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payment of costs of prosecution, and has replaced it with legislation which specifically prohibits the imposition of such prison sentences for failure to pay costs:

> No person shall by any court be committed to the penitentiary, to the reformatory for women, or to any other state institution for the recovery of a fine or costs.[40]

In view of the serious doubt as to the constitutionality of Sections 9-105 and 9-108, and the grave consequences they may produce if they are constitutional, it is submitted that the Wyoming legislature should either repeal these cost statutes, or repeal or limit the imprisonment statute. On the whole it would seem preferable to allow Section 9-105 to stand and to repeal Section 9-108.

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TERMINATION OF PARENTAL RIGHTS

Wyoming is one of the few states which has enacted a statute conferring on the courts the power to sever the parent-child relationship in a special proceeding, styled "Judicial Termination of Parental Rights." The Wyomiing statute[1] is a progressive piece of legislation, closely patterned after the Standard Juvenile Court Act, prepared by the National Probation and Parole Association.[2] Wisconsin was one of the earliest states to adopt such a proceeding.[3] The California juvenile court law has a similar section.[4] The Wyoming Youth Council proposed the legislation with the view toward establishing ". . . clear judicial authority for the final termination of parental rights in cases of non-support for more than one year without just cause, abandonment, abuse or neglect. Thus, in flagrant cases of unfit parents, the children may be placed in permanent adoptive homes; the taxpayers are relieved of a financial burden; and there are both humane and economic benefits."[5] Termination of parental rights as comprehended by the draftsmen of the Wyoming statute must be distinguished from the common usage of the phrase. For example, statutes which dispense with consent of the parents in adoption proceedings where abandonment is proven, have been spoken of as "terminating parental rights." The effect of an adoption decree is said to "terminate parental rights." Emancipation of a minor child through attainment of majority or marriage is referred to as such a "termination." The new statute, however, envisages a possible severance of all the rights of a parent without regard to the happening of any subsequent fact (such as attainment of

40. Ill. Rev. Stat. Chap. 38, § 802 (1951).

1. Wyo. Comp. Stat. § 58-701 (Supp. 1957).
2. Ibid.
3. Wis. Stat. § 48.40 (1955).
4. Cal. Welfare and Institutions Code § 775 et seq.
5. Report of the Wyoming Youth Council (1955-1957 Biennium), p. r.

majority) when the welfare of a child is threatened through the behavior of an unfit parent. Wyoming law gives the court jurisdiction to "transfer the permanent care, control and custody of such child . . . and may terminate all rights of such parent with reference to such child."[6]

The statute represents an additional step in an evolutionary process which has been going on for some time. The transfer of mere physical custody of a child from unfit parents is a limited remedy long recognized by the courts. A parent, for example, is charged with the duty of rearing and disciplining his child, and therefore has the right to inflict bodily injury, but by his abuse of this privilege, a parent may forfeit the right of custody.[7] The common law absolute right in the father to custody of his child gave way to "presumptive right," and contemporaneous courts disregard even the so called "presumptive rights" in favor of considerations of the "best interests of the child," in proceedings awarding custody.[8]

The transfer of mere custody is often an incomplete solution to a legal and social problem, since the parents still retain much control over the child. For example, the parent is entitled to regain the custody of the child at any time upon proper showing of changed circumstances,[9] and during the period of transferred custody, it seems that the parent retains rights to reasonable visitation, determination of religious affiliation and an inalienable right to consent to adoption.[10] Thus the problem of obtaining jurisdiction to enter a decree of adoption over the objection of an unfit parent or one outside the court's jurisdiction, who does not have custody of the child, has often barred the way to an advantageous adoption for an unfortunate child.[11]

Prior to the enactment of the Wyoming statute permitting termination of parental rights, there was no common law or statutory provision whereby irrevocable custody of an abused or neglected child could be secured by the state or by petitioners in adoption, without consent of the parents and with the ultimate purpose of making the child eligible for adoption. The primary problem has been a combined sociological and legal problem: whether the requirement of consent by the natural parent should outweigh considerations of the welfare of the child when the parent refused to give that consent.

Most jurisdictions have made some provision for dispensing with parental consent in adoption proceedings, usually based on abandonment.[12] A number of jurisdictions hold that the consent of the natural parents lies at the foundation of the adoption statutes, proven abandonment being

6. Wyo. Comp. Stat. § 58-701 (Supp. 1957).
7. Association of American Law Schools, Selected Essays on Family Law (1950), p. 420.
8. Id. at 593.
9. Wyo. Comp. Stat. § 58-214 (1945).
10. Standards for Specialized Courts Dealing with Children (Children's Bureau, Pub. No. 346, 1954), p. 79.
11. Note, 8 Wyo. L.J. 214 (1954).
12. 24 Rocky Mt. L. Rev. 359 (1952).

the only exception to the rule. This reasoning appears to have been adopted by the Wyoming court in the case of *Lucas v. Strauser*[13] in which under the circumstances, non-support of a child for more than 2 years was held not to constitute abandonment of such a nature as to give the court jurisdiction to render a conclusive decree of adoption based on service by publication. We may derive from the opinion in that case the following strict requirements necessary to support a finding of abandonment:

1. Those asserting the abandonment must sustain the burden of proving it by clear and convincing evidence.

2. The parent's conduct must have evinced a "settled purpose to forego all parental duties and relinquish all parental claims to the child."

3. The parent's absence or neglect of parental duty must be permanent rather than temporary.

4. The court must be satisfied that the parent did not intend to reserve the right to reclaim the child.

The *Lucas* decision made abandonment a difficult if not impossible thing to prove; for a change of intention, assented by a parent who to all appearances had abandoned his child, becomes under the doctrine of this case sufficient grounds upon which to re-open a decree of adoption based upon constructive service.

The new proceeding for termination of parental rights avoids the result reached in *Lucas v. Strauser* by setting forth failure to support without just cause for one year[14] as an independent ground for invoking the termination statute. The procedure is quasi in rem, since the status of the child is considered in the nature of a res, hence jurisdiction over a non-resident parent may be obtained by publication. Section 58-703 expressly provides for constructive service; section 58-706 discards the common law view that the residence of the child is that of the parent,[15] by expressly empowering the court to determine the residence of the child. It further makes proceedings under the statute conclusive on "all persons" after six months,[16] which would, of course include the natural parents. This short statute of limitations precludes the result reached in *Morris v. Jackson*[17] under which, by habeas corpus proceeding, an adoption proceeding could apparently be attacked at any time.

The termination statute also anticipates the result reached in the case of *State v. Hayworth*,[18] which held that a child's destitution was indispensable to a conviction of parents under the section of the Wyoming statutes which makes it a crime to refuse to provide support.[19] That

13. Lucas v. Strauser, 65 Wyo. 98, 196 P.2d 862 (1948).
14. Wyo. Comp. Stat. 58-701 (Supp. 1957).
15. Morris v. Jackson, 66 Wyo. 369, 212 P.2d 78 (1949).
16. The same period of limitation is also prescribed for opening judgments based on service by publication. Wyo. Comp. Stat. § 3-3802 (Supp. 1957).
17. Note 15 supra.
18. State v. Hayworth, 66 Wyo. 238, 208 P.2d 279 (1949).
19. Wyo. Comp. Stat. § 9-803 (1945).

holding had the result of relieving the parent, in a criminal proceeding, from the obligation to support when the child was being cared for by a volunteer, another member of the family, or a charitable institution and hence was not destitute. The termination statute, on the other hand, is effective against a parent who fails to support without just cause for a period of one year.[20] The fact that the child is not actually in want no longer protects a parent who fails, without just cause to support his child; rather, the non-supporting parent must fulfill his legal obligation or in the alternative, hazard the loss of his parental relationship with the child.

The most profound effect of the termination statute is upon adoption procedures. Under the amended adoption laws, the petition for adoption need be supported only by consent of the legally appointed guardian, (presumably a guardian-ad-litem, appointed for that specific purpose) when parental rights have been terminated in former judicial proceedings.[21] In such case, adoption proceedings may be had without service of notice to the parent.[22] Even constructive service is not required, on the premise that the prior termination proceedings have brought to an end the natural parent's right to consent to adoption. Thus the prospective parents in adoption are protected against arbitrary intervention of the natural parents, either during the probationary custody period, the adoption hearings, or later by attacking the jurisdiction of the court acquired through constructive service.

A judicial termination prior to adoption has another salutary feature. Under former adoption proceedings, the judge was sometimes in the same hearing confronted not only with the question of whether the natural parents had so conducted themselves that they should be deprived of their parental rights to the child through abandonment, but also with the entirely distinct issue of the witness of the petitioners as foster parents. Under the new statutes, parental rigfhts are first separately considered, and, if terminated, the fitness of the adoptive parents will later be the sole issue in the adoption proceeding itself.

A difficult problem regarding adoption of the child of an unwed minor has been anticipated by the new statutes. In the past, an unwed mother desiring to relinquish her child for adoption did so by executing a formal instrument out of court, prior to consumation of adoption proceedings. The purpose of not having the mother appear in court during the adoption proceedings to relinquish arises from the desire to keep the name of the adopting family confidential. In the case of an unwed mother who was a minor, however, an instrument executed out of court might be disaffirmed by the mother after attainment of her majority, resulting in little finality in the adoption. Section 58-705 now provides that the termination pro-

20. Ibid. § 58-701 (Supp.1957).
21. Ibid. § 58-201 (Supp. 1957).
22. Ibid. § 58-207 (Supp. 1957).

ceeding can be initiated on the application of a parent. Section 58-701 provides that the minor mother can be represented in court by a guardian appointed by the court during the termination proceedings. The result is that an irrevocable relinquishment for adoption purposes can be accomplished by the minor mother through termination proceedings.

It is submitted that termination of parental rights, which judicially orphans a child, should be contemplated only with the view of creating new and permanent rights through adoption. In case of an adoptable child, the social and material benefits which would flow to the child from the continued existence of the parental relationship should be carefully weighed against the benefits which would flow to the child from the status of adoption. If the prospective benefits from adoption do not outweigh those inherent in the existing parental relationship, the court should recommend proceedings of legal custody or guardianship in someone other than the natural parent. In the case of a nonadoptable child, as for example one with a serious defect or malfunction, no useful purpose would be served by invoking the termination statute, since custody or guardianship proceedings would adequately protect the child, while preserving whatever potential benefits there may be in the future, such as inheritance, from the continued natural relationship.[23]

Whether the inheritance rights of the child from the natural parent will be dissolved by operation of the termination statute appears to be an undecided question. The statute by its terms severs the rights of the parent in the child; it is silent, on the other hand, concerning the residual rights of the child in the parent. The Children's Bureau of the United States Department of Health, Education and Welfare apparently takes the view that the statute does operate to terminate the rights of the child to inherit from the natural parent,[24] and therefore should be a factor for consideration in the termination proceedings, to be weighed against the prospective benefits arising from an adoptable status.

Logical analysis leads to the conclusion that the termination statute would work on inheritance rights in the same manner as termination through adoption has done in the past. As in the majority of jurisdictions, the Wyoming statute relative to adoption provides that: ". . . the parent or guardian of such minor child shall cease to have any control whatever over the person of such child so relinquished, or right to reclaim the same; and the person adopting such child shall exercise all the rights of a parent the same as if such child was the legitimate offspring of such person, and shall be subject to all the liabilities incident to that relation."[25]

It will be observed that the adoption statute does not specifically

23. Standards for Specialized Courts Dealing with Children (Chilren's Bureau, Pub. No. 346, 1954), p. 80.

24. Ibid.

25. Wyo. Comp. Stat. § 58-204 (1945).

mention inheritance rights, but fair implication indicates that the adoptive parent may inherit from the adopted child, and in Wyoming the latter may inherit from the adoptive parents.[26] The statutes of a number of states specifically allow the adopted child to inherit from the natural parent.[27] In the absence of any statutory provision (as is the case in Wyoming) it is generally held that the right of the child to inherit from its natural parent remains.[28] Dual inheritance by the child, both from the adoptive and natural parents does not work any serious injustice, although it can be argued that the proportionate share of the other children in both families will be reduced, whereas the adopted child is entitled to share from each family. On the other hand, it can be said that the adopted child is the natural object of the bounty both of the natural and the adoptive parents. An anomalous and unjust result would be reached if the inheritance rights of the child from his natural parents were cut off by the termination statute prior to the creation of new rights through adoption. The weight of reason seems to favor the view that the rights of the child to inherit from his natural parents should not be extinguished by operation of the termination statute.

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26. Ibid. § 58-216 (1945).
27. Association of American Law Schools, Selected Essays on Family Law (1950), p. 375.
28. Ibid.