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CONCERNING ADOPTION AND ADOPTED PERSONS AS
HEIRS IN PENNSYLVANIA

A. J. White Hutton*

On May 17th, 1937 the Supreme Court of Pennsylvania rendered an epochal
decision in Cave's Estate, 326 Pa. 258, 192 A. 460, 27 D. & C. 646. The inspir-
ation for the present discussion arises from that decision and the lucid opinion
of Stern, J., in which the entire court concurred. On June 10th, 1937, a motion
for rehearing was denied. Consequently the question decided may be taken as
settled, dispelling doubts engendered by prior cases, particularly that of Reamer's

Since the effective date of the Intestate Act of June 7, 1937, P.L. 429,
20 PS sec. 102, the present writer has held to the view now expounded in Cave's
Estate, supra, concerning the right of the adopted person to inherit from col-
lateral kindred of the adopting parents and has so taught in the class room.
Hence the present decision is a matter of gratification, although during the ap-
parent interregnum of Reamer's Estate, supra, the view became clouded by reason
of the dictum expressed, howbeit Per Curiam, in the Reamer Case. As illus-
trative of the student attitude critical of the latter case the reader is referred to
an article entitled "Adoption as Affecting Inheritance in Pennsylvania," by
Jesse P. Long, which is found in 39 Dickinson Law Review 179 (1935). With
these preliminary observations, let us consider this startling departure from the
beaten paths of inheritance law.

DEFINITION

In 1 R.C.L. 592 (1914) it is explained:

"The act of adoption fixes a status, and it has been defined to be
the act by which relations of paternity and affiliation are recognized
as legally existing between persons not so related by nature. An-
other definition is 'the taking into one's family the child of another
as son and heir, and conferring on it a title to the rights and priv-
ileges of such'."

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As set forth in the definitions just quoted, adoption, by whatever process wrought, creates a status recognizable by the law, of which further trite instances are the status created by marriage and by the commercial contract of partnership. In each instance the individuals are, as it were, lifted out of a former condition into one entirely different, recognizable by the law as such, and in which status a different set of laws is applicable from that of the former condition. The late Professor James Parsons in his erudite treatise on Partnership Law maintained stoutly that the discordant principles of partnership law could only be reconciled by the application of this status theory. As to what particular rules of law are to be applied to the new status of adoption that is another question. The point at present made is that the adopted person in law becomes a different person. If any one doubts that the law does so work upon the imagination, let him recall the familiar example of corporate entity where the legal imagination has run riot, asseverating that as many as 40,000 individuals may be one person in the eyes of the law and in turn this fictitious person becomes a citizen of the United States.

The adoption theory, although stated repeatedly in the cases to be a concept unknown to our common law ancestors, (see Carroll's Estate, 219 Pa. 440, 68 A. 1038,) was known to the ancients of Greece and Rome and to other ancient peoples and was practiced among many continental nations under the civil law from remotest antiquity. 1 R.C.L. 593. Furthermore, the custom of adoption was followed by the American Indians and was observed by the performance of either of two rites, (1) that of baptism, (2) by transfusion of blood. It may be of interest to recite at some length an instance of a baptismal ceremony, where the adopted person was a white man, who by the way, has recently been reincarnated as the hero in an historical novel, "The First Rebel." Let Col. James Smith explain the ceremony of his adoption into the Delaware Tribe after his capture near Fort Duquesne in 1755. He recounts his experience in "Our Western Border," p. 76, where after describing his capture, there is this graphic recital:

"As I at that time knew nothing of their mode of adoption an'-I had seen them put to death all they had taken, and as I never could find that they saved a man alive at Braddock's defeat, I made no doubt but they were about putting me to death in some cruel manner. The old chief, holding me by the hand, made a long speech, very loud, and when he had done, he handed me to three young squaws who led me by the hand down the bank, into the river, until the water was up to our middle. The squaws then made signs to me to plunge myself into the water, but I did not understand
them—I thought that the result of the council was, that I should be drowned, and that these young ladies were to be the executioners. They all three laid violent hold on me, and I for some time opposed them with all my might, which occasioned loud laughter by the multitude that were on the bank of the river. At length one of the squaws made out to speak a little English, (for I believe they began to be afraid of me,) and said no hurt you; on this I gave myself up to their ladyships, who were as good as their word; for though they plunged me under the water, and washed and rubbed me severely, yet I could not say they hurt me much.

"These young women then led me up to the council house, where some of the tribe were ready with new clothes for me. They gave me a new ruffled shirt, which I put on; also a pair of leggins done off with ribbons and beads; likewise a pair of moccasins, and garters dressed with beads, porcupine quills, and red hair—also a tinsel laced cappo. They again painted my head and face with various colors, and tied a bunch of red feathers to one of those locks they had left on the crown of my head, which stood up five or six inches. They seated me on a bearskin, and gave me a pipe, tomahawk, and polecat-skin pouch, which had been skinned pocket fashion, and contained tobacco, killikinnick, or dry sumach leaves, which they mix with their tobacco—also spunk, flint and steel. When I was thus seated, the Indians came in dressed and painted in their grandest manner. As they came in they took their seats, and for a considerable time there was a profound silence—every one was smoking—but not a word was spoken among them.

"At length one of the chiefs made a speech, which was delivered to me by an interpreter, and was as followeth: 'My son, you are now flesh of our flesh, and bone of our bone. By the ceremony which was performed this day, every drop of white blood was washed out of your veins; you are taken into the Caughnewaga nation, and initiated into a warlike tribe; you are adopted into a great family, and now received with great seriousness and solemnity in the room and place of a great man. After what has passed this day, you are now one of us by an old strong law and custom. My son, you have nothing to fear; we are now under the same obligations to love, support and defend you, that we are to love and defend one another; therefore, you are to consider yourself as one of our people.' At this time I did not believe this fine speech, especially that of the white blood being washed out of me; but since that time I have found that there was much sincerity in said speech,—for, from that day, I never knew them to make any distinction between me and
themselves in any respect whatever until I left them. If they had plenty of clothing I had plenty; if we were scarce, we all shared one fate."

That the colonists of Pennsylvania were familiar with these practices among Indians is quite clear, not only from the instance just recited but from the noted Mary Jamison case and other remarkable experiences occurring at the old Carlisle Barracks following the Treaty with the Indians at Fort Stanwix. Nevertheless, it has been stated that no common law of adoption prevails in Pennsylvania. Said Potter, J., in Carroll's Estate, supra:

"The only methods of adoption of children known to the law of Pennsylvania, are those prescribed by the Act of May 4, 1855, P. L. 430, sec. 7, as re-enacted by the Act of May 19, 1887, P. L. 125, sec. 1, and the Act of April 2, 1872, P. L. 31, sec. 2. The former provides for adoption by petition to, and decree of, the court of common pleas; and the latter for adoption by deed duly executed and recorded. While the act of 1872 refers to 'the common-law form of adopting a child by deed,' yet the authorities are uniform to the effect that adoption was unknown to the common law, whether by deed or otherwise: Ballard v. Ward, 89 Pa. 358; McCully's Appeal, 10 W. N. C. 80; Session's Estate, 70 Mich. 297; Butterfield v. Sawyer, 187 Ill. 598. We know of no authority for the proposition that, in the state of Pennsylvania, a child may be adopted by parol. The doctrine of Peterson's Estate, 212 Pa. 453, does not justify any such conclusion. In that case, the adoption was not in parol, nor was there any effort to show that it was; it was under the petition of both the husband and wife, and the decree of the court."

STATUTORY GENESIS

The present law in Pennsylvania on the process of adoption, 1 PS Sec. 1, is the Act of April 4, 1925, P. L. 127, Sec. 1, as amended by the Act of April 26, 1929, P. L. 822, as follows:

"It shall be lawful for any adult citizen of this Commonwealth residing therein, desirous of adopting any person, either a minor or an adult, as his or her heir or as one of his or her heirs, to present his or her petition to the orphans' court, or to a law judge thereof, of the county where he or she may be resident, or of the county in which the person to be adopted is a resident, declaring such desire
and that he or she will perform all the duties of a parent to such person. Such petition shall also set forth the name, age, date, and place of birth of the person proposed to be adopted; the name, residence, and marital status of the adopting parent or parents; the name and place of residence of each of the natural parents or of the surviving parent or of any other person whose consent to the proposed adoption is necessary as hereinafter provided, and shall embody or have attached thereto the consents in writing of the person or persons whose consent to the proposed adoption is necessary as hereinafter provided."

In Thompson's Adoption, 290 Pa. 586 (1927) 139 A. 737, in a petition for adoption presented to the Orphans' Court of Allegheny County, the facts were that the petitioners, citizens of Pennsylvania, resided in Allegheny County. The minor was born on April 13, 1926, in Armstrong County, and resided there with his mother, grandmother and step-grandfather at the time of the adoption proceedings. The parents of this child and also his grandmother joined in the petition for his adoption, and the minor himself was present in court at the time of the hearing thereon. After this hearing, on consideration of the testimony there taken, the court below found that the welfare of the child would be promoted by allowing the adoption, but refused the petition on the ground that, since the minor was a resident of Armstrong County, the courts of Allegheny County had no jurisdiction.

In reversing the decree and remitting the record to the court below with a procedendo, Moschzisker, C. J., observed, inter alia:

"The subject of adoption has always been in the hands of the legislature. There was no such thing as adoption in the English common law (Ballard v. Ward, 89 Pa. 358, 362; 1 C. J. 1371; Brown's Adoption, 25 Pa. Superior Ct. 259, 262; Evan's Est., 47 Pa. Superior Ct. 196, 198), and, prior to 1855, we had no general statute in Pennsylvania providing for such procedure: Ballard v. Ward, supra; Carroll's Est., 219 Pa. 440, 444; Brown's Adoption, supra; Evan's Est., supra. Up to 1855, adoptions were legalized in particular cases by special acts of assembly: See, for example, Act of March 15, 1847, P. L. 388, enacting 'That (X) and (Y) his wife, be authorized to change the name of (A.B.) . . . . and by that name (A.B.) shall have and enjoy all the rights, benefits and advantages of a child born in lawful wedlock of the . . . . said (X) and (Y)'; see also the Act of May 8, 1854, P. L. 685. While the Act of 1855 provided for adoptions in general (McQuiston's App., 238 Pa. 304, 310), it did not name the courts of common pleas to
exercise that jurisdiction; it simply said that it should be lawful to present petitions for adoption to 'such court' in the county where the person desiring to make the adoption 'may be resident,' and no mention of the common pleas, to which the words 'such court' can properly be referred in connection with the subject of adoptions, appears in the statute, either before or after that phrase. We, however, construed 'such court' to mean the courts of common pleas (Ballard v. Ward, 89 Pa. 358, 362), probably because those tribunals were at that time the only courts throughout the State of recognized general, as distinguished from special, jurisdiction . . . . Our legislature, by the Act of 1925, has recently seen fit to confer the jurisdiction in question on the orphans' court, and we find nothing in this statute to render it unconstitutional.'

Despite the statement in the aforegoing quotations concerning the common law, which may be interpreted as referring to the common law of England and not the common law of Pennsylvania, nevertheless the General Assembly of the Commonwealth in the Act of April 2, 1872, P. L. 31, being a supplement to the 7th Section of the original Adoption Act of May 4, 1855, P. L. 430, provided as follows:

"That in all cases heretofore, as well as hereafter, when the common law form of adopting a child by deed has been practiced or done, it shall be lawful, on proof of due execution of the deed, to have the same recorded in the proper office for the recording of deeds, in the county where the adopting parent resides at the date of its execution; and a duly certified copy thereof shall be received in evidence, with the same force and effect as the record of adoption would have in the mode provided in the act to which this is a supplement."

Both the Act of 1872 and the section 7 of the Act of 1855, supra, were repealed by the Adoption Act of April 4, 1925, P. L. 127. Whether the so-called common law adoption by deed may still be considered as the law of Pennsylvania is at least questionable in view of the aforegoing authorities. Moreover the broad view of inheritance rights as interpreted in Cave's Estate, supra, would call for a confinement of adoption procedure to that directed in the Act of 1925. Therefore, the Orphans' Court is the jurisdictional tribunal and "any adult citizen of this Commonwealth" may adopt "any person, either a minor or an adult, as his or her heir or as one of his or her heirs," and by the provisions of Section 4 of the Act of 1925 the adoption decree as made directs "that the person proposed to be adopted shall have all the rights of a child and heir of such adopting parent or parents, and be subject to the duties of such child."
Section 7 of the Act of May 4, 1855, P. L. 430, provided, inter alia, "that it shall be lawful for any person desirous of adopting any child as his or her heir, or as one of his or her heirs, to present his or her petition to such court in the county where he or she may be resident." Consequently under these provisions an adult could not be adopted and where this was desired a special act of assembly had to be procured. The Pamphlet Laws contain many instances of legislative action, see for particular examples the Pamphlet Laws of 1872, pages 1046, 1250, 1251 and 1252.

The Constitution of 1838 did not forbid special legislation, but Article III Section 7 of the present Constitution provides "the general assembly shall not pass any local or such law," inter alia, "authorizing the adoption or the legitimation of children."

The Act of 1855, as quoted, did not lay so much stress upon the residence of the petitioner, although requiring that such petitioner was to present the petition to such court in the county "where he or she may be resident."

In Brown’s Adoption, 25 Pa. Superior Court 259, Rice, P. J., after quoting the language of the Act of 1855, reasoned:

"Hence, it has been authoritatively decided in this state that the word 'resident' as used in the act of 1855 includes both permanent and temporary residence in the commonwealth."

As will be noted in the Act of 1925, supra, the petitioner, unless presenting the petition to the court of the county where the person to be adopted resides, must present the petition to the court of the county where he resides as a citizen of Pennsylvania, thus emphasizing citizenship, a permanent matter, as well as residence which may be temporary.

To sum up the differences in this aspect between the acts of 1855 and 1925, they are (1) a change of the court from common pleas to orphans' court, (2) allowing adoption of an adult, and (3) laying stress upon the status of the petitioner as a citizen of Pennsylvania.

It was held in McQuiston’s Adoption, 238 Pa. 304, 86 A. 205, that the Act of 1855 did not preclude the right of the petitioner to file an adoption petition in the county where the child resided. As already stated the Act of 1925 expressly so permits.

METHODS OF ADOPTION

Prior to the Act of 1925 the three methods of adoption were (1) by petition to the common pleas court, (2) by deed of adoption, according to the Act of 1872, and (3) by special legislative enactment prior to the first Monday of January, 1874, when the present Constitution went into effect.
As the Act of 1872 has been repealed by the Act of 1925 and the present Constitution proscribes special legislation, on matters of adoption, this would leave remaining as the sole method that by petition which now is addressed to the orphans’ court instead of the common pleas court. As already stated it is doubtful whether the so-called common law method of adoption by deed, as mentioned in the Act of 1872, prevails since the repeal of that act, although upon studying the cases so frequently cited to support the statement that no common law plans of adoption exist in Pennsylvania will be found to contain merely obiter dicta on this point. Moreover, it must be remembered that there are still many cases of adoption now existing in Pennsylvania which must be supported as valid acts of adoption according to the law as it existed prior to the passage of the Act of 1925. In this connection the case of Evan’s Estate, 47 Pa. Superior Court 196, may be cited for the proposition that an adoption by deed according to the Act of 1872 is not complete until the deed is recorded.

**PROCEDURE**

Sections 3 and 4 of the Adoption Act of April 4, 1925, P. L. 127, 1 PS, provide as follows:

"Section 3.

"Upon presentation of any such petition as aforesaid a time for hearing thereon shall be fixed not less than ten days from said presentation, which said hearing may be before the said court or any law judge thereof at chambers, and may be adjourned from time to time if the nature of the case should so require. At said hearing the adopting parents or parent, the person proposed to be adopted, and all the persons whose consent is necessary hereunder must appear in person and be examined under oath by such court or judge, but the personal appearance of the natural parents or other persons whose consent is necessary hereunder may be dispensed within the discretion of the court or judge hearing the petition, if such persons reside without the jurisdiction of the court, or if for any other reason the said court or judge deem it unnecessary, provided the duly executed consents of such persons in writing have been filed with the petition; and the said court or judge may in his discretion require the personal appearance of the natural parents of the child at a different time and separate and apart from that of the other parties in interest. The said court or judge shall also hear any other testimony as to the facts set forth in the petition or necessary to inform the court as to the desirability of the proposed adoption, and may also make or cause to be made an investigation by some person or agency specifically
designated by said court or judge to verify the statements of the petition and such other facts as will give the court full knowledge as to the desirability of the proposed adoption.

"Section 4.

"If satisfied that the statements made in the petition are true, and that the welfare of the person proposed to be adopted will be promoted by such adoption, and that all the requirements of this act have been complied with, the court or judge shall make a decree so finding and reciting the facts at length, and directing that the person proposed to be adopted shall have all the rights of a child and heir of such adopting parent or parents, and be subject to the duties of such child; but otherwise shall make a decree refusing the adoption and dismissing the petition. If desired by the parties the decree may also provide that the person adopted shall assume the name of the adopting parent or parents. Such decree shall be filed and spread at length upon the records of said court and shall be sufficient evidence of the adoption and shall be open to the public. All other papers pertaining to the case and the testimony if written out shall be kept in the files of said court as a permanent record thereof and may in the discretion of said court or judge be withheld from inspection, by a proper order, in which case no person shall be allowed access thereto, except upon an order of court granted upon cause shown."

In Appeal of Weinbach, 316 Pa. 333, 175 A. 500, it was held that the review of an adoption case would lie with the Supreme Court rather than the Superior Court except where the adoption proceeding appealed from was in the Municipal Court of Philadelphia which has jurisdiction in adoption matters, and in which instance the appeal would be to the Superior Court under its exclusive jurisdiction of appeals from the Municipal Court, citing McCann's Adoption, 104 Pa. Superior Court 196, 159 A. 334. On the question of the right of appeal in adoption cases, Schaffer, J., said:

"The next question for consideration is whether there is any right of appeal in this class of cases. Adoption is a purely statutory proceeding. There was no such thing as adoption known to the common law. Ballard v. Ward, 89 Pa. 358; Thompson's Adoption, 290 Pa. 586, 199 A. 737. The Act of April 4, 1925, P. L. 127, as amended by Act of April 26, 1929, P. L. 822, section 1 (1 PS section 1), regulating adoption does not provide for an appeal, and therefore the scope of our review is that exercisable on certiorari, Lewis' Appeal, 6 Sad. 79, 10 A. 126; Von Moss' Election, 219 Pa.
Consequently, the only matters to be inquired into are whether the court below exceeded its jurisdiction or its proper legal discretion. Robb's Nomination, 188 Pa. 212, 41 A. 477; Sterrett v. MacLean, 293 Pa. 557, 143 A. 189; Yancoski's Appeal, 313 Pa. 461, 169 A. 762. In reviewing the court's decision, under the provisions of the Act of April 18, 1919, P. L. 72, section 1 (12 PS section 1165), we take into consideration the evidence which, according to the terms of the statute, is brought up by the writ of certiorari 'with like effect as upon an appeal from a judgment entered upon the verdict of a jury in an action at law.' This requires us to examine the testimony to determine whether there is any evidence to sustain the findings of fact. In re Plains Township Election Returns, 280 Pa. 520, 124 A. 678; Walker's Appeal, 294 Pa. 385, 144 A. 288; Bangor Electric Company's Petition, 295 Pa. 228, 145 A. 128."

AS HEIR

The right of an adopted person to take as heir in Pennsylvania depends upon the intestate laws. This is particularly so under our present Constitution which provides in Article III Section 3 that no bill, except general appropriation bills, shall be passed containing more than one subject, which shall be clearly expressed in its title. Consequently, the adoption act of 1925, together with its amendment of 1929, does not cover the right of an adopted person to take as heir.

Under the Constitution of 1838 this requirement did not exist and hence the Act of May 4, 1855, P. L. 430—the first act of assembly in Pennsylvania upon the subject of adoption—is entitled "An Act relating to certain duties and rights of husband and wife, and parents and children."

Section 7 of the Act of 1855 reads as follows:

"That it shall be lawful for any person desirous of adopting any child as his or her heir, or as one of his or her heirs, to present his or her petition to such court in the county where he or she may be resident, declaring such desire, and that he or she will perform all the duties of a parent to such child; and such court, if satisfied that the welfare of such child will be promoted by such adoption, may, with the consent of the parents or surviving parent of such child, or if none, of the next friend of such child, or of the guardians or overseers of the poor, or of such charitable institution as shall have supported such child for at least one year, decree that
such child shall assume the name of the adopting parent, and have all the rights of a child and heir of such adopting parent, and be subject to the duties of such child, of which the record of the court shall be sufficient evidence: Provided, That if such adopting parent shall have other children, the adopted shall share the inheritance only as one of them in case of intestacy, and he, she or they shall respectively inherit from and through each other, as if all had been the lawful children of the same parent."

The Intestate Act of April 8, 1833, P.L. 315, "an Act relating to the descent and distribution of the estates of intestates," was based entirely upon the descent and distribution of the estates of such intestates to blood relatives and to the spouses, hence the provisions of Section 7 of the Act of 1855 are to be considered as an engraftment upon an entirely different theory. Consequently, the section has been construed strictly and the courts did not allow its terms to be extended any farther than the language would permit. The adopted person was clearly made an heir of the adopting parent and in case of the death of the latter, intestate, would take such estate just as a blood relative under the Intestate Act of 1833 or a share thereof along with the blood children of the intestate. In Johnson's Appeal, 88 Pa. 346, a testamentary trust was created and the remainder disposed of as follows: "And upon and immediately after the death of my son, to assign, grant and convey the said real estate to such person or persons, and for such estate or estates, and in such proportions as would, by the intestate laws of this Commonwealth, be entitled to the same if he had died intestate seised thereof in fee." After the death of the testatrix the son adopted a child under the provisions of the Act of 1855 and later died leaving this adopted child but no issue. It was held that the adopted child was entitled to the estate. Said Gordon, J.:

"One of two things may be regarded as reasonably certain in this case: either Mrs. Johnson did know and understand the intestate laws, to which she so distinctly and emphatically refers, and so must have known that her son had the power to introduce into the succession one not of her blood, or she was indifferent as to what might become of the residue of her estate after her son's death, and therefore intrusted the disposition thereof to those laws, without caring to inform herself particularly concerning their provisions. In the one case, she acted in view of the possible occurrence of what has happened, and in the other, she cared not what the result might be; in either case, nothing remains but to give her words their legal and reasonable meaning and force, and thus invest the appellant with the title and possession of the property which rightfully belongs to her."
The phraseology of the section, inter alia, is that the adopted person "shall have all the rights of a child and heir of such adopting parent." This same phrase appears in the Act of May 9, 1889, P. L. 168, and was interpreted in Webb's Estate, 250 Pa. 179, as investing the adopted child with the right to become the heir at law of the adopting parent and with this investment goes the right of succession in the legal heirs of such adopted child so that in case such child is not living at the death of the adopting parent, his or her heirs would succeed, as he or she would have done if living.

On the other hand the section was singularly remiss in not creating reciprocal rights of inheritance between the adopting parent and the adopted child whereby the former would take the estate of the latter dying intestate, unmarried and without issue. Therefore, in Commonwealth v. Powel, 16 W.N.C. 297, it was held that the natural parents of a child adopted under the provisions of the Act of 1855 are entitled to the child's estate in preference to the adopting parents where such child dies intestate, unmarried and without issue. The simple reason assigned for such a ruling was that the act did not provide for the parent by adoption inheriting from the adopted child, and a reading of the section discloses this fact.

The proviso of Section 7 of the Act of 1855 takes care of the situation where the adopting parent has natural children by specifying "the adopted shall share the inheritance only as one of them in case of intestacy, and he, she or they shall respectively inherit from and through each other, as if all had been the lawful children of the same parent." This has been interpreted as meaning that there are reciprocal rights between the persons just mentioned confined, however, to the estate as inherited from the adopting parent. The play therefore is upon the words "from and through each other" but confined to the estate as inherited. Consequently, in Burnett's Estate, 219 Pa. 599, interpreting the later Act of April 13, 1887, P. L. 53, it was held that an adopted child of a deceased brother could not claim a share as the representative of his adopting parent in the estate of another brother who died intestate leaving to survive him one brother, one sister and the children of a deceased brother. The law applying was section 3 of the Act of April 8, 1833, P. L. 315, together with the Acts of May 4, 1855, P. L. 430, April 13, 1887, P. L. 53 and May 19, 1887, P. L. 125.

In order to provide for the casus omissus pointed out in Commonwealth v. Powel, supra, the Act of April 13, 1887, P. L. 53, specified as follows:

"That whenever hereafter any child, adopted according to law, shall die intestate and without issue, in the distribution and division of any personal or real estate of such child, the adopting parents, and their lawful heirs and kindred, shall be treated and shall inherit from such adopted child, according to the intestate laws of this
Commonwealth, the same as though such adopted child were the natural child and heir at law of such adopting parents, to the exclusion of the natural parents, kindred and heirs at law of such adopted child, reserving to the husband or wife of such adopted child all his or her respective rights, under the said intestate laws: and, in case either or both such adopting parents shall die intestate, said adopted child shall inherit the property of said parent or parents, the same as though the said adopted child were the lawful child and heir at law of said adopting parents: Provided however, that this act shall only apply to such property, as the adopted child shall have inherited or derived from the adopting parents, or their kindred."

Further statutes providing for situations in the adoption of adults, not embraced in the Act of 1855, are as follows: Act of May 9, 1889, P. L. 168; Act of April 22, 1905, P. L. 297; Act of June 1, 1911, P. L. 539. These statutes are cited in order to afford a full review, but they do not advance the matter beyond the statutes already discussed. A like observation may be made concerning the Act of May 28, 1915, P. L. 580.

Thus stood the statutes of this Commonwealth prior to the effective date of the Intestate Act of June 7, 1917, P. L. 429, 20 PS Section 102, and the law may be summarized as providing for the adoption of both minors and adult persons and the conferring upon the adopting parents and their heirs and the adopted persons and their heirs reciprocal rights of inheritance and also extending similar rights of inheritance respectively to the adopted person and his heirs and the natural children of the adopting parent and their heirs, providing, however, that in the latter cases these reciprocal rights of inheritance "from and through each other" were confined to the estate that was inherited from the adopting parent. Section 16 of the Intestate Act of June 7, 1917, P. L. 429, 20 PS, provides, inter alia, as follows:

"(a) 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.

"(b) 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 the report of the Commission to codify and revise the law of Decedents' Estates submitted to the General Assembly of 1917, the Commissioners stated:

"So far as concerns our recommendations for substantive changes in the law, we have endeavored to be conservative, and yet have not hesitated to suggest important changes where we thought them distinctly beneficial. It has been often said, and with truth, that the burden of proof is upon him who advocates a change in the law, and this rule is distinctly applicable to that department of the law which has been referred to us. For the law of decedents' estates in this Commonwealth is and has been for many years, certainly since the Revised Acts drafted by the Commissioners of 1830, most admirable in its theory, and in practice most satisfactory to the community. We have therefore been careful to limit our recommendations to those changes, which we felt after our careful deliberations and unanimous conclusions would meet with the approval of the representatives of our fellow citizens, and deserve a practical trial."  

In Thomas's Estate, 2 D. & C. 89, Judge Hughes of the Orphans' Court of Washington County, in an able opinion discussed and applied the law as set forth in Sec. 16, supra. He first traced the various acts of assembly relative to adoption, already cited in this present article, whereupon the learned judge explained:

"Upon a consummation of an adoption under any of these statutes, certain mutual, fixed and present rights, duties and liabilities automatically attach to the immediate parties to such new relationship; the adopting parent gaining thereby all the rights of a natural parent, such as the custody, control, services and earnings of the adopted child, while the adopted person becomes thereby entitled to all the vested rights of a natural child, such as a home, support, clothing, medication and education. Such are the mutual and vested
rights and obligations which attach and become fixed concurrently with the completion of an adoption, but another important right (so-called) accrues as an incident to such adoption, such right, however, being purely inchoate in character, to wit, the right of inheritance; such right being created and existing to the extent defined by the succeeding adoption statutes.

"The Intestate Act of April 8, 1833, P. L. 315, having been enacted many years before adoption was permitted in Pennsylvania, it, of course, contains no provisions relative to inheritance incidental to adoptions. While the Act of April 13, 1887, P. L. 53, amending the Act of May 4, 1855, P. L. 430, is devoted exclusively to the subject-matter of inheritance under adoptions, each of the other adoption statutes cited covers not only the circumstances and conditions upon which adoptions will be permitted thereunder and the procedure to be followed to obtain the desired decree, but also defines the inheritance to follow the adoption perfected under such act. The legislature of 1917 saw fit to divorce the matter of inheritance under adoption from the said adoption statutes and to cover such matter of adoption inheritance exclusively within the new inheritance act of that year. Consequently, the subject-matter of inheritance following adoptions of minors, as well as of adults, has been made a part of, and incorporated in, the Intestate Act of June 7, 1917, P. L. 429, as section 16 thereof; while all of the said adoption acts then existing were thereby repealed so far (and only) as they related to inheritance. This Intestate Act of June 7, 1917, P. L. 429, in express language provides that it shall take effect on Dec. 31, 1917, and shall apply to estates, real and personal, of all persons dying intestate on or after said date; section 28 specifying that the act 'is intended as an entire and complete system for the descent and distribution of the estates, real and personal, of persons dying intestate' on and after such date, and concluding with a general repealer of all other acts of assembly or parts thereof in any way in conflict or inconsistent with the provisions of the said Intestate Act of June 7, 1917, P. L. 429, or any part thereof."

In this case A adopted B, aged 16 years, in 1907. B later married and died in 1918 intestate, survived by his adopting parent, A, his widow, C, and one child, D. A died in 1920 testate as to a portion of her estate but intestate as to the residue which was the greater portion, leaving to survive no spouse or natural child or issue but C and D and certain collateral relatives consisting of nieces and nephews, children of deceased brothers and sisters. In the adjudication of the account of the personal representative of A’s estate the orphans'
court awarded the residue going under the Intestate Law to C as the heir of B, the deceased adopted child of A. Judge Hughes has written an opinion sustaining this holding and covers in a most comprehensive way the import and breadth of Section 16, supra, and particularly clause (a) which contains the applicable provisions. Said the learned judge:

"... Upon scrutinizing clause (a), it is observed that its provisions are devoted exclusively to the inheritance rights of the two immediate parties to the adoption, no attempt being therein made to cover the inheritance rights of persons other than such immediate parties, such as the latter's natural or adoptive heirs or kindred. Now, upon centering our attention on the word 'from', it is perceived that it contemplates and can be applicable and operative only in the event of the death of one or the other of such immediate parties to the adoption, the statute giving the survivor of such immediate parties the right to inherit and take by devolution 'from' the other, the deceased party. The effect of the word 'through' is farther reaching, extending the inheritance rights of both of the immediate parties so that each of them is thereby qualified to inherit, not merely from the other immediate party, but also from the latter's relatives and kindred, through the channel left open by the latter's death; it being observed that such word 'through' likewise presupposes the death of such original party, leaving the other party surviving; and it being further remembered that clause (b) of said section limits such 'relatives and kindred' of the adopted person to the latter's children and descendants. Now, in clause (b) of the section under consideration we find expressed the converse of the said provisions of clause (a), to wit, clause (b) giving the adoptive relatives of the person adopted, i.e., the natural relatives and kindred of the adopting parent, the right to inherit and take not only 'from' the adopted person himself, but also from his children and descendants, 'through' the channel left vacant by the death of such adopted person. Thus it is seen that the statute has thrown open both gates of the channel of adoptive inheritance, permitting not only adopting parents, but also their kindred (without any limitation whatsoever and irrespective of degree of relationship), to inherit and take not only from the adopted person, but also from his children and descendants. Now, it must be admitted that the statute does not expressly provide for or authorize reverse inheritance in such line of persons, to wit, inheritance by the children and descendants of the adopted person from the adopting parent and from the latter's kindred, but such reverse or reciprocal inheritance is necessarily
implied. We have seen that under clause (a) the adopting parent himself, and under clause (b) the relations and kindred of such adopting parent, are qualified to inherit from the adopting person and also from his children and descendants 'through' him. What possible reason could the legislature have had to deny reciprocal or reverse inheritance rights to such children and descendants of the adopted person? No reason can be conceived, and we conclude, therefore, that the legislature did not so intend to withhold from the children and descendants of an adopted person inheritance rights reciprocal to those vested by the act in express language in the kindred of the adopting parent.

"Accordingly, we conclude that the statute impliedly vests such reciprocal rights of inheritance in the children and descendants of the adopted person, permitting them to inherit, not only from the adopting parent, but also from the latter's natural relatives, 'through' the gates of the channel of inheritance left open by the deaths of the original adopting and adopted persons."

It is not expedient in this article to quote at further length from this most excellent opinion but the reader is referred to it as one of the best discussions on the scope and legal effect of Section 16, supra, as will be found in our reports. The decision is correct and the whole case may properly stand for the proposition that under Section 16 (a) the inheritance rights of the adopted person and the adopting parent or parents are reciprocal and carry under the theory of succession these same rights to the heirs of the adopted person and the adopting parent or parents as they may be determined under the general intestate laws of the Commonwealth. The ruling in *Webb's Estate*, 250 Pa. 179, *supra*, is followed. It is believed, however, that if the learned court had directly applied the adoption theory, as outlined in the present article, and had held that the trend of inheritance legislation in Pennsylvania culminates in Section 16 of the Intestate Act as the carrying out of this theory, then in the language of the codifying commission there would be emphasized "important changes where we thought them distinctly beneficial."

To restate the matter, by the process of adoption the status of the adopted person and of the adopting parents is changed and under the theory of the law the latter become the actual parents of the former. The previous identity is completely lost in the new relationship or as expressed by the Indian chief in the adoption of Col. Smith: "My son, you are now flesh of our flesh, and bone of our bone." Facing the reality of the situation as presented by our adoption statutes, this is actually the change that takes place by operation of law. True, the inheritance statutes have lagged behind in the carrying out of this theory and according to the changed relationship all of the rights and privileges pertaining thereto. However, as we trace the development in these
statutes in Pennsylvania, we do find a continuous progression until finally, as has already been stated, the theory is carried out in its entirety in Section 16 of the Intestate Act of 1917.

As held in Thomas's Estate, supra, the issue of the deceased adopted child takes a share in the estate of the adopting parent who dies intestate in just the same way that those of the actual blood would take. This principle applies lineally to the remotest degrees in accordance with the general rule of inheritance in the Intestate Act of 1917. Conversely, not only will living adopting parents inherit from deceased adopted children where by the general laws of inheritance they would be entitled to take, but in the ascending line grandparents and descendants of grandparents would likewise take shares in the estate of the deceased adopted child when by law such classes were entitled to inherit. Moreover, the status of the adopted person being established, he cannot reap any advantages by virtue of his former position. Under the adoption Act of 1887, it was held in Morgan v. Reel, 213 Pa. 81, that where a grandfather adopted a grandchild, daughter of a deceased daughter, and later died intestate, the adopted grandchild inherited as a child of the adopting parent who was also the blood grandfather and not in a double capacity as child and grandchild.

Let us now consider particularly the provisions of Section 16 (b), supra, and the cases in which this paragraph has been construed.

In Russell's Estate, 284 Pa. 164, 130 A. 319, the question was considered by Simpson, J., as to whether the provisions of Section 16 (b) of the Intestate Act would extend to a will wherein there were gifts to a brother, sister, nephew, and niece if the legatee predeceased the testator leaving no issue, the Wills Act of 1917 making no specific provision for such a situation. The decree of the court below holding that such legacies lapsed was affirmed by the Supreme Court. Concerning the course of legislation it was said:

"Instead of passing a general act, giving to adopted children all the rights of those who are natural-born, the legislature has chosen, as has been shown above, to advance step by step, and we cannot properly do otherwise than follow where it leads; hence, since the supposed rights of an adopted child have not been extended to cover the situation here presented, we can only repeat what we said in Boyd's Est., 270 Pa. 504, 507; 'If it is deemed wise to provide that adopted children shall have the rights here claimed for them, the legislature can extend the law to cover them; we cannot.'"

In Cryan's Estate, 301 Pa. 386, 152 A. 675, a testatrix devised certain real estate to four sisters, a brother and her own adopted daughter. The testatrix died in 1913. One of her sisters died in 1914 unmarried and without issue; another sister, a widow without issue, died in 1925, and another sister, a widow, died in
1929 leaving two children surviving. The brother died also in 1929 unmarried and without issue. The fourth sister and the adopted daughter of the testatrix remained at the time of the present litigation which was a proceeding for a declaratory judgment to determine the proper construction of the will of the testatrix in regard to the amount and nature of the interests given to the six devisees. In passing upon this question and in referring to the opinion of the lower court, Moschzisker, C. J., observed:

"We agree with the court below that, 'upon the death (in 1914) of C. Gertrude Mays, a sister (of testatrix), unmarried and without issue, her undivided . . . share . . . in said real estate descended to her (three) surviving sisters and brother, and (the) adopted child of S. Anice Cryan'; that, 'upon the death (in 1925) of Ella A. Beck (sister of testatrix), a widow without issue, her undivided . . . share . . . descended to her (two) surviving sisters and brother and to Minnie C. Wineman, the adopted child of . . . S. Anice Cryan; that, 'upon the death (in January 1929) of Martha Jane Creswell (sister of testatrix) a widow, leaving to survive her two children, namely, Ella C. Wagner and Annie C. Turner, the respondents, her undivided . . . share . . . descended to her said two children in equal shares'; that, 'upon the death (in May 1929) of John Mays (brother of testatrix) a widow, leaving to survive her two children, namely, Minnie C. Wineman, the adopted child of S. Anice Cryan, and to Ella C. Wagner and Annie C. Turner, the children and heirs of Martha Jane Creswell, deceased.'"

Continuing the learned Chief Justice thus concluded:

"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 (20 PS paragraph 102) 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, 130 A. 319,) inherited a portion of their respective shares. These facts and the statute last cited must be taken into consideration to understand the correctness of the judgment entered in this case.

"The judgment of the court below, so far as it determines the interest of the present owners of the property in controversy to be 'Minnie C. Wineman, one-third, Mary E. Hall, one-third, Annie Creswell
Turner, one-sixth, and Ella Creswell Turner, one-sixth,' and that they hold in fee as tenants in common, is affirmed, costs to be divided pro rata according to the shares just stated."

In this case the estate as taken by the respective devisees and under the ruling of the court was all derived from the testatrix and could therefore be considered as coming "from and through" the testatrix. Nevertheless, the remarks of the court and the results of the ruling in holding that the adopted child inherited as niece a portion of the vested shares of testatrix's brother and sisters dying intestate and without issue after the testatrix, appeared to justify the broad interpretation of section 16 (b) as entitling the adopted child to take a portion of the estate left by collateral adoptive relatives.

However, the assurances so engendered, either with or without justifiable reason, were in the course of time dispelled by an obiter dictum in Reamer's Estate, 315 Pa. 148, 172 A. 655. A petition was filed with the Register of Wills of Bedford County seeking the revocation of a prior grant of letters of administration on the estate of Mary Kerns Reamer, deceased, and the appointment of the petitioner as administrator in place of the original appointee. The Register dismissed the petition and upon appeal the orphans' court sustained the action of the Register, whereupon the petitioner appealed to the Supreme Court. The decedent in question had died intestate and her next of kin of the blood relationship were first cousins. She was also survived by an adopted daughter of a deceased sister, but the adopted one was not of the blood of the decedent. The Register of Wills upon the nomination of the first cousins appointed an administrator and the adopted child of the decedent's deceased sister later nominated the petitioner to the office of administrator. In a Per Curiam opinion the court affirmed the order of the court below and stated that the only question involved was, does the adopted daughter of a deceased sister, not herself of the blood of decedent, inherit a portion of the decedent's estate, in preference to first cousins who are of that blood? The court then stated that it agreed with the court below in answering this question in the negative. In the following quotation appears the position of the court on the matter of the rights of inheritance of adopted children:

"This controversy seems to be a perennial one. Over and over again we have been unsuccessfully urged to decide that adopted children, merely by reason of their adoption, acquired a right to share in the estates of deceased relatives of the predeceased adopting parent, but all such attempts have met with failure. Section 16 (a) of the Intestate Act of June 7, 1917, P. L. 429, 439 (20 PS paragraph 161), because of which, if at all, an adopted child's claim must be established, provides as follows: 'Any minor or adult person adopted according to law, and the adopting parent or parents shall, re-
spectively, 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.' Despite the care and skill evidenced by the brief of appellant's counsel, there is nothing new in the argument now presented to us. 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 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. As the rights of the adopted child and the adopting parent are reciprocal, under the section of the statute quoted, it necessarily follows, if appellant's contention is correct, that, 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.'

Two points of criticism may be made on the result of this case and the reasoning to support such result. (1) The question for determination was not as to the right of the adopted daughter of a deceased sister to inherit but was whether the action of the Register in granting letters to the nominee of a blood relative over the nominee of the adopted child of the deceased sister of the decedent was proper. And (2) that the phrase in all of the inheritance laws in Pennsylvania pertaining to adoption including the provisions of section 16 wherein the words "from and through" are used, does not have reference to the estate which passes from or through but does refer to the right of inheritance which may pass "from and through" the particular person.

As to the first point of criticism it may be said that as the right of administration is fundamentally based upon the right of participation in, the estate to be administered, if the first cousins were not entitled to take they would hardly be entitled to the letters, and conversely if they were entitled to take they would obviously be entitled to the letters. However another turn to the problem revolves around the point as to whether the Fiduciaries Act, which contains the specifications as to rights of administration which govern the register of wills, contains terms broad enough to justify the register in passing of blood relatives and selecting adopted persons although the latter might actually be entitled to the estate in question. The answer to this particular problem is beyond the scope of the present article but the writer believes that the present law is broad enough to justify the register of wills in appointing as administrator the adopted child or his issue who inherit from the decedent in question rather than
blood relatives who either do not inherit or participate along with the adoptive relatives.

As to the second point of criticism, the remarks bear internal evidence of rather hasty consideration and certainly do not represent the law of the present concerning the rights of adoptive relatives to take in the estates of collateral adoptive relatives.

If Reamer's Estate is to be supported, it must rest upon the narrow position that the register of wills acted properly in refusing to consider the petition in question rather than on the broad position assumed by the court in determining the heritable qualities of the adopted child of the deceased sister of the decedent.

**Cave's Estate**

This case is the last utterance of our Supreme Court on the question of the proper interpretation of section 16 of the Intestate Act of 1917. The question involved arose in the adjudication by the orphans' court of Philadelphia County of the account of the administrator of W. Lewis Cave, deceased, and the distribution of the balance appearing upon said account. The decedent died September 21, 1935 intestate, unmarried and without issue, and was survived by four nephews and by Jean Cave, adopted daughter of another nephew, Warren F. Cave, who had died before the decedent. Jean Cave when adopted in 1922 was two years of age and the decree of the court provided that she should "assume the name of Warren F. Cave and Mary R., his wife, and have all the rights of a child and heir of the said Warren F. Cave and Mary R., his wife, and be subject to the duties of such child." Jean Cave presented her claim to participate in the estate of the decedent but the court below rejected her claim and ordered distribution among the four nephews. The guardian of Jean Cave appealed and the question presented to the Supreme Court was whether under the facts Jean Cave was entitled to inherit a fifth part of the decedent's estate.

In an opinion by Stern, J., approved by the entire court, this question was answered in the affirmative and the decree of the lower court was reversed and a distribution ordered in accordance with the opinion of the court. After stating the facts in the question involved and citing the Intestate Act of June 7, 1917, P. L. 429, Section 9 (d), 20 PS Section 65, providing that in default of issue, parents, brothers and sisters, the property of an intestate who leaves nephews and nieces shall be divided among them per capita and "each child of a deceased nephew or niece . . . shall receive an equal portion of the share which his or her parent would have received if living at the death of the intestate", as being the appropriate provision of the law if the adopted child of a deceased nephew should come within this provision, the learned justice remarked:

"The right of adopted children to inherit from kindred of their adoptive parents is dependent entirely upon statutory enactments, and
because the 'call of the blood' is one of the most firmly rooted instincts of human nature, courts tend to a strict construction of such legislation. In the absence of a plain legislative mandate to the contrary, a stranger to the adoption proceedings should not have his property diverted from its natural course of descent to the heirs of his blood; therefore, a statutory grant to adopted children of the right to inherit from their foster parent does not necessarily carry with it the right to inherit from the latter's collateral relatives. However, it must be conceded to be within the legislative power to confer such a right upon an adopted child, and the problem in the present case is to ascertain whether the statutory law of the state is properly to be construed as having granted it."

After a discussion of the statutes already referred to in this article and also the cases of Russell's Estate, Cryan's Estate and Reamer's Estate, supra, the learned justice observed:

"Such being the somewhat confused state of judicial expression in regard to this subject, we have no hesitancy now in deciding, apart from any binding authority to be ascribed to the decision in Cryan's Estate, that the Intestate Act of 1917 permits of no reasonable construction other than that, by its terms, an adopted child has the same right of inheritance from the collateral kindred of his adoptive parents as a natural child of such parents would have. The court below apparently relied upon the statement in Reamer's Estate that an adopted child is not entitled to inherit an estate in which his adoptive parent never had a vested interest. Such a construction of section 16 of the Intestate Act (20 P.S. Sections 101, 102) is wholly untenable. . . . . . . By the use of both words—'from' and 'through'—it is clear the Legislature intended that the adopted child should have the right to inherit not only property in which his adoptive parent himself owned a vested interest, but property of kindred of his adoptive parent which the latter would have inherited had he been living, and which, by reason of his death, passes 'through' him to his adopted child as it would have done, to use the language of section 16 (a), 20 P.S. section 101, 'if the person adopted had been born a lawful child of the adopting parent or parents.'

"The language of clause (a) of section 16 (20 P.S. section 101) is greatly strengthened and emphasized by that of clause (b), 20 P.S. section 102. Nothing could be more sweeping than the provisions: '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. . . . Adopted persons shall not be entitled to inherit or take from or through their natural parents, grandparents, or collateral relatives.' This severs the child from his natural family tree and engraves him upon that of his new parentage 'for all purposes of inheritance.' The evident purpose of this legislation is lost by the interpretation given to the act by the court below.”

Thus after the passage of twenty years from the enactment of Section 16 of the Intestate Act of 1917, it has received an authoritative and final interpretation in accord with the broad and sweeping terms of its language and free from the sophistry so apparent in the dictum of Reamer's Estate.

The interpretation as made carries into full effect the plain language of the section and coupled with the interpretation of Judge Hughes in Thomas's Estate, supra, the effect of the section is made clear indeed.

BY WILL

In Webb's Estate, supra, Stewart, J., referred to the right of the parent to do with the property he possessed as he or she saw fit and that it was only when the parent's dominion over the property is terminated by death that anybody succeeds to such property rights. This obviously applies not only to natural parents and natural children but also to adoptive parents and adopted children as well. Therefore the provisions of law already discussed have application only to situations of intestacy or where there is a will wherein the terms of the intestate law are adopted as in Johnson's Appeal, supra. On the other hand whether an adopted person comes within the terms of the Wills Act of June 7, 1917, P. L. 403, 20 PS Section 181, depends upon the language of the particular sections. Section 16, 20 P.S., sections 227 and 228, provide as follows:

"(a) Whenever in any will a bequest or devise shall be made to the child or children of the testator, without naming such child or children, such bequest or devise shall be construed to include any adopted child or children of the testator, unless a contrary intention shall appear by the will.

"(b) Whenever in any will a bequest or devise shall be made to the child or children of any person other than the testator, without naming such child or children, such bequest or devise shall be construed to include any adopted child or children of such other person who were adopted before the date of the will, unless a contrary intention shall appear by the will."

These provisions changed the rule applied in Schafer v. Eneu, 54 Pa. 304, to the effect that an adopted child could not take under a devise to the adopting parent for life and after her death to her child.
It was also held in Goldstein v. Hammell, 236 Pa. 305, that the adoption of a child after making a will did not avoid the will as to such child and this ruling was followed in Boyd's Estate, 270 Pa. 504, wherein it was held that the Wills Act of 1917 did not change this ruling. However, section 21 of the Wills Act of June 7, 1917, P. L. 403, as amended by the Act of May 20, 1921, P. L. 937, section 1, 20 P.S. section 273, now reads as follows:

"When any person, male or female, shall make a last will and testament, and afterward shall marry, or shall have a child or children, either by birth or by adoption, not provided for in such will, and shall die leaving a surviving spouse and such child or children, or either a surviving spouse or such child or children, although such child or children be born after the death of their father, every such person, so far as shall regard the surviving spouse or child or children born or adopted after the making of the will, shall be deemed and construed to die intestate; and such surviving spouse, child, or children shall be entitled to such purparts, shares, and dividends of the estate, real and personal, of the deceased, as if such person had actually died without any will."

On the other hand in Russell's Estate, 284 Pa. 164, 130 A. 319, where under section 15 (b) of the Wills Act of June 7, 1917, P. L. 413, 20 PS 252, providing that where a testator did not leave any lineal descendants who would receive the benefit of any lapsed or void devise or legacy, a legacy to a predeceasing niece should not lapse if she left issue surviving the testator, it was held that an adopted child of the niece was not to be considered as such issue and further in such a case the adopted child could not take such devise or legacy under the provisions of section 16 (b) of the Intestate Act of June 7, 1917, P. L. 429, 20 PS section 101.

TRANSFER INHERITANCE TAX

In Thomas's Estate, supra, Judge Hughes stated:

"Counsel for the petitioner, in contending that the right of inheritance given by the Intestate Act of June 7, 1917, P. L. 429, to an adopted person is purely personal to such adopted person and not transmissible by succession to such adopted person's descendants lays great stress on the decisions in those reported cases which hold that an adoption does not make the adopted person in fact a child of the adopting parent, nor cause such adopted child to lose its true identity in the eyes of the law. The case of Reel's Estate, 50 Pitts. L. J. 128 (1902), cited by counsel for the petitioner in this connection, has
been overruled in effect by the decision in Morgan v. Reel, 213 Pa. 81 (1915). In the other cases so cited by such counsel in this connection, Com. v. Nancrede, 32 Pa. 389 (1859); Thorp v. Com., 58 Pa. 500 (1868), it was held (and the Adult Act of May 9, 1889, P. L. 168, expressly provides) that the shares obtained by adopted persons from decedents' estates through inheritance or under testamentary disposition should be subject to the payment of collateral inheritance tax. It cannot be denied that such, indeed, was the inheritance tax law under such decisions and under said statute, and that such continued to be the law until, by section 16 of the Intestate Act of June 7, 1917, P. L. 429, adopted persons, so far as inheritance and devolution are concerned, were placed on a parity with natural children. In this connection it should be observed that the Legislature of 1917, which enacted the Intestate Act of June 7, 1917 P. L. 429, also enacted the Transfer Inheritance Act of July 11, 1917, P. L. 832, wherein adopted children are classed no longer along with collaterals, but are placed in the same group with, and taxable as, lineals, and in this later classification they are carried into the Acts of June 20, 1919, P. L. 521, and the amendment of the latter, approved May 4, 1921, P. L. 341. This change in the classification of adopted persons is another manifestation of the fixed determination of the lawmakers to abolish as to inheritances all distinction previously existing between adopted and natural children.

However, in Herner's Estate, 19 D. & C. 563, decided in 1933, it was held that the Act of May 15, 1925, P. L. 806, 20 PS section 2302, in the use of the term "adopted children", referred only to those adopted by the decedent himself, and that others in the lineal line receiving a legacy or share of an estate, although through the channels of adoption, would have to bear the rate of 10% instead of 2%. This case is out of harmony with the trend of the decisions outlined in this article and can be supported only on the peculiar reading of the statute.

Chambersburg, Pa.

A. J. White Hutton