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M C. Mirow

Florida International University College of Law, [mirowm@fiu.edu](mailto:mirowm@fiu.edu)

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# BASTARDY AND THE STATUTE OF WILLS: INTERPRETING A SIXTEENTH-CENTURY STATUTE WITH CASES AND READINGS

*M.C. Mirow\**

The Statute of Wills of 1540 created a tax loophole for transfers of property to illegitimate children.<sup>1</sup> Assessments for

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\* Assistant Professor of Law, South Texas College of Law; Samuel I. Golieb Fellow in Legal History, New York University, 1998-1999. This study stems from work done under the supervision of Professor J.H. Baker whom I thank for his guidance and suggestions. I thank Professors Barry Cushman, Catherine McCauliff, Kenneth Parker, Bernard Rudden, and Christopher Tomlins who commented on this work. Members of the Center for Comparative Legal History, University of Chicago, and members of the New York University Legal History Colloquium have provided useful criticism. Portions of the research for this article have been financially supported by the Committee of Vice-Chancellors and Principals of the Universities of the United Kingdom; the Cambridge Overseas Trust, Cambridge University; the Frederic William Maitland Fund, Faculty of Law, Cambridge University; the Master and Fellows of Gonville and Caius College, Cambridge; and the Saint Louis University School of Law.

<sup>1</sup> Throughout this study, unless otherwise indicated, the term "Statute of Wills" refers to both the Statute of Wills, 32 Hen. VIII, c. 1 (1540), 3 STATUTES OF THE REALM 744-46 (hereinafter "Stat. Wills"), and the Explanation of the Statute of Wills, 34 & 35 Hen. VIII, c. 5 (1542), 3 STATUTES OF THE REALM 901-04 (hereinafter "Stat. Expl.").

There is substantial literature on the legal status and social history of bastardy during the sixteenth and seventeenth century, a topic not addressed by this study. See generally Walter J. King, *Punishment for Bastardy in Early Seventeenth-Century England*, 10 ALBION 130-51 (1978); BASTARDY AND ITS COMPARATIVE HISTORY 49 (Peter Laslett, et al. eds., 1980); JAMES A. BRUNDAGE, LAW, SEX, AND CHRISTIAN SOCIETY IN MEDIEVAL EUROPE (1987); WILLIAM CLERKE, THE TRIALL OF BASTARDIE (London, 1594); CHRIS GIVEN-WILSON & ALICE CURTEIS, THE ROYAL BASTARDS OF MEDIEVAL ENGLAND (1984); R.H. HELMHOLZ, CANON LAW AND THE LAW OF ENGLAND (1987); RALPH A. HOULBROOKE, CHURCH COURTS AND THE PEOPLE DURING THE ENGLISH REFORMATION 1520-1570 (1979); THE ENGLISH FAMILY 1450-1700 (1984); MARTIN INGRAM, CHURCH COURTS, SEX, AND MARRIAGE IN ENGLAND, 1570-1640 (1987); PETER LASLETT, FAMILY LIFE AND ILLICIT LOVE IN

wardships that would normally be imposed on certain transfers of land to children could be effectively avoided by establishing that the donee was illegitimate, and therefore a stranger to the donor for the purposes of the statute. English lawyers in the sixteenth and seventeenth centuries educated their colleagues about this newly available tax loophole. In the inns of court, they discussed the statutory provisions and recent revenue cases from the Court of Wards. They considered hypothetical situations to define who was and who was not a bastard for the purposes of the statute. The first part of this study will briefly set this tax loophole in the general institutional context of both the Statute of Wills and the common law educational system in England. The second part of the article examines the problem of how being an illegitimate child of a donor created a favorable tax situation under the Statute of Wills. Concluding observations will then show how this example sheds light on the relationship between the inns and the courts, and on how these institutions overlapped and interacted as they grappled with interpreting ambiguous statutory language.

### I. INSTITUTIONAL BACKGROUND

The English Statute of Wills of 1540 must be seen as one of many statutory enactments resulting from the Henrician Reformation, the dissolution of the monasteries, and Henry VIII's effective program to increase royal revenues. Although other forms of wealth were appearing in English society during these years, land and rights in land continued to be the context in which most wealth was perceived. Transfers of land, particularly upon the death of the owner, were convenient points to assess and collect feudal incidents and royal prerogative rights, which were by this date expressed in money payments.<sup>2</sup> Many of Henry's political maneuvers and sub-

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EARLIER GENERATIONS (1977); IVY PINCHBECK & MARGARET HEWITT, CHILDREN IN ENGLISH SOCIETY VOLUME I: FROM TUDOR TIMES TO THE EIGHTEENTH CENTURY (1969); LAWRENCE STONE, THE FAMILY, SEX AND MARRIAGE IN ENGLAND 1500-1800 (1977).

<sup>2</sup> The political and fiscal considerations leading to the Statute of Wills and

sequent enactments attempted to reimpose such incidents. In fact, the Statute of Wills is most accurately viewed as a taxation statute that happened to create the right to devise a certain portion of land.<sup>3</sup>

Two relevant aspects of this period's unprecedented statutory activity must be noted. First, new statutes provided for the creation of new institutions of administration and adjudication, such as the Court of Wards. Second, new statutory provisions called for authoritative interpretations by the profession. The method of legal education in the inns of court concerning the manner in which readings on statutes were conducted changed accordingly. Readings became the individual products of the particular reader and often addressed recent case interpretations of statutory provisions. This article addresses one example of this second change which can best be understood after considering the general nature of the Court of Wards and the readings.

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the Explanation of the Statute of Wills have been treated fully elsewhere. See generally 2 J.H. BAKER, *THE REPORTS OF SIR JOHN SPELMAN* 192-203 (Selden Soc'y vol. 94, 1978); J.M.W. BEAN, *THE DECLINE OF ENGLISH FEUDALISM* 1215-1540 (1968); A.R. BUCK, *The Politics of Land Law in Tudor England, 1529-1540*, 11 J. LEGAL HIST. 200-17 (1990); N.G. JONES, *The Influence of Revenue Considerations upon the Remedial Practice of Chancery in Trust Cases, 1536-1660*, in *COMMUNITIES AND COURTS IN BRITAIN 1150-1900* 99-113 (Christopher Brooks & Michael Lobban eds., 1997); Charles J. Reid, Jr., *The Seventeenth-Century Revolution in the English Land Law*, 43 CLEV. ST. L. REV. 221, 237-39 (1995); Prue Vines, *Land and Royal Revenue: The Statute for the Explanation of the Statute of Wills, 1542-43*, 3 AUSTL. J. LEGAL HIST. 113-30 (1997).

I disagree with Ms. Vines's conclusion concerning the provision addressing the testamentary capacity of married women. She states that "the need to clarify the position as to capacity resulted not from poor drafting in the *Statute of Wills*, but from the conflict between the ecclesiastical courts and the common law courts in relation to wills and estates." *Id.* at 129. In my view, lawyers saw the problem purely within the common law and statutory interpretation as indicated by their discussions in the inns of court. M.C. Mirow, *Monks and Married Women: The Use of the Yearbooks in Defining Testamentary Capacity in Sixteenth- and Seventeenth-Century Readings on Wills*, 65 LEGAL HIST. REV. 19-39 (1997).

<sup>3</sup> The statute does not have a single taxing provision, but must be read almost in its entirety to determine its operation.

### A. *The Court of Wards*

The predecessors of the Court of Wards and Liveries were the individual receivers for the counties under Henry VII, who were charged with collecting the king's revenues from wardships and other incidents of lands held of him.<sup>4</sup> Centralized control over the collection and administration of these incidents grew during the reigns of Henry VII and Henry VIII, and by 1528, a Master of the Wards sat regularly at Westminster, conducted judicial business, and was assisted by an attorney.<sup>5</sup> The statutes creating the Court of Wards are seen as formalizing a pre-existing institution whose main activities were increased substantially by two legislative changes: on one side, the Statute of Uses and Statute of Wills, and on the other, the requirement that grants of monastic lands by the Court of Augmentations be held in knight-service in chief tenure.<sup>6</sup> Thus, the decisions of the court provided the most current interpretations of the statutory provisions concerning wardship and other incidents and therefore should have been essential material for a student of such statutes.

At least two of the readers studied here had positions with the court. Robert Nowell, who read in 1561, was appointed the Attorney of the Court of Wards that same year.<sup>7</sup> Hugh Hare, with his apparently more industrious brother John, was appointed Clerk of the court in 1589.<sup>8</sup> Furthermore, any of the readers later made serjeants or judges of the common law courts might have been involved in deciding a case.<sup>9</sup> Whatever the personnel used to reach a decision, it was "normally embodied in a formal decree of the court."<sup>10</sup> Another reader of note on the Statute of Wills was Henry Sherfield. His success-

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<sup>4</sup> H.E. BELL, AN INTRODUCTION TO THE HISTORY AND RECORDS OF THE COURT OF WARDS AND LIVERIES 5-6 (1953).

<sup>5</sup> *Id.* at 12.

<sup>6</sup> The two statutes are 32 Hen. VIII, c. 46, and 33 Hen. VIII, c. 22. BELL, *supra* note 4, at 14.

<sup>7</sup> *Id.* at 22, n. 4.

<sup>8</sup> *Id.* at 26-27.

<sup>9</sup> *Id.* at 98.

<sup>10</sup> *Id.* at 100.

ful practice before the Court of Wards has been recounted by Prest, and his iconoclastic church window smashing has been illuminated by the work of Slack.<sup>11</sup> Reading on the Statute of Wills also served James Dyer, John Popham, and Augustine Nicholls well; each was to have a successful judicial career.

Aside from the pleadings in the cases, the most important official documents preserving the workings of the Court of Wards are the Books of Orders which are relatively complete, and the Books of Decrees which run from about 1572 to 1645.<sup>12</sup> Supplementing these records are the manuscript reports of decrees for cases from 1553 to 1581 by John Hare.<sup>13</sup> James Ley was Attorney of the Court of Wards from 1608 to 1621; his reports of seventy-five cases from the reign of James I, subsequently published in 1659, and his *Learned Treatise Concerning Wards and Liveries* (published 1641 and 1642) are useful sources.<sup>14</sup> The Court was abolished in 1646.<sup>15</sup>

### B. Readings

Educational activities in the inns of court ranged from informal student-run gatherings to elaborate, ritualistic events conducted by senior members of the profession. The readings were the most formal, and perhaps the most technical or sophisticated, of these activities.<sup>16</sup> Within the inns, the period

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<sup>11</sup> WILFRID R. PREST, *THE RISE OF THE BARRISTERS: A SOCIAL HISTORY OF THE ENGLISH BAR, 1590-1640* 30-34 (1986). Paul Slack, *The Public Conscience of Henry Sherfield*, in *PUBLIC DUTY AND PRIVATE CONSCIENCE IN SEVENTEENTH-CENTURY ENGLAND 151-71* (John Morrill, et al. eds., 1993); *Religion Protest and Urban Authority: The Case of Henry Sherfield, Iconoclast, 1633*, in 9 *STUDIES IN CHURCH HISTORY* 295-302 (Derek Baker ed., 1972); *Poverty and Politics in Salisbury 1597-1666*, in *CRISIS AND ORDER IN ENGLISH TOWNS, 1500-1700* 164-203 (P. Clark & P. Slack eds., 1972).

<sup>12</sup> BELL, *supra* note 4, at 87-88.

<sup>13</sup> *Id.* at 90. CUL MSS Dd.3.9, Hh.3.1, and Ii.5.7.

<sup>14</sup> Apart from Bell's study, see JOEL HURSTFIELD, *THE QUEEN'S WARDS; WARDSHIP AND MARRIAGE UNDER ELIZABETH I* (2d ed. 1973) for a general description of the court and wardships.

<sup>15</sup> BELL, *supra* note 4, at 150.

<sup>16</sup> Case-putting, bolts, and moots were the law student's "daily fare" according to Prest or his "bread and butter" according to Lemmings. DAVID LEMMINGS, *GENTLEMEN AND BARRISTERS: THE INNS OF COURT AND THE ENGLISH BAR, 1680-1730*

during a reading was a time for education, institutional promotion, and social functions. Readings delivered an intensive dose of legal learning to the audience, gave the reader an opportunity to display his knowledge, were closely associated with a senior utter-barrister's elevation to bench of an inn, and provided convenient times for the members of the profession to dine together.<sup>17</sup>

Despite their depth of analysis and legal complexity, the readings contain similar material to that found in the less formal exercises. Even in this later period of original authorship, readers might borrow substantial portions of text from earlier readings on the same or similar topics.<sup>18</sup> It is very likely that they were accessible to their audience, pedagogically valuable, and after their delivery provided relatively cohesive statements of law in a particular area.<sup>19</sup> Thus, the readings can properly be regarded as one end-point of the continuum of the inns' educational devices, and, in many instances, the most sophisticated treatments of contemporary topics available.

A reading was a structured exegesis of a statute or a particular provision of a statute. Although before this period there was a pattern or cycle to the statutes selected as the

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77 (1990); WILFRID R. PREST, *THE INNS OF COURT UNDER ELIZABETH I AND THE EARLY STUARTS, 1590-1640* 117-19 (1972); *See also* W.C. RICHARDSON, *A HISTORY OF THE INNS OF COURT: WITH SPECIAL REFERENCE TO THE PERIOD OF THE RENAISSANCE* 128-66 (1978). Almost all exercises and lectures were oral, with very little emphasis being placed on the production of written work. *Id.* at 100. A useful survey of the exercises in the inns of chancery and the inns of court and of the relationship between the two types of inns during this period is found in 2 J.H. BAKER, *THE REPORTS OF SIR JOHN SPELMAN* 125-35 (Selden Soc'y vol. 94, 1978).

<sup>17</sup> While one might suppose that reading was a necessary prerequisite to elevation to the bench, evidence indicates that utter-barristers could be made benchers first with the obligation later imposed to read. Ives even describes this as a "regular procedure" in Lincoln's Inn. E.W. Ives, *Promotion in the Legal Profession of Yorkist and Early Tudor England*, 75 *LAW Q. REV.* 348, 351 (1959).

<sup>18</sup> J.H. BAKER, *JOHN SPELMAN'S READING ON QUO WARRANTO xvi-xxi* (Selden Soc'y vol. 113, 1997).

<sup>19</sup> M.C. Mirow, *The Ascent of the Readings: Some Evidence from the Readings on Wills*, in *LEARNING THE LAW: TEACHING AND THE TRANSMISSION OF ENGLISH LAW, 1150-1900* 227-54 (Jonathan A. Bush & Alain Wijffels, eds., 1999).

topics for the readings, by the date of the readings studied here, readers apparently had free choice in selecting their statutes. The presentation and content of readings changed throughout the life of the institution, and it is generally agreed that the addressing of new statutes marked a new era in the readings.<sup>20</sup>

The fullest contemporary account of readings in the inns of court describes a substantially similar procedure in all the inns:

And then the first day after Vacation, after 8 of the clock, he that is so chosen to read openly in the Hall before all the company shall read some one such act, or statute, as shall please him to ground his whole Reading on, for all that vacation; and that done, doth declare such inconveniences and mischiefs as were unprovided for and now by the same statute be amended; and then reciteth certain doubts and questions which he has devised that may grow upon the said statute, and declareth his judgment therein. That done, one of the younger utter-barristers rehearseth one question propounded by the Reader, and doth by way of argument labour to prove the Reader's opinion to be against the law.<sup>21</sup>

Readings were delivered during the Lent and autumn (or summer) learning vacations of an inn. A reader's first reading was usually conducted in the autumn, and Lent was the usual time for his second, or "double," reading, which was often given before the reader was called as a serjeant.<sup>22</sup> The second read-

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<sup>20</sup> Louis A. Knafla, *The Matriculation Revolution and Education at the Inns of Court in Renaissance England*, in *TUDOR MEN AND INSTITUTIONS* 232, 252-53 (Arthur J. Slavin ed., 1972); PREST, *supra* note 16, at 119-20.

<sup>21</sup> REPORT OF NICHOLAS BACON, THOMAS DENTON, AND ROBERT CAREY ON THE STATUS OF LEGAL EDUCATION IN ENGLAND, PRESENTED TO THE KING, c. 1540, reprinted in RICHARDSON, *supra* note 16, at 415. For a discussion and edition of this report see D.S. Bland, *Henry VIII's Royal Commission on the Inns of Court*, 10 J. SOC'Y PUB. TCHRS. L. 178 (1968). R.M. Fisher, *Thomas Cromwell, Dissolution of the Monasteries, and the Inns of Court, 1534-1540*, 14 J. SOC'Y PUB. TCHRS. L. 103 (1980) contains further discussion of the origins of this report and editions of related papers concerning Lincoln's Inn and Middle Temple.

<sup>22</sup> J.H. BAKER, *THE ORDER OF SERJEANTS AT LAW* 84-85 (Selden Soc'y Supp. Series vol. v, 1984). There were elaborate rules for giving a serjeant elect the



ing, several years after the reader's first reading, was considered to be an even more learned and ceremonial occasion than the first.<sup>23</sup>

On the first morning of the reading, the reader entered the hall, stood at the cupboard, and took the Oaths of Supremacy and Allegiance.<sup>24</sup> The sub-lecturer then read the statute, or the applicable "branch" thereof, upon which the reader conducted his reading. The reader delivered a "grave and apologetic" speech explaining his choice of the statute and setting forth the divisions of his reading.<sup>25</sup> The reader would then set out ten to twelve cases on the division, in the form of hypothetical factual situations for argument. From a list of these cases, the least senior cupboardman would choose one and argue against the reader's conclusion.<sup>26</sup> The chosen case would then be argued up the hierarchy of seniority through the other cupboardmen, positioned near the cupboard, and benchers, "who are placed on a form opposite the reader."<sup>27</sup> The reader then would speak defending his position, followed by any judges and serjeants present who would "argue" the case chosen.<sup>28</sup> Thus, we may

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opportunity to read before the return of his writ. WILLIAM DUGDALE, *ORIGINES JURIDICIALES, OR HISTORICAL MEMORIALS OF THE ENGLISH LAWS, COURTS OF JUSTICE . . . INNS OF COURT AND CHANCERY* (London, 2d ed. 1671; first published 1666). Dugdale made use of the account in JOHN FORTESCUE, *DE LAUDIBUS LEGUM ANGLIE* 114-21 (photo. reprint 1979) (S.B. Chrimes ed. 1942) (c. 1470) and the report quoted above. KENNETH CHARLTON, *EDUCATION IN RENAISSANCE ENGLAND* 172 (1965). Readers were elected from the senior utter-barristers of an inn who had held such positions for about ten years, in other words, those who had been members of an inn for between sixteen and eighteen years. J.H. BAKER, *English Legal Profession, 1450-1550*, in *THE LEGAL PROFESSION AND THE COMMON LAW* 75, 91 (1986).

<sup>23</sup> Richardson, *supra* note 16, at 106.

<sup>24</sup> *Id.* at 206. The oath was first required by 5 Eliz. c. 1, s. 4 (1563), 4 STATUTES OF THE REALM 403. In the Inner Temple if attendance was insufficient, the reader, benchers, and utter-barristers could amerce those absent and dissolve the reading. DUGDALE, *supra* note 22, at 160.

<sup>25</sup> *Id.* at 206. A division of the reading was a specific legal question arising from the statutory text and was often the subject of one day's lecture.

<sup>26</sup> The cupboardmen were usually the four most senior utter-barristers present at the reading. *Id.* at 203.

<sup>27</sup> *Id.* at 206.

<sup>28</sup> *Id.* It is not clear whether the judges and serjeants would be attempting to support the reader's conclusions or merely arguing the points of law in the case.

think of the Inner Temple representation as accurate for the method of argumentation in all the inns, "all of which is to be done *ex tempore pro and con*."<sup>29</sup> Abbreviated arguments might run into the evening.<sup>30</sup>

This outlines the first day's events, and the following days of the reading were similar. The reading and its argument of cases were conducted Mondays, Wednesdays, and Fridays, interspersed with feasting and entertaining strangers, often "great lords."<sup>31</sup> By all accounts and attempted regulations, the readings were expensive events.

At the end of the final day of a reading, the reader would deliver a speech which was followed by the most senior benchers' remarks. The reader's final speech might have taken the form of a repetition or summary of his reading, repeating his divisions and perhaps important conclusions.<sup>32</sup> The cases were then presented for the "division for that day."<sup>33</sup> Two cupboardmen would argue one case and ask the reader's opinion on the case to be given the next term.<sup>34</sup> In response, the reader made a short speech and retired without addressing the substance of the case, a symbol of the continuous nature of legal education in the inns. This ceremony was followed by a

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Nonetheless, from their position in the hall alone, sitting opposite the benchers with their backs to the reader, it seems more likely than not that they would support the reader's position. In the Inner Temple a second case would be argued in the morning. This was chosen by the most senior utter-barrister or a judge. *Id.* at 160.

<sup>29</sup> *Id.*

<sup>30</sup> *Id.* at 207. In the Inner Temple, at the end of the morning session, the "reader delivers his Paper of Cases, for that morning to the puisne Vacation utter-barrister, who is to argue one of those cases he likes best, immediately after dinner, at the Bench Table end." The utter-barrister would be aided by all the barristers present, helping him "to break the case and open the points." After the benchers argued, the reader would conclude. *Id.* at 160. We should not forget that "[a] reading was also a festive occasion, an opportunity for 'wining and dining the right people.'" E.W. IVES, *THE COMMON LAWYERS OF PRE-REFORMATION ENGLAND: THOMAS KEBELL: A CASE STUDY* 50 (1983).

<sup>31</sup> DUGDALE, *supra* note 22, at 207.

<sup>32</sup> PREST, *supra* note 16, at 124.

<sup>33</sup> DUGDALE, *supra* note 22, at 207.

<sup>34</sup> *Id.* at 207-08.

procession through the streets and dinner in the hall.<sup>35</sup>

The duration of the reading, according to Dugdale, was two days less than a fortnight.<sup>36</sup> This would provide six reading days. Earlier accounts indicate that the common duration was between a period of three weeks and three days and a period of two weeks.<sup>37</sup>

It was within the context of such readings that the following example must be examined. The most important decisions concerning the interpretation of the Statute of Wills were in the Court of Wards, and the readings in the inns of court provide the setting for tracing the development of the applicable provisions of the Statute.

## II. TRANSFERS TO ILLEGITIMATE CHILDREN UNDER THE STATUTE OF WILLS

The permissive language of the Statute of Wills relating to devises and acts executed during the lifetime of the donor created difficulties in the complex area of wardship. The Statute of Wills states that each person

shall have full and free liberty, power, and authority to give, dispose, will, and devise, as well by his last will and testament in writing, or otherwise by any act executed in his life, all his said manors, lands, tenements, or hereditaments, or any of them at his free will and pleasure; any law, statute, or other thing heretofore had made or used to the contrary notwithstanding.<sup>38</sup>

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<sup>35</sup> *Id.* at 208.

<sup>36</sup> *Id.* at 207.

<sup>37</sup> PREST, *supra* note 16, at 124; J.H. BAKER, AN INTRODUCTION TO ENGLISH LEGAL HISTORY 184 (3d ed., 1990); DUGDALE, *supra* note 22, at 194. Indicating that a skeleton of a longer period remained even in Dugdale's day is his note that although the reader ends his reading after a fortnight, the associated exercises continue for the "reading month" conducted "by readers or vacationers . . . as if the Reading has so long continued." *Id.* at 160.

<sup>38</sup> Stat. Wills, s. 1. Other sections referring to tenures other than socage tenure have similar language but replace "free will and pleasure" with "will and pleasure." Stat. Wills, ss. 2, 3, and 4. The Statute of Wills, s. 5, addressing socage tenure, uses again "free will and pleasure."

The Statute of Wills adds further language when the land is held in knight-service in chief and similar tenures. Here, each person may

give, dispose, will or assign two parts of the same manors, lands, tenements, or hereditaments in three parts divided . . . *to and for the advancement of his wife, preferment of his children, and payment of his debts, or otherwise at his will and pleasure; any law, statute, custom, or other thing to the contrary notwithstanding.*<sup>39</sup>

The third part not transferred under this provision was subject to wardship, primer seisin, and livery.

The Explanation of the Statute of Wills repeats this language with these purposes in its preamble and then incorporates the language of the Statute of Wills in its section on wardship. The Explanation of the Statute of Wills speaks of a donor's

gift, disposition, or devise by his last will in writing, or otherwise by any act or acts lawfully executed in his life, to his wife, children, or otherwise.<sup>40</sup>

These provisions created wardship obligations where none had existed before their enactment. Ley states that there is "no dying seised, nor descent" but nonetheless there is "wardship during the minority."<sup>41</sup> Concerning this provision, Bell states:

[I]f the statutes had given the subject a limited freedom to devise, they had also given the king certain wardships and primer seisins, where he would have had none before—that is, on one third of land conveyed during life for the purposes mentioned in the statute. Thus the statutes and the common law were to some extent contradictory, and much learning was displayed in argument as to whether or not, in a particular case, an heir was in ward or should sue livery.<sup>42</sup>

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<sup>39</sup> Stat. Wills, ss. 2 and 3 (emphasis added). Stat. Wills, ss. 4 and 5 state "in manner and form as above declared."

<sup>40</sup> Stat. Expl., preamble and s. 4.

<sup>41</sup> J. LEY, A LEARNED TREATISE CONCERNING WARDS AND LIVERIES 25 (1641).

<sup>42</sup> BELL, *supra* note 4, at 107.

Thus, the contemporary practitioner was presented with a new statute creating new financial responsibilities to the king. These were, no doubt, important provisions, which were subsequently litigated. As the following discussion indicates, the interpretation of these provisions was not obvious.

The words "or otherwise" were the source of much difficulty, and it was not for another thirty-five years that their interpretation would be settled. From the plain language of the statute, it was unclear to what "or otherwise" referred: did the statute mean that any disposition by will or by the lifetime act of the donor for any purpose should incur primer seisin or wardship for land held by knight-service in chief? Clearly, when land held in knight-service in chief was devised or given in the lifetime of the donor *for the stated purposes*, the incidents were due to the king. In 1548-49, the first judicial interpretation of this provision indicated a broad reading of the language to make any transfer taxable:

Note, for law by the Chancellor of England and justices, that if the tenant who holds of the king in knight-service *in capite*, gives all his land to a stranger, by act executed in his life, and dies; yet the king shall have the third part in ward, and shall have the heir in ward if he be within age. And if of full age, he shall have primer seisin of the third part, by virtue of that clause in the statute "Saving to the king ward, primer seisin, livery" and the like, by which it appears that the intent of the act is that the king shall have as much as if the tenant had made a will, and had died seised. Yet by all, after the king is served of his duty of it, the gift is good to the donee against the heir.<sup>43</sup>

Here, even apart from the three purposes expressed in the act, wardship, primer seisin, and livery attach to *any* disposition of land held in knight-service in chief. If this interpretation was followed, further discussion on the provision would have been unnecessary.

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<sup>43</sup> Anon. (1548-49), 2 Edw. VI, Brooke's New Cases 179, 73 E.R. 925.

By 1561, however, this interpretation of the statute was being questioned. A reader in Gray's Inn, Robert Nowell, provided some thoughts on the nature of conveyances during the donor's life ("acts executed") in relation to wills as part of his reading on the Statute of Wills:

And therefore the cause wherefore acts executed are made mention of in this statute is not to the intent to give men power to convey their lands away which they might do before, but to bring the saying which follows after for the advantage of the prince and the lord giving as it seems the third part in every case and upon every conveyance made mention of before by act executed where the heir is within age, the land is held by knight-service, to the intent that the prince and the lord by knight-service might receive a benefit of a third part upon conveyance by act executed as they sustained the loss of two parts upon conveyance by last will and testament. *And the conveyances by act executed in this statute are not simply and generally all manner of conveyance by act executed, but [are] those conveyances within [the statute] and properly are most like to wills and do provide a remedy for those things which men most commonly provide for in wills, for their wives, children and payment of their debts, for the words of the statute be that a man shall have full power and authority by any act lawfully executed to give and dispose will and assign etc. to and for the advancement of his wife, preferment of his children, and payment of his debts or otherwise at his will and pleasure.*<sup>44</sup>

Thus, by 1561, lawyers were arguing for a more restricted reading of the statute's application. Only transfers for the specific reasons stated in the statute were to produce the imposition of a payment to the crown. Of the three specific purposes expressed in the statute, the meaning of "advancement of children" was apparently put before the courts most often.<sup>45</sup> The

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<sup>44</sup> BL MS Harley 829, f. 28 (emphasis added).

<sup>45</sup> Why the terminology changed from "preferment of children" in the statute to "advancement of children" in the contemporary language of the practitioner is not known. This study follows the lawyers rather than the statute in this regard. For advancement of a wife, see *Floyer's Case* (1611), Hil. 8 Jac. 1, 9 Co. Rep.

question presented in these cases was whether certain persons should be considered "lawful generation" for the purposes of advancing children within the language of the statutes. The phrase "lawful generation" is found in the preamble of the Statute of Wills, and if an advancement to a child of lawful generation was established, wardship or primer seisin would attach for the conveyance of land held in knight-service in chief. Thus, the crucial issue was the applicability of the sections of the statutes dealing with wardship and the suing of liveries for lands "advanced" to certain family members during the lifetime of the donor. A significant body of law developed around the question of what was or was not advancement under various circumstances, but in the late 1560s and early 1570s, the law was still open to varying interpretations.

An early case interpreting this provision is from 1568. A manuscript of Henry Blanchard's reading in 1581 records that an estate executed to a bastard daughter or son was not within the statute as it regards wardship and the suing of livery. For this proposition he cited the case of *Dame Woodhouse*.<sup>46</sup> Although the case is not available in printed reports, Hare's manuscript reports of Court of Wards cases contain the following entry from 1568:

Madam Woodhouse being seised of the manor of A. held in knight-service in chief made feoffment of this in consideration of marriage to be entered between Ursula, base daughter of the said Madam, and William Cotton to the use of him for his life, the remainder to the said William and Ursula in tail, the remainder to the right heirs. The said Madam Woodhouse dies having issue, Dudley Arundell by her second husband, and her daughter as heir. The which matter was found accordingly by office upon the death of the Madam, upon which office the said auditor understanding that the said Ursula

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125b, 77 E.R. 913, where advancement given to a woman in contemplation of marriage is held within the statutory definition of "wife."

<sup>46</sup> CUL MS Hh.2.1, f. 72. The case of *Madam Woodhouse* is noted at 73 E.R. 776 as being located in the Decree Book of the Court of Wards at f. 327 for the Trinity term of 10 Eliz. (1568). This Decree Book which corresponds to P.R.O. Ward 9/83 has been classified as "unfit for production" by the P.R.O.

shall be said one of the daughters of the said Madam and [therefore] issue within the Statute of Wills, charged the third part for fault of livery. *But upon grand advice and deliverance of the justices on this point they resolve that the said base daughter shall take this land as a mere stranger and not as any child [of] the said Madam as issue. The conveyance [was made] out of the power of the aforesaid statute upon which she made discharge by decree of livery etc.*<sup>47</sup>

By 1568, a bastard daughter would not be considered a child for the purposes of assessing wardship or suing livery upon advancement by act executed during the life of the parent.

A second similar case is from 1570.<sup>48</sup> There, land held in knight-service was conveyed to the bastard son of the donor, but the son was "not called bastard or son to the donor."<sup>49</sup> Finding that the bastard son was out of the statute's application, the court stated:

And as it seems the bastard shall be out of the statute, because he is, but as any other person, a mere stranger to the father, *quia filius nullius*. And the preamble of 32 Henry VIII [c.1] rehearseth "lawful generation."<sup>50</sup>

Consistent with *Madam Woodhouse* on the question of the applicability of the statute to bastard sons, its focus on the fact that the bastard was not recognized or accepted as the son the donor is notable. The donor's or public's perception of the familial relationship appears to have been a consideration in the proper characterization of the son.

Other related provisions of the Statute of Wills were being debated that same year. Dyer reports a discussion of these provisions in the Court of Wards in 1570.<sup>51</sup> This discussion indicates that after more than twenty-five years from the en-

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<sup>47</sup> CUL MS II.5.17, ff. 31v-32 (emphasis added).

<sup>48</sup> Anon. (1570), Mich. 12 & 13 Eliz., 3 Dyer 296b, 73 E.R. 666. This case is a few months later than the first discussion of the question of collateral relatives in the Hilary term of 12 Elizabeth addressed next.

<sup>49</sup> *Id.*

<sup>50</sup> 73 E.R. 666.

<sup>51</sup> Anon. (1570), Hil. 12 Eliz., 3 Dyer 386b, 73 E.R. 642.



actment of the statutes the law on this subject was unsettled. The general question concerned advancements "in consideration of natural love and affection to his kindred and blood" with lands held in knight-service in chief. A relative other than one in the direct family line presented a difficult case. The judges were divided:

And in a meeting of all the judges at Serjeants Inn, it was holden by Onslow Attorney of the Wards, Wray, and Barham the Queen's serjeant, Harper Justice, Welshe Justice, Saunders Chief Baron, and Dyer Chief Justice of the Bench, that children's children, and so on, descending in a right line, are within the statute etc., and this by the words in the preamble, "generations, family, children, and posterity."<sup>52</sup> And Dyer also thought that collateral cousins should be in the same predicament. But Keilwey Surveyor of the Liveries, Carus, Southcot, Weston, and Whiddon Justices, *contra*, in both points, etc. and Catlin Chief Justice also: but Saunders Chief Baron, only in one as above. And in next Trinity, in the lodgings of Secretary Cecil, Master of the Wards, near the Savoy, the case was argued for four hours and half, and the opinions [were] as above, except Carus, who changed his opinion.<sup>53</sup>

Thus, at the beginning of 1570, there was little agreement about how the statute was to be interpreted on this point. These were also questions considered to be worth long and repeated debate by the country's top judiciary. It should be noted that Dyer read the statute broadly to include children's children and collateral cousins. The important point for our purposes is that the interpretation of the three purposes clearly had become more restrictive, excluding strangers and others from its application. The discussion examines twice the statutory language regarding the three purposes of the disposition, once to note its presence in the Statute of Wills, and again to note its absence in the individual section of the Explanation of

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<sup>52</sup> These words are used in isolation from each other in the Statute of Wills, preamble.

<sup>53</sup> 73 E.R. 643.

the Statute of Wills concerning knight-service in chief:

Also, in the third article of the Statute of Explanations, 34 & 35 Henry VIII [c.5] it is declared and enacted that the king's tenants in chief hath, and by that act shall have authority to dispose, etc., to any person or persons (except bodies politic and corporate) by will or writing, or act executed in life, two parts, etc. omitting the words, "to and for the advancement of the wife, preferment of the children, payment of the debts, or otherwise." Wherefore, etc. Therefore, note the generality, etc. And Cecil argued sensibly to the same intent.<sup>54</sup>

Considering the recital of these requirements in the clause creating the saving to the king, it is a puzzling argument.<sup>55</sup> It is not surprising, however, to find Cecil, as Master of the Wards, arguing for a broad application of the statute.

Despite these discussions and although there were four other readers on the Statute of Wills in the inns of court between 1561 and 1581, it appears that it was not until Blanchard's reading of 1581 that the possible issues were given a full treatment. This was most likely due to the rapidly developing case law in the area at that time and the increasing availability of reports.<sup>56</sup> After Blanchard's reading, the readings routinely provide a summary of the major issues of advancement under the statute.

The question of whether a bastard was "lawful generation" was presented again in a case which became known as *Gray's Case*.<sup>57</sup> The case concerned Edward Gray who was Lord

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<sup>54</sup> 73 E.R. 643.

<sup>55</sup> Stat. Expl., s. 4.

<sup>56</sup> Many factual variations are presented in the reader's cases in St John's College, Cambridge MS 5.28, ff. 55-58. MSS of Blanchard's reading also provide good narrative discussions of the topic. BL MS Add. 16169, ff. 262v-263v and BL MS Add. 35951, ff. 21v-24. Dyer's reports were printed in 1585, but manuscript reports circulated before this date.

<sup>57</sup> *Gray's Case* (1572), Trin. 14 Eliz., 3 Dyer 313b, 73 E.R. 711 (also called *Lord Powis's Case*). The MS of Dyer's reports indicates that the case was decided by all the judges, including Saunders, C.B. and Bacon, L.K. (except Corbett, J.) and was argued in both the Chancery and the Court of Wards. 1 J.H. BAKER, REPORTS FROM THE LOST NOTEBOOKS OF SIR JAMES DYER 35-36 (Selden Soc'y vol. 109, 1994).

Powis's bastard son and who received a remainder in land held in chief. At least two important questions were presented. The first was whether a bastard son could take under the language of a gift which stated "to the son." The second concerned whether a bastard would have to sue livery to take the remainder, a question directly related to the statute. A manuscript report of the case demonstrates that a bastard could be a valid purchaser under the language described and evidently placed considerable weight on the fact that he was "commonly reputed and taken as son of the said Lord Powis."<sup>58</sup> Concerning the second question, the printed version of Dyer's report of the case states "and he shall not sue livery, because he is as a stranger, and not a lawful issue."<sup>59</sup> Therefore, Edward was a son for some purposes (to take the property), but not for others (to sue livery). This language appears to have been sufficient justification for readers to state generally that a bastard was "not within the statute." Nonetheless, there was some later confusion about which of these two separate issues was addressed, and how they were resolved, by this case.

*Gray* became a popular case to cite for questions concerning the status of bastards, and readings before the case do not consider the advancement of a bastard under the statute. John Popham used the case in 1573 first to examine a disputed son's right to take under a gift, the non-taxation aspect of the case. Discussing a reader's case involving a son born overseas, Popham used *Gray* by way of analogy to examine the difference between a son recognized by the law and a son "according to the common opinion."<sup>60</sup> Supporting his conclusion that the alien son, later made a denizen, may take by a devise of the father to "his son," Popham stated:

And this is the older [alien-born] son only, and he may well be purchaser by such name, although the law does not count him to be a son in fact, yet he is his son according to the common opinion. And so accepted, it is sufficient for him to

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<sup>58</sup> *Id.*

<sup>59</sup> 73 E.R. 711.

<sup>60</sup> BL MS Hargrave 89, f. 4v.

make a purchase by such name. As is the case of one, a mere bastard, which was adjudged in the case of Gray bastard son of Lord Powes.<sup>61</sup>

This use of *Gray* was based on the discussion found in the manuscript report, the report addressing the question of whether a bastard may be a purchaser, and was distinct from the applicability of the statute to a gift to a bastard from a parent.

Popham's next use of the case addressed the question of advancement. The applicable part of his reader's case states:

The disseisee reenters and enfeoffs his bastard son born between him and his wife before the coverture.<sup>62</sup>

The question was whether this feoffment of land held in knight-service in chief to a bastard son constituted an advancement for the purposes of assessing wardship. Finding that it should be considered an advancement within the statute, Popham stated:

[I]t seems that this bastard is such person as the statute intends, because such a bastard may in cases inherit land as it appears by 20 Assize 6<sup>63</sup> and by Littleton, 96. And such by the spiritual law shall be called a son. And for these reasons, [it is] clearly within the case of the statute. And it appears an even stronger case than [where] one who is a mere bastard is within the case of the statute because such appears by the case now lately adjudged upon the assurance made by the late Lord Powes to his bastard.<sup>64</sup>

Here, although citing *Gray*, it appears that Popham had come to the opposite conclusion of the decision as found in the printed reports of Dyer. Popham's use of canon law is noteworthy. Because under canon law the son would be legitimated by the

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<sup>61</sup> *Id.*

<sup>62</sup> BL MS Hargrave 89, f. 16.

<sup>63</sup> BL MS Lansdowne 1133 reads "2 Assize p. 9."

<sup>64</sup> BL MS Hargrave 89, f. 16. A reader's case and discussion involving bastard daughters, but not dealing with advancement, is found at f. 19.

parents' subsequent marriage, Popham asserted that the transaction was taxable. Thus, this conclusion by Popham and the 1570 discussion quoted at the beginning of this article indicate that the interpretation of the statute was still unsettled.

In 1575 another case was decided in the Court of Wards that accorded with the decision of *Madam Woodhouse's Case*. In *Thornton's Case*, a mother during her lifetime gave land held in knight-service to her bastard daughter.<sup>65</sup> Here Saunders, Kingsmill, and Keilwey held that "the Queen shall not have any third part in this case, because she is not a lawful daughter, or child of the mother more than of the father." Dyer, however, doubted this decision.<sup>66</sup> This not only indicates a lingering doubt about the application of the statute to advancements of bastards, but also Dyer's continuing inclusive interpretation of the statutory language.

Although he did not cite *Gray*, Blanchard in 1581 interprets the law to be in accordance with what would later be found in the printed report of the case. A manuscript of Blanchard's reading accurately records the status of a bastard under *Gray* as printed:

An act executed to a bastard son for his advancement is not an advancement meant by the statute and the king shall not have the wardship of any part.<sup>67</sup>

Nonetheless, by this date *Gray* was just one among many cases which could support this statement, and another manuscript of the reading cites *Madam Woodhouse* for the proposition that an estate executed to a bastard son or daughter is not within the meaning of the statute.<sup>68</sup> For example, it is likely that Blanchard used a case reported by Dyer, as the following entry

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<sup>65</sup> *Thornton's Case* (1575), Mich. 17 & 18 Eliz., 3 Dyer 345a, 73 E.R. 776.

<sup>66</sup> 73 E.R. 776.

<sup>67</sup> BL MS Add 35951, f. 20v. Two other manuscripts record a reader's case in which the entry of a bastard apparently cut off the right of the lord to wardship. CUL MS Hh.2.1, f. 77v; and St John's College, Cambridge MS 5.28, f. 59v. Another MS notes that an estate executed to a bastard son or daughter is not within the statute. BL MS Add. 16169, f. 262v.

<sup>68</sup> CUL MS Hh.2.1, f. 72.

is found in a list of cases vouched by Blanchard during his reading:

A woman has issue, a bastard daughter, and she herself is seised of lands held of the queen in chief. She executeth estate of all [her land] to her bastard daughter in fee and dies. And it was adjudged in the Court of Wards that the queen shall not have any part, by the advice of Lord Dyer and Lord Saunders by the report of Lord Dyer [of] 19 Elizabeth.<sup>69</sup>

Professor Baker states that this language suggests that Dyer was orally reporting the case from his own notes. If so, Dyer's view on the subject appears to have shifted towards a more exclusionary reading of the statute. In any event, the passage gives a partial citation to and an accurate reporting of the holding in *Thornton*.

The only manuscript of Robert Gardiner's reading of 1584 indicates that the topic of bastardy was also raised there. Gardiner presented the issue in a reader's case involving a bastard eigne ("older son") and a legitimate younger son, a factual pattern found in many readers' cases. Unfortunately, the argument of the case is not recorded, although the arrangement of the text in the manuscript indicates that the case was argued.<sup>70</sup> As the reader's case involves the bastard eigne dis-seising the father and the father subsequently releasing all his right to the bastard, one issue clearly raised by the case was the advancement of the bastard during the life of the father.

John Shirley in 1588 also considered the implications of bastardy as it related to an advancement of a child. Although the issue is not explicitly presented in his reader's cases, two records of the argument reveal that it was discussed. The first reference to the topic found is

[i]f a mother of a bastard conveys land to the bastard, although he be in notice of the world her son, this is not advancement because he is not of "lawful generation."<sup>71</sup>

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<sup>69</sup> BL MS Add. 35951, f. 14v.

<sup>70</sup> LI MS Misc. 367, p. 73.

<sup>71</sup> CUL MS Ee.4.5, f. 49.

Here, Shirley has accurately stated the rule derived from two of the cases presented. The elements of this statement are the mother's conveyance (*Thornton*) and a bastard son publicly known as such (*Gray*).

A second manuscript of the reading also contains a reference to the topic:

A bastard is not a child within this statute because the words of the statute are "lawful generation."<sup>72</sup>

Thus, even when the reader's case did not expressly raise the issue, readers or those arguing the readers' cases believed that it was an issue worth presenting. The example of Shirley's reading demonstrates the use of *Gray* and its progeny without a citation to the cases. Perhaps by 1588 any sensational quality of the case had died; no one now cared that Edward Gray was the bastard of Lord Powis, and there were now several cases that could be cited for this same principle. Nonetheless, the legal principle was important enough for its inclusion in the readings to continue. The section of the reading which presented this issue sets out fully other advancement issues as well, such as whether a grant benefiting the wife of the son is advancement to the son within the statute.<sup>73</sup> No doubt, when a reader came to read on the provision concerning acts executed during the life of the donor, he and his audience expected to cover the general law surrounding advancement.

For his reading, Hugh Hare appears to have copied substantial portions of Popham's reading without making sure his statements were current. This is the only example of wholesale copying found among the readings on the Statute of Wills. Hare's reliance on Popham's reading got him into difficulty concerning the law of bastardy. Dyer's *Reports* had been published more than six years before the date of Hare's reading, 1592. The basic principle of law on the topic was settled, not only by *Gray* but by later cases and the expositions found in

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<sup>72</sup> BL MS Add. 16169, f. 367v.

<sup>73</sup> CUL MS Ee.4.5, f. 49.

the readings after Popham: Generally, a bastard was not within the language of the statute, although a bastard was sufficient to take as a purchaser under a gift which recited "son." Nonetheless, Hare, copying from Popham's reading, misstated the law:

And this bastard is such son as this statute intends, because such bastard may in cases be inheritable to land. And by the spiritual law shall be called son and thereby clearly within the case of the statute. But if he was a mere bastard who by no possibility may be his heir and of whom the law never takes account as of a stranger, it shall be otherwise than this case is put. The wardship of the heir and of the land shall be given to the king.<sup>74</sup>

This demonstrates further Hare's unquestioning reliance on Popham's reading. It seems an odd mistake for someone about to step into a high position in the Court of Wards.

Augustine Nicholls's reading of 1602 presents the following analysis:

An estate executed to a bastard is not within the statute. Dyer, 313, 296. But an estate executed to a bastard eigne is within this statute [because] a covenant by natural affection shall raise a use to him. But if a man takes a second wife, the first wife living, and has issue by her, such son is not within the statute and he is a mere bastard.<sup>75</sup>

Here Nicholls has set out the general principle citing *Gray* and the anonymous case decided in 1570 addressing bastardy. His statements continue with the complicating factors of natural affection towards a relative and, it appears, divorce for precontract.

The status of a bastard for the purposes of advancement and the third due to the king is also considered in Henry Sherfield's reading of 1624:

And lawful children and no others are those who are meant

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<sup>74</sup> BL MS Lansdowne 1141, f. 40.

<sup>75</sup> LI MS Maynard 19(b), f. 5v.



by the law. And a child by reputation only is not within [the statute] but he must be a child in law and truth. Thus a bastard child although he be of his mother is not a child within the law, because the statute provides for their "lawful generation."<sup>76</sup>

The question arose again later in a reader's case in which a son was arguably made a bastard by divorce for precontract, a factual twist also used by Nicholls:

Response to the third objection that by the divorce the issue is a bastard, and thus A. is not a child within the law. I have argued to the contrary before and therefore nothing more shall be said on this point. But if it were thus, perhaps this would be a child within the law. As if a man makes a conveyance for the advancement of his wife and after there is a divorce by reason of precontract, this is within the law, because she is a wife by reputation. And if there is a recovery against such husband and wife, shall a divorce afterwards [affect the recovery] according to this act? Certainly not. Relation shall not make a wrong to destroy a settled estate. And Popham holds accordingly as to the wife in his reading upon this statute.

I wish to confess that a bastard is out of this statute, but this is to be understood as such bastard who was both in truth and reputation a bastard always. But as I have argued before [there is] no question that the issue after a divorce by reason of precontract of the husband, whereof the wife knew nothing, shall be always legitimate and shall inherit [from] the mother and the father.<sup>77</sup>

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<sup>76</sup> BL MS Stowe 424, f. 42. The passage continues with related discussion and a citation to *Sir George Curson's Case* (1607), East. 5 Jac. I, 6 Co. Rep. 75b, 77 E.R. 369, discussing advancements to relatives other than children.

<sup>77</sup> BL MS Stowe 424, f. 77v. The passage cites *Leonard Lovies's Case* (1613), East. 11 Jac. 1, 10 Co. Rep. 78a, 77 E.R. 1043, which presents a summary of prior case on this point at 77 E.R. 1049-50 and cites *Curson's Case* among others. Concerning the effect of the divorce, Nicholls was following established canon law. See R.H. HELMHOLZ, *ROMAN CANON LAW IN REFORMATION ENGLAND* 6 (1990). The statute 32 Hen. VIII, c. 38 (1540) on precontracts would have been an important part of the analysis of the fact patterns presented by Nicholls and Sherfield. CLERKE, *supra* note 1, at 79-81; and HELMHOLZ, *ROMAN CANON LAW, supra*, at

Sherfield explores the possibility of a divorce creating a bastard and the effect of this change of status.

The last reading on wills, delivered by Richard Townesend in 1631, also included the factual situation of a bastard in a reader's case. Following this reader's case is a full page of notes addressing the topic of bastards under the statute and a hurried list of phrases and citations. These include citations to *Gray* and *Thornton* which follow the statement, "a bastard is no child within 32 Henry VIII of wills although his mother conveys lands to him."<sup>78</sup>

### III. NEW LAW AND POLITICAL POSITIONING

The factual situation of advancing a bastard child provided a frequent topic for readers to present. The interpretation of the statute regarding advancement appears to have been of general importance for the readers, and the question of advancement to bastards presented an interesting legal issue, one of practical importance and with recent case interpretation. It is even possible to speculate as to Dyer's change of mind about the interpretation of the statute. Furthermore, it appears that the cases were sufficiently new and the principles expounded sufficiently important to find their inclusion in many of the manuscripts of the readings.

Readers could use the readings as an opportunity to transmit their interpretation of various statutes for political purposes. The first recorded restrictive interpretation of the statutory provision is found in a reading, Robert Nowell's reading in Gray's Inn in 1561. Despite this anti-revenue position, Nowell was appointed the Attorney of the Court of Wards the same year he read.<sup>79</sup> Nowell's interpretation was then adopted by the Court of Wards seven years later in the decision of *Madam Woodhouse's Case*. This interpretation was repeated in an anonymous case from the Court of Wards in 1570 and again in

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<sup>78</sup> CUL MS Dd.5.51(d), f. 26v.

<sup>79</sup> BELL, *supra* note 4, at 22, n. 4.

*Gray's Case* in 1572.

One year after the decision in *Gray's Case*, John Popham presented a similar problem in his reading. Nonetheless, Popham argued for a broad application of the statute and cited *Gray's Case* for the opposite rule of law, asserting that a bastard child was within the application of the statute. When Popham read, Dyer's reports, which provided the first printed report of *Gray's Case*, were not to appear for several more years. Manuscripts and reasonable memories could differ in the holding of a case. Popham's argument equates the statutory definition of who is a child with the donor's intent and the donor's characterization of the donee. Because Popham's example dealt with an illegitimate child whose parents later married, this interpretation would also harmonize the definition of legitimacy under the Statute of Wills with the view of the ecclesiastical law. Finally, Popham had been appointed to the Privy Council in 1571, and perhaps this revenue producing interpretation was consistent with his new office.

Question concerning the proper interpretation of the provision lingered into the mid-1570s. Dyer read the provision broadly in 1570 and kept to this interpretation in *Thornton's Case* in 1575. Nonetheless, by 1581 it appears that Dyer had changed his view according to a manuscript of Henry Blanchard's reading. Because Dyer and Blanchard were both members of Middle Temple and both readers on the Statute of Wills, Dyer may have been in attendance at Blanchard's reading.

The only reader after Blanchard to argue for a broader interpretation of the statute was Hugh Hare, who copied Popham's argument. By the time of his reading in 1592, Hare had been joint clerk of the Court of Wards for two years, and this reading of the statute would be consistent with his position.

Thus, for the most part, from 1581 onwards, the law was settled and readers consistently asserted that bastard children were outside the application of the statute. The appearance of Dyer's report of *Gray's Case* in 1585 must have done much to settle any doubts about this exception, Hugh Hare's reading

notwithstanding.

In an era when statutes were still viewed as "amending mischiefs," lawyers were beginning to see that statutory language could lead to unintended consequences. The interplay between statute and case law was more complex than the accepted view that statutes adjusted unwanted shifts of the common law. The manuscripts of the readings also indicate the rather fluid way in which case authorities, even after their being set into print, were presented, used, interpreted and misinterpreted. Using a base of statutory texts, the readings provided a critical setting for statutory interpretation within the common law tradition, a setting where legal knowledge could be displayed, shared, and transmitted. Readings not only advanced the political and professional aspirations of the readers, but also served as important bridges between case law and statute, between legal education and legal practice.