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Wills -- "Or His Estate" as Words of Substitution Preventing Lapse of Bequest

for such a provision the reviser's notes cited the *Kepner* case, mentioning that it was brought under the FELA and prosecuted in New York although the accident occurred in Ohio. The use of the *Kepner* case to illustrate the *need* of Section 1404 (a) is of great importance in determining congressional intent since the reviser's notes were considered by the congress.[22]

Since the FELA merely provides where an action *may* be brought and does not provide that the action must remain, it is possible to construe Section 1404(a) and the FELA as being consistent.[23] There is no particular reason why FELA cases should now be treated differently from other cases.[24] The court apparently placed too much weight on the fact that the Jennings Bill, a separate piece of legislation, failed to be enacted by congress. The reviser's notes would seem a more appropriate source for ascertaining congressional intent as to the application of Section 1404(a).

WILLS — "OR HIS ESTATE" AS WORDS OF SUBSTITUTION PREVENTING LAPSE OF BEQUEST

Testator executed a holographic will devising certain property to Specter "or his estate." The donee, who was unrelated to the testator, predeceased him. The bequeathed property was sold; and by decree of the lower court the proceeds were awarded to the heirs of deceased donee Specter. From this decree, the executors of testator appealed. *Held*, since the words "or his estate" did not indicate that the testator intended to substitute the donee's heirs in his place and thus prevent lapse of the bequest, the testamentary gift to the donee lapsed upon his death. Decree reversed. In re *Brunet's Estate*, 200 P.2d 59 (Cal. 1949).

In the absence of statute, a testamentary gift lapses if the beneficiary thereof predeceases the testator unless the bequest manifests the testator's intent to substitute another in place of the deceased donee.[1] Recent statutes modify this common law rule in order to prevent lapse and permit devolution of the gift to the heirs of the donee even though the bequest does not expressly substitute them in his place if the deceased donee was within a specified degree of relationship to the testator.[2] But where the donee was a stranger in blood,

22. See H. R. REP. No. 308, 80th Cong., 1st Sess. A132 (1948).
23. White v. Thompson, *supra*.
24. Nunn v. Chicago, Milwaukee, St. P. & P. R. R., *supra*.

1. *In re* Simpson's Estate, 304 Pa. 396, 156 Atl. 91 (1931); Equitable Trust Co. v. Banning, 17 Del. Ch. 95, 149 Atl. 432 (1930); Bryson v. Holbrook, 159 Mass. 280, 34 N. E. 270 (1893); *see* Nelson v. Meade, 120 Me. 61, 149 Atl. 626, 628 (1930).

2. "If a devisee or legatee dies during the lifetime of the testator, the testamentary disposition to him fails, unless an intention appears to substitute another in his place; except that when any estate is devised or bequeathed to any kindred of the testator, and the devisee or legatee dies before the testator, leaving lineal descendants, . . . such descendants take the estate so given by the will in the same manner as the devisee or legatee would have

as in the instant case, these same statutes generally provide that a gift will lapse upon the donee's death during the testator's lifetime unless the bequest expressly manifests the intent of the testator to substitute another in the donee's stead.[3] Accordingly, it has been held that a bequest to one "or his heirs" does not lapse if the donee predeceases the testator for the use of the disjunctive "or" indicates the testator's intent to substitute said heirs as alternative donees and thus prevent lapse.[4]

While most jurisdictions have construed bequests to one "or his estate" to have the same effect as a bequest to one "or his heirs," [5] California courts have held that the testator's intent to substitute the donee's heirs as alternative donees could not be imputed from the term "or his estate," as "estate," technically construed, is not synonymous with "heirs" but rather means one's "property or property interests." [6] Such a result appears untenable, for in ascertaining and effectuating the intent expressed in a holographic will, a term with diverse meaning should not be construed in its technical sense.[7] To hold that the testator so meant "estate" in the instant case renders the term meaningless, for such construction results in ascribing to the testator an intent to make a bequest to one—and in the event of his death during the testator's lifetime—to his property, a result which has been termed "absurd." [8] Clearly, if the will is considered as a whole, the donor's intent to substitute the donee's heirs as alternative donees is manifest and should have been effectuated.

done had he survived the testator." CAL. PROB. CODE § 92 (1931). FLA. STAT. § 731.20 (1941) (almost identical).

3. *Ibid.*

4. Wyman v. Kinney, 11 Vt. 94, 10 A.2d 191 (1940); Potter v. Potter 306 Ill. 37, 137 N. E. 425 (1922).

5. Bottomley v. Bottomley, 134 N. J. Eq. 279, 35 A. 2d 475 (1944); Leary v. Liberty Trust Co., 272 Mass. 1, 171 N. E. 828 (1938); Reid v. Neal, 182 N. C. 192, 108 S. E. 769 (1921); *cf.* Shockley v. Storey, 185 Ga. 790, 196 S. E. 702 (1938); Pace v. Pace, 19 Fla. 438 (1882).

6. *In re* Davis' Estate, 59 P.2d 547 (1936), *rev'd per curiam on other grounds*, 8 Cal. 2d 4, 63 P.2d 827 (1936); *In re* Glass' Estate, 164 Cal. 765, 130 Pac. 868 (1913); *cf.* Gardner v. Anderson, 114 Kan. 778, 227 Pac. 743 (1924).

7. Arvin v. Smith's Ex'rs., 142 Va. 680, 128 S. E. 252 (1925); Conover v. Cade, 184 Ind. 604, 112 N. E. 7 (1916).

8. *See* Pace v. Pace, 19 Fla. 438, 458 (1882) (construction of term "estate" with respect to distribution of insurance proceeds).