1922.

PROBATE COURT—GUARDIAN OF AN INCOMPETENT PERSON APPOINTED UNDER SECTION 10989 G. C. (108 O. L. 387) HAS NO CONTROL OVER PERSONAL PROPERTY OF HIS WARD—SUCH GUARDIAN CANNOT SELL REAL ESTATE OF HIS WARD ON COURT'S ORDER.

Under existing statutes, a guardian of an incompetent person, appointed under section 10989 G. C., as amended in 108 O. L., Part I, page 387, has no control over the personal property of his ward, nor can the court grant such guardian an order to sell his ward's real estate.

COLUMBUS, OHIO, March 17, 1921.

HON. L. JAY DUKE, *Judge of Probate Court, Mount Vernon, Ohio.*
DEAR SIR:—In a recent letter to this department you say:

> "Will you please render me an opinion in the following matter:
> What are the rights of a guardian of an incompetent person, appointed under section 10989 of the General Code, as passed April 17, 1919, and approved May 15, 1919? See 108 O. L., Part I, page 387. Does the guardian have any control over the personal property? Can the court grant the guardian an order to sell real estate?
> This matter was taken up before our last probate judges' meeting, and it seemed to be the opinion of all who talked upon the question that a guardian had no rights, except as to the person, because of the fact that the legislature failed to amend section 10991 making the laws of minors, etc., applicable to guardians of incompetent persons."

In order to give a proper setting to your question, it may be well to consider what was the situation as to guardians and wards *prior* to the amendment appearing in 108 O. L., p. 387.

Chapter 4 of Title III, Part Third of the General Code is headed "Guardians and Trustees." The first seventy-seven sections of that chapter relate to the appointment of guardians for *minors* and point out the duties, rights and liabilities of such guardians.

The next subdivision of the chapter is entitled "Lunatics, Idiots and Imbeciles." Under this heading the codifying commission brought various statutes that had to do with the appointment of guardians for idiots, imbeciles and lunatics, and with the rights and duties of such guardians. The second section appearing in this subdivision was called section 10989 G. C. and this section, prior to its recent amendment, read:

> "Upon satisfactory proof that a person resident of the county, or having a legal settlement in any township thereof, is an idiot, imbecile, or lunatic, the probate court shall appoint a guardian for such person, who, by virtue of such appointment, shall be the guardian of the minor children of his ward, unless the court appoints some other person as their guardian. No such guardian shall be appointed until at least three days' written notice, to the persons next of kin resident in the county of such person, is given to attend at the same time and place, which shall be served by delivering a copy of it to each person named therein, or by leaving such copy at his usual place of residence."

The phrase "idiot, imbecile or lunatic," occurring in section 10989 G. C. as above set forth, appears continually in the remainder of this particular subdivision. For example, section 10990 G. C. says:

"When a person having a wife is declared to be an *idiot, imbecile, or lunatic,* the probate judge may appoint such wife his guardian, if it be made to appear to the satisfaction of such judge that the wife is competent to discharge the duties of such appointment."

Section 10991 G. C. provides:

"Laws relating to guardians for minors and their wards, and pointing out the duties, rights, and liabilities of such guardians and their sureties, shall be applicable to guardians for *idiots, imbeciles and lunatics,* and their children, except as otherwise specially provided."

The same phrase occurs in section 10992 G. C., where the guardian's settlement of accounts is referred to; also in section 10993 G. C., referring to suits instituted by the guardian; also in section 10994 G. C., referring to proceedings brought to sell real estate for the purpose of supporting the ward or paying his debts; also in section 10997 G. C., referring to the sale or adjustment of the ward's dower rights; also in section 11000 G. C., referring to long-time leases made of the ward's real estate; also in section 11003 G. C., referring to the authority of the guardian to complete his ward's real contracts; also in section 11004 G. C. (except that "idiot" is omitted), referring to the use by the guardian of his ward's money and personal estate in improving his wards real estate; also in section 11008 G. C., referring to insolvency proceedings; also in section 11009 G. C., referring to the powers of foreign guardians over the foreign ward's property situate in this state.

The same phrase occurs again in the concluding section (section 11010 G. C.) of the subdivision, said section reading thus:

"When the probate judge is satisfied that an *idiot, imbecile, or lunatic,* or a person as to whom guardianship has been granted as such, is restored to reason, or that letters of guardianship have been improperly issued, he shall make an entry upon the journal that such guardianship terminate. Thereupon it shall cease, and the accounts of the guardian be settled by the court."

We are now ready to notice the circumstance which gives rise to your question, namely, the amendment of section 10989 G. C. made by S. B. 115, enacted April 17, 1919, said amendment being found in 108 O. L., Part I, p. 387, and reading thus:

"Upon satisfactory proof that a person resident of the county, or having legal settlement in any township thereof, is an idiot or imbecile, or lunatic, or an incompetent by reason of advanced age or mental or physical disability or infirmity, the probate court shall appoint a guardian for such person, who by virtue of such appointment shall be the guardian of the minor children of his ward, unless the court appoints some other person as their guardian. No such guardian shall be appointed until at least three days after the personal service of a written notice setting forth the time and place of the hearing shall have been served upon the person for whom such appointment is sought; and also until at least three days after written notice has been served upon the persons next of kin of such person for whom appointment is sought, resident in the county in which application is made,

to attend such hearing at the same time and place; which notice shall be served by delivering a copy of it to each person named therein or by leaving such copy at his or her usual place of residence."

It will be observed that, aside from a change as to the manner of giving notice of the time and place of hearing, the only change wrought by the amendment is by the addition of one more class of persons to the category of incompetents, namely,

"an incompetent by reason of advanced age or mental or physical disability or infirmity."

S. B. 115 consists solely of the amendment of section 10989 G. C., and refers to no other section contained in the subdivision of the code entitled "Lunatics, Idiots and Imbeciles."

The situation just described raises a number of questions, some of them of no little difficulty. One is whether the sections subsequent to section 10989 G. C., or any of them, can now be read as though they expressly mentioned "incompetents by reason of advanced age or mental or physical disability or infirmity." If they cannot be so read, has the addition by the legislature of said words to the category set forth in section 10989 G. C. been of much avail? For it will be noticed that section 10989 G. C. mainly accomplishes but one thing, to-wit the *appointment* of the guardian, leaving the powers and the duties of the guardian, once he is appointed, to be declared by other sections.

As a matter of logic, there seems to be no good reason why the legislature, after authorizing in a given statute the appointment of a guardian for four classes of persons, to-wit, idiots, imbeciles, lunatics, and incompetents by reason of age, etc., should provide a system of rules for the guidance of guardians of persons in the first three classes, but wholly *omit* to provide for the guidance of guardians of the remaining class of persons.

Yet as to matters statutory, the test is not one of logic, but of legislative intention. And in the construction of a statute, we are told that the question is, what did the legislature mean by what it said; and not, what did it mean to say. Slingluff vs. Weaver, 66 O. S. 621; Scheu vs. State, 83 O. S. 146. Or, as it is put in Brower vs. Hunt, 18 O. S. 311, 341:

"What the legislative intention was, can be derived only from the words they have used, and we cannot speculate beyond the reasonable import of these words. The spirit of the act must be extracted from the words of the act, and not from conjectures *aliunde*."

Black on Interpretation of Laws (2nd ed.), page 80, says:

"When a statute makes specific provisions in regard to several enumerated cases or objects, but omits to make any provision for a case or object which is analogous to those enumerated, or which stands upon the same reason, and is therefore within the general scope of the statute, and it appears that such case or object was omitted by inadvertence or because it was overlooked or unforeseen, it is called a 'casus omissus.' Such omissions or defects cannot be supplied by the courts."

These principles seem applicable to the matter in hand, and cause me to take the view that the phrase in section 10989 G. C.,

"an incompetent by reason of advanced age or mental or physical disability or infirmity,"

cannot properly be read into sections 10990 G. C., 10991 G. C., or any of the succeeding sections of the subdivision.

There being in section 10989 G. C., standing alone, no description of the powers of the guardian appointed thereunder (except that such guardian shall be the guardian of the minor children of his ward, unless the court appoints some other person as their guardian), it is believed that both of your specific questions, to-wit,

> (1) "Does the guardian (of an incompetent) have any control over the personal property?
>
> (2) "Can the court grant the guardian an order to sell real estate?"

should be answered in the negative.

Respectfully,
JOHN G. PRICE,
Attorney-General.

1923.

APPROVAL, LEASES OF WATER AT SUMMIT LAKE AND OHIO CANAL LOCK 1, AKRON, OHIO.

COLUMBUS, OHIO, March 17, 1921.

HON. JOHN I. MILLER, *Superintendent of Public Works, Columbus, Ohio.*

DEAR SIR:—I have your letter of March 8, 1921, enclosing for my approval, among others, the following leases, in triplicate:

	Annual Rental.
To The Firestone Tire & Rubber Co., Akron, Ohio, lease of water at Summit Lake	$7,920 00
The Philadelphia Rubber Works Co., Akron, Ohio, lease of water taken from the Ohio Canal at Lock 1, Akron, Ohio	4,500 00

I have carefully examined said leases, find them correct in form and legal, and am therefore returning the same with my approval endorsed thereon.

Respectfully,
JOHN G. PRICE,
Attorney-General.

1924.

APPROVAL, LEASES TO STATE LANDS AT DAYTON, GROVEPORT, LOGAN AND NAPOLEON, OHIO.

COLUMBUS, OHIO, March 17, 1921.

HON. JOHN I. MILLER, *Superintendent of Public Works, Columbus, Ohio.*

DEAR SIR:—I have your letter of March 8, 1921, enclosing for my approval, among others, the following leases, in triplicate: