

1384.

APPROVAL, BONDS OF CITY OF LIMA, OHIO, IN AMOUNT OF \$6,500
FOR SPECIAL ASSESSMENTS.

COLUMBUS, OHIO, July 1, 1920.

Industrial Commission of Ohio, Columbus, Ohio

1385

APPROVAL, BONDS OF CITY OF LIMA, OHIO, IN AMOUNT OF \$16,500
FOR STREET ASSESSMENTS.

COLUMBUS, OHIO, July 1, 1920

Industrial Commission of Ohio, Columbus, Ohio.

1386.

APPROVAL, BONDS OF CITY OF LIMA, OHIO, IN AMOUNT OF \$36,000
FOR STREET ASSESSMENTS.

COLUMBUS, OHIO, July 1, 1920.

Industrial Commission of Ohio, Columbus, Ohio.

1387.

PROBATE COURT—LUNACY PROCEEDINGS—THE WORDS “PROVED
INSOLVENT” CONSTRUED IN SECTION 1982 G. C., 108 O. L. 1203—
DUTY OF PROBATE JUDGE TO MAKE INQUIRY INTO FINANCIAL
CONDITION OF PERSON PROCEEDED AGAINST AND THOSE PER-
SONS LAWFULLY RESPONSIBLE—QUERY HAVE THEY PROPERTY
SUBJECT TO EXECUTION?—HOW COSTS AND FEES PAID IN SUCH
CASES.

1. *In connection with a lunacy proceeding it is the duty of the probate judge, under the provisions of section 1982 G C as amended in H B 294, 108 O L Par II, p 1203, to make careful inquiry into the financial condition of the person proceeded against, as well as the financial condition of the persons lawfully responsible for the care of the person proceeded against.*

2. *If upon such inquiry the probate judge is of the opinion that neither the person proceeded against nor those lawfully responsible for his care have property which would be subject to execution, if that were attempted, then such persons may be said to have “proved*

insolvent" within the meaning of section 1982 G. C., and the probate court may in such case order that all of the costs, fees and expenses contemplated by said section (except the fees of the probate judge and the fees and expenses of the sheriff) be paid from the county treasury upon the certificate of the probate judge.

COLUMBUS, OHIO, July 1, 1920

HON JOHN B COONROD, *Judge of Probate Court, Fremont, Ohio*

DEAR SIR—In your letter of recent date, you call attention to section 1982 G. C. recently amended by house bill No 294, 108 O. L., Part II, page 1203, to read as follows:

"The fees and expenses enumerated in the preceding section together with all costs in the probate court, including the cost of clothing, if any, authorized by section 1962, shall be taxed in the bill of costs and collected from the patient or those lawfully responsible for his care but if they should prove insolvent, all of said fees and expenses, except the fees and expenses of the sheriff, and the fees of the probate judge, shall be paid from the county treasury upon the certificate of the probate judge."

After quoting said section you inquire:

"What proof is necessary for the court to find 'if they should prove insolvent?'"

In other words, we are to consider what the legislature meant by the words "prove insolvent" found in the above quoted section.

The task of interpreting these words is by no means an easy one, for it is at once evident that they are susceptible of various meanings. For instance, a person may be said to *prove insolvent* when the meaning is that such person appears or turns out to be unable to pay his debts. (see Century dictionary, pp. 3120,4803). Again, the words "prove insolvent" might be taken to refer to insolvency proceedings had under the insolvent debtors statutes. See section 11092 G. C., et seq.; or, in the case of a lunatic it might also be claimed that the words in question refer to proceedings had under authority of section 11008 G. C., which says:

"If the estate of the idiot, imbecile or lunatic is insolvent, or will probably be insolvent, it shall be settled by the guardian in like manner and like proceedings may be had as are required by law for the settlement of the insolvent estate of a deceased person."

Again, it might be claimed that the proof of insolvency which the legislature had in mind was the return "nulla bona" on an *execution* issued against the property of the person proceeded against, or against the property of "those lawfully responsible for his care," and that the issuance of such execution was a condition precedent to the right of the probate judge to issue his certificate for the payment from the county treasury of the fees, costs and expenses referred to in section 1982 G. C.

The theory last mentioned is not without plausibility in view of the interpretation placed by opinions of former attorneys general upon the phrase "wherein the defendant *proves insolvent*," found in section 3019 G. C., said section also being amended in H. B. 294 but not with respect to the words in question. In opinion No. 88, found in 1915 Opinions of Attorney General, Vol. I, page 148, the Attorney General, referring to these words, said:

"Under the provisions of this section, no allowance can be made to the

officers in misdemeanor cases unless the defendant 'proves' insolvent. It may be a matter of common knowledge that a defendant is insolvent and that a judgment against him for fine and costs would be worthless, but within the meaning of the statute it could hardly be said that a defendant has been *proven* insolvent until there has been a conviction or a plea of guilty, and until sentence has been passed and there is a commitment for failure to pay the penalty assessed.'

See also Opinions of the Attorney General found in 1918 Opinions of Attorney General, Vol I at page 301 and at page 934.

It appears that the words "proves insolvent" found in section 3019 G. C. were given a like construction in the unreported case of State ex rel. vs. Marshall, auditor, decided by the common pleas court of Carroll county.

In other words, the opinions and the court decision just referred to, seem to go upon the theory that one is not *proved* insolvent until all has been done that legally can be done to demonstrate that fact.

It appearing that the words "prove insolvent" found in section 1962 G. C. are ambiguous, it is not improper to consider the consequences which in the administration of the law would ensue under the various possible constructions.

"The consequences of evil and hardship," says Black on interpretation of laws, p. 88, "may properly exert an influence in giving a construction to a statute when its language is ambiguous or uncertain and doubtful, but not when it is plain and explicit. The same may be said of the consideration of convenience, and in fact of any consequence."

If it were to be held that none of the fees, costs and expenses payable in lunacy proceedings should be paid from the county treasury until the alleged insane person or those lawfully responsible for his care had been given, by court proceedings, the status of insolvent debtors, or until they had been shown, by the issuance and return of executions, to be "execution-proof"—great delay in the payment of such fees, costs and expenses would, in many cases, ensue. Such delay would be annoying to physicians designated by the court to examine the alleged lunatic, as well as to the witnesses testifying, and all others entitled to fees and expenses in connection with the proceeding.

In view of the ambiguity surrounding the meaning of the words in question, it seems desirable to recommend for your guidance that interpretation which will be most conducive to convenience in administering the law.

Accordingly, you are advised that in connection with a lunacy proceeding it is the duty of the probate judge to make careful inquiry into the financial condition of the person proceeded against, as well as the financial condition of those persons lawfully responsible for the alleged lunatic's care. If upon such inquiry the probate judge is of the opinion that neither the person proceeded against nor those lawfully responsible for his care have property which would be subject to execution, if that were attempted, then such persons may be said to have "proved insolvent" within the meaning of section 1982 G. C. and the probate judge may order that all of the costs, fees and expenses contemplated by section 1982 G. C. (except the fees of the probate judge and the fees and expenses of the sheriff) be paid from the county treasury upon the certificate of the probate judge.

Respectfully,
JOHN G. PRICE,
Attorney-General.