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NOTES

Inheritance From An Adopted Child

THE INCREASING number of adoptions in the United States presents a challenge to the courts and legislatures to keep abreast of the social developments in this field.¹ Among the many legal problems created by adoption is that of determining the adoptive relatives' rights of inheritance from the adopted child. This problem has received too little consideration to afford proper protection to the adoptive family.²

In adoption, which has been recognized since ancient times,³ emphasis initially was placed upon the continuance of the family, but the later Christian influence stressed protection of the homeless and destitute child as the dominant motive.⁴ The early American statutes on adoption were based upon this latter attitude and gave the adopted child the right to inherit *from* his parents by adoption.⁵ But the legislatures failed to allow the adopted child to

¹ The Children's Bureau of the U. S. Department of Labor estimated that there were 50,000 adoption petitions filed in 1944, and there are indications that the number of adoptions has increased greatly since that time. Smith, *Adoption* in SOCIAL WORK YEARBOOK 22, 24 (1949).

² BROOKS, *ADVENTURING IN ADOPTION* 162 (1939); RICKS, *LEGAL ASPECTS OF ADOPTION* (Child Welfare League) 13 (1937).

³ For a complete account of the history and development of adoption, see BROOKS, *op. cit. supra* note 2, at 93 *et seq.*; Appeal of Woodward, 81 Conn. 152, 70 Atl. 453 (1908); Hockaday v. Lynn, 200 Mo. 456, 98 S.W. 585 (1906).

⁴ BROOKS, *op. cit. supra* note 2, at 96.

⁵ According to KNOX, *THE FAMILY AND THE LAW* 98 (1941), the first adoption statute in this country was passed by Massachusetts in 1851. Mass. Acts and

inherit *through* his adoptive parents⁶ and to allow the adoptive parents and adoptive kin to inherit from the child.⁷ The failure to allow the adopted child to inherit *through* the adopting parents was probably due to a reluctance to have the adoption procedure bind persons who were not parties to it.⁸ The failure to permit the adoptive relatives to inherit from the child may be attributed to a desire to protect the child and discourage predatory adoption.⁹ Gradually, some legislatures gave rights of inheritance from the adopted child to the adoptive parents and their kin, but these were limited to property that the adopted child had obtained from them by gift, will or descent.¹⁰ This form of limited inheritance by the adoptive relatives today is found in a number of states.¹¹ Others have broadened the inheritance rights of adoptive relatives; but those which accord the same rights of inheritance to adoptive relatives as normally are accorded to blood relatives are a minority.¹²

Section 10512-23 of the Ohio General Code provides:

. . . The natural parents, if living, shall be divested of all legal rights and obligations due from them to the (adopted) child or from the child to them, and the child shall be free from all legal obligations of obedience or otherwise to such

Resolves of 1851, c. 324. Subsequent statutes in other states appear to have been patterned after the Massachusetts act. *E.g.*, Wis. Gen. Acts of 1853, c. 85; Maine Acts and Resolves of 1855, c. 189; N.H. Laws of 1862, c. 2603; R.I. Acts of 1866, c. 627. The failure of the early American adoption statutes to provide adequately for inheritance rights may have been caused by a reluctance to encroach upon the Anglo-American concept of blood descent. In Kuhlmann, *Intestate Succession By and From The Adopted Child*, 28 WASH. U. L. Q. 221, 246 (1943), the author explains this reluctance by the fact that "adoption procedures were too questionable to merit revision of the well-established common law rules of intestate succession."

⁶ Kuhlmann, *supra* note 5, at 225.

⁷ *Ibid.*

⁸ *Phillips v. McConica*, 59 Ohio St. 1, 51 N.E. 445 (1898); *Quigley v. Mitchell*, 41 Ohio St. 375 (1884).

⁹ Kuhlmann, *supra* note 5, at 225. It is doubtful that such predatory motives exist to any appreciable degree. The main motives for adoption are an interest in children, a desire for affectionate response and an insurance against the insecurity of old age (the last not necessarily implying support). BROOKS, *ADVENTURING IN ADOPTION* 183 (1939); see also PRENTICE, *AN ADOPTED CHILD LOOKS AT ADOPTION* 176 *et seq.* (1940).

¹⁰ *E.g.*, Ill. Stat., c. 4, § 6 (Hurd, 1874); Pa. Laws of 1887, Act No. 22; Mich. Pub. Acts of 1891, Act No. 81. It is probable that the purpose of these provisions was not to accord reciprocal rights to the adopter but to keep this property in the family. The entire history of adoption shows an aversion to allowing blood strangers to inherit the property of others.

¹¹ See notes 22 and 34 *infra*.

¹² See notes 21 and 33 *infra*.

parents; and the adopting parent or parents of the child shall be invested with every legal right in respect to obedience and maintenance on the part of the child as if said child had been born to them in lawful wedlock; and the child shall be invested with every legal right, privilege, obligation and relation in respect to education, maintenance and the rights of inheritance to real estate, or to the distribution of personal estate on the death of such adopting parent or parents as if born to them in lawful wedlock; provided, such child shall not be capable of inheriting property expressly limited to heirs of the body of the adopting parent or parents; but shall be capable of inheriting property expressly limited by will or by operation of law to the child or children, heir or heirs at law, or next of kin, of the adopting parent or parents, or to a class including any of the foregoing, and provided, also, if such adopting parent or parents shall have other child or children, then the children by birth and adoption shall, respectively, inherit from and through each other as if all had been children of the same parents born in lawful wedlock. Nothing in this act shall be construed as debarring a legally adopted child from inheriting property of its natural parents or other kin. . . .

This statute has been construed to allow the adopted child to inherit *through* as well as *from* the adopting parents.¹³ Since the statute expressly preserves the right of an adopted child to inherit from his natural family, the only remaining problem is that of inheritance from the adopted child.

The first Ohio case to raise the issue of inheritance from an adopted child was *Upton v. Noble*,¹⁴ in which the natural mother and the adoptive parents claimed the property of the child. The court held that the adoption statute, being in derogation of the

¹³ *White v. Meyer*, 66 Ohio App. 549, 37 N.E.2d 546 (1940) (adopted child permitted to inherit property of sister of deceased adoptive parent), 8 Ohio St. L. J. 113 (1941); *cf. Flynn v. Bredbeck*, 147 Ohio St. 49, 68 N.E.2d 75 (1946) (adopted child held within the term "issue" in the "anti-lapsing" statute); *In re Estate of Friedman*, 55 Ohio L. Abs. 22 (Ct. App. 1949) (adopted child held to be lineal descendant of adoptive grandfather for purpose of giving his succession, under the will of the grandfather, a greater exemption and lower rate of taxation). These decisions, based on a 1931 amendment to the Adoption Code, 114 Ohio Laws 474, overrule a long line of cases holding that an adopted child cannot inherit through his adopting parents. In respect to this issue, the present statute is the same as the 1931 amendment.

¹⁴ 35 Ohio St. 655 (1880).

common law, should be strictly construed; to allow the adoptive parents to inherit in preference to the natural parent would change the course of descent and distribution and ignore all merit on account of blood; since the statute made the child the legal heir of the adopter without an explicit reciprocal provision in favor of the adopter, the property should be awarded to the natural mother.

The *Upson* case appears to be the only Ohio decision involving inheritance rights of adoptive parents. In *Ransom v. New York, C. & St. L. Ry.*,¹⁵ the adoptive parents were allowed to recover for the wrongful death of their adopted child. By manifesting a liberal and humanitarian attitude toward the adoption statute, the court seemingly overrules the *Upson* case in principle.¹⁶ But inasmuch as inheritance rights were not involved in the *Ransom* case, a court, confronted with the problem in the future, might revert to the strict construction theory of the *Upson* case¹⁷ and deny the right of the adopting parents to inherit from the adopted child.

Since the *Upson* and *Ransom* cases were decided, the adoption statute has not been changed to give an explicit right of inheritance to the adopting parents, although it was amended to allow the natural and adopted children of the adopting parents to inherit from and through each other.¹⁸ There seems to be no logical reason why the natural children of the adopter should have a right of inheritance and not the adopter also. Therefore, it may be that the legislature, in enacting this amendment, assumed that the adopting parents already had the right to inherit from the adopted child and felt that it was not necessary explicitly to give them a right. But a court, interpreting this statute, might hold that, since it gives an express right of inheritance to the natural children of the adopter without a similar express provision for

¹⁵ 93 Ohio St. 223, 112 N.E. 586 (1915).

¹⁶ DIEBEL, OHIO PROBATE LAW § 1184 n. 2 (1948).

¹⁷ This would be in direct contravention of OHIO GENERAL CODE § 10214, which provides that the rule of construction that statutes in derogation of the common law must be strictly construed has no application to the portions of the code of which the adoption provisions are a part. *But cf.* National Bank of Lima v. Hancock, 85 Ohio App. 1, 88 N.E.2d 67 (1948), discussed *infra*, in which the court followed the strict construction theory of the *Upson* case in denying any right of inheritance to the adoptive collateral kin.

¹⁸ 109 Ohio Laws 179 (1921). The statute on which the decisions in the *Upson* and *Ransom* cases were based may be found in 56 Ohio Laws 82 (1859).

the adopter, the legislature did not intend to allow the adopting parents to inherit from the adopted child.¹⁹

The legislature's failure to provide an indisputable right of inheritance for the adopting parents appears to be inconsistent with sound social and legislative policies. In most cases of adoption, the children care little about their natural parents and regard their adoptive parents as their own, feeling a strong sense of responsibility toward them.²⁰ It is doubtful that they would care to have their property descend to their natural parents in preference to their adoptive parents. Also, the distribution of the adopted child's property to his natural family creates an inequitable result. It is the adopting parents who have assumed the normal parental responsibilities and duties toward the child and have given him the opportunity to accumulate an estate. And the estate ought to be distributed to those who have made its existence possible. Furthermore, since the adopted child may inherit from the adopting parent, the logical extension of this rule is that reciprocal rights be accorded to the parents. Such an extension has been expressly made in statutes of twenty-four states and territories.²¹ In ten states the legislatures have made the source of the property determinative of the right of the adoptive parents to inherit,²² while sixteen states, including Ohio, have no

¹⁹ See *National Bank of Lima v. Hancock*, 85 Ohio App. 1, 15, 88 N.E.2d 67, 74 (1948) where the court states that the application of the clause that "the natural parents of the child, if living, shall be divested of all legal rights and obligations due . . . from the child to them" is limited to rights other than rights of inheritance.

²⁰ LOCKRIDGE, *ADOPTING A CHILD* 152 (1947); BROOKS, *ADVENTURING IN ADOPTION* 32 (1939).

²¹ ALASKA COMP. LAWS ANN. § 21-3-21 (1949); CALIF. PROBATE CODE § 257 (Deering, 1941); COLO. STAT. ANN., c. 4, § 5 (1935); CONN. GEN. STAT. § 6869 (1949); D. C. CODE § 16-205 (1940); FLA. STAT. ANN. § 731.30 (1944); HAWAII REV. LAWS § 12278 (1945); IOWA CODE § 636.32 (1946); KAN. GEN. STAT. § 59-507 (Supp. 1947); KY. REV. STAT. § 391.080 (Baldwin's, 1942); LA. GEN. STAT. § 9734.6 (Dart, 1939); MICH. STAT. ANN. § 27.3178(164) (1943) (personal property); MINN. STAT. ANN. § 259.07 (1947); MO. REV. STAT. ANN. § 9614 (Supp. 1948); NEB. REV. STAT. § 43-110 (1943); NEV. LAWS, c. 152, § 5 (1941); N. Y. DOM. REL. LAW § 115; N. C. LAWS, c. 832, § 1, c. 879, § 1 (1947), amending N. C. GEN. STAT. §§ 29-1, 28-149 (1943); ORE. COMP. LAWS ANN. § 63-407 (a) (Supp. 1947); PA. STAT. ANN., tit. 20, § 1.8 (Purdon, Supp. 1948); TEXAS STAT. ANN., art. 46a, § 9 (Vernon's Civil, 1947); VT. STAT. § 9954 (1947); WASH. LAWS OF 1943, c. 268, § 12, amending WASH. REV. STAT. § 1699 (1932); WIS. STAT. § 322.07 (1947). Many of these statutes have been passed either to adopt or to overrule previous court decisions.

²² Four states limit the adoptive parents' right of inheritance to property received by the child from the adoptive family. ARIZ. CODE ANN. § 39-103 (1939); ILL. ANN. STAT., c. 3, § 165 (Smith-Hurd, 1941); IND. STAT. ANN. § 3-121

explicit statutory provision allowing the adoptive parents to inherit from the adopted child.²³ The statutes of two states expressly deny the right of inheritance of the adoptive parent.²⁴

As to the right of the natural parents to inherit from an adopted child—fifteen jurisdictions have express statutory provisions denying this right.²⁵ The statutes of thirteen others, which expressly limit the adoptive relatives' inheritance rights to certain property, either expressly or impliedly allow the natural parents to inherit the remainder,²⁶ while those of three states allow the natural parents to inherit only in the absence of adoptive relatives.²⁷ The statutes of the nineteen remaining states, including Ohio, have no explicit provision on this point and are subject to diverse interpretation.²⁸

(Burn's, 1933; Repl. 1946); OKLA. STAT. ANN., tit. 10, § 53 (Supp. 1948). Six states allow the adoptive parents to inherit all property except that received by the adopted child from his natural family. ARK. STAT. ANN. § 56-109(b) (1947); ME. REV. STAT., c. 145, § 38 (1944); MASS. ANN. LAWS, c. 210, § 7 (1933); MICH. STAT. ANN. § 27.3178(156) (1943) (real property); N. H. REV. LAWS, c. 345, § 5 (1942); VA. CODE ANN. § 5333h(b) (1942).

²³ ALA. CODE, tit. 27, § 5 (1940); Del. Laws of 1937, c. 187, p. 622, amending DEL. REV. CODE, c. 88, § 3551 (1935); IDAHO CODE §§ 16-1508, -1509 (1947); MD. ANN. CODE, art. 16, § 85k (Flack's, Supp. 1947); MISS. CODE ANN. § 1269 (1942); MONT. REV. CODE §§ 5863, 5864 (1935); N. J. STAT. ANN. § 9:3-9 (1939); N. M. STAT. ANN. § 25-211 (1941); N. D. REV. CODE §§ 14-1113, -1114 (1943); OHIO GEN. CODE § 10512-23; R. I. GEN. LAWS, c. 420 (1938); S. C. CODE OF LAWS § 8679 (1942); S. D. CODE § 14.0407 (1939); UTAH REV. STAT. §§ 14-4-10, -11 (1933); W. VA. CODE ANN. § 4759 (1943); WYO. COMP. STAT. ANN. §§ 58-204, 58-216 (1945).

²⁴ GA. CODE ANN. § 74-404 (1935) (only adopting father denied the right); TENN. CODE § 9570 (Williams, 1934).

²⁵ ALASKA COMP. LAWS ANN. § 21-3-21 (1949); CALIF. PROB. CODE § 257 (Deering, 1941); COLO. STAT. ANN., c. 4, § 5 (1935); CONN. GEN. STAT. § 6869 (1949); D. C. CODE § 16-205 (1940); FLA. STAT. ANN. § 731.30 (1944); HAWAII REV. LAWS § 12278 (1945); KAN. GEN. STAT. § 59-2103 (Supp. 1947); MICH. STAT. ANN. § 27.3178(164) (1943) (personal property); MINN. STAT. ANN. § 259.07 (1947); NEB. REV. STAT. § 43-110 (1943); N. Y. DOM. REL. LAW § 115; PA. STAT. ANN., tit. 20, § 1.8 (Purdon, Supp. 1948); TEXAS STAT. ANN., art. 46a, § 9 (Vernon's Civil, 1947); VT. STAT. § 9954 (1947); Wash. Laws of 1943, c. 268, § 12, amending WASH. REV. STAT. § 1699 (1932).

²⁶ ARIZ. CODE ANN. § 39-103 (1939); ARK. STAT. ANN. § 56-109b (1947); Del. Laws of 1937, c. 187, p. 622, amending DEL. REV. CODE, c. 88, § 3551 (1935); ILL. ANN. STAT., c. 3, § 165 (Smith-Hurd, 1941); IND. STAT. ANN. § 3-121 (Burn's, 1933; Repl. 1946); ME. REV. STAT., c. 145, § 38 (1944); MASS. ANN. LAWS, c. 210, § 7 (1933); MICH. STAT. ANN. § 27.3178(156) (1943) (real property); N. H. REV. LAWS, c. 345, § 5 (1942); N. J. STAT. ANN. § 9:3-9 (1939); OKLA. STAT. ANN., tit. 10, § 53 (Supp. 1948); VA. CODE ANN. § 5333h (1942); W. VA. CODE ANN. § 4759 (1943).

²⁷ IOWA CODE § 636.43 (1946); KY. REV. STAT. § 391.080(2) (Baldwin's, 1942); WIS. STAT. § 322.07 (1947).

²⁸ Most of these states have provisions to the effect that the natural parents shall be freed of all the obligations and duties toward the child and the latter

The problem that has received the least attention is that of inheritance by the adoptive relatives, other than parents, from the adopted child. This is probably the most frequently occurring problem. In the recent case of *National Bank of Lima v. Hancock*,²⁹ the adopted child died intestate, leaving no spouse or issue. The decedent had inherited property from her adoptive mother and brother, which property was identifiable at her death. The adoptive cousins of the decedent and the children of the decedent's natural half-brother claimed the right of inheritance to this property. The court, following the strict construction theory presented by the *Upton* case, awarded the property to the blood kin. Although the court's approach to the problem seems rather narrow,³⁰ it is doubtful that a liberal interpretation of the adoption statute would achieve a different result. The fault lies with the legislature. The result in the *Hancock* case is an example of the "unjust, unanticipated and unconscionable dispositions of intestate estates" caused by the uncertainties and inadequacies of our adoption laws.³¹

In several states where the statutes were not explicit as to the right of the adoptive relatives to inherit from the adopted child, the courts have recognized this right in respect to property which

shall be freed of all obligations of obedience and maintenance to them; others, that the adoptee shall be treated in all respects as the child of the adopter; and still others, that all rights and duties and all legal relationship between the child and his natural parents shall cease.

²⁹ 85 Ohio App. 1, 88 N.E.2d 67 (1948).

³⁰ See note 18 *supra*.

³¹ Kuhlmann, *Intestate Succession By and From The Adopted Child*, 28 WASH. U. L. Q. 221, 244 (1943).

Another gross injustice is illustrated by a recent Michigan decision. In 1939, the adoption-inheritance provisions in that state were re-enacted into the new probate code. Prior to that time the statute provided: "Whenever any person heretofore or hereafter adopted by any person or persons . . . shall die intestate, leaving no issue, any real estate of which such person dies seized (except such real estate as may have come to such deceased person by inheritance from his or her natural parents) shall descend to the adopting parent or parents or their legal representatives in the same proportions as though such adopting parents had been the natural parents of said deceased person." MICH. STAT. ANN. § 26.994 (1937). In the process of re-enactment the words "or their legal representatives" were omitted. MICH. STAT. ANN. § 27.3178(156) (1943). In *In re Loakes' Estate*, 320 Mich. 674, 32 N. W. 2d 10 (1948), the brothers of the adopting mother claimed the right of inheritance of realty that the deceased adopted child had acquired upon the death of his adopting mother. The court held that the new statute gives realty to the adopting parents only and makes no provision for other members of the adoptive family; since the adoptive parents were dead, the property escheated to the state.

There are other decisions equally harsh, but fortunately they have been corrected by legislation.

the child inherited from his adopter. The argument of these courts is that prospective adopters would be discouraged from adopting children if they knew that their property, subsequently inherited by the adopted child, might finally go to strangers in preference to their own kin.³² This argument disregards the fact that such an adverse result may be obviated by will. Also, in view of the current trend in adoptions, it is doubtful that such a factor is significant in discouraging them.

The legislative trend is toward allowing the adoptive collateral kin to inherit from the adopted child. Fifteen jurisdictions have explicit statutory provisions permitting them to inherit from the child,³³ while the statutes of twelve states regard the source of the estate as determinative of their right to inherit.³⁴ Five states, including Ohio, have statutory provisions according reciprocal rights of inheritance to natural and adopted children of the adopting parents.³⁵ The statutes of the other twenty-two states con-

³² *Alexander v. Lamar*, 188 Ga. 273, 279, 3 S.E.2d 656, 659 (1936); *Shepard v. Murphy*, 332 Mo. 1176, 1184, 61 S.W.2d 746, 749 (1933); *In re Havsgord's Estate*, 34 S.D. 131, 136, 147 N.W. 378, 380 (1914).

³³ ALASKA COMP. LAWS ANN. § 21-3-21 (1949); COLO. STAT. ANN., c. 4, § 5 (1935); CONN. GEN. STAT. § 6869 (1949); D. C. CODE § 16-205 (1941); IOWA CODE § 636.42 (1946); KY. REV. STAT. § 391.080(2) (Baldwin's, 1942) (adoptive relatives share equally with natural relatives); MICH. STAT. ANN. § 27.3178 (164) (1943) (personal property); MINN. STAT. ANN. § 259.07(4) (1947); NEB. REV. STAT. § 43.110 (1943); NEV. LAWS, c. 152, § 5 (1941); ORE. COMP. LAWS ANN. § 63-407(a) (Supp. 1947); PA. STAT. ANN., tit. 20, § 1.8 (Purdon, Supp. 1948); TEXAS STAT. ANN., art. 46a, § 9 (Vernon's Civil, 1947); WASH. LAWS OF 1943, c. 268, § 12, amending WASH. REV. STAT. § 1699 (1932); WIS. STAT. § 322.07 (1947). Many of these statutes overruled decisions denying the right of inheritance.

³⁴ Five states permit the adoptive relatives to inherit all the property except that which came from the natural family. ARK. STAT. ANN. § 56.109(b) (1947); ME. REV. STAT., c. 145, § 38 (1944); MASS. ANN. LAWS, c. 210, § 7 (1933); N. H. REV. LAWS, c. 345, § 5 (1942); VA. CODE ANN. § 5333h(b) (1942). Seven states limit the inheritance right to property which came from the adoptive family. ARIZ. CODE ANN. § 39-103 (1939); DEL. LAWS OF 1937, c. 187, p. 622, amending DEL. REV. CODE, c. 88, § 3551 (1935); ILL. STAT. ANN., c. 3, § 165 (Smith-Hurd, 1941); IND. STAT. ANN. § 3-121 (Burns, 1933; Repl. 1946); N. J. STAT. ANN. § 9:3-9 (1939); OKLA. STAT. ANN., tit. 10, § 53 (Supp. 1948); W. VA. CODE ANN. § 4759 (1943). Prior to 1944 Ohio had a similar provision in its statute. When the Adoption Code was amended in 1943, this provision was omitted. 120 Ohio Laws 440. When the original bill was introduced in the House, it contained no change in Section 10512-23. H. B. No. 279, 95th General Assembly 10 (1943). However, the House Judiciary Committee, to which it was referred, reported out a substitute bill omitting the provision allowing the adoptive relatives to take property which the adopted child had inherited from his adopting parents. SUB. H.B. No. 279, 95th General Assembly 10 (1943). No minutes or reports of this committee are available, and the writer has been unable to discover the reason for this omission.

³⁵ N. J. STAT. ANN. § 9:3-9 (1939); N. Y. DOM. REL. LAW § 115; OHIO GEN. CODE § 10512-23; VT. STAT. § 9954 (1947); W. VA. CODE ANN. § 4759 (1943).

tain no provision pertaining to the right of adoptive relatives to inherit from the adopted child. The inadequate statutory coverage of this problem has resulted in uncertainty and confusion among the courts.

Social scientists regard the adopting family as a complete substitute for the natural family in every respect except the biological. This theory is based on the belief that the essence of parenthood is sociological rather than merely physiological.³⁶ This view finds support in the practical aspect of adoption. Upon adoption, contacts and associations with the natural parents ordinarily cease. In most cases the adopted child has either no knowledge of, or no acquaintance with, his natural parents and relatives.³⁷ Adopted children commonly think of their adoptive relatives and ancestors as their own, and the relatives in turn accept the children as their blood kin.³⁸ Thus the paradox exists that, while the social scientist very properly views adoption as creating a relationship equal to that of the natural family and strives to aid the development of such a relationship, some legislatures, by an anachronistic over-stressing of blood lineage, are deterring the attainment of this desirable end.

In order to help society obtain the fullest benefits from adoption, all rights of inheritance between the adopted child and his natural family should be severed;³⁹ and reciprocal rights of in-

³⁶ BROOKS, *ADVENTURING IN ADOPTION* 136 (1939).

³⁷ CLARKE, *SOCIAL LEGISLATION* 305 (1940).

³⁸ BROOKS, *op. cit. supra* note 31, at 70 and 186. This is particularly true of children adopted at an early age. Statistical findings show that most children who are adopted are very young. In a California survey, it was found that three-fourths of the children were placed in adoptive homes by the time they were six months of age. Smith, *Adoption* in *SOCIAL WORK YEARBOOK* 22, 24 (1949). In another survey, 88 per cent of the children placed independently or by agency were found to be under the age of six, and 55 per cent under the age of one. COLBY, *PROBLEMS AND PROCEDURES IN ADOPTION* (Children's Bur., Dept. of Labor, Pub. No. 262) 28 (1941).

³⁹ This would be in accord with the ancient Roman law of adoption, "one incident of which was that the adopted child took on the full rights of a child in its new family and lost its *birth rights*, becoming a stranger and alien in the family of its origin." *Hockaday v. Lynn*, 200 Mo. 456, 463, 98 S.W. 585, 586 (1906).

As a practical matter the adopted child seldom inherits from his natural relatives. Adoption records, which may be located in a county or state other than that in which the natural relative dies, are confidential; and the welfare agencies advise against the disclosure of the identity of the adopting and natural families to each other. Therefore, the administrator of an intestate estate seldom has knowledge of any adoption out of that family, and, even if he has such knowledge, it is ordinarily difficult to locate the child.