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The third district's decision has, however, since been overruled by the Florida Supreme Court.<sup>29</sup> In so doing, the court clarified an important<sup>30</sup> area of the law which had been misinterpreted since the *Frank* case was decided in 1959.<sup>31</sup> The court construed the language of the insurance contract, and concluded that it meant what it appeared to say—that loss to the automobile by theft was covered by the comprehensive provision, and by implication, that the loss was indeed “direct and accidental.”<sup>32</sup>

Moreover, the decision stressed that as long as insurance companies insist on drawing their contracts in language which is difficult and confusing to the ordinary purchaser, then that language will be construed strictly against the company and liberally in favor of the policyholder.<sup>33</sup> The stress was well placed.

MELVILLE DUNN

## ANTI-LAPSE—RIGHT OF ADOPTED CHILD TO TAKE

The adopted daughter of a devisee, who had predeceased the testatrix, sought to recover the share to which her adopting father would have been entitled had he survived the testatrix. The trial court rendered final judgment for the adopted child. On appeal, *held*, affirmed: The adopted child of a devisee who predeceases the testatrix is a “lineal descendant” within the meaning of Florida’s anti-lapse statute,<sup>1</sup> and is therefore entitled to the share her adopting parent would have received had he survived the testatrix. *In re Baker’s Estate*, 172 So.2d 268 (Fla. 2d Dist. 1965).

Since adoption was unknown to the common law,<sup>2</sup> there was no com-

29. *Hartnett v. Southern Ins. Co.*, 181 So.2d 524 (Fla. 1965).

30. Virtually every standard form of automobile insurance contract contains a comprehensive clause. See *supra* note 5.

31. *Frank v. State Farm Mut. Auto. Ins. Co.*, 109 So.2d 594 (Fla. 3d Dist. 1959).

32. 181 So.2d at 528:

Elemental principles in construing these contracts . . . requires a conclusion that theft is included in the coverage. How there could be any doubt of this in view of the plain language showing a premium charge . . . for ‘A—Comprehensive—Loss of or damage to the automobile, except by collision or upset, *but including fire, theft and windstorm*’ escapes us.

It is interesting to note that the third district’s decision apparently did not consider the express inclusion of theft on the face of the insurance policy. As previously noted, however, this difference in form should not make any difference in interpreting the contract. The standard form appears in note 1 *supra*, and the third district’s reference to it in 171 So.2d at 440. The clause in which theft is expressly included is cited in 181 So.2d at 527.

33. *Id.* at 528.

1. FLA. STAT. § 731.20 (1963). For the text of this statute, see note 22 *infra*.

2. *In re Palmer’s Adoption*, 129 Fla. 630, 176 So. 537 (1937); *Hockaday v. Lynn*, 200 Mo. 456, 98 S.W. 585 (1906); *In re Howlett’s Estate*, 366 Pa. 293, 77 A.2d 390 (1951); see ATKINSON, WILLS (1953); REPPY & TOMPKINS, LAW OF WILLS (1928); 1 AM. JUR., *Adoption of Children* § 32 (1936).

mon law right of inheritance in an adopted child, and therefore no early cases determining whether an adopted child was of the class protected by the rather modern anti-lapse statutes.

Where adoption is recognized in this country, at least in those jurisdictions having the common law as the basis of their jurisprudence,<sup>3</sup> it is so recognized only by virtue of statute.<sup>4</sup> Starting with a Massachusetts statute in 1851,<sup>5</sup> legislation in all jurisdictions now recognizes the institution of adoption and confers, in varying degrees, a right of inheritance on the adopted child.<sup>6</sup> These statutes have generally evolved so as to clothe the adopted child with all the rights of a natural child relating to the inheritance of realty or the distribution of personalty from the adopting parent.<sup>7</sup> Generally, however, they have conferred no right on the adopted child to inherit from the collateral or lineal kindred of the adopting parent.<sup>8</sup>

3. *Hockaday v. Lynn*, 200 Mo. 456, 457, 98 S.W. 585, 586 (1906):

Adoption was . . . an incident of Spanish law, was incorporated into the Code Napoleon, and from that code [or the Spanish law] found its way through Louisiana and Texas . . . .

See also *Vidal v. Commagère*, 13 La. Ann. 516 (1858).

4. See *In re Estate of Levy*, 141 So.2d 803 (Fla. 2d Dist. 1962); *In re Palmer's Adoption*, 129 Fla. 630, 176 So. 537 (1937); *In re Howlett's Estate*, 366 Pa. 293, 77 Atl. 2d 390 (1951); REPPY & TOMPKINS, *LAW OF WILLS* (1928); 1 AM. JUR., *Adoption of Children* § 3 (1936).

5. MASS. ACTS & RESOLVES, 185, c. 324 (1851).

6. ALA. CODE tit. 27, § 5 (Supp. 1963); ALASKA STAT. tit. 20, ch. 10, § 120 (Supp. 1965); ARIZ. REV. STAT. ANN. § 8-108 (Supp. 1965); ARK. STAT. ANN. § 56-109 (Supp. 1965); CALIF. CIV. CODE ANN. § 228 (Derring 1965); COLO. REV. STAT. § 4-1-11 (1963); CONN. GEN. STAT. ANN. § 45-65, 67 (Supp. 1964); DEL. CODE ANN. tit. 13, §§ 919, 920 (Supp. 1964); D.C. CODE § 16-312(a) (Supp. 1965); FLA. STAT. § 72.22 (1963); GA. CODE ANN. § 74-414 (Supp. 1964); REV. LAWS HAWAII ch. 331, § 16 (Supp. 1961); IDAHO CODE § 16-1508 (amended 1963); ILL. STAT. ANN. § 6-208 (Smith-Hurd 1964); IND. STAT. ANN. § 6-208 (Burns 1965); IOWA CODE ANN. § 600.6 (Supp. 1964); KAN. STAT. ANN. § 59-2103 (1964); KY. REV. STAT. § 199.520 (Supp. 1960); L.S.A.-C.C. art. 214 (Supp. 1964); ME. REV. STAT. ANN. ch. 19, § 535 (Supp. 1965); MD. CODE ANN. art. 16, § 78; art. 93, § 147 (Supp. 1965); MASS. GEN. LAWS ANN. ch. 210, § 7 (Supp. 1964); MICH. LAWS § 710.9 (Supp. 1962); MINN. STAT. ANN. § 259.29 (Supp. 1964); MISS. CODE ANN. § 1269-06 (Supp. 1964); MO. STAT. ANN. § 453.090 (Supp. 1957); REV. CODE MONT. § 61-212 (amended 1965 *Laws of Mont.* p. 197); REV. STAT. NEB. § 43-110 (Supp. 1963); NEV. REV. STAT. § 127.160 (1963); N.H. REV. STAT. ANN. ch. 461, § 6 (Supp. 1963); N.J. STAT. ANN. tit. 2A, ch. 22, § 3 (Supp. 1963); N.M. STAT. ANN. 22-2-10 (Supp. 1965); N.Y. CONSOL. LAWS ANN. D.R.L. § 117 (Supp. 1965); N.C. GEN. STAT. § 48-23 (Supp. 1963); N.D. REV. CODE § 14-11-13, 14 (Supp. 1957); OHIO REV. CODE § 3107.13 (1964); OKLA. STAT. ANN. § 10-60.16 (Supp. 1964); ORE. REV. STAT. § 109.050 (1953); PA. STAT. § 1-4 (Supp. 1964); R.I. GEN. LAWS § 15.7.16 (Supp. 1964); S.C. STAT. AT LARGE No. 703 § 12 (1964); S.D. CODE § 14.0407 (Supp. 1960); TENN. CODE ANN. § 36-126 (Supp. 1965); TEX. CIV. STAT. art. 46a § 9 (Supp. 1965); UTAH CODE ANN. tit. 78, ch. 30, § 9 (Supp. 1965); VT. STAT. ANN. § 15-448 (Supp. 1965); VA. CODE ANN. § 63-357 (Supp. 1964); WASH. REV. CODE ANN. tit. 26, ch. 32, § 140 (Supp. 1964); W.VA. CODE ANN. ch. 48, art. 4, § 5 (Supp. 1965); WIS. STAT. ANN. § 48.92 (1964); WYO. STAT. § 1-721, 726 (Supp. 1965).

7. *Supra* note 6; REPPY & TOMPKINS, *LAW OF WILLS* (1928).

8. *In re Estate of Levy*, 141 So.2d 803 (Fla. 2d Dist. 1962); *Hockaday v. Lynn*, 200 Mo. 456, 98 S.W. 585 (1906); *In re Bradley's Estate*, 185 Wis. 393, 201 N.W. 973 (1925); 1 AM. JUR., *Adoption of Children* § 63 (1936).

*Contra*, *Brooks Bank & Trust Co. v. Rosabacher*, 171 Atl. 655 (Conn. 1934); *Kolb v. Ruhl's Adm'r*, 198 S.W.2d 326 (Ky. 1946); *McFadden v. McNorton*, 193 Va. 455, 69 S.E.2d 445 (1952).

The fact that an adopted child is not considered capable of *inheriting* from collateral or lineal kindred of his adopting parent does not, under the general view, bar him from *taking* property devised or bequeathed to his adopting parent under circumstances such as were presented by the *Baker* case.<sup>9</sup> Such right has been held to be dependent not upon the laws of succession or representation, which are properly applicable only to questions of intestacy,<sup>10</sup> but upon whether the child came within the scope and meaning of the particular class designation used in the anti-lapse statute.<sup>11</sup> Thus, it has been held that an adopted child was an "issue,"<sup>12</sup> "heir,"<sup>13</sup> "child,"<sup>14</sup> "descendant,"<sup>15</sup> and "lineal descendant"<sup>16</sup> within the meaning of such statutes.

*In re Baker's Estate*<sup>17</sup> illustrates the position of the majority<sup>18</sup> and is demonstrative of the rationale generally utilized. The court took two steps in reaching its decision. First, it pointed out that Florida's anti-lapse statute merely requires that the person taking by its operation be a lineal descendant of the devisee or legatee; he need not be a lineal descendant of the testator. Second, it explained that by the decree of adoption, the

9. *In re Baker's Estate*, 72 So.2d 268 (Fla. 2d Dist. 1965).

10. *In re Harmount's Estate*, 336 Ill. App. 322, 83 N.E.2d 756 (1949); Warren v. Prescott, 84 Me. 483, 24 Atl. 948 (1892).

11. E.g., *In re Moore's Estate*, 7 Cal. App. 2d 722, 47 P.2d 533 (1935); *In re Buell's Estate*, 167 Ore. 295, 117 P.2d 832 (1941); Clark v. Clark, 76 N.H. 551, 85 Atl. 758 (1913).

12. Flynn v. Bredbeck, 147 Ohio St. 49, 68 N.E.2d 75 (1946); Industrial Trust Co. v. Taylor, 69 R.I. 153, 32 A.2d 269 (1943). *Contra*, Arnold v. Helmer, 327 Mass. 722, 100 N.E.2d 886 (1951); Gammons v. Gammons, 212 Mass. 454, 99 N.E. 95 (1912); Phillips v. McConica, 59 Ohio St. 1, 51 N.E. 445 (1898); *In re Russell's Estate*, 284 Pa. 164, 130 Atl. 319 (1925).

13. *In re Harmount's Estate*, 336 Ill. App. 322, 83 N.E.2d 756 (1949).

14. Dean v. Smith, 195 Ark. 614, 113 S.W.2d 485 (1938); Smallwood v. Smallwood, 121 N.J.E. 126, 186 Atl. 775 (1936); *In re Walter's Estate*, 270 N.Y. 201, 200 N.E. 786 (1936).

15. Clark v. Clark, 76 N.H. 551, 85 Atl. 758 (1913).

16. *In re Tibbett's Estate*, 48 Cal. App. 2d 177, 119 P.2d 368 (1941); *In re Moore's Estate*, 7 Cal. App. 2d 722, 47 P.2d 533 (1935); Warren v. Prescott, 84 Me. 483, 24 Atl. 948 (1892); Soellinger v. Molzhan, 77 N.D. 108, 41 N.W.2d 217 (1950); *In re Buell's Estate*, 167 Ore. 295, 117 P.2d 832 (1941). *Contra*, Rauch v. Metz, 212 S.W. 357 (Mo. 1919); *but see* St. Louis Union Trust Co. v. Hill, 336 Mo. 17, 76 S.W.2d 685 (1934).

17. *Supra* note 9.

18. Dean v. Smith, 195 Ark. 614, 113 S.W.2d 485 (1938); *In re Tibbett's Estate*, 48 Cal. App. 2d 177, 119 P.2d 368 (1941); *In re Moore's Estate*, 7 Cal. App. 2d 722, 47 P.2d 533 (1935); *In re Harmount's Estate*, 336 Ill. App. 322, 83 N.E.2d 756 (1949); Warren v. Prescott, 84 Me. 483, 24 Atl. 948 (1892); see also St. Louis Union Trust Co. v. Hill, 336 Mo. 17, 75 S.W.2d 685 (1934); Clark v. Clark, 76 N.H. 551, 85 Atl. 758 (1913); *In re McEwan's Estate*, 128 N.J.E. 140, 15 A.2d 340 (1940); Smallwood v. Smallwood, 121 N.J.E. 126, 186 Atl. 775 (1936); *In re Carleton's Will*, 3 Misc. 2d 677, 151 N.Y.S.2d 338 (Surr. Ct. 1956); *In re Walter's Estate*, 270 N.Y. 201, 200 N.E. 786 (1936); *In re Ramseyer's Estate*, 127 N.Y.S.2d 22 (Surr. Ct. 1953); *In re Foster's Estate*, 108 Misc. 604, 177 N.Y. Supp. 827 (Surr. Ct. 1919); Headen v. Jackson, 225 N.C. 157, 120 S.E.2d 598 (1961); Hoellinger v. Molzhan, 77 N.D. 108, 41 N.W.2d 217 (1950); Flynn v. Bredbeck, 147 Ohio St. 49, 68 N.E.2d 75 (1946); *In re Buell's Estate*, 167 Ore. 295, 117 P.2d 832 (1941); Industrial Trust Co. v. Taylor, 69 R.I. 153, 32 A.2d 269 (1943); Craft v. Blass, 8 Tenn. App. 498 (1928). *Contra*, McLeod v. Andrews, 303 Ky. 46, 196 S.W.2d 473 (1946); Arnold v. Helmer, 327 Mass. 722, 100 N.E.2d 886 (1951); Gammons v. Gammons, 212 Mass. 454, 99 N.E. 95 (1912); *In re Russell's Estate*, 284 Pa. 164, 130 Atl. 319 (1925).

child is thereafter deemed to be the child and legal heir of the adopting parent, entitled to all the rights and privileges of a natural child. Therefore, the court concluded, to hold that an adopted child was not a "lineal descendant," within the meaning of the anti-lapse statute, would be to draw an arbitrary distinction between the adopted and natural child contrary to the legislature's expressed intention that no line should be drawn.

The court supported its statutory construction by the "doctrine of substitution." Under this doctrine, the adopted child is deemed to take directly under the testator's will by operation of the anti-lapse statute.<sup>19</sup> The adopted child is not deemed to "inherit," because "inherit" means to take as an heir at law, by descent and distribution, rather than under a will.<sup>20</sup>

To the extent that the *Baker*<sup>21</sup> decision was based on a reading, *in pari materia*, of Florida's anti-lapse<sup>22</sup> and adoption<sup>23</sup> statutes, the holding was eminently correct. However, to the extent that Florida Statute, section 731.30<sup>24</sup> may have had any bearing on the decision, the writer takes issue on two grounds. First, any utilization of section 731.30<sup>25</sup> to establish the right of the adopted child to take by operation of the anti-lapse statute could only limit the clear import of the adoption statute:

By the decree of adoption the child shall be the *child* and legal heir of the adopting parent or parents, entitled to *all* the rights and privileges . . . of a child born to such parent or parents in lawful wedlock.<sup>26</sup>

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19. *In re Harmount's Estate*, 336 Ill. App. 322, 326, 83 N.E.2d 756, 758 (1949): ". . . the adopted children are taking by virtue of a statute which creates in them an original right by virtue of their substitution for the legatee who predeceased the testatrix."

20. *In re Harmount's Estate*, 336 Ill. App. 322, 83 N.E.2d 756 (1949); *Warren v. Prescott*, 84 Me. 483, 24 Atl. 948 (1892).

21. *Supra* note 9.

22. FLA. STAT. § 731.20 (1963) provides:

(1) If a devisee or legatee dies during the lifetime of the testator, the testamentary disposition to such devisee or legatee lapses, unless an intention appears from the will to substitute another in his place; but when any property is devised or bequeathed to an adopted child or blood kindred of the testator, and such devisee or legatee dies before the testator, leaving lineal descendants, or is dead at the time the will is executed, leaving lineal descendants who survive the testator, such legacy or devise does not lapse but such descendants take the property so given by will in the same manner as the devisee or legatee would have done had he survived the testator.

23. FLA. STAT. § 72.22 (1963) provides:

By the decree of adoption the child shall be the child and legal heir of the adopting parent or parents, entitled to all the rights and privileges, and subject to all obligations, of a child born to such parent or parents in lawful wedlock. . . .

24. FLA. STAT. § 731.30 (1963) provides:

An adopted child, whether adopted under the laws of Florida or any other state or country, shall be an heir at law and for the purpose of inheritance be regarded as a lineal descendant of its adopting parents and the adopting parents shall inherit from the adopted child. Such adopted child shall inherit the estate of its blood parents, but such blood parents shall not inherit from such adopted child.

25. *Supra* note 24.

26. *Supra* note 23 (Emphasis added).

This clear and unequivocal statement of the rights of an adopted child should not suffer by restrictive enumerations—which can only serve to limit, never to expand, such a broad grant. Second, the court's utilization of section 731.30<sup>27</sup> in this manner is inconsistent with the court's own use of the doctrine of substitution. The court pointed out the distinction between the right to inherit, by operation of the laws of descent and distribution and the right to take under a will. Taking by will is the effect of the doctrine of substitution.<sup>28</sup> Therefore, any utilization of section 731.30,<sup>29</sup> which defines adopted child as the lineal descendant of the adopting parent for purposes of *inheritance*, to substantiate the adopted child's right to take under the anti-lapse statute, is wholly incongruous with the doctrine of substitution.

Aside from the foregoing comments, however, it is the writer's opinion that the instant case is illustrative of a progressive outlook which might well foreshadow legislation which will abolish any remaining legal distinctions between an adopted and natural child.<sup>30</sup>

WILLIAM J. KENDRICK

### PUNITIVE DAMAGES ASSESSED AGAINST JOINT TORTFEASORS—ADMISSIBILITY OF WEALTH

The plaintiff received an award of compensatory and punitive damages assessed jointly and severally against the defendants who were joint tortfeasors. Upon consideration of the defendants' motion for a new trial, the trial court held that it had erred in admitting evidence of the financial worth of the individual defendants and ordered that unless the plaintiff filed a remittitur in the amount assessed as punitive damages within ten days, the motion for a new trial would be granted. The plaintiff declined to remit the punitive damages and appealed. The First District Court of Appeal reversed the trial court's order.<sup>1</sup> On certiorari to the Florida Supreme Court, *held*, affirmed: evidence establishing the financial worth of joint tortfeasors may be properly admitted in support of a prayer for punitive damages. The court also adopted the use of a special or

27. *Supra* note 24.

28. *Supra* note 20.

29. *Supra* note 24.

30. For other cases illustrating such a progressive view, see generally *McCune v. Oldham*, 213 Iowa 1221, 240 N.W. 678 (1932); *Denton v. Miller*, 110 Kan. 292, 203 Pac. 693 (1922); *In re Sutton's Estate*, 161 Minn. 426, 201 N.W. 925 (1925); *Headen v. Jackson*, 255 N.C. 157, 120 S.E.2d 598 (1961); *McFadden v. McNorton*, 193 Va. 455, 69 S.E.2d 445 (1952).

1. *Spencer Ladd's Inc. v. Lehman*, 167 So.2d 731 (Fla. 1st Dist. 1964). This decision, rather than that of the supreme court, contains most of the substantive law.