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Jesse P. Long

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"While the statutes in question give the right to pursue the wrongdoer after the death of the person injured, and designate who may bring suit and how the money recovered shall be divided, yet in each instance, the foundation of the claim and the defenses which may be imposed, are the same as though the victim of the trespass has not died."

This statement of the law has been supported in several Pennsylvania cases.<sup>25</sup> In *Howard v. Bell Telephone Company* it was held that the Act of 1851 created a new right of action, but that this right is derived from and depends upon the existence of the right of action in the decedent had he lived. In our supposed case the wife and mother could undoubtedly have recovered for the injury had she lived regardless of any fault in her husband. The above quotation from the *Darbrinsky* case and the holdings of our neighboring states furnish one plausible solution to our problem.

Our courts have not spoken. Until they do, this moot question will remain a perplexing knot in a highly entangled chapter of our law. It has been said that no field of law is so contradictory, illogical, and unjust as the jurisprudence growing from our death statutes. As an instant example, there can be no completely just answer to our problem. The negligent father is forced into the position of plaintiff if there is to be any recovery under the statute; the statute gives him an absolute right to share in any recovery. An injustice must inevitably be done, either to the defendant, who may have been no more to blame for the accident than the plaintiff, or to the innocent beneficiaries. We can only hope that the legislature will come to our aid with some intelligent and intelligible revisions.

Myron D. Hockenbury.

## ADOPTION AS AFFECTING INHERITANCE IN PENNSYLVANIA

### I.

A recent case<sup>1</sup> brings up the question of the interpretation of section 16 (a) and (b) of the Intestate Act of June 7, 1917,<sup>2</sup> relative to the rights of an

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<sup>25</sup>*Howard v. Bell Telephone Company*, 306 Pa. 518, 160 Atl. 613, (1932); *Staggers v. Dunn Marr Oil and Gas Co.*, 312 Pa. 269, 176 Atl. 785 (1933); *Centofanti v. Pennsylvania R. R. Co.*, 244 Pa. 255, 90 Atl. 558, (1914).

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<sup>1</sup>*Reamer's Estate*, 315 Pa. 148, 172 Atl. 655 (1934).

<sup>2</sup>P. L. 429.

adopted child or an adopting parent to inherit from or through the other.

Section 16 (a) provides as follows :

"Any minor or adult person adopted according to law and the adopting parent or parents shall, respectively, inherit and take by devolution from and through each other personal estate as next of kin and real estate as heirs, under the provisions of this act, as fully as if the person adopted had been born a lawful child of the adopting parent or parents."

Section 16 (b) provides as follows :

"The person adopted shall, for all purposes of inheritance and taking by devolution, be a member of the family of the adopting parent or parents. The adoptive relatives of the person adopted shall be entitled to inherit and take from and through such person to the exclusion of his or her natural parents, grandparents and collateral relatives, but the surviving spouse of such adopted person and the children and descendants of such adopted person shall have all his, her and their respective rights under this act. Adopted persons shall not be entitled to inherit or take from or through their natural parents, grandparents or collateral relatives, but each adopted person shall have all his or her rights under this act in the estates of his or her spouse, children and descendants."

In discussing the effect of the above section it is important to bear in mind the following situations :

1. The right of an adopted child to inherit from the adopting parent.
2. The right of the adopted child to inherit from the ancestors and collateral relatives of the deceased adopting parent.

Under the direct and clear language of the act it is apparent that an adopted child has the right to inherit from the adopting parents just as if he were the natural child of the deceased parent or parents. This is supported by the case of *Thomas's Estate*,<sup>3</sup> which holds that under the Act of 1917 an adopted person becomes, to all intents and purposes, a child, heir at law and a member of the family of the adopting parent, being thereby invested with all the fixed rights, as well as the inchoate inheritance rights, of a natural child of such parent. So certain is this result that this seems to be the only case which has even raised the question.

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<sup>3</sup>2 Pa. D. & C. 89 (1922)

A real question arises when the adopting parent of the adopted is deceased and the adopted child seeks to inherit as an heir of a deceased ancestor or collateral relative of the deceased adopting parent. At first glance at this section, and indeed after much study of the language used, the natural conclusion would seem to be that under all circumstances the adopted child inherits as though he were a natural child of the adopting parent, taking not only from that parent but through him from collaterals as next of kin for personality or as heir for realty. But this is not always the result.

Let us now consider the case which provoked this note, *Reamer's Estate*.<sup>4</sup> In that case A died intestate leaving as his nearest blood relatives first cousins and also leaving C, the adopted daughter of a deceased sister, thus apparently standing in the position of his niece. The cousins nominated a person as administrator and the Register issued letters to that person. Later C nominated the plaintiff as administrator and the latter applied for letters which were refused by the Register, and this refusal was sustained on appeal by the Orphans' Court. Plaintiff appealed to the Supreme Court claiming that C, the adopted daughter of the deceased sister was the nearest relative and therefore entitled to nominate the administrator under section 2 (c) of the Fiduciaries Act of June 6, 1917.<sup>5</sup> In a Per Curiam opinion the Court affirmed the action of the Register and Orphans' Court and said that since the adopting parent was dead the adopted child could not inherit as a collateral heir in preference to cousins who were related by blood to the decedent.

The Court argued thus: The estate of the adopted child is limited by the statute to one which comes "from and through" the adopting parent, and an estate in which the latter never had any interest cannot possibly go to the adopted child since it cannot be derived "from" or "through" the adopting parent. The Court said that since the rights of the adopting parents and adopted child are reciprocal, if the plaintiff's claim is supported, if either dies the survivor will take, at no matter what lapse of time, whatever the other would have taken, if living, irrespective of the source from which the estate comes.

Forgetting for the moment the logic of this interpretation of the act, let us examine some prior cases to see if they sustain the reasoning of the Court. The Court cites with approval for its proposition *Russell's Estate*.<sup>6</sup> Does this case sustain it? It does not. That was a case where a testator made a will with a bequest to his niece. The niece died before the testator and, after his

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<sup>4</sup>Supra note 1.

<sup>5</sup>P. L. 447.

<sup>6</sup>284 Pa. 164, 130 Atl. 319 (1925).

death, plaintiff, the adopted son of the niece, claimed that the bequest under the will by virtue of section 15 of the Wills Act of 1917 had not lapsed, but passed to him. That section provides<sup>7</sup> that no bequest or devise to a brother or sister or children of brothers and sisters, etc. shall lapse by reason of the death of the devisee or legatee in the lifetime of the testator, if such devisee or legatee shall leave issue surviving the testator. In that case the Court held that the word "issue" did not mean adopted children, but only natural born children, so the plaintiff could not take under the will. Likewise the Court said that the plaintiff could not take under section 16 (b) of the Intestate Act since it would be unconstitutional if so construed as the title covers only intestacy and not testacy. Simpson, J., quotes from the opinion of the trial court with approval, thus :

"In Burnett's Estate, 219 Pa. 599, it was held that an adopted child could not inherit from the collateral kindred of adopting parents; *a state of the law altered by the Act of May 28, 1915 P. L. 580, and by section 16 (a) and (b) of the Intestate Act of 1917.*" (Italics added).

Of course that quotation was mere dictum, but in *Reamer's Estate* the Court quotes that very language, but, significantly, it deleted the part in italics above, to the effect that the Intestate Act changed the law. Was this intentional?

Another case which is important is *Cryan's Estate*.<sup>8</sup> In that case the plaintiff was the adopted daughter of the testatrix who died leaving all of her property to devisees who were her brothers and sisters. Before the estate was distributed some of the devisees died unmarried and leaving no lineal descendants. The Court held that the plaintiff, who was the adopted daughter of the testatrix, was the niece of the deceased devisees (brothers and sisters of testatrix) under the Intestate Act, section 16 (b), and so took their share by inheritance. This seems to present the same situation as is presented in *Reamer's Estate*, but the Court did not mention the case, although it

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<sup>7</sup>Act of June 7, 1917, P. L. 403, section 15 (b) : "Where any testator shall not leave any lineal descendants who would receive the benefit of any lapsed or void devise or legacy, no devise or legacy made in favor of a brother or sister, or of brothers or sisters of such testator, or in favor of the children of a brother or sister of such testator, whether such brothers or sisters or children of brothers or sisters be designated by name or as a class, shall be deemed or held to lapse, or become void by reason of the decease of such devisee or legatee in the lifetime of the testator if such devisee or legatee shall leave issue surviving the testator; but such devise or legacy shall be good and available in favor of such surviving issue, with like effect as if such devisee or legatee had survived the testator, unless the testator shall in the will direct otherwise."

<sup>8</sup>301 Pa. 386, 152 Atl. 675 (1930).

was cited by counsel for appellant. This might be excusable since most of the syllabus and report of the *Cryan* case is devoted to the determination of whether there is a proper basis for a declaratory judgment, and only one page is devoted to the other question presented. In the *Cryan* case, as in *Reamer's Estate*, the adopting parent was dead and the plaintiff, adopted child, was seeking to inherit from collateral relatives or ancestors of the deceased adopting parent. Inheritance was permitted in the *Cryan* case and denied in the *Reamer* case. The only possible point of distinction between the two cases is that in *Reamer's Estate* there were blood relatives more distant or remote than the adopting child, whereas in the *Cryan* case there were no blood relatives. But under the language of the act this is no basis for a different holding.

The only other case raising the point is *Herner's Estate*,<sup>9</sup> where it is held that a legally adopted child is entitled under section 16 (a) and (b) of the Intestate Act of 1917 to share in the estate of his adopted parents' relatives in all respects as if he were the natural child of his adopted parents. In this case the adopting parents were dead and were survived by the plaintiff, an adopted child, and also by a natural child. After the decease of the parents, a grandparent died, and plaintiff claimed a share in the inheritance together with the natural grandchild. The Court held that the plaintiff under section 16 was entitled to an equal share with the natural child of the deceased adopting parent in the estate of the grandparent. The Court cites *Russell's Estate*<sup>10</sup> thus :

"In *Commonwealth v. Nancrede*, 32 Pa. 389, and other cases it was held that an adopted child was subject to collateral inheritance tax; but this was changed by the Act of June 20, 1919, P. L. 521. In *Shafer v. Enew*, 54 Pa. 304, it was held that an adopted child could not take under a devise to the adopting parent for life and after her death to her children; a ruling altered by sections 16 (a) and (b) of the Wills Act of 1917. In *Commonwealth v. Powel*, 16 W. N. C. 297, it was held that the natural parent instead of the adopting parent, inherits from the adopted child; a state of the law altered by the Act of April 13, 1887, P. L. 53 in part, and fully by section 16 (b) of the Intestate Act of 1917. In *Burnett's Estate*, 219 Pa. 599, it was held that an adopted child could not inherit from the collateral kindred of adopting parents; a state of

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<sup>9</sup>19 Pa. D. & C. 313 (1933).

<sup>10</sup>At page 168.

the law altered by the Act of May 28, 1915, P. L. 580, and by section 16 (a) and (b) of the Intestate Act of 1917 . . . "

The Court also cites *Cryan's Estate* and says that the question was squarely met and decided there although the syllabus and a large part of the decision stresses the declaratory judgment part of the case.

It is significant to note this language of the Supreme Court in affirming the lower Court in the *Cryan* case:<sup>11</sup>

"It remains to say only that the original devisees enjoyed vested estates in the real property here involved; several of them (as hereinbefore recited) died intestate, after the testatrix and, under section 16 (b) of the Intestate Act of June 7, 1917, P. L. 429, 439, appellant — being an adopted child of the original decedent, and because of this position, viewed in law as a niece of those devisees who died without issue (see *Russell's Estate*, 284 Pa. 164, 166-168) — inherited a portion of their respective shares."

Clearly in view of that strong language it is difficult to see how the Supreme Court could completely ignore that case in deciding the same point in *Reamer's Estate*. In our opinion the *Cryan* case was a direct precedent and should have been followed, if for no other reason, on the basis of *stare decisis*.

From the above cited cases it is apparent that the Court in the *Reamer* case refused to follow precedents which would have made necessary a contrary decision. Can the decision be sustained as a logical interpretation of the statute? We believe the necessary conclusion is that it cannot be so sustained, and that the reasoning of the Court is neither logical nor sound.

The act provides that the adopted and adopting shall "inherit and take by devolution 'from' and 'through' each other — as fully as if the person adopted had been born a lawful child of the adopting parent or parents." Inherit and take by devolution means that the adopted shall take by operation of law upon intestacy as distinguished from taking by purchase, as under a will. To take "from" would mean naturally to be the direct heir of the adopting parent, and to take immediately from that person. If that is so, then when the Legislature used the word "through" they must have intended some different meaning for it. The only other reasonable meaning for that word could be that the adopting child is to take as the representative of the deceased adopting parent, thereby making the adopted a descendant and heir at law

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<sup>11</sup>At page 402.

of all ancestors and collateral relatives of the deceased adopting parent (the very situation presented in *Reamer's Estate* and the earlier cases cited).

Likewise Black's Law Dictionary in defining the word "from" says:<sup>12</sup>

"Descent *from* a parent cannot be construed to mean *through* a parent, it must be immediate, from the person designated." (Italics added).

Several cases are cited for this proposition.<sup>13</sup> It is apparent from this that there is a distinction between the meaning of the words "from" and "through" when used in connection with descent, and it is logical to believe that the Legislature had that distinction in mind when they used both words.

This view is further strengthened by the language in section 16 (b) of the Intestate Act which provides :

"The person adopted shall, for *all* purposes of inheritance and taking by devolution, be a member of the family of the adopting parent or parents." (Italics added).

It will be noted that the word "all" is used. It says "for all purposes of inheritance" the adopted shall be a member of the family of the adopting parent. Again, the Legislature must be presumed to have intended the words used, as the logical conclusion would seem to be, to mean that an adopted child could inherit from ancestors of his deceased adopting parent just as if he were a blood relative.

Another point which might be noted is that the entire Intestate Act deals with the right of a person to inherit from deceased relatives, and particularly is this true of section 16 which provides that any adopted person shall have the right to inherit and take by devolution. This is not dependent on whether the deceased person has property but is a general right given irrespective thereof; but in the *Reamer* case the Court seemed to be of the opinion that in order for an adopted child to take either from or through the adopting parent within the meaning of that section, the adopting parent must have been possessed of the property. In other words the Court decided that the property must come from or through the adopting parent, whereas the Act merely provides that the right to inherit shall come from or through such adopting parent. This is shown by the following quotation from the *Reamer* case:<sup>14</sup>

"We repeat what we have always heretofore said, that the estate which an adopted child is entitled to have is limited by the statute, to one

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<sup>12</sup>Black's Law Dictionary, 3rd ed., (1933), page 820.

<sup>13</sup>*Gardner v. Collins*, 2 Pet. (U. S.) 58, 86, 7 L. Ed. 347; *Case v. Wildridge*, 4 Ind. 51.

<sup>14</sup>At page 150.

which comes 'from and through' the adopting parent, and that an estate in which the latter never had any interest cannot possibly go to the adopted child since it cannot be derived 'from' or 'through' the adopting parent."

What seemed to shock the Court in the *Reamer* case was that a person who was not a blood relative of the deceased would take to the exclusion of blood relatives in a more remote degree if they followed the language of the statute, and also the fact that if they interpreted the language in a normal manner if either the adopted child or the adopting parent should die, the survivor would take, at no matter what lapse of time, whatever the other would have taken, if living, irrespective of the source from which the estate came. This is not so shocking as it appeared to be to the Court. Admittedly it is contrary to the rule at the common law, but this section of the statute was placed therein for the express purpose of making changes and expanding the rights of adopted children and adopting parents to inherit from each other and from their respective relatives. Perhaps what shocked the Court was the fact that a person could adopt a child, not a blood relative of an ancestor, and thereby by his own act, without the consent of the ancestor, make this adopted child an heir of the ancestor. But this is no more true in case of adoption than when a person has a child born to him. In neither case does he ask the consent or advice of the ancestor, yet in both cases he affects the distribution of the property of the ancestor should the latter die intestate. In view of the fact that the ancestor could alleviate all difficulty by making a will, it is submitted that the possibility that a stranger in blood to the deceased should take to the exclusion of blood descendants of that person should not be a sufficiently strong reason to induce the Court to stretch the language of a perfectly clear section of the act as they did in the *Reamer* case.

It is believed that the Court in *Thomas's Estate* correctly interpreted the act. It says that the act makes the adopted person "a member of the family of the adopting parent" for all purposes of inheritance and taking by devolution. So, "whether living or dead, he is to be considered and reckoned in determining the course and shares of inheritance in all estates of all persons whatsoever who may be interested in or affected by the creation of the new relationship." This seems the clear conclusion deducible from the language of the act, and is much preferable to the *Reamer* case conclusion:

For the reasons above set forth it is submitted that the rule in the *Reamer* case should be confined in its present effect to its own particular facts, and that in all other situations the rule as laid down in *Cryan's Estate* and in *Herner's Estate* should be applied. It is hoped that the Supreme Court will

see fit to overrule the *Reamer* case or that the Legislature will correct this error in the near future.

Confining the *Reamer* case to its own facts we can lay down the following summary of the right of an adopted child to inherit from ancestors or collateral relatives of a deceased adopting parent :

1. If there are no living blood relatives of the deceased, the adopted child of a deceased relative may inherit. (*Cryan's Estate*).

2. If there are living blood relatives of the deceased, but they are in a more remote degree of relationship than the adopted child of a deceased relative would be, then, and only then, the adopted child cannot take to the exclusion of the blood relatives in a more remote degree. (*Reamer's Estate*).

3. If there are living blood relatives of the deceased in the same degree of relationship as the adopted child of a deceased relative, then the adopted child inherits a share with the blood relatives. (*Herner's Estate*).

## II.

Having thus discussed the point involved in the *Reamer* case, let us now look at the other cases which have interpreted section 16 (a) and (b) of the Intestate Act in order to get a better view of its operation as construed by the Courts.

It is interesting to consider *Wood's Estate*<sup>15</sup> in light of *Russell's Estate* where it was held that an adopted child was not issue under section 15 of the Wills Act. *Wood's Estate* held that under section 16 (a) of the Intestate Act, giving adopted children the same rights of inheritance as natural children, such child is "issue" within the meaning of section 2 (a) of that act, and the surviving widow has no right thereunder to claim the \$5000 allowance given her, where it appears that her husband died leaving an adopted child. So, although the Legislature adopted the Wills Act and the Intestate Act in the same year as part of a general scheme, and used similar language, "issue" under the Wills Act does not include adopted children, whereas the same word under the Intestate Act does so include them.

*In Re Burns*<sup>16</sup> involved an interpretation of section 16 (b) which is a natural result of the language therein used as applied to the facts of the case. Testator devised land in trust for a life tenant, and after the death of the life tenant, the principal was to be paid in equal shares to the life tenant's issue

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<sup>15</sup>12 Pa. D. & C. 510 (1928).

<sup>16</sup>15 Pa. D. & C. 615 (1931).

and in default of issue, to his next of kin. At the time of the creation of the life estate the plaintiff was a sister of the life tenant, but subsequently, and prior to the death of the life tenant, plaintiff was adopted by a third person. It was held that upon the death of the life tenant without issue, plaintiff could not take as the next of kin of the life tenant, since the remainder so created was contingent until the death of the life tenant, and at that time the plaintiff was not entitled as his next of kin since section 16 (b) of the Intestate Act provides that an adopted child cannot inherit from the family of his natural parents.

In *Hall's Estate*<sup>17</sup> the plaintiff was adopted by proceedings in the Orphans' Court in New Jersey, under a decree which expressly reserved his right of inheritance from his natural parents. It was held that he was entitled to inherit from his natural parents in Pennsylvania, even though a decree of adoption in this state would have precluded him from so doing. The Court said that adoption proceedings are contractual in their nature, and rights reserved therein to the adopted child may be asserted by him in the courts of any other jurisdiction.

The final point to be noted from the decisions appears in *Herner's Estate*<sup>18</sup> where the Court said that property passing upon death to an adopted son of decedent's daughter is subject to transfer inheritance tax under section 2 of the Act of May 15, 1925 P. L. 806, at the rate of 10%. The term "adopted children" as used in that statute, refers only to those adopted by the decedent himself. The Court reaches this result because the act uses the words "child" and "lineal descendants." The former is limited to issue of the first generation and "lineal descendants" means issue more remote. On the same basis the Court says that an "adopted child" is a child of the first generation, and not more remote. Therefore an adopted person more remote than the first generation is not included within the definition of a direct descendant under the act, so he must pay tax as a collateral at the rate of 10%.

Jesse P. Long.

## CIVIL LIABILITY CREATED BY THE VIOLATION OF A PENAL STATUTE IN PENNSYLVANIA

If conduct which is not criminal but which is harmful to an individual is made criminal by statute, is such conduct, by implication, made a civil wrong

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<sup>17</sup>20 Pa. D. & C. 214 (1934).

<sup>18</sup>19 Pa. D. & C. 563 (1933).