

Keeping in mind the fact that the parenthetical clause above quoted applies only to corporate bonds and that the conclusion herein reached applies only to such bonds, we see that the evident intent of the legislature was to exempt from the terms of the act the bonds or notes involved in any particular transaction in which more than fifty per cent of the entire issue is disposed of to one purchaser. This does not mean that the mere fact that fifty per cent of the issue is sold to one purchaser at some time, exempts the entire issue and all transactions subsequently involving it from the terms of the securities law. If this purchaser who acquires more than fifty per cent of the issue subsequently resells, and in such sale conveys to a purchaser less than fifty per cent of the entire issue, then as to such transaction such bonds or notes are securities, within the meaning of the securities law.

It will be apparent that if the interpretation contended for by the briefs which were submitted to you, and which you included with your letter, were to be accepted, every issue of such bonds and notes could be entirely removed from the operation of the law by the simple expedient of a formal transfer of fifty-one per cent to an employe or officer of the company, and a subsequent transfer by him to a third party. Our conclusions are, therefore:

(1) That it is necessary for the broker to secure an exemption of certificate of compliance from the Division of Securities if at any time a sale is made to any person of less than fifty per cent of the whole issue.

(2) The investment company or broker must secure a dealer's license and give bond for himself or his agents if any such sale of less than fifty per cent of the entire issue is made.

(3) The purpose of the broker in purchasing such bonds or notes is immaterial; it is not a question of what he purposes to do, but what he does.

Each particular case must be judged according to the principles explained, in the answers to your first and second questions.

Respectfully,

C. C. CRABBE,  
*Attorney-General.*

882.

EXEMPTION OF ASSETS—SECTION 10654 G. C. (SENATE BILL NO. 8-110 O. L. 51) CONSTRUED.

*SYLLABUS:*

*When there is not sufficient money to equal the difference between the value of the personal property selected by the widow or widower, and five hundred dollars in lieu thereof, as provided in amended section 10654, General Code, said difference in money is not a debt against the estate for the payment of which real estate may be sold.*

COLUMBUS, OHIO, November 8, 1923.

HON. HARRY G. GRAM, *Probate Judge, Springfield, Ohio.*

DEAR SIR:—Acknowledgment is hereby made of your recent communication in which you state as follows:

“The last legislature passed an act amending section 10654, relative to exempting the assets from administration of certain decedent's estate, under

senate bill number 8, in which a widow, widower, minor child or children shall be allowed household goods, live stock, tools, implements and utensils not exceeding \$500.00; or if there be no such personal property, then \$500.00 in money, and provides further that if the personal property be of less value than \$500.00, then such widow, etc., shall receive such sum of money in addition as will equal the difference between the value of such personal property and \$500.00.

The question arises as to whether or not this \$500.00 exemption is on the same plane as the widows' allowance, and whether the real estate may be sold to satisfy the same where there is no household goods, etc., or money of the amount of \$500.00."

The first statute in this state providing for the exemptions to the widow and minor child was section 43 of the act relating to the administration of the estate of deceased persons passed March 23, 1840, S. & C. 574, and provides as follows:

"When a man, having a family, shall die leaving a widow or a minor child, the following articles shall not be deemed assets, nor be administered as such, but shall be included and stated in the inventory of the estate, and signed by the appraisers without being appraised:

First: All spinning wheels, weaving looms, and stoves, put up and kept for the use by his family.

Secondly: The family Bible, family pictures, and school books used by or in the family of the deceased; and books not exceeding fifty dollars in value, which were kept and used as part of the family library before the decease of such person.

Thirdly: One cow, all sheep, to the number of twelve, and the wool shorn from them, and the yarn and cloth manufactured by the family; and all the flax in possession of the family, and yarn or thread and cloth manufactured therefrom.

Fourthly: All wearing apparel, beds, bedsteads and bedding, necessary cooking utensils, the clothing of the family, the clothes and ornaments of the widow, the wearing apparel of the deceased, and,

Fifthly: One table, six chairs, six knives and forks, six plates, six tea cups and saucers, one sugar dish, one milk pot, one tea pot, twelve spoons."

Under these provisions only specific articles of personal property were included, and in the New York case of *Baucus v. Stover*, 24 Hun page 109, the fourth paragraph of the syllabus read as follows:

"The statute authorizing the setting apart of sheep and swine to the widow, only applies where the deceased had such an ownership and possession of them as at the time of the making of the inventory, will permit of their delivery to the widow; when he had but a half interest therein, they cannot be delivered to her, nor can any allowance be made therefore."

Section 45 and 46 of said administration act are as follows:

## Section 45:

"The appraisers shall also set off and allow to the widow, and children under the age of fifteen years, if any there be, or if there be no widow, then to such children, sufficient provisions of other property to support them for twelve months from the death of the decedent; and if the widow or such children have, since the death of the deceased, and previous to such allowance, consumed for their support any portion of the estate, the appraisers shall take the same into consideration in determining the amount of the allowance."

## Section 46:

"When there is not sufficient personal property, or property of a suitable kind, to set off to the widow or children, as provided in the preceding section, the appraisers shall certify what sum, or further sum, in money, is necessary for the support of such widow or children."

Section 43 was amended March 12, 1861, 58 O. L., p. 45. It changed the list of property not to be deemed assets and for the first time provided for property to the amount of one hundred dollars to be retained by the widow and children.

Section 43 was again amended May 12, 1868, 65 O. L., p. 180, and in this amended section it was first provided that "if there are no household goods such as the widow or guardian or next friend may desire to select, then forty dollars in money."

This amended section became section 6038 of the Revised Statutes. Section 45 was carried into the Revised Statutes as section 6041 and contained the same wording as when originally passed in 1840.

Section 6041 of the revised statutes became section 10656 of the General Code, and section 6038 of the revised statutes became section 10654 of the General Code.

It will therefore be noted that original section 43 of the administrative code providing for the widow's schedule of exemptions and that original section 45 providing for the widow's and children's allowance were enacted as, and have been carried into the General Code as separate and independent sections, being respectively sections 10654 and 10656.

Amended section 10654, General Code, became effective June 17, 1923, and reads as follows:

"When a person dies leaving a widow, widower, or minor child, or children, the following property shall not be deemed assets or administered as such, but must be included and stated in the inventory of the estate:

1. Household goods, live stock, tools, implements and utensils to be selected by such widow or widower, or if there be no widow or widower, then by the guardian or next friend of such minor child, or children, not exceeding five hundred dollars in value, or if there be no such personal property then five hundred dollars in money; provided, however, if such personal property be of less value than five hundred dollars, then such widow, widower, guardian or next friend shall receive such sum of money in addition to the personal property as shall equal the difference between the value of such personal property and five hundred dollars.

2. All the wearing apparel, relics and heirlooms of the family and of the deceased, without appraisal, and ornaments, pictures and books to be selected by such widow, widower, guardian or next friend not exceeding two hundred dollars in value."

Section 10656 provides as follows:

"The appraisers also must set off and allow to the widow, and children under the age of fifteen years, if any there be, or if there be no widow, then to such children, sufficient provisions or other property to support them for twelve months from the decedent's death. If the widow or such children, since then, and previous to such allowance, have consumed any part of the estate for their support, the appraisers shall take that into consideration in determining the amount of the allowance."

Section 10657 reads as follows:

"When there is not sufficient personal property, or property of a suitable kind, to set off to the widow or children, as provided in the next and in lieu of said provisions or other property, a certificate of what sum, in money, is necessary for the support of said widow and children.

In these respective sections the legislature has made a clear distinction between the widow's schedule of exemptions which "shall not be deemed assets or administered as such" and the widow's year's allowance which the appraisers must set off and allow to the widow and minor children, and being sufficient provisions or other property to support them for twelve months from the decedent's death, and in lieu of said provisions or other property, a certificate of what sum, in money, is necessary for the support of said widow and children.

Section 10654 G. C. provides that certain articles and in lieu thereof a sum of money shall not be deemed assets of the estate and shall not be administered as such, but shall belong to the widow and minor children. Section 10656 provides that certain provisions or other property must be set off and allowed by the appraisers to the widow and minor children under fifteen years of age, out of the decedent's estate.

Section 10654 deals with property and money that is not to be considered as assets. Sections 10656 and 10657 deal with property that is to be considered as assets and provide that out of these assets certain personal property and, in lieu of sufficient or suitable personal property, a sum of money which the appraisers deem necessary for the widow and minor children, shall be set off and allowed by the appraisers.

It is expressly provided that the amount of money set off and allowed by the appraisers as a year's allowance is a debt payable out of the assets of the estate.

Section 10714 G. C. provides as follows:

"Every executor or administrator shall proceed with diligence to pay the *debts* of the deceased applying the assets in the following order:

1. The funeral expenses, those of the last sickness, and the expenses of the administration;
2. The allowance made to the widow and children for their support for twelve months \* \* \*."

It was held in the case of *Allen v. Allen's admr.*, 18 O. S., 234 that:

"An allowance for the support of the widow and her child is a debt of the estate, for the payment of which resort may be had, to said land or its proceeds."

It will be noted that while amended section 10654 G. C. provides that the widow, or guardian or next friend may select household goods, live stock, tools, implements and utensils, to the amount of five hundred dollars, and in lieu of this amount of personal property, said widow, guardian or next friend shall receive such sum of money in addition to the personal property as shall equal the difference between the value of such personal property and five hundred dollars, yet there is no provision in this or any other section of the General Code that said amount of money in lieu of said personal property shall be a debt against the estate of the decedent, should there be no money left by decedent.

The original enactment provided for certain articles of personal property and as held in the afore-mentioned case of *Baucus v. Stover*, if the decedent was not in possession of said property at the time of his death, it could not be delivered and no allowance could be made therefor. It would appear that the articles and money mentioned in amended section 10654, General Code, must be selected from the personal estate of the decedent of which he was possessed at the time of his death, and if there be no money, none can be selected or received by the widow or minor children under the schedule of exemptions.

You are therefore advised that the five hundred dollars exemption is not on the same plane as the widow's allowance and real estate may not be sold to satisfy the same where there is no household goods, etc., or money of the amount of five hundred dollars.

Respectfully,

C. C. CRABBE,  
*Attorney-General.*

883.

ABSTRACT, STATUS OF TITLE, 76.79 ACRES OF LAND SITUATED IN PREBLE COUNTY, WASHINGTON TOWNSHIP, IN NORTHEAST QUARTER OF SECTION 4, TOWNSHIP 7 AND RANGE 2 EAST.

COLUMBUS, OHIO, November 12, 1923.

HON. L. A. BOULAY, *Director, Department of Highways and Public Works, Columbus, Ohio.*

DEAR SIR:—You have submitted an abstract which was certified by John V. Dye of Eaton, Ohio, October 25th, 1923, inquiring as to the status of the title to 76.79 acres of land situated in Preble County, Washington Township, in the northeast quarter of section 4, township 7 and range 2 east, which is more fully described in said abstract and deed which you also enclosed.