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THE WIDOW'S ELECTION TO TAKE AGAINST A WILL*

II. EVIL EFFECTS OF THE WIDOW'S ELECTION AGAINST THE WILL

A. *Interference With Testator's Intention*

Where the testator fails to anticipate his widow's election against the will and consequently does not provide for the distribution of the property which remains after the widow is given her share, the widow's election ordinarily results in a disruption of the testator's dispositive plan. Such interference is justified only when the widow's election is prompted by the desire to provide financial protection for herself and/or her children. Otherwise, the policy behind the widow's statutory rights under Section 233.14 of the Wisconsin Statutes is not being furthered, and the sanctity which Wisconsin law gives to a testator's right to have his will carried out¹ is being violated. Thus, where the widow takes against the will even though she would be adequately cared for without so electing, the interference with the testator's intention is wholly unjustified, and constitutes an evil effect of the widow's election.

B. *Difficulty Determining Who Bears Loss Occasioned by Widow's Election*

Another evil brought about by the widow's election, and the one with which we will be primarily concerned, is the difficulty which the courts experience in determining the method of distribution of the property which remains in the testator's estate after the widow's share has been taken. Since the property remaining subject to the will is usually less than it would have been had the widow abided by the will, the problem is essentially one of determining which testamentary beneficiaries must bear the loss occasioned by the widow's election.

As was mentioned above, if the testator expressly provides how the loss is to be borne, such provision will be carried out.² However, the cases are few in which testators have had such foresight.³ In some jurisdictions statutes regulate the incidence of the loss, but these enactments have been of little help. Because of the many varied fact situations which arise, questions as to the construction, application, and effect of the statutes are frequently before the courts.⁴

*This is the second of three installments of this article. The first installment, discussing the situations where a widow may elect against her husband's will, appears in 37 Marq. L. Rev. 365. The present installment is concerned with the evil effects of a widow's election. The third installment will take up possible remedial measures and will appear in a subsequent issue of the Review.

¹ See Scheller, *The Right to Dispose of Property by Will*, 37 MARQ. L. REV. 92, 94, 95 (1953), and cases cited.

² See the first installment of this article, 37 MARQ. L. REV. 365, 366 (1954).

³ *Ibid.* at 365.

⁴ To illustrate, ILL. REV. STAT. C.3, §202 (1953) provides that the probate court "shall abate from or add to the legacies in such a manner as to equalize pro-

Where there is neither a statute nor an express provision in the will regarding the method of distribution, the courts rely on the "presumed intent" of the testator in carrying out the provisions of the will. That is, the testator is presumed to have known of the possibility of an election against his will,⁵ and the will is therefore construed as if drawn with such possibility in mind.⁶ Although the presumed intent of the testator is probably the best available standard in the absence of an expressed intent, it is quite unrealistic. On this point the late Professor Page commented:

"In most cases this is a fictitious explanation. If testator really contemplates the possibility of an election against the will, he is likely to make a provision for such event in terms so clear that the rules of construction which are here given have no place."⁷

The rules of construction to which Professor Page referred have been adopted by the courts in an effort to ascertain the testator's presumed intent. These rules vary so much in different jurisdictions under almost identical circumstances that it appears that testators of different states have different intentions.

The controversies in the various jurisdictions revolve around two main problems: whether disappointed beneficiaries have a right to compensation out of the provisions renounced by the widow, if any, and/or whether they have a right to contribution from other testamentary beneficiaries of the same or a different class.

Many complex subsidiary questions arise in connection with each of these primary problems. Appellate case law in the various jurisdictions has not answered all the questions, and those answers which have been given illustrate the inconsistent opinions which must inevitably result from the use of such a loose standard as the testator's presumed intent. There has been a great deal of literature on each of the various aspects of the distribution of the loss occasioned by a widow's election, so we shall not attempt a detailed analysis of the entire problem. But we shall discuss generally the most important points, referring to Wisconsin law where our court has passed on the questions, in the hope

portionally the loss or advantage resulting therefrom." In *Lewis v. Sedgwick*, 223 Ill. 213, 79 N.E. 14 (1906) the statute was construed so as to prefer specific to residuary legacies. In *Dunshie v. Dunshie*, 263 Ill. 188, 104 N.E. 1100 (1914) the court held that the statute was inapplicable to devises. Also, see Notes, 99 A.L.R. 1197, 1198 (1935); 27 L.R.A. (N.S.) 602, 608 (1910).

⁵ *Bross v. Bross*, 123 Fla. 758, 167 So. 669 (1936); *Johnson v. Stringer*, 158 Md. 315, 148 A. 447 (1930); *In re Povey's Estate*, 271 Mich. 627, 261 N.W. 98 (1935); *In re Estate of Hunter*, 129 Neb. 529, 262 N.W. 41 (1935).

⁶ *Bross v. Bross*, *supra*, note 5; *Johnson v. Stringer*, *supra*, note 5; *Crocker v. Crocker*, 230 Mass. 478, 120 N.E., 110 (1918); *In re Povey's Estate*, *supra*, note 5; *Disston's Estate*, 257 Pa. 537, 101 A. 804 (1917); *Will of Marshall*, 239 Wis. 162, 300 N.W. 157 (1941).

⁷ 4 PAGE, LAW OF WILLS 88 (3d ed. 1941).

that we can make Wisconsin attorneys aware of the many complex problems brought about by a widow's election where remedial precautions have not been taken.

However, before we can begin our consideration of the questions of compensation and contribution, we must determine what property is taken to make up the share which goes to the widow upon her election. Then we shall know which testamentary gifts are impaired and how the questions of compensation and contribution arise.

(1) What Property Makes Up Widow's Share Under Section 233.14

Section 233.14 gives the widow the following property: her dower under Section 233.01, *i.e.*, a one-third portion of all the lands whereof her husband was seized of an estate of inheritance at any time during the marriage; an estate in the homestead for life or until remarriage; and one-third of the husband's net personal estate. Even though the realty is specifically devised, the widow gets her rights in the homestead⁸ and a one-third portion of *each parcel* of non-homestead realty.⁹ However, in regard to the widow's share of the personalty, specific and general bequests are entitled to be met in full so long as the personalty in the residue is sufficient to meet the widow's share and the will does not manifest a contrary intent.¹⁰ Thus, in Wisconsin, a testamentary beneficiary of land, no matter whether the gift be specific, demonstrative, general, or residuary, must give up to the widow one-third of the value of each piece of non-homestead realty and an estate for the widow's life or until her remarriage in the homestead. Regarding personalty, residuary beneficiaries may lose their entire gifts, and beneficiaries of the higher classes may also suffer loss on the occurrence of either of two contingencies: (1) a manifestation of such intent in the will, or (2) lack of sufficient residual personalty to make up the widow's share. Consequently, the question arises as to whether the disappointed beneficiaries should be compensated for the losses they sustain by reason of the widow's election.

(2) Compensation of Disappointed Beneficiaries From Provisions Renounced by Widow

(a) In General

Where a widow by taking under the law renounces testamentary provisions in her favor, the courts ordinarily sequester the property

⁸ WIS. STATS. (1953) §233.14.

⁹ WIS. STATS. (1953) §233.01; Will of Marshall, *supra*, note 6. In Will of Marshall part of the non-homestead realty was specifically devised and part was included in the residue. The widow was given dower in each parcel specifically devised as well as in those parcels passing under the residuary clause.

¹⁰ Will of Muskat, 224 Wis. 245, 271 N.W. 837 (1937).

renounced and use it to compensate beneficiaries whose gifts are impaired by the widow's election.¹¹ However, compensation is not based on disappointment in expectation, but on the probable intent of the testator.¹² Where the will expressly or impliedly precludes compensation, it will not be granted.¹³ Thus, we have the first of the rules of construction to which we have referred. Although the rule appears to be logical and equitable, it of course has the defect of any rule of construction, *i.e.*, the difficulty in ascertaining when a contrary intent is sufficiently manifested.

It has been held that where beneficiaries of both specific and residuary gifts are disappointed by the widow's election, the specific beneficiaries are to be preferred over the residuary beneficiaries in the matter of compensation from the renounced property, because of the generally favored position of specific gifts in regard to questions of abatement.¹⁴ There are no Wisconsin cases in point, so we cannot tell with certainty how the Wisconsin Supreme Court will hold on this question. However, Wisconsin also favors specific gifts in regard to abatement,¹⁵ as well as with respect to creditors' suits against will beneficiaries,¹⁶ and the manner of apportioning the widow's distributive share of personalty when she takes against the will.¹⁷ So, there is at least a good possibility that Wisconsin will follow this rule.

(b) Where Widow Renounces a Life Interest

When the widow renounces a life interest and no demand is made for compensation out of the renounced provision, the remainder is accelerated as though the widow were dead, unless a contrary intent appears in the will.¹⁸ However, where disappointed beneficiaries request compensation, a conflict arises between the doctrine of acceleration of the remainder upon the widow's election and the doctrine of

¹¹ 2 POMEROY, EQUITY JURISPRUDENCE 464 (5th ed. 1941). See Notes, 5 A.L.R. 1628, 1629 (1920); 99 A.L.R. 230, 231, 232 (1935); 125 A.L.R. 1013, 1014 (1940). *Contra*, Gainer v. Gates, 73 Iowa 149, 34 N.W. 798 (1887).

¹² Pace v. Pace, 271 Ill. 114, 110 N.E. 878 (1915); Hesselstine v. Partridge, 236 Mass. 77, 127 N.E. 429 (1920); *In re Povey's Estate*, *supra*, note 5; Will of Marshall, *supra*, note 6.

¹³ Crocker v. Crocker, *supra*, note 6; *In re Kahl's Estate*, 336 Pa. 376, 9 A.2d 346 (1939).

¹⁴ Page v. Rouss, 86 W.Va. 305, 103 S.E. 289 (1920).

¹⁵ WIS. STATS. (1953) §313.28.

¹⁶ WIS. STATS. (1953) §287.21.

¹⁷ *Supra*, note 10.

¹⁸ Sherman v. Flack, 283 Ill. 457, 119 N.E. 293 (1918); Young v. Harris, 176 N.C. 631, 97 S.E. 609 (1918); Will of McIlhattan, 194 Wis. 113, 216 N.W. 130 (1927). Note, however, that where the remainder is contingent an incidental problem presents itself, *i.e.*, whether the remainder can be accelerated prior to the occurrence of the contingency upon which it is limited. The courts have split on this question, but the later decisions are in favor of allowing acceleration. See Note, 5 A.L.R. 473, supplemented by 17 A.L.R. 314, 62 A.L.R. 206, and 164 A.L.R. 1433.

sequestration of the renounced provision for compensation of disappointed beneficiaries.¹⁹

Of course, testamentary intent as to which doctrine shall prevail is controlling, but difficulty in ascertaining such intent has resulted in inconsistent holdings. The only test which has been offered is that of the American Law Institute, which has formulated the rule that the renounced interest is sequestered when "there is no manifestation of a contrary intent" and (1) the satisfaction of the widow's share causes a "substantial distortion among the other testamentary dispositions" or (2) the acceleration of the remainder is excluded by the manifestation of a contrary intent.²⁰ "Distortion" is said to exist whenever satisfaction of the widow's share "operates otherwise than to decrease or increase such other dispositions proportionately."²¹ This rule has been of little influence, since few courts have even cited it. However, the Wisconsin Supreme Court has made reference to it in the *dicta* of two decisions, *Will of Muskat*²² and *Will of Marshall*.²³ In each of these cases sequestration was denied because of a finding of contrary testamentary intent, but the *dicta* stated that there was also a lack of substantial distortion.

The application of the Restatement rule in these *dicta* has been criticized in an article in the Wisconsin Law Review.²⁴ The author quarrels with the implications from the cases that (1) no distortion exists when the gifts of specific and residuary beneficiaries are diminished in the same proportion,²⁵ and that (2) the benefits a disappointed beneficiary will receive if the remainder is accelerated to him are not to be considered in determining whether there is a distortion.²⁶

Regarding the first implication, the author points out that it is not in accord with the ordinary rules of abatement nor with the definition of residue as given in *In re Bradley's Will*.²⁷ This case held that no residue exists until after the payment of all charges and burdens, including the widow's statutory share. The author says:

" . . . Under that definition of residue it is difficult to conceive

¹⁹ However, when a court decides in favor of compensation, it does not necessarily have to resort to sequestration. An alternative method of compensation, involving both acceleration and sequestration, was used in *Tomb v. Bardo*, 153 Kan. 766, 114 P.2d 320 (1941). That is, the remainder was accelerated, but there was a charge on the accelerated property in favor of the disappointed beneficiaries. Whether this remedy or sequestration is to be used depends upon judicial choice as to which is more efficient.

²⁰ RESTATEMENT, PROPERTY §234 (1936).

²¹ RESTATEMENT, PROPERTY §234(h) (1936).

²² *Supra*, note 10.

²³ *Supra*, note 6.

²⁴ Note, *Wills—Renunciation by Widow—Sequestration to Compensate Devises*, 1942 WIS. L. REV. 312.

²⁵ *Will of Marshall*, *supra*, note 6, 239 Wis. at 174, 300 N.W. at 162.

²⁶ *Ibid.*; *Supra*, note 10, 224 Wis. at 249 and 250, 271 N.W. at 838.

²⁷ 123 Wis. 186, 101 N.W. 393 (1904).

of the residue's being diminished by the widow's election so that diminution of a specific devise would not amount to distortion."²⁸

As to the second implication the author states:

" . . . It would seem that where the respective losses of different groups of beneficiaries are compared, the fact that one group gains, by having their interests in remainder accelerated, would be very important. It is possible that such gain may, in a given case, exceed the loss due to the widow's election. If so, it is difficult to justify accelerating instead of sequestering simply, because losses were proportional in the first instance. . . ."²⁹

However valid these criticisms of the Restatement's rule of construction may be, *Will of Marshall* demonstrates even more significantly the strained holdings to which the courts will resort in attempting to find a testamentary intent sufficient to prevail over the various rules of construction. This case held that when the testator provided that "all lapsed devises and bequests" were to go to the residue, he intended the renounced share of the widow to pass into the residue instead of being sequestered to compensate disappointed beneficiaries. Technically the term "lapse" does not pertain to a widow's renounced share. Rather, it refers to a legacy or devise "which fails because the devisee or legatee has, in some way, become incapable of taking under the will between the time that the will was made and the time that testator died."³⁰ However, the Wisconsin court justifies its holding by (1) indulging in the presumption, which Professor Page has called fictitious,³¹ that the testator had the possibility of his widow's election in mind when he drafted his will, and (2) reasoning from this presumption to the conclusion that the testator used the word "lapse" in a broad sense so as to include the renounced gifts to the widow.

The use of the presumption in this case was particularly unjustified, since the will under consideration was that of Roujet Marshall, a former Justice of the Wisconsin Supreme Court and a man of great legal ability. The court itself says, "He was one of the most thoroughgoing, accurate, and exhaustive lawyers that has ever appeared at the bar of Wisconsin."³² It is the respectful opinion of the writer that, had Judge Marshall *actually* contemplated his widow's election, his habits of thoroughness would have prompted him to make express provision for the disposition of the renounced gifts in the event of her election.

However, the result in *Will of Marshall* is just, since the residuary

²⁸ *Supra*, note 24, at 316.

²⁹ *Ibid.*

³⁰ 4 PAGE, LAW OF WILLS 158 (3d ed. 1941).

³¹ *Supra*, note 7.

³² *Will of Marshall*, *supra*, note 6, at 172.

beneficiaries, who were allowed to retain the renounced property, were the most cherished of Judge Marshall's beneficiaries. Still, this decision is ample proof of the difficulties which may arise when a will lacks provisions expressly covering the possibility of the widow's election. Without such provisions the will of Judge Marshall, who was famed for his thoroughness and accuracy, had to be taken to the Supreme Court of Wisconsin for construction.

(3) Contribution to Disappointed Beneficiaries of Same or Different Class

Where compensation out of the renounced provisions has not been allowed, or, if allowed, has been insufficient to make up the loss to beneficiaries whose gifts were impaired, the question arises whether such beneficiaries should receive contribution from other beneficiaries of the same or a different class. One of the problems with respect to contribution has already been answered in our consideration of how Wisconsin apportions the widow's share of personalty when she takes against the will. That is, the rule that the residue suffers the entire loss if it is sufficient and there has been no expression of a contrary intent,³³ answers the question whether there is contribution between beneficiaries of personalty.

However, the question whether beneficiaries of personalty receive contribution from beneficiaries of land has not been considered. For instance, does a residuary devisee, who loses one-third of non-homestead realty and/or an estate for the life of the widow or until her remarriage in the homestead,³⁴ have to contribute to a residuary legatee who loses out in greater proportion? Also, where the residual personalty is small and a general legatee consequently loses a larger proportion of his gift than that which devisees lose, is the general legatee entitled to contribution from general and/or residuary devisees?

Regarding contribution to devisees, the following questions are pertinent: (1) Do devisees get contribution from devisees or legatees of lower classes? (2) Are specific or general devisees allowed contribution from legatees of the same class who have not lost out in the same proportion?

None of the various aspects of contribution between beneficiaries has ever been before the Wisconsin Supreme Court. Therefore, we must use cases from other jurisdictions to demonstrate the difficulties peculiar to the problem of contribution.

(a) Contribution from Beneficiaries of Same Class

As pointed out above, in Wisconsin the questions of contribution between beneficiaries of the same class are as follows: (1) Does a

³³ *Supra*, note 10.

³⁴ WIS. STATs. (1953) §233.14, 233.01, 237.02(2).

residuary legatee who has lost out in greater proportion than a residuary devisee get contribution from the latter? (2) Is a general legatee entitled to contribution from a general devisee who has not lost out in the same proportion? (3) Does a general devisee get contribution from a general legatee who has not lost as large a share of his gift? (4) Does a specific devisee get contribution from a specific legatee who has not lost out in as great a proportion? Note that the claims for contribution are between legatees on the one hand and devisees on the other.

The decided cases on the question of contribution between beneficiaries of the same class hold that contribution should be allowed.³⁵ However, most of these cases involve disputes between devisee and devisee or between legatee and legatee, since the widow's share has been taken disproportionately from devisees or legatees of the same class.³⁶ In Wisconsin the widow's share is taken proportionately from devisees or legatees of the same class, so these cases are clearly inapplicable. However, some of the cases do involve situations which may occur in Wisconsin. For example, in *Sandoe's Appeal*³⁷ the court held, in effect, that a specific devisee should contribute to a specific legatee. This decision is not too strong, though, since the court found testamentary *intent* that the gifts to the devisee and legatee should be equal in value. In *In re Evans Estate*,³⁸ a Pennsylvania case where the share allotted to the widow was similar to that given her in Wisconsin, the court said in a *dictum* that, if both devisees and legatees are disappointed by the widow's election, it is the probate court's duty to adjust the equity between the devisees and legatees "in such manner that each shall bear his proper proportion of the loss, and no more."³⁹ Lastly, in *Robinson v. Harrison*⁴⁰ the Tennessee court put the loss proportionately on specific devisees and legatees (there were no general or residuary beneficiaries).

As to whether or not Wisconsin will follow this apparent tendency to allow contribution between beneficiaries of the same class when the dispute is between devisees on one side and legatees on the other, we can only speculate.

(b) Contribution from Beneficiaries of Lower Class

We have already indicated in the material introducing the problem

³⁵ *Henderson v. Green*, 34 Iowa 437, 11 Am. Rep. 149 (1872); *Latta v. Brown*, 96 Tenn. 343, 34 S.W. 417 (1896); *Meek v. Trotter*, 133 Tenn. 145, 180 S.W. 176 (1915). See Notes, 99 A.L.R. 1187, 1190, 1191 (1935); 27 L.R.A. (N.S.) 605 (1910); Ann. Cas. 1913E 424, supp. Ann. Cas. 1918C 415.

³⁶ For example, see *Latta v. Brown*, *supra*, note 35; *Meek v. Trotter*, *supra*, note 35.

³⁷ 65 Pa. 314 (1870).

³⁸ 150 Pa. 212, 24 A. 642 (1892).

³⁹ *Ibid.*, 24 A. at 643.

⁴⁰ 2 Tenn. Ch. 11 (1874).

of contribution that the following questions arise in Wisconsin with respect to contribution from beneficiaries of lower classes: (1) Should devisees get contribution from devisees or legatees of lower classes? (2) Is a general legatee whose gift is impaired entitled to contribution from a residuary devisee?

Again we must look to the decisions of other jurisdictions to see what the law is on these questions, since there are no Wisconsin cases in point.

Where the gifts of specific beneficiaries have been impaired, some of the cases hold that the disappointed beneficiaries are entitled to contribution from the general estate.⁴¹ The theory of these cases is:

" . . . that the testator must have meant that the persons to whom he made specific gifts should receive these gifts unimpaired, and that the general and residuary legatees (*the word 'legatees' is used here so as to include both devisees and legatees*) should take only in the event of there being property available for the purpose. . . ."⁴² (Italics added.)

However, there are a number of cases holding that specific beneficiaries should not be allowed contribution from beneficiaries of lower classes,⁴³ the rationale of these decisions being that:

" . . . the testator must be regarded as having made such specific gifts subject to the possibility of his widow's asserting her legal rights in derogation thereof."⁴⁴

Where the gifts of general beneficiaries have been impaired by the widow's election, there is also a split of authority regarding contribution from the residuary estate. Some of the cases allow contribution, upon the ground that the possibility of residuary beneficiaries losing out entirely is an unavoidable incident of a residuary gift.⁴⁵ Other decisions treat general and residuary gifts alike and apportion the loss ratably between them.⁴⁶

How will the Wisconsin Supreme Court hold on the question of contribution from beneficiaries of a lower class? A Wisconsin decision, *Will of Muskat*,⁴⁷ has been cited for the proposition that a

⁴¹ Treasy v. Treasy, 18 Ky. L. Rep. 387, 36 S.W. 3 (1896); Mercantile Trust Co. v. Schloss, 165 Md. 18, 166 A. 599 (1933); Tehan v. Tehan, 83 Hun. 368, 31 N.Y.S. 961 (1894). See Notes, 99 A.L.R. 1187, 1192-1195 (1935), 27 L.R.A. (N.S.) 606 (1910); Ann. Cas. 1913E 425.

⁴² Note, 99 A.L.R. 1187, 1192 (1935).

⁴³ Gainer v. Gates, 73 Iowa 149, 34 N.W. 798 (1887); Devecmon v. Kuykendall, 89 Md. 25, 42 A. 963 (1899); Witherspoon v. Watts, 18 S.C. 396 (1883). See Notes, 99 A.L.R. 1187, 1194, 1195 (1935); 27 L.R.A. (N.S.) 607, 608.

⁴⁴ *Supra*, note 42.

⁴⁵ Firth v. Denny, 2 Allen (Mass.) 468 (1861); Wallace v. Wallace, 15 W. Va. 722 (1879).

⁴⁶ *McRae's Appeal*, 179 Mich. 595, 146 N.W. 265 (1914); *Re Byrnes*, 149 Misc. 449, 267 N.Y.S. 627 (1933).

⁴⁷ *Supra*, Note 10.

specific beneficiary is entitled to contribution from the residuary estate, but this case did not involve the impairment of a specific gift, so it is clearly not in point. The fact that residuary beneficiaries lose out in Wisconsin concerning questions of abatement,⁴⁸ suits against will beneficiaries,⁴⁹ and apportionment of the widow's share of personalty when she takes against the will,⁵⁰ would seem to indicate that Wisconsin will require contribution from residuary beneficiaries. However, in the *dicta* of *Will of Muskat*⁵¹ and *Will of Marshall*⁵² to which we have already referred in regard to the question of sequestration, the Wisconsin court put specific and residuary gifts on a par when it said that there is no "substantial distortion" among testamentary gifts where specific and residuary beneficiaries lose out in the same proportion and that specific beneficiaries are therefore not entitled to compensation. Consequently, we have factors pointing both ways in Wisconsin and it is impossible to predict how our court will hold.

(c) Conclusion Regarding Contribution

Concluding our remarks on contribution, it is apparent that the conflicts among the various jurisdictions and the difficulty in ascertaining what the position of the Wisconsin court will be, will foster needless litigation in our courts unless wills are drafted so as to express the testator's intention with respect to contribution.

C. Tax Effects

The tax effects of a widow's election have already been considered.⁵³ Ordinarily, there will be no tax advantage or disadvantage when a widow takes against a will.⁵⁴ However, under certain circumstances the widow gets an advantage regarding the federal estate tax.⁵⁵ Under other circumstances her election causes an increase in the federal estate tax.⁵⁶ Thus, whether or not there will be an evil effect tax-wise depends upon the facts in each case.

(To be continued)

WILLIAM A. GIGURE

⁴⁸ *Supra*, note 15.

⁴⁹ *Supra*, note 16.

⁵⁰ *Supra*, note 10.

⁵¹ *Supra*, note 10.

⁵² *Supra*, note 6.

⁵³ See the first installment of this article, 37 MARQ. L. REV. 365, 371-373 (1954).

⁵⁴ *Ibid.*

⁵⁵ *Ibid.*, at 372.

⁵⁶ *Ibid.*, at 373.