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ERRATA.

Through a mistake the November number went to press without the writer of the article on "Freedom and Slavery in Roman Law" having an opportunity to correct the following typographical errors: Page 636, line 5, strike out "more as"; page 640, next to last line, for "reasoned" read "reasoning"; page 640, last line, for ";" read ","; page 641, line 6 before "Slavery" read "2."; page 644, third line from end, for "468" read "486"; page 645, line 7, after "statutes" insert ","; page 645, line 13, for *"manupatio"* read *"mancipatio";* page 645, line 26, for "654" read "659"; page 646, line 25, for *"seditieu,"* read *"deditieii";* page 650, line 4, for "relation" read "obligation"; page 651, line 29, strike out "1."; page 651, line 29, for "on" read "in."

DEATH OF PARENT-DAMAGES. *Stahler* v. *Phila. and Reading Ry. Co.* Supreme Court of Pa., May 27, 1901. 49 Atl. 273, 199 Pa. 383.—In this case Wm. Stahler, a wealthy merchant of Norristown, was killed in a railroad accident, generally known as the

Exeter wreck, on defendant's railroad. His death was caused by the admitted negligence of employes of the defendant company. Deceased was seventy-three years of age at his death, and had been in excellent health. He left surviving him no widow, his three adult sons, who are the plaintiffs in the suit, and who ask damages for the loss which they have sustained by reason of the death of their father.

The Act of Assembly bearing on this case is that of April 26, 1855 (P. L. 309), which provides "That the persons entitled to recover damages for any injury causing death shall be the husband, widow, children or parents of the deceased, and no other relative." This act is one of those passed in most jurisdictions to overcome the common-law rule—*actio personalis moritur cum persona.*

This act is construed in *Schnatz* v. *R. R. Co.,* 160 Pa. 602, 28 Atl. 952, as follows: "The Act of April 26, 1855, relating to damages for accidental death, makes no distinction between children over age ,and those under, between those married or single, between those having homes and families of their own and those still members of the parents' household. If children, although not living with their parent, have a reasonable expectation of pecuniary advantage from the continued life of the parent, they are entitled to recover damages for such loss."

In the present case, the plaintiff testimony showed conclusively that the deceased had for about ten years contributed, in the aggregate, to the three sons about $2,500 yearly. The defendants take the broad ground that if plaintiffs were benefited by their father's death, by inheriting his estate, they can have suffered no loss. The question arose on offers by defendant to show the appraisement of the estate, the will of the decedent, and by direct questions to each plaintiff of what he had received from the estate. The sole object of the testimony was to show a large estate left by the deceased, and that the present worth of the inheritance exceeded the amounts received in the lifetime of the parent. All these offers were rejected by the trial judge.

The defendants alleged that the court here laid down a new and dangerous doctrine, but the court replies that they are sustained by reason ,common sense, and decisions of the highest court of the state. The judge further says: "It is a novel proposition that a yearly allowance, with a certainty of an inheritance of an estate constantly increasing in value by the parent's prudence and financial ability, can be cut off by the killing of the parent, and the children be told that it is for their benefit. If this is the law, what security have the wealthy against the negligence of others?" The judge also declares that if it is the law that the defendant, although confessedly guilty of negligence resulting in death, suffers no loss or punishment for its unlawful act, simply because of the financial standing of the deceased, then

it might be well for the legislature to provide a new criminal offence, and substitute imprisonment for damages, and thus induce the same degree of care and caution in the transportation of the rich as of the poor.

"The true question is, what had these plaintiffs the right ot expect to receive from the parent during his life? and for the loss of this they are to be compensated. It is the destruction of their expectations that the law deals with, and for which it furnishes compensation." The question was squarely decided in *R. R. Co.* v. *Kirk,* 90 Pa. 15, where it was endeavored to be shown that a father suing for the death of his adult son had been benefited by reason of having a policy of insurance on his son's life. This offer was rejected. Counsel have endeavored to draw a distinction between an insurance and an inheritance, but there is no difference in the application of the principle. Sedg. Dam., 8th Ed., Section 67, says: "The amount received by the plaintiff on an insurance policy cannot be shown to reduce the damages."

The opinion thus concludes: "It is claimed that all the cases cited by us are mere dicta, and not binding upon us or the higher court. But even if so regarded, we think they express the true thought of the court, and the spirit of the law, and clearly foreshadow what will be, if not already, pronounced as the rule governing cases of this nature."

This case then rightly settles the rule that the right of adult children to recover damages for the negligent killing of their father, who made them a yearly allowance, is not affected by the fact of their inheriting his estate.

The Supreme Court in a *per curiam* opinion merely affirmed the learned opinion of the court below, Hon. H. K. Weand, J.

W. L. S.

LIFE INSURANCE—INSURABLE INTEREST—THE "POOR LAW" OF PENNSYLVANIA AS AFFECTING INSURABLE INTEREST.—*Life Insurance Clearing Co.* v. *O'Neill,* 106 Fed. Rep. 800. An adult son had taken a policy of insurance on the life of his father. Father and son lived apart and each maintained himself by his own exertions. The relation of debtor and creditor did not exist between them. Under these circumstances the Circuit Court of the United States for the Western District of Pennsylvania, in an opinion based upon the Pennsylvania Poor Law (Act of 1836, P. L. 547) and *Ins. Co.* v. *Kane,* 81 Pa. 154, sustained the son's right to recover on the policy.

The Act of 1836 provides by its twenty-eighth section that "the father and grandfather and the mother and grandmother and the children and grandchildren of every poor person not able to work shall at their own charge being of sufficient ability relieve and maintain such poor person at such rate as the

Court of Quarter Sessions of the county where such poor person resides shall order and direct on pain of forfeiting a sum not exceeding $20 for every month that they shall fail therein, which shall be levied by the process of the said court and applied to the relief and maintenance of such poor person." In commenting on this section of the act the Supreme Court of Pennsylvania in *Ins. Co.* v. *Kane, supra,* say: "Maintenance of a father or mother unable to work is therefore a legal liability. When we add to this the feelings of natural affection and the desire produced by these feelings to provide for the comforts of parents, the right to effect an insurance on the life of the parent, to carry out these purposes, ought not to be denied. It would be technical in the extreme to say that a son has no insurable interest in his father's life. Poverty may overtake the father in his lifetime, and thus both father and mother be cast upon the son. Why then should he not be permitted to make a provision by insurance, to reimburse himself for his outlays past and future? What injury is done to the insurance company? They receive the full premium and they know in such case from the very relationship of the parties that the contract is not a mere gambling adventure, but is founded in the very best feelings of our nature and on a legal duty which may arise at any time."

It will be noticed that the Pennsylvania Supreme Court and the Circuit Court base the son's right to recover upon the liability imposed by the statute to support his pauper parent, and also agree that relationship alone will not vest an insurable interest. See *Edwards* v. *Davis,* 16 Johns. (N. Y.) 281; *Stevens* v. *Warren,* 101 Mass. 564; *Mitchell* v. *Ins. Co.,* 45 Me. 104.

The judgment of the Circuit Court was appealed from and reversed by the Circuit Court of Appeals, where it was held that the duty to support a parent would give an insurable interest only in case expenditures were made by the son for that purpose, and then only to the amount actually expended. It was pointed out, however, that the statute created an insurable interest when it gave the son a right to be supported in case of poverty by his father. The decision of the Circuit Court was not sustained under this view owing to the fact that no evidence had been offered at the trial to show the father's ability to support the son in case a demand should be made. The Court of Appeals stated its concusions as follows:

1. That mere relationship of father and son does not give an adult son an insurable interest in his father's life. Such an interest may exist under the circumstances of a particular case, but relationship alone is not sufficient to establish it.

2. Under the Poor Law of Pennsylvania an adult son has an interest in his father's life sufficient to support a policy of insurance for either or both of two purposes: to reimburse him for payments actually made or to be made on his father's behalf

and to protect him against the loss of his father's support when there is a reasonable expectation that his father will be of sufficient ability to respond to the call that may be made upon him."

Enactments similar to the Pennsylvania statute exist in Alabama, Delaware, Georgia, Illinois, Massachusetts, Michigan and probably in other states. The decision of this federal court will naturally interest attorneys in such jurisdictions.

R. J. G.