery in *Anthony v. National Fruit Canning Co.*, 185 Wash. 637, 56 P. (2d) 688 (1936). The court in that case also held that no right of action was preserved under the factory act, WASH. LAWS 1905, chap. 84, p. 164, since that act has been superseded by the workman's compensation act and the remedies here applicable under the factory act were omitted from the superseding act. Now, basing their decision on *Anthony v. National Fruit Canning Co., supra*, the court feels constrained to hold that in spite of the statutory provision which declares that only children having an *invalid* father may recover, the plaintiffs are entitled to judgment. They say now that, "the theory upon which they (the Anthonys) were denied relief in their action for wrongful death was that their remedy was to be found in the compensation act."

Apparently the court now feels bound by the maxim that "there can be no wrong without a remedy." In view of the "spirit" of the workman's compensation act and a long line of Washington decisions to the contrary, the maxim is hardly a sound rationalization. Speaking of an instance where there is a similar lack of remedy, the case of *Robinson v. McHugh*, 158 Wash. 157, 291 Pac. 330 (1930), holds that the legislature may abolish the remedy for wrongful death, since it was only a statutory relief in the beginning. This holding was approved in *Denning v. Quist*, 160 Wash. 681, 297 Pac. 145 (1931); and on rehearing, *Denning v. Quist*, 172 Wash. 83, 19 P. (2d) 656 (1933). See also *Mattson v. Dept. of Labor and Industries*, 176 Wash. 345, 29 P. (2d) 675 (1934); *Long v. Thompson*, 177 Wash. 296, 31 P. (2d) 908 (1934). Similar results are found in cases from other jurisdictions where the legislature has intended to make the workman's compensation act exclusive of other remedies and has failed to provide a particular remedy where one existed before. *Shanahan v. Monarch Engineering Co.*, 219 N. Y. 469, 114 N. E. 795 (1916); *King v. Viscoloid Co.*, 219 Mass. 420, 106 N. E. 988, Ann. Cas. 1916D 1170 (1914).

In construing REM. REV. STAT. § 7679 (a) (1) as it did, the court ignored the policy previously approved by it in *North Spokane Irrigation Dist. v. Spokane County*, 173 Wash. 281, 22 P. (2d) 990 (1933), wherein it quoted from 2 LEWIS' SUTHERLAND ON STATUTORY CONSTRUCTION (2 ed. 1904) p. 702, as follows: "When the meaning of a statute is clear, its consequences, if evil, can only be avoided by a change of the law itself, to be effected by the legislature, and not by judicial construction."

It is submitted that the effect of the decision is to read the word *invalid* out of REM. REV. STAT. § 7679 (a) (1), thus materially enlarging the class of those entitled to compensation and giving a remedy to the child with an able-bodied father for the death of the mother, although the legislature expressly failed to provide for such a remedy.

H. B. S.