

July 2021

How a Millionaire Can Make the Colorado Taxpayers Feed and Clothe His Children

Thompson George Marsh

Follow this and additional works at: <https://digitalcommons.du.edu/dlr>

Recommended Citation

Thompson George Marsh, How a Millionaire Can Make the Colorado Taxpayers Feed and Clothe His Children, 19 Dicta 145 (1942).

This Article is brought to you for free and open access by the Denver Law Review at Digital Commons @ DU. It has been accepted for inclusion in Denver Law Review by an authorized editor of Digital Commons @ DU. For more information, please contact jennifer.cox@du.edu, dig-commons@du.edu.

How a Millionaire Can Make the Colorado Taxpayers Feed and Clothe His Children

By THOMPSON GEORGE MARSH*

Let us assume the quite ordinary case of John Dough, a superbly loyal alumnus of Getmore College. He has a million dollars, one wife, and three small children.

Of course he would rather buy athletes for his alma mater than to waste money on his family, but the arbitrary Colorado law imposes upon him the duty of support, and that means really adequate support, which may be truly expensive. Should he then desert his family? No, he can't dodge the duty of support that way. Will divorce help him? No. What, then, can the poor man do? He can go out and hang himself.

If he will make the supreme sacrifice, if he will die for dear old Getmore, then, in that solemn moment of death, John Dough will at last overcome the technicalities of the law, and will achieve in death that great goal toward which he could but vainly strive during his lifetime.

Of course such a beautiful result can be attained only by following closely the advice of counsel. John Dough will be advised to execute a will naming Getmore College as the sole legatee and devisee, and then he will be advised to die by any method that suits his fancy, but the dying must be so timed as to occur at least an instant after the death of his dearly beloved wife. Then who gets what? The county court gets its fees, the executor gets his, the lawyer gets his, the children get \$2,000 to be divided three ways; the college gets the million; and the taxpayers get the children, in Colorado in 1942.

How fortunate for John Dough, and especially for Getmore College, that Colorado has chosen the middle way! A backward, reactionary state might have adopted the law of England as of 1538, and in such a case, John Dough could not have disposed of his land by will. It would have descended to his eldest son, or to his daughters equally. Such an archaic limitation upon the power of testation seems to infringe upon the natural rights of freeborn Englishmen, though of course it was the law of England for about five centuries.

*Professor of Law, University of Denver.

And on the other hand, if Colorado had been a radically progressive state, given to new-fangled innovations, it might have gone too far in the other direction, and instead of adopting the English law as of 1538 it might have adopted the English law as of 1938. If this recent Act of Parliament, known as the Family Provision Act, had been in force in Colorado at the time of John Dough's gallant death, the glory of his sacrifice would have been somewhat dimmed, because the probate judge would have taken from the estate a sufficient fund to support John Dough's dependents! The college would have taken only what was left!

Let all alumni of Getmore College rejoice then, that Colorado has chosen the middle way, and that there has been no tendency to turn back to the medieval ways of protecting children, nor has there been any idea of adopting the twentieth century method, which recognizes that the children of a man have a claim upon his property for their support, even though he be dead, and even though devisees and legatees be thereby disappointed!

The following jurisdictions have actually enacted such legislation at the times indicated: *New Zealand*. "An Act to Insure Provision for Testators' Families." (1900) N. Z. STAT. NO. 20; *Victoria*. "Widows and Young Children's Maintenance Act." (1906) VICT. STAT., 6 EDW. VII, No. 2074; *Tasmania*. "Testator's Family Maintenance Act." (1912) TAS. STAT., 3 GEO. V No. 7; *Queensland*. "Testator's Family Maintenance Act." (1914) QUEENS. STAT., 5 GEO. V No. 26; *New South Wales*. "Testator's Family Maintenance and Guardianship of Infants Act." (1916) N. S. W. STAT. No. 41, Sec. 3 (1); *South Australia*. "Testator's Family Maintenance Act." (1918) SO. AUST. STAT., 9 GEO. V No. 1327; *Western Australia*. "Guardianship of Infants Act." (1920) WEST. AUST. STAT., 11 GEO. V No. 15; *British Columbia*. "Testator's Family Maintenance Act." (1920) BRIT. COL. STAT., 10 GEO. V c. 94; *Ontario*. "Dependents Relief Act." (1929) ONT. STAT., 19 GEO. V c. 47; *England*. "Inheritance (Family Provision) Act." (1938) 1 and 2 GEO. VI c. 45.

The English, Canadian, and New Zealand acts are summarized in the 1942 Martindale-Hubbell Law Directory under the topic "Wills." The cases construing these statutes are digested in the English and Empire Digest, under the topic "Wills, Part XVII, Family Maintenance and Protection."

Recent law review articles include one by Joseph Dainow in 36 MICHIGAN LAW REVIEW 1107, and a note in 53 HARVARD LAW REVIEW 465.