EASON *v.* HIGHLEY.

Opinion delivered June 2, 1930.

1. DESCENT AND DISTRIBUTION—NEW ACQUISITION.—Where an intestate dies without leaving descendants and possessed of an estate in land which came from his father or mother by gift, devise or descent, it goes, on the parents' death, to the heirs of the intestate

who are of the ancestor from whom it came; but if any part of the consideration is furnished by intestate, the estate acquired is a new acquisition.

2. GUARDIAN AND WARD—ALLOWANCES FOR MAINTENANCE AND EDUCATION.—The probate court cannot approve the expenditures of a guardian for the maintenance and education of his ward in so far as they exceed the income of the ward's estate, unless such expenditures have been made under the direction of the court.
3. DESCENT AND DISTRIBUTION—NEW ACQUISITION.—Evidence *held* to sustain a finding that a part of the consideration of a deed to intestate was furnished by him, and therefore that the estate acquired thereunder was a new acquisition.

Appeal from Saline Chancery Court; *W. R. Duffie,* Chancellor; affirmed.

STATEMENT OF FACTS.

Appellants, Mrs. Sarah E. Eason and Mrs. Alice Retting brought this suit in equity against appellees Andrew J. and Martin Highley, to recover the possession of a parcel of land 100 feet by 150 feet in the city of Benton, Saline County, Arkansas, and to declare the title vested in them from the death of Alice L. Highley. They claim title in the land on the ground that they were the next of kin and sole heirs at law of said Alice L. Highley, deceased. The suit was defended on the ground that appellees acquired title to the land by descent as the heirs at law of Van Franklin Highley, deceased.

The record shows that the legal title to the land was acquired by Van Franklin Highley from Lillian E. Hutcheson by warranty deed executed on the 9th day of March, 1920, and duly filed for record on the same day. The deed recites the consideration of $1,400, paid by Van Franklin Highley. Van Franklin Highley was the son of Martin Highley and Alice L. Highley. Martin Highley was also the father of Andrew J. Highley and Martin Highley by a former wife. They were the sole heirs at law of Van Franklin Highley, who died intestate in Saline County, Arkansas, on the 3d day of February, 1923, owning the lot in controversy. His mother, Alice L. Highley, continued in possession of said lot until she died intestate in Benton, Saline County, Arkansas, on the 18th day

of October, 1928. She left surviving her as next of kin and sole heirs at law, Mrs. Sarah E. Eason, a half-sister, and Mrs. Alice Retting, a daughter of a half-sister.

According to the testimony of Mrs. Lillian E. Hutcheson, she executed the deed to Van Franklin at the instance of his mother, Mrs. Alice L. Highley. She was paid the sum of $1,400 for the lot, and understood that Mrs. Highley was paying part of the consideration and Van Highley was paying a part of it. The mother said that they were getting the money as a pension from the United States, due them as the widow and heir at law of Martin Highley. Van Franklin Highley was never strong and lived with his mother. He worked some delivering groceries during week-ends.

According to the records of the probate court, Mrs. Alice Highley filed her final settlement as guardian of her minor son, Van Franklin Highley, on the 2d day of March, 1920. In her account, she reported that she was indebted to the minor in the sum of $752 on account of the minor's pension. She asked for a credit in the sum of $875 for his support and maintenance for four years, ten months and ten days at fifty cents per day. She asked credit for this sum from the date of the death of his father, who was described as being a soldier of the United States in the Civil War. The record shows that she applied for a pension for herself and her minor son commencing November 16, 1911. She was granted a pension for herself and her minor son from that date until September 27, 1916, at which time her son became sixteen years of age. She was then granted a pension in her right from September 28, 1916, to February 18, 1920. Other facts will be stated or referred to in the opinion.

The chancellor was of the opinion that a part of the funds of Van Franklin Highley was used in the purchase of the lot, and that it was, therefore, a new acquisition instead of an ancestral estate from his mother. Consequently, it was held that his mother inherited for life and that after her death, under our statutes of distribution,

the title of the lot vested in Andrew J. Highley and Martin Highley, sole heirs at law of said Van Franklin Highley, instead of in appellants as the sole heirs at law of his mother, Mrs. Alice L. Highley. The case is here on appeal.

O. E. Williams, for appellants.

W. A. Utley, for appellees.

HART, C. J., (after stating the facts). It is the settled law of this State that where an estate comes to an intestate by gift or devise, without consideration other than that of blood, it is an ancestral estate; but that, if any part of the consideration is a valuable one, the estate acquired is a new acquisition. The court has held frequently that the purpose of the statute creating ancestral estates was to keep such estates in the line of blood from which they came, and that blood must be the only consideration by which they are acquired, whether by devise or gift. Hence, if an estate is ancestral and comes to the intestate by gift, devise, or descent, on the part of the father or mother, it goes to the heirs of the intestate who are of the blood of the ancestor from whom it came. If, on the other hand, the land is a new acquisition, on the death of the mother after that of Van Franklin Highley, the land passed to his brothers of the half blood. *Martin* v. *Martin,* 98 Ark. 93; *Hill* v. *Heard,* 104 Ark. 23; *McElwee* v. *McElwee,* 142 Ark. 560; *Earl* v. *Earl,* 145 Ark. 559; *Beard* v. *Beard,* 148 Ark. 23; and *Carter* v. *Carter,* 129 Ark. 7 and 573.

It is contended by counsel for appellants that a preponderance of the evidence shows that the lot in controversy was an ancestral estate. They point to the fact that the records of the bank show that Mrs. Alice L. Highley had on deposit in the bank the sum of $1,400 on the day that the deed to Van Franklin Highley was executed. They state that this fact, coupled with the other circumstances attending it, show that the whole consideration was paid by the mother. It is true, as contended by appellants, that the pension attorney testified that, under

the laws of the United States, the pension was received by Mrs. Alice L. Highley for herself and her minor son, but a consideration of the whole testimony of the pension attorney shows that he was referring to the amount received after September 27, 1916, at which time the minor became sixteen years of age. The mother had applied for and received a pension commencing November 16, 1911, and from that time until her minor son became sixteen years of age, on September 27, 1916, it appears that she received the pension, both for herself and for her minor son. In any event, she so considered the matter and so reported it to the probate court. She was the guardian of her minor son, and in her final settlement, which was filed on the 2d day of March, 1920, she charged herself with the sum of $752 on account of the minor's pension. She also asked for credit from the death of his father up to September 27, 1916, for funds expended in his education and maintenance. This shows that she regarded his claim for minor's pension as belonging to him, and that she must account for it to the probate court. It is true that her account was approved by the probate court, but this does not end the matter. She had not obtained any previous order of the court allowing her to expend this sum for the support and maintenance of her minor son.

It is the established law in this State that the probate court cannot approve the expenditures of a guardian for the maintenance and education of his ward in so far as they exceed the income of the ward's estate, unless such expenditures have been under the direction of the court. *Campbell* v. *Clark*, 63 Ark. 450; *Thomas* v. *Thomas*, 126 Ark. 579; and *Diffie* v. *Anderson*, 137 Ark. 151. There is nothing in the record tending to show that there had been any previous order of the probate court directing Mrs. Highley to expend any part of the principal of her ward's estate for his education and maintenance. On the other hand, such proof as the record contains on the point was, that the son, while in poor health, worked during the

week-ends in delivering groceries and endeavoring to earn what he could to help support himself and his mother. She earned her own support by daily labor, but there is nothing to show that she was authorized to expend any part of her ward's money towards his education and support.

The testimony of Mrs. Hutcheson, who deeded the lot to the minor, was that his mother told her that it was to be paid for her out of the pension money belonging to herself and to her minor son. While the mother had on deposit in the bank in her own name the amount, which she paid for the lot, still when her daily deposit slips in the bank for the time previous to the execution of the deed are examined, we must come to the conclusion that it required the pension money of her son to make out the $1,400. Another witness testified, that when the mother told him in the presence of her son that she wished to purchase them a home but did not have sufficient money for that purpose, her son replied that he wished his pension money to be used in part payment of the purchase price of a home for them. Hence we are of the opinion that a preponderance of the evidence is that a part of the purchase price of the land in question was paid by the minor; and, under the principles of law above set forth, the estate was a new acquisition, and, upon the death of the mother after that of the minor, it descended to his half brothers as his heirs at law.

There is nothing in the case of *United States Fidelity & Guaranty Co.* v. *Hicks,* 180 Ark. 118, 21 S. W. (2d) Ark. 421, which conflicts with the views we have expressed here. In that case, the record showed that the United States had allowed the mother a monthly pension of $20 for the support of her ward, and that the probate court had allowed her a monthly sum of $25 for the same purpose. The court also said that the testimony showed that, after the allowance was made, the guardian supported and maintained her ward and spent more than the sum allowed upon her ward. So, it will be seen that the

facts in that case showed that an allowance had been made in the probate court for the support and maintenance of the ward, and that the mother had expended more for that purpose than the sum allowed by the probate court, or allowed as a pension for the minor by the United States; but was only permitted to hold as her own money the amount so allowed her.

It follows that the decree of the chancery court was correct, and must be affirmed.