

This is the Law



By ROBERT E. LEE
(For the N. C. Bar Association)

Inclusion Of Children

Real property is conveyed to "John Doe and his children." At the time of the execution of the deed John Doe had no children. Two children of his were subsequently born. May John Doe, without the consent of the two children, sell the land and use the proceeds of the sale in any way he desires?

Yes. Since John Doe had no children at the time of the execution of the deed, he has acquired under the law of North Carolina an absolute ownership to the property. He is the sole owner of the property. His children have no legal rights in its ownership.

As of the effective date of the deed, there were no children in existence who could answer to a roll call of his children.

This rule is applicable alike to both deeds and wills. For example, if a provision in a will gives property "to John Doe and his children", and he has no chil-

dren at the time of the testator's death, John Doe becomes the sole and absolute owner of the property. His future children do not acquire any interest in the property.

In the overwhelming majority of other states, the provision is construed to mean a life estate to John Doe with remainder to his children.

Real property is conveyed to "Sam Smith and his children." At the time of the execution of the deed Sam Smith had one child, but subsequently two other children of his were born. Who now owns the real property?

Sam Smith and his oldest child own the property in equal shares as tenants in common. The two children born subsequent to the execution of the deed do not have any legal interest in the property.

The two youngest children were not born as of the effective date of the deed, and as a consequence they were unable to answer to the roll call of Sam Smith's children at this time.

This is the law not only in North Carolina but most of the other states. It is applicable to provisions in both deeds and wills in the absence of a clearly expressed intention to the contrary.

It should be carefully observed that the case involving John Doe is factually different from the one involving Sam Smith—in the former there is no child alive at the time of the execution of the deed, in the latter there is. Although the written provisions in the two deeds are the same, the court construes them differently because of the factual situation existing at the

time the deed goes into effect is not the same.

It may be that the legal result in both cases are contrary to the actual intention of the grantor. If so, the fault is with the choice of language used. A good lawyer could have drafted a provision effectuating whatever actual intention the grantor had in mind. The interest of future children could have been protected by a carefully drawn instrument.

This is the last of a spring series of articles that have appeared weekly during the past three months. They have been written for the non-lawyer as a public service of the North Carolina Bar Association. Another series will be started in the fall.

Weekly Devotional Column By JAMES MACKENZIE

Stand up, stand up for Jesus! Ye soldiers of the cross! Lift high His royal banner, It must not suffer loss. From victory unto victory His army shall He lead, Till every foe is vanquished, And Christ is Lord indeed!

Stand up, stand up for Jesus! The trumpet call obey, Forth to the mighty conflict In this His glorious day: Ye that are men now serve Him Against unnumbered foes; Your courage rise with danger, And strength to strength oppose.

The author of this stirring and popular hymn, George Duffield, was pastor of a struggling Presbyterian church in a rapidly de-

teriorating area of Philadelphia in the middle of the last century. Struggling with finances, struggling with the problem of gaining new members, and above all, struggling with the forces of sin so prevalent around it. Often he would become discouraged, and cry out to God for revival.

Finally in 1857, the Lord answered his prayer, and the prayers of other Christians, in a manner far beyond their fondest expectations. Beginning in New York He poured out His Holy Spirit from one end of the country to the other, bringing about a revival unparalleled in American history. In Philadelphia, the leading spirit of the revival was the Rev. Dudley Tyng, a young man of unusual evangelistic fervor and Christian piety who had recently been ousted from his church for preaching a strong anti-slavery sermon. Preaching to daily congregations in excess of five-thousand, Tyng was used of God to bring scores of thousands to a saving knowledge of Jesus Christ. Other clergymen of the city supported him, including George Duffield.

Then came Tyng's sudden death. The previous Sunday he had proclaimed the glorious Gospel to a huge audience, and led more than a thousand of them to the Lord. "The following Wednesday," writes Mr. Duffield, "he left his study for a moment and went to the barn where a mule was at work on a horse-power machine shelling corn. Patting him on the neck, the sleeves of his silk gown caught in the cogs of the wheel and his arm was torn out by the roots." He died five days later. Several friends were present at

his bedside, and one of them asked if he had any message to send to his people. Tyng replied, "Tell them, 'Let us all stand up for Jesus!'"

The following Sunday, Rev. Duffield, who had been present at Tyng's bedside, preached to his own congregation from the text: "Stand therefore, having your loins girt about with truth..." (Ephesians 6:14), closing his message with the words to the hymn we all now know and love. When published it became instantly popular, especially among the soldiers of the Civil War, and has since traveled about the earth having been translated into many languages.

Stand up, stand up for Jesus! Stand in His strength alone; The arm of flesh will fail you, Ye dare not trust your own; Put on the Gospel armor, Each piece put on with prayer; Where duty calls, or danger, Be never wanting there.

Stand up, stand up for Jesus! The strife will not be long; This day the noise of battle, The next the victor's song: To him that overcometh A crown of life shall be, He with the King of Glory Shall reign eternally.

BLOODSHED BOXSCORE ON N. C. HIGHWAYS

Raleigh — The Motor Vehicles Department's summary of traffic deaths through 10 A. M., Monday, June 27, 1960 follows:
Killed To Date.....522
Killed To Date Last Year.....528



3 MORE BIG DAYS! — OF —



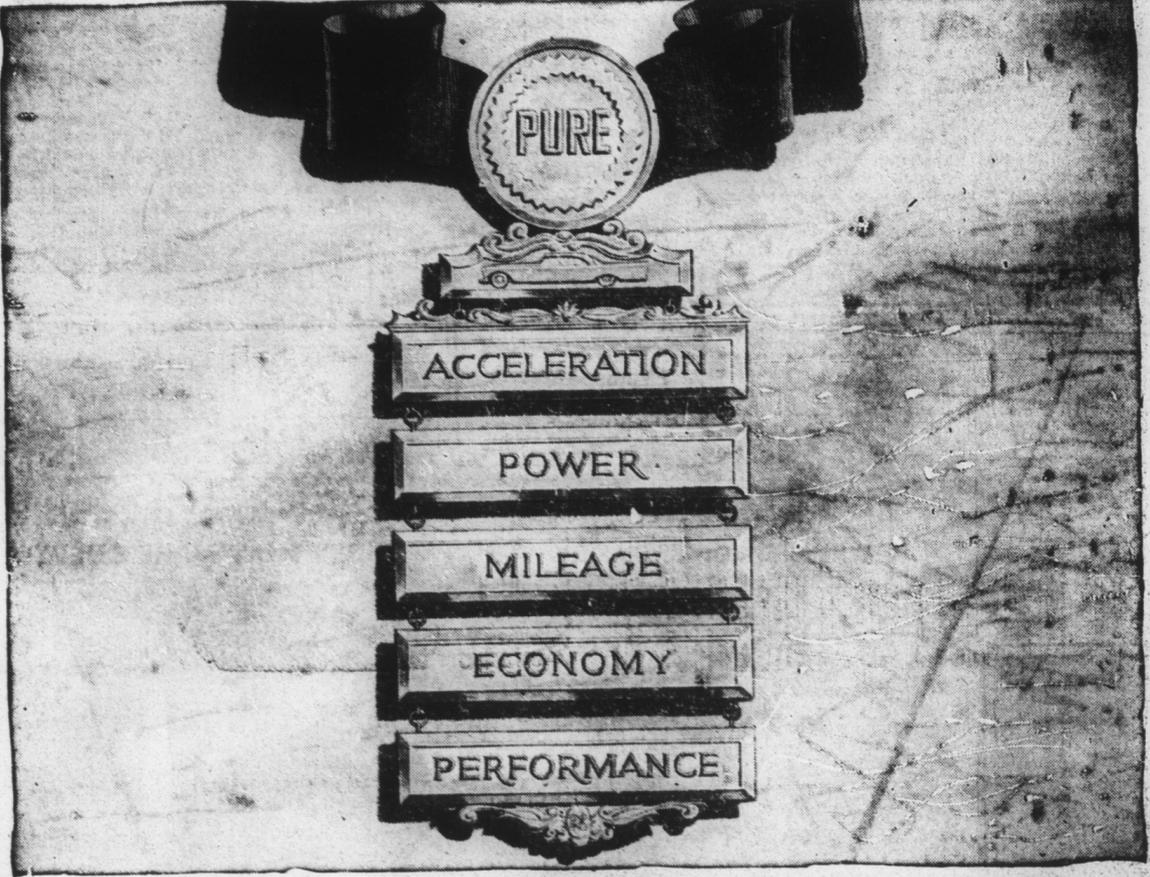
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