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right to a return of any unearned premium prior to cancellation.[36] Several cases point out exceptions to this generalization. In *Bard v. Fireman's Insurance Co.*,[37] the insured did not know of her right to payment prior to cancellation and surrendered her policy on the strength of the erroneous statement of her agent that the policy was already cancelled. It was there held that no waiver of the insured's rights resulted. A similar result was obtained where the policy was surrendered by a broker without authority,[38] and in another case where the policy was surrendered merely to allow the agent to obtain a description for the purpose of obtaining insurance in another company, which was never done.[39]

Payment in legal tender may be waived by the insured by accepting a check,[40] but tender of the full amount is not waived by a retention of a smaller sum.[41] Actual payment is waived where the insured retains a check until after a loss,[42] unless the insured has stated that he would only accept money.[43]

ILLINOIS INHERITANCE LAWS AND ADOPTED CHILDREN

Laws relating to the adoption of children have an interesting history in the legal systems of ancient and modern nations. Such laws were apparently well known to the Egyptians, Babylonians, Assyrians, Greeks, and Germans of antiquity.[1] In the Roman law, adoption allowed the complete substitution of the rights of the adoptive family for the rights of the natural family, at least until the time of Justinian, when the adopted child was allowed to inherit from his natural family also.[2] In spite of the extent of this ancient legal development, the common law

[36] Addia v. Globe & R.F. Ins. Co., 97 W.Va. 443, 125 S.E. 161 (1924); Liverpool, L. & G. Ins. Co. v. Tharel, 68 Okla. 307, 174 Pac. 773 (1918); Buckley v. Citizens Ins. Co., 188 N.Y. 339, 81 N.E. 165 (1907); Hancock v. Hartford F. Ins. Co., 81 Misc. 159, 142 N.Y.S. 352 (S.Ct., 1913); Bingham v. Ins. Co. of N.A., 4 Wis. 498, 43 N.W. 494 (1889).

[37] 108 Me. 506, 81 Atl. 870 (1911).

[38] Kinney v. Rochester German Ins. Co., 141 Ill. App. 543 (1908).

[39] Caldwell v. Stadcona F. & L. Ins. Co., [1803] 11 Can. S.C. 212.

[40] Gill v. Fidelity Phoenix Fire Ins. Co., 5 F. Supp. 1 (D.C. Ky., 1933); Lampasas Hotel & Park Co. v. Home Ins. Co., 17 Tex. Civ. App. 615, 43 S.W. 1081 (1897).

[41] Quong Tue Sing v. Angelo Nevada Assur. Corp., 86 Cal. 566, 25 Pac. 58 (1890).

[42] Phoenix Ins. Co. of Brooklyn v. Hunter, 95 Miss. 754, 49 So. 740 (1909); Lampasas Hotel & Park Co. v. Home Ins. Co., 17 Tex. Civ. App. 615, 43 S.W. 1081 (1897).

[43] Niagara F. Ins. Co. v. Mitchell, 164 S.W. 919 (Tex. Civ. App., 1914).

[1] 2 C.J.S., Adoption of Children § 2 (1936).

[2] Legislation and Decisions on Inheritance Rights of Adopted Children, 22 Iowa L. Rev. 145, 146 (1936).

never recognized any other than the natural blood relationship.[3] In this country, adoption statutes began to be enacted about a century ago. The first state basing its system of jurisprudence on the common law to enact such a law was Massachusetts.[4]

Since the time when Massachusetts gave impetus to the development of adoption laws, adoption has come to be accepted and, it is perhaps correct to say, even popular. According to an estimate of the United States Children's Bureau, 50,000 children were adopted in this country in 1944.[5] In the months between December 1, 1950, to November 30, 1951, there were 2,458 cases, and in April of 1952 alone there were 179 cases, handled by the County Court of Cook County, Illinois.[6]

In the light of the many adoption cases in the United States at the present time, it is submitted that a thorough re-examination of our existing laws relating to every facet of the problem of adoption must be undertaken, to the end that legislators and courts may approach the problem with an ever increasing realistic view. This article will be concerned primarily with the inheritance laws of Illinois relating to adopted children. No attempt to systematize the adoption laws of all states will be made, for as was said in an early Illinois case,[7] there is no real uniformity in adoption statutes. The subjects of adoption procedure, oral contracts to adopt, and foreign adoption will also not be considered.

The first Illinois legislation on adoption was enacted in 1867.[8] The sections relating to inheritance in that act were amended in the Adoption Act of 1874.[9] The present section of our law dealing with inheritance and

[3] McLaughlin v. People, 403 Ill. 493, 87 N.E. 2d 637 (1949); Watts v. Dull, 184 Ill. 86, 56 N.E. 303 (1900).

[4] Ross v. Ross, 129 Mass. 243 (1880); 2 C.J.S., Adoption of Children § 2 (1936).

[5] Lockridge, Adopting A Child 1 (1948).

[6] These statistics were acquired by personal interview with the Hon. Edmund K. Jarecki, Judge of the County Court, Cook County, Illinois. April was suggested as being a representative month.

[7] Keegan v. Geraghty, 101 Ill. 26 (1881).

[8] Public Laws, 1867, p. 133. Section 1, which pertains to inheritance, reads: "It shall be the duty of the court . . . to make an order declaring said child to be the adopted child of such person, and capable of inheriting his or her estate, . . . thenceforth the relation between such person and the adopted child shall be, as to their legal rights and liabilities, the same as if the relation of parent and child existed between them, except that the adopted father or mother shall never inherit from the child; but to all other persons the adopted child shall stand related as if no such act of adoption had been taken."

[9] Ill. Rev. Stat. (1874) c. 4, §§ 5–7. On the subject of inheritance, that act provided: "A child so adopted shall be deemed, for the purposes of inheritance by such child, and his descendants and husband or wife, and other legal consequences and incidents of the natural relation of parents and children, the child of the parents by adoption, the same as if he had been born to them in lawful wedlock, except that he shall not be capable of taking property expressly limited to the body or bodies of the parents

adopted children, enacted in 1939, is included in the Probate Act. It is substantially the same as the sections in the 1874 act and reads as follows:

A child lawfully adopted is deemed a descendant of the adopting parent for purposes of inheritance, except that the adopted child shall not take property from the lineal or collateral kindred of the adopting parent per stirpes or property expressly limited to the body of the adopting parent.

An adopting parent of a child lawfully adopted is deemed the parent of the adopted child for purposes of inheritance, except that the parent and the parent's kindred shall take from the child and the child's kindred only such property as the child has taken from or through either or both of the adopting parents by gift, by will, or under the intestate laws with the accumulations, income, and profits thereof.

For purposes of inheritance from the child and his kindred, (1) the spouse of an adopting parent is deemed an adopting parent, and (2) a child is deemed lawfully adopted when the child has been heretofore or is hereafter declared by any court to have been adopted or has been heretofore or is hereafter declared or assumed to be the adopted child of the testator or grantor in any will or deed bequeathing, devising, or giving property to the child.

When an adopted child is related by blood to the adopting parent, the adopted child and his descendants shall take property from the estate of the adopting parent only as an adopted child or descendants of an adopted child and not as relatives by blood.[10]

The last paragraph of the 1939 law is a new provision in the Illinois statute.

Although the statute fails to cover this point, it has been held under the Illinois statute that an adopted child can inherit from its natural parents.[11] No section of the statute forbids this, and thus the adopted child is given a double right of inheritance—from his adoptive and

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by adoption, nor property from the lineal or collateral kindred of such parent by right.

The parents by adoption and their heirs shall take by descent from any child adopted under this or any other law of this state for the adoption of children, and the descendants, and husband or wife of such child, only such property as he has taken or may hereafter take from or through the adopting parents or either of them, either by gift, bequest, devise or descent, with the accumulations, income and profits thereof; and all laws of descent and rules of inheritance shall apply to and govern the descent of any such property, the same as if the child were the natural child of such parents; but the parents by adoption and their heirs shall not inherit any property which such child may take or have taken by gift, bequest, devise or descent from his kindred by blood.

The preceding section shall apply to any case where a child has heretofore been declared by any court to have been adopted, or where such adoption has been declared or assumed in any deed or last will and testament, giving, bequeathing or devising property to such child, as the adopted child of the grantor or testator, and the wife or husband of such adopting parent shall be capable of inheriting from such child the same as if she or he had become the adopted mother or father of such child, pursuant to this act."

[10] Ill. Rev. Stat. (1951) c. 3, § 165.

[11] In re Estate of Tilliski, 390 Ill. 273, 61 N.E. 2d 24 (1945).

natural parents. A child adopted after its adoptive parent's execution of a will is an after-born child within the statute[12] which provides that if a child is born to the testator after his will is made, that child will take of the estate of the testator what he would have taken had his parent died intestate, unless the testator provides for such a child in his will, or unless it appears to be the testator's intention to disinherit such child.[13]

An Illinois statute provides that where a descendant who is a devisee or legatee predeceases the testator, and there is no provision in the will for such a contingency, the descendants of such legatee or devisee will take per stirpes the estate so devised or bequeathed.[14] An adopted child will take as a descendant of such a devisee or legatee, on the theory that the adopted child would be taking as a substituted legatee and not as an heir of the adoptive grandparent.[15]

It has also been held that a widow cannot, by renunciation, elect to take one-half of her deceased husband's realty if there is an adopted child and no natural children.[16] Also, where an adopted child acquires property by gift from his adoptive parents who also happen to be his blood relatives, it has been held that such parents would take from the child as adoptive parents, under the statute, what was so given to the child.[17]

A somewhat more difficult problem which the courts face involves the construction of wills and deeds. The court must determine whether or not such terms as "child," "heir," or "issue," are meant by the testator or grantor to include adopted children. This is primarily a matter of intent.[18]

The word "issue" will generally not include adopted children. Thus, where the testator devised land to his nephew for life or until he shall have "a child, his lawful issue," it was held that an adopted child was not such "lawful issue."[19] The term "heirs generally" will include adopted

[12] Ill. Rev. Stat. (1951) c. 3, § 199.

[13] Hopkins v. Gifford, 309 Ill. 363, 141 N.E. 178 (1923); Flannigan v. Howard, 200 Ill. 396, 65 N.E. 782 (1902).

[14] Ill. Rev. Stat. (1951) c. 3, § 200.

[15] In re Estate of Harmount, 336 Ill. App. 322, 83 N.E. 2d 756 (1949).

[16] Sayles v. Christie, 187 Ill. 420, 58 N.E. 480 (1900).

[17] Carter Oil Co. v. Norman, 131 F. 2d 451 (C. A. 7th, 1942).

[18] Moffet v. Cash, 346 Ill. 287, 178 N.E. 658 (1931); Miller v. Wick, 311 Ill. 269, 142 N.E. 490 (1924).

[19] Miller v. Wick, 311 Ill. 269, 142 N.E. 490 (1924). It has been held that the term "descendants" means "issue," and will not, when taken in its ordinary sense, include adopted children. Hale v. Hale, 237 Ill. App. 410 (1925). It should be noted, however, that this case was decided under the 1874 act which provided that an adopted child is deemed a "child" of its adoptive parents. The present act provides that an adopted child is deemed a "descendant" of its adoptive parents. See Ill. Rev. Stat. (1951) c. 3 § 165.

children, in the absence of a contrary intention appearing, since it is the law that defines who is an heir.[20]

It is perhaps not as easy to determine the testator's intention when the word "children" is used. In *Wallace v. Noland*,[21] the testator died in 1866. He left certain property to his son, providing that if his son should "die leaving no heirs," the property was to pass to another. The court first having determined that the word "heirs" meant "children," concluded that the term would not include adopted children since at the time of the execution of the will, and at the time of the testator's death, there was no Illinois statute on adoption. Therefore, the testator could only have had natural children in mind. A similar result was reached where the life tenant adopted a child nine years after the testator's death, although the Illinois Adoption Act of 1874 was in force at the time of the execution of the will.[22] In *Munie v. Gruenwald*,[23] there was a devise over to children of the testator's children "should any of my . . . children die before my death or that of my wife. . . ." The testator's daughter had adopted the appellee seven years before the will was drawn, and this with the knowledge of the testator. The court held the appellee to be a "child" within that will.

It has been said that the modern trend is to extend the inheritance rights of adopted children.[24] It is the thesis of the present writer that the more progressive view would be to substitute entirely the adoptive family for the natural one. Such a departure from what has been the law in Illinois would, of course, involve amendments to the present statutes in the following manner:

(1) The adoptive parents and their lineals and collaterals would be enabled to inherit from the adopted child as if the latter were born in lawful wedlock to the adoptive parent. From such a provision, it would follow that all rights of inheritance of the natural parents would be severed. Presently, the law provides for inheritance by the adoptive parents to the extent that the child took from those parents by gift or otherwise.[25] Presumably, the natural parent still inherits from the child that which the child acquired by himself, the statute not having covered this point. This rule which divides inheritance according to the source of the property might be difficult indeed properly to carry into effect. It is quite laborious to determine, in this complex age, the source of a

[20] Butterfield v. Sawyer, 187 Ill. 598, 58 N.E. 602 (1900).

[21] 246 Ill. 535, 92 N.E. 956 (1910).

[22] Belfield v. Findlay, 389 Ill. 526, 60 N.E. 2d 403 (1945).

[23] 289 Ill. 468, 124 N.E. 605 (1919).

[24] In re Hecker's Estate, 178 Misc. 449, 33 N.Y.S. 2d 365 (Surr. Ct., 1942); Legislation and Decisions on Inheritance Rights of Adopted Children, 22 Iowa L. Rev. 145, 153 (1936).

[25] Ill. Rev. Stat. (1951) c. 3, § 165.

decedent's property. Such would certainly be the case in the event the decedent left no records. The problem becomes more complicated when attempting to compute not only the source, but the extent of the accumulations therefrom.

Forbidding inheritance by the natural parents would make the law more consistent with the provision of the Adoption Act that reads:

> The natural parents of a child so adopted shall be deprived, by the decree, of all legal rights as respects the child, and the child shall be freed from all obligations of maintenance and obedience as respects such parents.[26]

(2) The adopted child would inherit not only from his adoptive parents, but from their lineals and collaterals as well. The argument against the extension of such rights to the adopted child seems to be that "another person, who has never been a party to any adoption proceeding, . . . why should his property be subjected to such an unnatural course of descent? To have it turned away upon his death from blood relations, where it would be the natural desire to have property go, and pass into the hands of an alien in blood,—to produce such effect . . . the . . . statute should be most clear."[27]

Whether or not a collateral or lineal of the adoptive parent would in fact react in the manner suggested by the Illinois court is a matter for conjecture; however, be that as it may, such collateral or lineal can effectuate his intention by executing a will. Adoption being as common as it is today, the intent of the relative will probably depend more on the character of the child than consanguinity. The law, then, ought to give full effect to the status which, by virtue of its adoption laws, it has brought into being.

(3) The adopted child would not inherit from its natural parents. The rule that an adopted child can so inherit was established in Illinois by judicial decision.[28] It is thought that the adoption of children is in the best interests of the state and society as a whole.[29] However, it is submitted that the adoption laws are so constructed so as to "give the child as good a chance as children in general have, it was not its plan to give him a better one,"[30] in the form of a double right of inheritance.

(4) The law would provide that the use of the word "child" or its equivalent in any instrument whatsoever would include adopted children, unless a contrary intention appears. Such an enactment would not be an innovation in American jurisprudence.[31] Statutory language of similar

[26] Ill. Rev. Stat. (1951) c. 4, § 5-1.

[27] Keegan v. Geraghty, 101 Ill. 26, 35 (1881).

[28] In re Estate of Tilliski, 390 Ill. 273, 61 N.E. 2d 24 (1945).

[29] Hopkins v. Gifford, 309 Ill. 363, 141 N.E. 178 (1923).

[30] Young v. Bridges, 86 N.H. 135, 142, 165 Atl. 272, 276 (1933).

[31] See, e.g., Ann. Code of Md. (1947) Art. 16, § 85 K(c), and authorities cited in The Progress of Law, 1919-1920, 34 Harv. L. Rev. 508, 529-530 (1921).

import would bring clarity to the law, while it would preserve the right of the individual to provide as he sees fit by the use of a will. The arguments set forth in this article are perhaps not conclusive. Much remains to be said pro and con, especially with reference to points (2) and (3). Illinois would by no means be a pioneer in the field if the legislature were to enact such legislation. Similar legislation has already been passed in such states as Kansas,[32] Delaware,[33] Connecticut,[34] Maryland,[35] Minnesota,[36] and Pennsylvania,[37] and it is the understanding of the writer that several Illinois bar associations are considering the advisability of recommending changes in the inheritance laws along some of the lines above suggested.[38]

DEFAMATION AND THE MERCANTILE AGENCY

Credit, or the trust reposed in the ability of one to render his consideration in the future, is undoubtedly the most important preliminary factor in many business transactions.[1] It is essential that the merchant, or person from whom credit is sought, obtain information as to the solvency and reliability of applicants for credit in order that he may conduct his business prudently. As a corollary, it is necessary that the buyer or seeker of credit maintain his reputation of reliability in financial matters in order that he, also, may continue successfully in business. Ultimately, the credit evaluation of the applicant may determine whether or not a contract will be entered into, and if so, its terms.

The right of the applicant to remain secure in his reputation, for which he looks to the laws of libel and slander, as opposed to the right of the creditor to obtain frank information concerning the applicant's credit standing results in a clash of personal interests. The clash becomes apparent when the potential creditor seeks to acquire information relating to the solvency and integrity of the applicant. If, in the process of obtaining this information, a defamatory communication is made concerning either the financial worth or personal reputation of the applicant, the laws of libel and slander will be called upon to resolve the question of liability.

One of the methods of acquiring credit evaluations is the utilization

[32] Gen. Stat. of Kan. (1949) c. 59, § 2103.

[33] Laws of Del. (1951) c. 134, § 4(J) .

[34] Gen. Stat. of Conn. (1949) c. 335, § 6869.

[35] Ann. Code of Md. (1947) Art. 93, § 139A.

[36] Minn. Stat. Ann. (1951) c. 259, § 259.07.

[37] Pa. Stat. Ann. (1951) Title 20, c. 1, § 101–102.

[38] Kahn, Section on Probate and Trust Law, 40 Ill. Bar J. 650, 651 (1952).

[1] ". . . in the twelve month period of May 1949 through April 1950 our manufacturers' and wholesalers' sales totaled $303 billion—ninety per cent of which was conducted on credit terms." The Mercantile Agency, Dun & Bradstreet Inc. 56 (1950).