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RECENT DECISIONS

Business Homestead — Non-Contiguous Lots

A judgment debtor claimed two urban lots separated by an alley as his business homestead. Both were used in his plumbing business, one as the office, warehouse, and sales area, the other as a workshop and storage area. He sought a temporary injunction to prevent the sale of the property under a writ of execution. The judgment of the trial court granting the temporary injunction was reversed by the court of civil appeals on the ground that only one of two non-contiguous lots could be exempt as a business homestead.[1] *Held, reversed*: The business homestead exemption may extend to two non-contiguous lots when both are "essential to and necessary for such business, not merely being used in aid of the business." *Ford v. Aetna Insurance Co.*, 424 S.W.2d 612 (Tex. 1968).[2]

The Constitution of Texas exempts from execution urban real property of five thousand dollars or less in value which is used as the home of a family or place of business of the head of the family.[3] Although there is only one homestead, that portion used for business purposes is commonly called the business homestead and consists of a lot or lots used "as a place to exercise the calling or business of the head of the family . . . ."[4]

Because of the supreme court cases of *McDonald v. Campbell*[5] and *Rock Island Plow Co. v. Alten*,[6] a number of scholars[7] and courts[8] have concluded that two non-contiguous lots could not constitute "a place" for exercising the calling or business. In *McDonald* a druggist owned two lots —one lot on which he kept his drug store and another a short distance away on which there was a house he used as a storage area for his medicines. The court held that the lot with the house was not exempt because it was only incidentally profitable to the drug business. The Texas Constitution only allows a sufficient number of lots on which to conduct the business, and a judgment debtor could not be permitted to exempt an unlimited

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[1] Aetna Ins. Co. v. Ford, 417 S.W.2d 448 (Tex. Civ. App. 1967).

[2] 424 S.W.2d at 616. This case should be distinguished from those cases where an exemption claimant is operating two businesses on non-contiguous lots. There the claimant can only have one. He is required to make an election, or a court finding will constitute his election. Campbell v. First Nat'l Bank, 88 S.W.2d 1084 (Tex. Civ. App. 1935), *error ref.*; Bowman v. Stark, 185 S.W. 921 (Tex. Civ. App. 1916), *error dismissed*; Parrish v. Frey, 44 S.W. 322 (Tex. Civ. App. 1898), *error ref.*

[3] TEX. CONST. art. 16, § 51.

[4] *Id.*

[5] 57 Tex. 614 (1882).

[6] 102 Tex. 366, 116 S.W. 1144 (1909).

[7] J. MOFFETT, EXEMPTIONS AND WRITS 184 (1914); W. NUNN, TEXAS HOMESTEAD AND OTHER EXEMPTIONS 137 (1931); STATE BAR OF TEXAS COMM. ON CONTINUING LEGAL EDUCATION, CREDITORS' RIGHTS IN TEXAS 29 (1963); McSwain, *The Texas Business Homestead*, 15 BAYLOR L. REV. 39, 42 (1963); Comment, *The Business Homestead in Texas*, 8 Sw. L.J. 90, 92 (1954); Note, *Homestead—What Constitutes Business Homestead in Texas?*, 16 TEXAS L. REV. 108 (1938).

[8] Campbell v. First Nat'l Bank, 88 S.W.2d 1084 (Tex. Civ. App. 1935), *error ref.*; Harrington v. Mayo, 130 S.W. 650 (Tex. Civ. App. 1910); Woeltz v. Woeltz, 57 S.W. 905 (Tex. Civ. App. 1900), *rev'd on other grounds sub nom.* O'Brien v. Woeltz, 94 Tex. 148, 58 S.W. 943 (1900); Parrish v. Frey, 44 S.W. 322 (Tex. Civ. App. 1898), *error ref.*; Hinzie v. Moody, 20 S.W. 769 (Tex. Civ. App. 1892).

number of lots simply by placing them in collateral service to a business operated somewhere else in the city.

In *Rock Island* the judgment debtor owned lots 1, 2, 4, and 5, but not lot 3, in a block in an urban area. On lots 1 and 2 was a house he used in his business as a dealer in hardware, stoves, farm implements, etc. On lots 4 and 5 he stored and exhibited secondhand items taken in trade, assembled articles for storage, and kept a bathroom for himself and his customers. Holding lots 4 and 5 not exempt, the court said of the homestead that "that portion which is devoted to the business must constitute a place, that is, one place, at which business is transacted," and that the language of the Texas Constitution did not permit such lots to be used simply "in aid of the business of the head of the family."[9]

In *Ford* the supreme court determined that the true basis of the decisions in *McDonald* and *Rock Island* was not non-contiguity, but that the disputed lots were used for purposes only ancillary to the business. *McDonald* can be justified on this ground, but it is difficult to find any meaningful distinction between the fact situations in *Rock Island* and *Ford*. If the exemption was denied in *Rock Island* because the lot in dispute was used merely in aid of the business, then the case incidentally decided that a non-contiguous lot cannot be used otherwise than in aid of a business. From an academic standpoint, *Rock Island* should be considered overruled; the true test is whether such a lot is essential to and necessary for the business, not merely an aid to it.

From a practical standpoint, how is a court to apply the new test? The phrase "essential to and necessary for" has apparently never been construed.[10] Even the terms "essential" and "necessary" have never been consistently defined, often varying in meaning in different contexts.[11] In light of the court's emphasis that a lot must not be used merely in aid of the business, the test of exemption should be interpreted to require that a lot be necessary in the indispensable sense.[12] This should not be interpreted to deny an exemption unless it is shown that without the lot the business would perish. Whether a lot is "essential to and necessary for" the business should depend upon whether a business could keep the character it had at the time of execution if it were deprived of the lot. Judging from the facts

[9] 102 Tex. at 368-69, 116 S.W. at 1145.

[10] The phrase "necessary and essential work" is used in TEX. REV. CIV. STAT. ANN. arts. 6166x, 6166x-1 (1962), but has never been judicially defined.

[11] "Necessary" by itself may mean anything from "indispensable" to "convenient." 65 C.J.S. *Necessary*, at 381 (1966). The Supreme Court of Texas has said its meaning is flexible. Scott v. Walden, 140 Tex. 31, 165 S.W.2d 449 (1942). The court of civil appeals has said it means "reasonable" when determining the statutory discretionary power of an administrative agency to act when "necessary," Culver v. Smith, 74 S.W.2d 754 (Tex. Civ. App. 1934), *error ref.*, but that it means "indispensable" when used in a charge to a jury, Stephens v. Hobbs, 36 S.W. 287 (Tex. Civ. App. 1896). The word "essential" by itself usually means "indispensable." 30A C.J.S. *Essential*, at 1025 (1965). It has never been defined per se by a Texas court, but an "essential issue" is one whose submission is "necessary" to a proper determination of the cause. Wichita Falls & Okla. Ry. v. Pepper, 134 Tex. 360, 135 S.W.2d 79 (1940). As immediately above, the terms are sometimes used to define each other. *See also* Stephens v. Hobbs, *supra*. Michigan has held that the terms are interchangeable in a charge to the jury. City of Kalamazoo v. Balkema, 252 Mich. 308, 233 N.W. 325 (1930).

[12] This is supported by the court's disposition of the case on the finding that both lots were "actually and necessarily" used as a place of business, without mention of "essential." Ford v. Aetna Ins. Co., 424 S.W.2d 612, 616 (Tex. 1968).

of *Ford*, the twin determinants are purpose and space: if the activity conducted on the lot is required to carry out the purpose of the business, the exemption should be allowed unless it is shown that the activity could as well be conducted on one lot as two.

H.T.B.

Constitutional Law — Interracial Adoption

A Negro,[1] Army Sergeant Strawn, after nine years of marriage to Margarita Gomez, petitioned to adopt Margarita's two illegitimate children, aged sixteen and ten. Although the children were fully dependent upon Sgt. Strawn and had lived in his home since the marriage, the family was not entitled to receive government dependency allotments. To qualify for the allotment, the children had to be the natural children of Strawn or adopted by him;[2] thus, the adoption proceeding was initiated. The trial court found that the Strawn home was adequate in all respects for the placement of the children and that the children were proper subjects for adoption. Despite the findings, the court denied the petition on the ground that section 8 of article 46a, Texas Revised Civil Statutes Annotated,[3] forbids the adoption of a white child by a Negro. *Held*, *reversed*: A state statute which prohibits the adoption by a Negro or white person of a child of the other respective race, is violative of the equal protection clause of the fourteenth amendment and of the comparable clause of the Texas Constitution. *In re Gomez*, 424 S.W.2d 656 (Tex. Civ. App. 1967).

The El Paso court relented to the inevitable when it invalidated article 46a(8). Citing nearly every race case of recent years (and the commentaries thereto), the per curiam decision, without specifically relying on any one of the many theories represented by the cited cases, declared the statute violative of equal protection. Such a finding may have proceeded from two lines of reasoning.

First, the court may have found that the state failed to overcome the presumption of unequal protection of the laws which usually arises when a statute provides for racial distinctions.[4] Such a presumption is overcome only by a showing that the prohibition is reasonable in relation to a legitimate state objective, independent of the racial discrimination.[5] If this reasoning was applied by the court, it must have appeared to the court that no permissible state objective was being served by the regulation.[6]

A second line of reasoning would have allowed the court to invalidate the statute notwithstanding a valid regulatory purpose. If a statute is

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[1] TEX. PEN. CODE ANN. art. 493 (1952) defines a Negro as any person descendant from a Negro from the third generation inclusive. All others are considered to be white.

[2] Army Regs. 37-104, 30421d(9)(a) and c(2)(c) (1967).

[3] TEX. REV. CIV. STAT. ANN. art. 46a(8) (1959).

[4] Loving v. Virginia, 388 U.S. 1 (1967); McLaughlin v. Florida, 379 U.S. 184 (1964).

[5] Loving v. Virginia, 388 U.S. 1, 11 (1967).

[6] *See* Annot., 54 A.L.R.2d 909 (1957), for some of the arguments most commonly asserted as factors in which a state may have regulatory interest regarding interracial adoptions.

shown to place a stamp of inferiority upon a particular race or is based upon racial hostility, it is violative of equal protection.[7] Article 46a(8) would be unconstitutionally vague without the definitions of "white" and "negro" found in the Texas Miscegenation Statute.[8] The definition, however, regards all persons as white unless they are of negro ancestry, obviously a specific stamp of inferiority upon the negro race.[9]

From the order of the cites, it may fairly be presumed that the court adopted the first line of reasoning. If so, the statute is doomed; no rewriting will make it valid. While the decision affects only the El Paso district, it is expected that in other jurisdictions of the state the statute will be regarded only as fossil material to be judicially discarded along with its hereditary cousin, the Texas Miscegenation Statute.[10]

It is doubtful that the invalidation of article 46a(8) will substantially affect adoptions in Texas. The situation of a white or negro couple wishing to adopt a child of the other race arises infrequently. When the instance does arise, the factors against such an adoption are likely to be prohibitive. Only cases presenting unusual circumstances, *e.g.*, where it is in the best interests of a negro child to be placed with a white family, are likely to benefit from the *Gomez* decision. In such special cases adoption agencies in Texas have been able to sidestep article 46a(8) by arranging for the child to be adopted by parents of another state.[11] Invalidation of the statute will enable Texas to provide for the needs of its minor citizens without transportation costs. There is one other consideration: the continued operation of article 46a(8), in light of the invalidation of miscegenation statutes, will produce the incongruity of allowing a white to have a negro child naturally while prohibiting the same white to adopt a negro child.

D.R.S.

Oil and Gas — Power of Executive Rights Owner Extended

Sun Oil Company held an oil and gas lease covering two separate tracts of land, *A* and *B*. Sun Oil drilled a producing well on tract *B* during the primary term of the lease, and the lease, at least as to tract *B*, was extended beyond the primary term by continued production. The owners of the

[7] Applebaum, *Miscegenation Statutes: A Constitutional and Social Problem*, 53 GEO. L.J. 49, 86 (1964); Grossman, *A Child of a Different Color: Race as a Factor in Adoption and Custody Proceedings*, 17 BUFFALO L. REV. 303, 339-40 (1968).

[8] Note 1 *supra*. *See also* M. COHEN, RACE, CREED AND COLOR IN ADOPTION PROCEEDINGS 9 (1959).

[9] The two statutes if read together would permit a Caucasian to adopt an Oriental, an Oriental to adopt an American Indian, and so forth. A similar discrepancy was struck down in Loving v. Virginia, 388 U.S. 1 (1967).

[10] Loving v. Virginia, 388 U.S. 1 (1967), invalidated a miscegenation statute materially the same as TEX. PEN. CODE ANN. art. 493 (1952) (Miscegenation Statute). It is generally believed that the Texas law will be invalidated when tested.

[11] This information was contributed by the directors of Hope Cottage Children's Bureau, Inc., Dallas, Texas, in personal communication with the writer.

non-participating royalty interests in the two tracts were not identical, although one, Mathews, held the executive rights in both tracts. Mathews and the non-participating royalty owners[1] of tract *A* brought suit against the lessee, Sun Oil, seeking a decree that the oil and gas lease had terminated and was no longer effective insofar as tract *A* was concerned. Since the primary term of the lease had expired and there was an absence of drilling or production on tract *A*, Mathews claimed that the lease had terminated as to tract *A* even though there was production from tract *B*. The court of civil appeals, affirming the trial court's rendition of summary judgment for Sun Oil, held that the lease was still effective as to both tracts of land. *Held, affirmed*: The holder of the executive rights in two tracts of land has the power to include both tracts in the same lease even though the non-participating royalty interest owners in both tracts are not identical, and production from either tract propels both tracts into the secondary term. *Mathews v. Sun Oil Co.*, 425 S.W.2d 330 (Tex. 1968).

The owner of a non-participating royalty interest has no authority to execute an oil and gas lease.[2] That power is vested exclusively in the owner of the executive rights. When non-participating royalty interests are created before the lease has been executed, the owner of the executive rights determines whether a lease is to be made and the terms of this lease, including the amount of royalty to be shared by all the royalty interest owners. Despite these broad powers, circumstances may exist in which the court will require the person having the exclusive leasing power to execute a lease.[3] In addition, it has been stated that there should be "utmost fair dealing" between the person having the sole leasing power and the non-participating royalty interest owners.[4] Thus, absent "utmost fair dealing" on the part of the executive rights owner, the legal effect of any lease executed would be in question, as would be the personal liability of both the executive rights owner and the lessee to the non-participating royalty interest owners.

Even greater difficulties arise when two separate groups of non-participating royalty interest owners in two separate tracts of land are dominated by the same executive rights owner and he includes both tracts under the same lease. In *Mathews* the plaintiffs argued that the executive rights owner had no power to include the two tracts in one lease, that the lease should be treated as two separate leases, and that because no production had been obtained from tract *A*, the lease as to that tract had terminated. The plaintiffs relied on *Brown v. Smith*,[5] where the court stated that in many respects a lessee's burdens and obligations under a lease covering two separate tracts would be the same as his obligations under two separate leases.

[1] Hereinafter collectively referred to as Mathews. Three non-participating royalty interests were outstanding in tract *A*, while tract *B* had only a single and different non-participating royalty interest owner.

[2] City of Beaumont v. Moore, 146 Tex. 46, 202 S.W.2d 448 (1947); Brown v. Smith, 141 Tex. 425, 174 S.W.2d 43 (1943); Schlittler v. Smith, 128 Tex. 628, 101 S.W.2d 543 (1937).

[3] City of Beaumont v. Moore, 146 Tex. 46, 202 S.W.2d 448 (1947); Pinchback v. Gulf Oil Corp., 242 S.W.2d 242 (Tex. Civ. App. 1951), *error ref. n.r.e.*

[4] Hudgins v. Lincoln Nat'l Life Ins. Co., 144 F. Supp. 192 (E.D. Tex. 1956); Schlittler v. Smith, 128 Tex. 628, 101 S.W.2d 543 (1937).

[5] 141 Tex. 425, 174 S.W.2d 43 (1943).

Brown involved a lease covering two tracts of land but stipulating that the royalties be pooled and shared by the lessors in proportion to acreage owned. The court held that the executive rights owner had no power or authority to pool a non-participating royalty interest with those of other persons holding royalty interests in the two tracts of land. The reason given was that the pooling effected a cross-conveyance of undivided interests among the owners of the different tracts, and this cross-conveyance violated the intent of the non-participating royalty interest owner in purchasing such an interest.[6] However, the court in *Mathews* distinguished the power to pool royalty interests from the power to include two tracts in one lease, holding that the latter is an authorized act. In addition, the court stated that simply "because a lease will be considered as two leases for certain purposes, it does not follow that a single lease will be considered as two leases for all purposes whenever two or more tracts of land and diverse royalty interests are involved."[7]

The court considered the controlling issue to be the legal effect of Mathews' action in combining two tracts in one lease. Relying upon the familiar rule that production from any tract covered by the lease operates to perpetuate the lease as to all tracts included under the lease,[8] the court held that the tract with no well was bound under the lease, the execution of which was an authorized act of the executive rights owner.

The court recognized that the executive rights owner owed a duty to the non-participating royalty interest owners not to "prevent, hamper, or stifle production to the prejudice"[9] of the non-participating royalty interest owners. Nevertheless, the majority concluded that this duty did not prevent the executive rights owner from executing the single lease covering both tracts of land.

M.M.G.

Workmen's Compensation — Adopted Child Not Entitled to Compensation Benefits upon the Death of His Natural Parent

Two children were born of the marriage of Jack and Alice Patton. However, the couple were divorced, and the children went with their mother. The mother remarried, and her second husband adopted her two children. Thereafter, Patton was killed in the course of his employment at a time when his parents were dependent upon him for their support. The employer's insurer paid into court the correct amount of workmen's compensation death benefits and asked that the court determine whether Patton's minor children or his parents were entitled thereto. The courts below held

[6] Veal v. Thomason, 138 Tex. 341, 159 S.W.2d 472 (1942).
[7] Mathews v. Sun Oil Co., 425 S.W.2d 330, 333 (Tex. 1968).
[8] Orive v. Sun Oil Co., 346 S.W.2d 383 (Tex. Civ. App. 1961), *error ref.*
[9] Mathews v. Sun Oil Co., 425 S.W.2d 330, 333 (Tex. 1968).

that the children were entitled to the death benefits to the exclusion of the deceased workman's parents.[1] *Held, reversed*: When a child is legally adopted by another person, the family relationship between that child and his natural parent terminates for all purposes except inheritance by the child; therefore, the child is no longer a *minor child* of the deceased parent within the meaning of the Texas Workmen's Compensation Act and is not entitled to death benefits under the Act upon the death of his natural parent. *Patton v. Shamburger*, 11 Tex. Sup. Ct. J. 438 (May 29, 1968).[2]

Upon the death of an employee in the course of his employment, the Texas Workmen's Compensation Act provides for the payment of death benefits to two classes of beneficiaries: those who take without regard to dependency[3] and those who take only if dependent upon the deceased employee at the time of his death.[4] Such benefits are distributed among either class of beneficiaries according to the statute of descent and distribution;[5] however, the compensation does not pass through the estate of the deceased employee, but is paid directly to the beneficiaries.[6] The minor children and the parents of the deceased employee are entitled to death benefits without regard to dependency,[7] but since the statute of descent and distribution governs the distribution of death benefits among the beneficiaries, the minor children will take to the exclusion of the workman's parents.[8]

The question before the Texas Supreme Court in *Patton* was whether children who had been adopted prior to the death of their natural father were still minor children of the natural father and thus entitled to the death benefits under the Workmen's Compensation Act to the exclusion of the decedent's parents. In this regard, the Adoption Act provides in part that when a minor child is adopted, "*all legal relationship* and all rights and duties between such child and its natural parents shall cease and determine, and such child shall thereafter be deemed and held to be *for every purpose* the child of its parent or parents by adoption as fully as though naturally born to them in lawful wedlock."[9] However, even after adoption, the child is entitled to inherit from and through his natural parents.[10]

The *Patton* case is one of first impression in Texas, and a majority of the court reasoned that since decisions in other jurisdictions involving similar

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[1] *See* Patton v. Shamburger, 413 S.W.2d 155 (Tex. Civ. App. 1967).

[2] *See* 21 Sw. L.J. 708 (1967) for a Recent Decision on the court of civil appeals opinion in Patton v. Shamburger, 413 S.W.2d 155 (Tex. Civ. App. 1967).

[3] Minor children, parents, and stepmother. TEX. REV. CIV. STAT. ANN. art. 8306, § 8a (1967).

[4] Dependent grandparents, children, and brothers and sisters. TEX. REV. CIV. STAT. ANN. art. 8306, § 8a (1967). The term "children" in this context means adult children. *See* Turner v. Travelers Ins. Co., 401 S.W.2d 618 (Tex. Civ. App.), *error ref. n.r.e.*, 406 S.W.2d 897 (Tex. 1966) (holding approved per curiam).

[5] TEX. REV. CIV. STAT. ANN. art. 8306, § 8a (1967).

[6] *Id.* Thus the statute of descent and distribution is a basis for determining not only the apportionment of the death benefits but also the persons entitled to those benefits. Vaughn v. Southwestern Surety Ins. Co., 109 Tex. 298, 206 S.W. 920 (1918).

[7] *See* note 3 *supra*, and accompanying text.

[8] TEX. PROB. CODE ANN. § 38(a) (1956).

[9] TEX. REV. CIV. STAT. ANN. art. 46a, § 9 (1959) (emphasis added).

[10] *Id.*

situations were not uniform,[11] the question had to be resolved under the particular wording of the Texas statutes. Without citing a case, the majority concluded that the Adoption Act controlled, completely severing all legal ties between the natural parent and child, except for inheritance by the child.[12] Since workmen's compensation benefits are not obtained through inheritance, the court held that the parents, rather than the children, of the deceased employee were entitled to the death benefits because the children upon adoption ceased to be the minor children of their natural father within the meaning of the Workmen's Compensation Act. Underlying the majority decision was the public policy enunciation that if the adopted children were allowed to recover compensation benefits not only from their adoptive parents but also from their natural parents, their position would be superior to that of the children of the natural parents.[13]

The dissenters argued that the Adoption Act merely terminated the parent's responsibility to nurture, support, counsel, and control his natural child and the child's duty of obedience and service to his natural parent, but did not sever the element of kinship between the natural parent and his child who had been adopted by another person. More persuasively, the dissenters pointed to the fact that under the Workmen's Compensation Act the minor child is entitled to death benefits without regard to dependency as an indication of legislative intent to provide the minor child with compensation benefits regardless of whether he had been adopted by another person. In support of this position, they cited two cases from other jurisdictions allowing the adopted child to recover under circumstances similar to those of the instant case and involving the construction of compensation acts in which recovery was not based upon dependency.[14]

The propriety of the *Patton* decision, predicated as it is upon public policy, seems somewhat questionable, especially in view of the fact that the minor child is entitled to death benefits under the Texas Workmen's Compensation Act without regard to dependency. Decisions from other jurisdictions indicate that a requirement of dependency is one major factor in denying recovery of compensation benefits by the minor child who was adopted prior to his natural parent's death;[15] therefore, the *Patton* decision seems contrary to those decisions in which the dependency of the minor child was not a prerequisite to recovery.[16]

[11] Holland Constr. Co. v. Sullivan, 220 Ark. 895, 251 S.W.2d 120 (1952) (dependency not required, recovery allowed); New Amsterdam Cas. Co. v. Freeland, 216 Ga. 491, 117 S.E.2d 538 (1960) (dependency required, no recovery); *In re* Jones, 84 Idaho 327, 372 P.2d 406 (1962) (dependency not required, recovery allowed where child was adopted *after* his natural father's death); Shulman v. New York Bd. of Fire Underwriters, 15 App. Div. 2d 700, 223 N.Y.S.2d 312 (Sup. Ct. 1962) (dependency not required, recovery allowed); Stark v. Watson, 359 P.2d 191 (Okla. 1961) (being a "dependent" which meant "heirs at law" of the deceased was required, recovery allowed).

[12] *See* notes 9 and 10 *supra*, and accompanying text.

[13] Patton v. Shamburger, 11 Tex. Sup. Ct. J. 438, 439 (May 29, 1968).

[14] Holland Constr. Co. v. Sullivan, 220 Ark. 895, 251 S.W.2d 120 (1952); Shulman v. New York Bd. of Fire Underwriters, 15 App. Div. 2d 700, 223 N.Y.S.2d 312 (Sup. Ct. 1962). *See also In re* Jones, 84 Idaho 327, 372 P.2d 406 (1962) (recovery of compensation benefits by minor children who were adopted *after* their natural father's death).

[15] *See* cases cited note 11 *supra*.

[16] *See* cases cited note 14 *supra*.

The majority's interpretation of the Adoption Act dictates that upon the adoption of a child by another person, the consanguineous relationship between that child and his natural parent is effectively severed for all purposes except inheritance by the child. Such an interpretation appears contrary to prior Texas law.[17] Moreover, the possibility that the adopted child may recover compensation benefits upon the death of his natural parent as well as upon the death of his adoptive parent is less persuasive in view of the fact that a child after adoption is still entitled to inherit from his natural parents as well as from his adoptive parents.[18] A need for liberal construction of the Workmen's Compensation Act to insure support in the event of the breadwinner's death for those normally entitled thereto seems further to counterbalance this double-recovery argument.

F.W.M.

[17] Thompson v. Doyal, 209 S.W.2d 425, 426 (Tex. Civ. App. 1948), *error ref. n.r.e.*, involved a suit between the maternal grandfather (a widower) and the natural father for the custody of children who had been adopted by their natural mother's second husband. The mother and stepfather were both killed in an automobile accident. In construing article 46a, section 9 of the Adoption Act, the court said: "We agree with appellant that the effect of a valid statutory adoption is that 'all legal relationship and all rights and duties between such child and its natural parents shall cease and determine' . . . . This does not and could not mean that a natural parent ceases to be a natural parent."

[18] *See* Shulman v. New York Bd. of Fire Underwriters, 15 App. Div. 2d 700, 223 N.Y.S.2d 312, 313 (1962):

> Had the purpose been to destroy the consanguineous connection between a father and his natural child adopted by another as the basis for an award of death benefits, the statutory definition certainly would have been so precisely written as to leave no doubt that such was its intent. Moreover, the care with which the Legislature preserved in related statutes the right of such child to inherit from his natural parents is a reliable guide to the object sought to be accomplished by [the Workmen's Compensation Act]. Neither logic nor reason dictates any real distinction between the statutory devolution of property in the case of intestacy and the succession to a right conferred by the Workmen's Compensation Law. Each has for its purpose the promotion of the economic good of the child.