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# Domestic Relations—1917 Adoption Statute—Inheritance from Kindred of Adoptive Parents—Equitable Adoptions

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would allow summary punishment of any contempt, so long as it took place in geographical proximity to the court. The dissent regards this latter view as the holding of the majority.[20] If that is the correct interpretation, the difficult problem remains of what is a sufficiently short distance to come within the meaning of the statute.[21] The geographical criterion, moreover, seems unrealistic; there is little difference in practical effect between bribery in the corridors of the courthouse and bribery miles away which affects the same case. Any other criterion, however, seems out of accord with the statutory language.

J. D. H.

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DOMESTIC RELATIONS—1917 ADOPTION STATUTE—INHERITANCE FROM KINDRED OF ADOPTIVE PARENTS—EQUITABLE ADOPTIONS—[Missouri].—Plaintiff sought to be decreed the adopted son of Bert L. McIntyre and as such the great grandson and heir of Tabitha T. Cunningham, in an action brought against her legatees. A deed of adoption had been made out whereby the Children's Home Board on March 17, 1917 relinquished plaintiff to the McIntyres, who, by the deed, agreed to adopt and said they did adopt plaintiff as their child and heir. The deed was not recorded, as was necessary to make it effective under the statute,[1] because there was then pending in the Missouri General Assembly a proposed adoption law[2] (which became effective June 18, 1917) that would enlarge the privileges of an adopted child, and the adopting parents were advised to confer these rights on the child. It was contended that plaintiff was entitled to inherit under the 1917 statute[3] either because of an agreement to adopt under that statute or because the 1917 law applied to prior as well as subsequent adoptions no matter when the status was created. The trial court held that the agreement to adopt made plaintiff an adopted child under the old law on March 17, when the deed was signed and the child taken from the Children's Home.[4] It further held that the act of 1917 applied only prospectively.[5] The plaintiff appealed from the latter holding. *Held:* affirmed. *McIntyre v. Hardesty.*[6]

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20. Mr. Justice Stone says: "I do not understand my brethren to maintain that the secret bribery or intimidation of a witness in the court room may not be summarily punished." (1941) 61 S. Ct. 810, 819.

21. See, e. g., Ex parte Savin (1889) 131 U. S. 267 (attempt to bribe a witness in corridor and witness room of the court house). Sinclair v. U. S. (1929) 279 U. S. 749 (juror shadowed near courtroom).

1. R. S. Mo. (1909) secs. 1671 & 1673.

2. The act of 1917 was part of Chapter 125, Article 1, R. S. Mo. (1929) secs. 14073-14081, and is now the present adoption law of Missouri, R. S. Mo. (1939) secs. 9608-9614.

3. R. S. Mo. (1939) secs. 9608-9614.

4. In a previous action plaintiff had obtained a decree of a circuit court declaring he was the adopted child of Bert L. McIntyre by and after July 30, 1917.

5. R. S. Mo. (1939) secs. 9608-9614, particularly 9614. The first sentences of section 9614: "When a child is adopted in accordance with the provisions of this article, all legal relationship, and all rights and duties, between such

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Under the old adoption law[7] it was well settled in Missouri that an adopted child had no right of inheritance from the kindred of adoptive parents.[8] The 1917 statute[9] provides that the adopted child inherits as an actual child born in lawful wedlock, except where inheritance is to "heirs of the body."[10] The legislature had the power to make this provision apply to all adopted children, no matter under what procedure they attained that status.[11] This has been done in other states.[12] However, the Missouri court, declaring that the intent of the legislature had to be clear and definite to override the settled public policy that distribution should follow blood, found that the statute applied only prospectively, i. e. to those adopted under its provisions.[13]

Under the old statute[14] a deed of adoption had to be recorded in order to complete a statutory adoption.[15] But though not recorded, it could be evidence of an agreement to adopt, which a court of equity might enforce.[16] Where equity and justice required, Missouri courts have found an enforce-

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child and its natural parents, shall cease and determine. Said child shall thereafter be deemed and held to be for every purpose, the child of its parent or parents by adoption, as fully as though born to them in lawful wedlock."

6. (Mo. 1941) 149 S. W. (2d) 334.

7. Footnote 1, supra.

8. Hockaday v. Lynn (1906) 200 Mo. 456, 98 S. W. 585, 8 L. R. A. (N. S.) 117, 118 Am. St. Rep. 672, 9 Ann. Cas. 775; Rauch v. Metz (Mo. 1919) 212 S. W. 357. See Limbaugh, Adoption of Children in Missouri (1937) 2 Mo. L. Rev. 300, 311.

9. Footnote 3, supra.

10. R. S. Mo. (1939) 9614. See Shepherd v. Murphy (1933) 332 Mo. 1176, 61 S. W. (2d) 746; St. Louis Union Trust Co. v. Hill (1934) 336 Mo. 17, 76 S. W. (2d) 685; Brock v. Dorman (Mo. 1936) 98 S. W. (2d) 672. See also Limbaugh, The Adoption of Children in Missouri (1937) 2 Mo. L. Rev. 300, 312.

11. See In re Hood's Estate (1931) 206 Wis. 227, 239 N. W. 448. "Ordinarily the statute in effect at the time of succession governs the right of an adopted child to inherit from or through adopting parent." 2 C. J. S. 453 and 454 and cases cited in note 44.

12. Ibid.

13. (Mo. 1941) 149 S. W. (2d) 334, 336, 337.

14. Footnote 1, supra.

15. R. S. Mo. (1909) sec. 1671.

16. Ahern v. Matthews (1935) 337 Mo. 362, 85 S. W. (2d) 377, and cases cited at 384. "* * * the authorities very generally establish the proposition that a contract to adopt the child of another as his own, accompanied by virtual, although not a statutory, adoption, and acted upon by both parties during the obligor's life, may be enforced, upon the death of the obligor, by adjudging the child entitled to a natural child's share in the property of the obligor who dies without disposing of his property by will, * * *." 2 C. J. S. 400 and cases cited in footnote 48. See Note (1933) 11 Chi.-Kent L. Rev. 307, 307, & 308 and cases cited; Hanft, Thwarting Adoptions (1941) 19 N. C. L. Rev. 127, 139-142; Annotation (1930) 69 A. L. R. 33-48; Note (1939) 17 Tex. L. Rev. 339, 341; Annotation (1923) 27 A. L. R. 1327. Evidence of oral contract of adoption or adoption by estoppel must be clear, cogent, and convincing and such as to leave no reasonable doubt. Benjamin v. Cronan (1936) 338 Mo. 1177, 93 S. W. (2d) 975 and cases cited at 979.

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able contract to adopt without any direct evidence of the making of such a contract.[17] Although the 1917 statute[18] requires for an adoption a formal and elaborate judicial proceeding,[19] rather than the recording of a deed of adoption, a divided court in *Drake v. Drake*[20] held that the new statute has not changed the policy of the state toward recognizing such equitable adoptions.[21] The recognition of equitable adoptions under the new statute[22] can not be logically reconciled with the theory on which it is based, i. e. on specific performance of an agreement to adopt, because under the 1917 statute the juvenile court's discretionary acceptance of the adoption is required, and therefore the parties themselves are incapable of concluding a statutory adoption.[23] Moreover, it can be argued that the changing of the

17. Drake v. Drake (1931) 328 Mo. 966, 975, 43 S. W. (2d) 556; Ahern v. Matthews (1935) 337 Mo. 362, 375, 85 S. W. (2d) 377. In these cases the substance of an adoption existed because the child was taken into the home as an adopted child and because a lifelong relationship of parent and child ensued. See also Kay v. Niehaus (1923) 298 Mo. 201, 206, 249 S. W. 625; Bland v. Buoy (Mo. 1934) 74 S. W. (2d) 612, 620. Most courts protect the property interest of the defectively adopted child in some manner, as by the contract or estoppel theory. See Note (1934) 11 Chi-Kent L. Rev. 307, 307, 308 and cases cited; Hanft, Thwarting Adoptions (1941) 19 N. C. L. Rev. 127, 139-142; Annotation (1939) 69 A. L. R. 33-48. In Missouri the estoppel theory is also recognized. Thompson v. Moseley (1939) 344 Mo. 240, 125 S. W. (2d) 860. See Benjamin v. Cronan (1936) 338 Mo. 1177, 93 S. W. (2d) 975, 979. Cf. 1 Am. Jur. 631; Annotation (1923) 27 A. L. R. 1321.

18. Footnote 3, supra.

19. Ibid. See Cook, Suggestions as to Certain Changes in the Adoption Statutes (1938) 9 Mo. B. J. 47.

20. (1931) 328 Mo. 966, 43 S. W. (2d) 556. See Comment (1932) 17 ST LOUIS LAW REVIEW 362.

21. The *Drake* case has been followed in one case: Eldred v. Glenn (Mo. App. 1932) 52 S. W. (2d) 35. It has been accepted in dicta in others. See Benjamin v. Cronan (1936) 338 Mo. 1177, 93 S. W. (2d) 975, 979; Bland v. Buoy (Mo. 1934) 74 S. W. (2d) 612, 620; Thompson v. Moseley (1939) 344 Mo. 240, 125 S. W. (2d) 860, 862; Keller v. Lewis County (1939) 345 Mo. 536, 134 S. W. (2d) 48, 51. The doctrine of equitable adoptions has reached its fullest development in Missouri. In this state there is one legal means of attaining the status of an adopted child: the statutory. But there is also a second means: the one recognized by a court of equity. Where persons have lived as parent and child, and where justice and fairness require, the Missouri courts recognize that the status of an adopted child has been created, and will enforce the statutory incidents of that status. Such recognition is based on the theory that there was an executed contract of adoption, i. e. executed by the adopted child, and equity should view as done what ought to be done. However, the contract theory is merely a legal rationalization of a result which courts of equity find just. See Hockaday v. Lynn (1906) 200 Mo. 456, 98 S. W. 585, 8 L. R. A. (N. S.) 117, 118 Am. St. Rep. 672, 9 Ann. Cas. 775; Holloway v. Jones (Mo. 1922) 246 S. W. 587; McCary v. McCary (Mo. 1922) 239 S. W. 848; Taylor v. Coberly (1931) 327 Mo. 940, 38 S. W. (2d) 1055; Ahern v. Matthews (1935) 337 Mo. 362, 85 S. W. (2d) 377; Thompson v. Moseley (1939) 344 Mo. 240, 125 S. W. (2d) 860; Carlin v. Bacon (1929) 322 Mo. 435, 16 S. W. (2d) 46, 69 A. L. R. 1; Mutual Life Ins. Co. v. Benton (1940) 34 F. Supp. 859.

22. Footnote 3, supra.

23. See dissenting opinion in Drake v. Drake (1931) 328 Mo. 966, 43 S. W. (2d) 556. The general rule, where statutes provide for non-con-

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relationship and the rights of children is such a serious matter that the legislature must have intended that a formal judicial proceeding always be a prerequisite to adoption.[24] However, since in the *Drake* case[25] the action was brought by the child to compel recognition of him as the *heir of his adoptive parents,* who were morally obliged to treat the child as theirs, there were clearly strong equities in favor of the decision.[26] In actions for this purpose, recognition of equitable adoptions appears justified.

The Missouri courts have shown, as is illustrated in the principal case,[27] a long standing reluctance to give adopted children rights of inheritance from the kindred of the adoptive parents.[28] The weight of authority in this country is that such rights are not recognized unless the legislative intent to confer such rights is unmistakable,[29] as it appears to be in the present act where children are adopted according to the new procedure.[30] In view of the Missouri courts' past reluctance, it may be questioned whether the courts will allow a child not adopted according to the new statutory procedure to enforce an agreement to adopt so as to make him the *heir of the kindred* of the adoptive parents.[31]

L. E. M.

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tractual methods of adoption, is that the statutory method is exclusive. Comment (1932) 17 ST. LOUIS LAW REVIEW 362. In view of the logical defects in the theory of equitable adoptions based on enforcement of a contract to adopt and on estoppel, "probably the best basis for permitting a child to inherit notwithstanding defects in the adoption procedure is simply to look to the merits and establish a rule to that effect, without casting the rule in terms of any fixed doctrine such as estoppel or contract." Hanft, Thwarting Adoptions (1941) 19 N. C. L. Rev. 127, 141. This is what, in effect, the Missouri courts have done. See, e. g., Benjamin v. Cronan (1936) 338 Mo. 1177, 93 S. W. (2d) 975, 979. See, for an outline and classification of statutes on methods of adoptions: 4 Vernier, *American Family Laws* (1936) 293-338.

24. See Hanft, Thwarting Adoptions (1941) 19 N. C. L. Rev. 127, 141, 142; Note (1939) 17 Tex. L. Rev. 339, 343, 344.

25. Footnote 20, supra.

26. Cf. 1 Am. Jur. 631, sec. 20; Annotation (1923) 27 A. L. R. 1327.

27. (Mo. 1941) 149 S. W. (2d) 334, 337, 338.

28. Hockaday v. Lynn (1906) 200 Mo. 456, 98 S. W. 585, 8 L. R. A. (N. S.) 117, 118 Am. St. Rep. 672, 9 Ann. Cas. 775. See McIntyre v. Hardesty (Mo. 1941) 149 S. W. (2d) 134, 137, 138. Cf. Annotation (1925) 38 A. L. R. 8.

29. See Annotation (1925) 38 A. L. R. 8. But also see Madden, Handbook of the Law of Persons and Domestic Relations (1931) 362, notes 38 and 39, for cases. The statutes of other states are far from satisfactory. The legislatures have rarely stated a clear and adequate policy. 4 Vernier, *American Family Laws* (1936) 408-412.

30. Footnote 10, supra.

31. The kindred would not seem to be under any moral obligation to treat the child as a relative, where the statutory procedure was not followed. Also, they can hardly be held to have notice of the adoption unless the statutory procedure is carried out. There appear to be no strongly persuasive equities in favor of granting a non-statutory adopted child the special rights of inheritance as a descendant from others than the adoptive parents.

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