

have occurred has already been recognized by the highest authority of the land. The Supreme Court of the United States, in the case of *Railway Company vs. Interstate Commerce Commission*, decided January 4, 1932, speaking through Mr. Chief Justice Hughes, said:

“Of that change we may take judicial notice. It is the outstanding contemporary fact dominating thought and action throughout the country.”

Particularly significant has been the effect of the depression upon financial institutions. Judicial notice may be taken of the fact that there are, in our banks, many mortgages which, at the time the loans were made, were well within the percentage limitations prescribed by Section 710-112 of the Code, but which are now in excess of those percentages by reason of receding real estate values. Under such circumstances, in order that a bank may maintain that degree of liquidity which is essential to its safety, it may be necessary to realize upon a portion of the mortgage securities so held. This realization is in no sense an original investment, but the application of sound business principles to the liquidation of investments legally made.

These further considerations may well be added to what has already been said in support of the conclusion heretofore expressed.

Respectfully,

GILBERT BETTMAN,
Attorney General.

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COSTS—GOVERNED BY LAW IN EFFECT AT TIME OF FILING WILL—
PROVISIONS OF NEW PROBATE CODE INAPPLICABLE.

SYLLABUS:

1. *The filing of a will for probate under the probate code before amendment, constitutes the same a pending civil proceeding within the meaning of section 26, General Code, and subsequent fees and accounts should be governed by the law in effect at the time of such filing and not by the provisions of the new probate code effective January 1, 1932.*
2. *The provisions of the probate law in effect at the time of filing a will for probate govern subsequent procedure and new requirements or changes resulting from subsequent enactment, such as the requirement of filing a schedule of debts, need not be complied with.*

COLUMBUS, OHIO, February 5, 1932.

Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.

GENTLEMEN:—This is to acknowledge receipt of your recent request for my opinion which reads:

“We are enclosing herewith letter from one of our State Examiners submitting two questions relative to fees of Probate Judges under the new Probate Code.”

The questions presented by the attached communication are:

- “1. When a will is deposited and probated previous to Jan. 1, 1932,

and all other proceedings in connection with the settlement of such estate is had after said date, will the fees charged for such services rendered after Jan. 1, 1932, be those provided in the new law (Sec. 10501-42 G. C.) effective Jan. 1, 1932, or will the fees provided by the old law be taxed?

2. Under conditions as stated above, would there be any necessity for filing a schedule of debts or of rendering any other service required by the law effective after Jan. 1, 1932, but not provided in the old law?" Section 26, General Code, pertinent to your inquiry reads as follows:

"Whenever a statute is repealed or amended, such repeal or amendment shall in no manner affect pending actions, prosecutions, or proceedings, civil or criminal, and when the repeal or amendment relates to the remedy, it shall not affect pending actions, prosecutions, or proceedings, unless so expressed, nor shall any repeal or amendment affect causes of such action, prosecution, or proceeding, existing at the time of such amendment or repeal, unless otherwise expressly provided in the amending or repealing act."

An examination of the new probate code discloses no provision relative to the status of pending actions, prosecutions, or proceedings.

The questions presented by your communication then resolve themselves into a determination as to whether or not the probate of a will is a pending civil proceeding within the meaning of section 26, General Code, above quoted. If the same is a pending civil proceeding, then it follows that subsequent proceedings will be governed by provisions of the law before its amendment by the 89th General Assembly.

It has been held by the courts of this state that the term civil proceeding includes "an order or resolution of a board of county commissioners declaring for or in favor of a county road improvement, or fixing the assessment therefor." See *State, ex rel. Andrews, et al., vs. Zangerle*, 101 O. S. 235. See also 1929 Opinions of the Attorney General, page 499; and 1927 Opinions of the Attorney General, page 1357.

As to an application under the workmen's compensation law being a pending proceeding, see *Industrial Commission vs. Vail*, 110 O. S. 304.

It should be noted that in Opinion No. 3856 in Opinions of the Attorney General for 1931, I held that divorce actions pending in certain probate courts prior to January 1, 1932, continue in said courts by reason of section 26, General Code, notwithstanding the provisions of the new probate code.

A consideration of the foregoing cases and opinions compels the conclusion that the filing of a will for probate under the probate code before amendment, constitutes the same a pending civil proceeding within the meaning of section 26, General Code, and that subsequent fees and accounts should be governed by the law in effect at the time of such filing and not by the provisions of the new probate code effective January 1, 1932.

The provisions of the probate law in effect at the time of filing a will for probate govern subsequent procedure and new requirements or changes resulting from subsequent enactment, such as the requirement of filing a schedule of debts, need not be complied with.

Respectfully,

GILBERT BETTMAN,
Attorney General.