Adoption in Maryland

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ADOPTION IN MARYLAND*

By JOHN S. STRAHORN, JR.**

Adoption by one person of another who is not his own legitimate child, while early recognized in Roman law, and long known in modern systems based thereon, is an artificial, statutory creature in the Anglo-American system. It was not even provided for in England until 1926, although by now all American states have created it by statute.

This article is being written shortly after the fiftieth anniversary of the first enactment of the Maryland adoption statute, which occurred in 1892. The statute has since been thrice amended, for the first time in 1924 to provide concurrent jurisdiction either where the petitioner or the adoptee resides; then in 1935 to extend adoption jurisdiction to residents of Federal reservations within Maryland.

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*The sub-topics treated in this article, together with the pages at which they begin, are set out at this point:

** Introductory topics: Compliance with statute (page 277); Adoption of adults (page 283).

The procedure for adoption: Territorial jurisdiction and recognition of foreign decrees (page 286); Joint and several adoptions, capacity to adopt (page 292); Notice and consent (page 294); “The best interests and welfare of such child” (page 297); Revocation of adoption (page 301); and Change of name, birth certificates (page 303).

The consequences of adoption: Custody, earnings and services (page 307); Support and maintenance (page 310); Inheritance (page 314); and Revocation of will (page 320).

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1 16 and 17 Geo. V., c. 29.
2 Verniers, American Family Laws (1935) 279.
3 Md. Laws 1892, Ch. 244, now Md. Code (1939) Art. 16, Secs. 78-84. The various provisions of the adoption statute are each quoted once verbatim herein in the following footnotes: Section 78, n. 36; Section 79, n. 46; Section 80, n. 55; Section 81, n. 111; Section 82, n. 89; Section 83, n. 122; and Section 84, n. 49.
4 Md. Laws 1924, Ch. 441, amending Section 78, infra, n. 36. The statute, as originally enacted in 1892, provided only for jurisdiction where the petitioner resides.
5 Md. Laws 1935, Ch. 63, adding Section 79, infra, n. 46.
land; and last in 1937 to provide for the adoption of adults. All of the other provisions of the adoption law remain as first enacted in 1892.

The need for and details of a legal system of adoption would seem to depend on the motives which induce persons to adopt others. These vary according to whether the adoptee be an infant or an adult. In the more frequent situation of adoption of an infant, the principal motive would be to seek for a guarantee that all the legal attributes of the natural parent-child relation will follow from the adoptive one. These would include the rights to custody of the child and to his earnings and services during minority; the duty to support the child along with, possibly, the expectation on the parent's part of receiving support in his old age; and provision for inheritance by the child from the parent in the event of intestacy.

All of these are involved when an infant is adopted, and thus the desire is to give legal sanction to the factual situation of a child's being reared in a family other than that of his own natural parents. When an adult is to be adopted, however, the adopter is not concerned with custody, earnings, services, and support of the child. Rather the principal motive is to provide for inheritance.\footnote{Md. Laws 1937, Ch. 172, amending Section 78, infra, n. 36.}

In general, with reference to the consequences, adoption could well be analogized to the legitimation of an originally illegitimate child, which latter, in Maryland law, can be accomplished only by the combination of marriage to the mother and recognition of paternity,\footnote{As indicating that the father's right of action for the child's earnings is not outmoded, consider Lucas v. Maryland Drydock Co., 31 A. (2d) 637 (Md., 1943).} although certain other states permit it by mere recognition, with or without marriage.\footnote{Md. Code (1939) Art. 6.} In fact, there may be occasional motive, under Maryland law, for one formally to adopt his own illegitimate child for the purpose of indirectly accomplishing-\footnote{See infra, n. 17 and 19, for mention of another possible motive.}
ADOPTION

ing the sequelae of legitimation. One reason for this may be in order to keep secret the fact of original illegitimate relationship.\textsuperscript{10} Or, it may be because adoption is the only way the consequences of legitimation can be accomplished, as where the child’s mother is dead, or the father is already married to another woman.\textsuperscript{11} In either event, he is incapable of marrying the mother of the child, and thus he cannot perform one of the two essential requirements for legitimation, as such, in Maryland law.

While the sequelae of adoption and legitimation are practically the same, they are not exactly so. They are the same with respect to custody, earnings, services, and, probably, support. But they are not exactly so with respect to inheritance, as will be shown later, for while probably a legitimated child would be treated as equal to an originally legitimate one for all inheritance purposes, an adopted one is not completely so regarded.\textsuperscript{12}

\textit{Compliance With Statute}

As was mentioned above, in the Anglo-American system adoption is purely statutory. Thus, unless there be a local statute in effect and it be complied with, the legal sequelae of adoption do not follow from whatsoever arrangement the parties may have entered into looking toward an adoption in fact.

\textsuperscript{10} The situation has been known to arise where a woman, separated from her husband, gives birth to a child by another man, but the husband’s name is recorded on the birth certificate as father. If the wife should be divorced from the first husband and later marry the father of her child, adoption by them jointly would be the preferable route to “legitimate” the child, for the reason that the presumption of legitimacy, difficult to rebut, would be a barrier to establishing the necessary foundation fact for normal legitimation, that the woman’s child is that of the subsequently marrying husband. This was the obstacle in the well known Maryland case of Scanlon v. Walshe, 81 Md. 118, 31 A. 498, 48 A. S. R. 488 (1895), a case involving inheritance.

\textsuperscript{11} Where the father is already married to another woman, and wishes to adopt severally, the consent of the wife must be obtained, or the spouses must be living apart under circumstances entitling the husband to a divorce, or his wife must be insane. On this see the text, \textit{infra}, circa n. 57.

\textsuperscript{12} Holloway v. Safe Deposit and Trust Co., \textit{supra}, n. 9, indicates that a legitimated child is counted as a “child” of the legitimating parent for all purposes, including taking under the will of one of the parent’s relatives. This last is not so in the case of an adopted child, on which see the text \textit{infra}, circa n. 120.
Whether or not a private arrangement or agreement, entered into since the local statutory adoption procedure has been in force, will be given enforcement as a contract to adopt is a matter not yet passed on in Maryland adjudication. There is authority from elsewhere in favor of the specific performance of such contracts, even after the death of the prospective adopter.13

Nothing will better illustrate the Maryland adherence to the requirements of an extant adoption statute and proper compliance therewith than a survey of several Maryland cases dealing with adoption arrangements not in compliance with the local statute, or entered into at a time before its enactment in 1892.

An early dictum in 

Hiss v. McCabe,14

decided before 1892, stated that an “adopted” daughter was not a daughter who could claim by inheritance. Then, too, in 

Fisher v. Wagner,16

there had been no appeal from that part of the decree which had held that an “adopted” son did not take, but the Court by dictum said that this was proper inasmuch as the adoption law of 1892 had been passed some years after the death of the testator whose property was in litigation. In 

Holltrter v. Wagner16

an “adopted” daughter had claimed the right to administer, but had withdrawn the claim, and on appeal the Court pointed out that the period of the supposed adoption had long ante-dated 1892.

The case of 

Hillers v. Taylor17

presents a rather amusing example of an attempted adoption by other than strict statutory procedure. In that case plaintiff wife sued another woman for criminal conversation and for having alienated the affections of plaintiff’s husband. In defense, defendant offered in evidence a document titled “Adoption Paper”, which was signed by the plaintiff’s husband, and also subscribed in writing by defendant and her husband, whereby the plaintiff’s husband purported to have adopted the defendant. No objection was made to the admission

13 Madden, Persons and Domestic Relations (1931) 366-367.
14 45 Md. 77 (1876).
16 139 Md. 908, 116 A. 569 (1921).
17 108 Md. 149, 69 A. 715 (1909).
in evidence of this document, but the Court of Appeals, affirmed the trial court's action (although it reversed for other reasons) in granting plaintiff's prayer that the evidence was insufficient to prove a legal adoption and that the jury should not take into consideration any evidence of said adoption as a defense in the case. The husband had testified on cross-examination that the reason he had the adoption papers drawn up was that he was going around with the defendant and did not want people talking about them (the husband was then fifty-two years old and the defendant thirty-five years old).

The Court pointed out that adoption was purely statutory in the Anglo-American system, and that the Maryland statute had not been complied with in this instance, nor could it have been in view of the fact that the adoption statute then only went to the adoption of infants, and the alleged adoptee was an adult at the time. This case and the one following suggest that there may be an occasional motive to adopt an adult in order to give an air of plausibility to a relation between persons of the opposite sex which relation either is illicit in nature, or would otherwise appear to be so even though it is actually innocent.

Two cases have involved fraternal insurance benefits, and in both of them the doctrine of estoppel was advanced as a way to accomplish the substantial results of adoption without statutory compliance. Estoppel was rejected in one case, and applied in the other. In *Supreme Council of American Legion of Honor v. Green*, the law governing the society permitted the designation only of "relations" or "dependents" as beneficiaries, and the certificate also provided that it should be void for any false representations. The decedent had named as beneficiary "Elizabeth A. Green, my niece." In fact, she was not his niece, nor dependent upon him, but there had been an agreement between them that they should act toward each other as uncle and niece. The Court held against recovery by the

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18 Consider also that, even where the adoption statute otherwise applies and is complied with, there cannot be an adoption by a married person severally without the consent of the other spouse or equivalent circumstances, on which see the text infra, circa n. 57.

19 71 Md. 263, 17 A. 1048, 17 A. S. R. 27 (1889).
“niece” both because she was not within the class allowed to be designated, and because of the falsity of the statement in the certificate. The Court rejected the contention of estoppel against the society, which had been pleaded because the local official who had witnessed the application knew she was not really his niece.

In Clayton and Carves v. Supreme Conclave, Improved Order of Heptasophs, the facts were more complicated. The plaintiffs, aged three and five at the time, were taken to be reared by one Montgomery in 1881. In 1894 (two years after the Maryland adoption statute had been passed, so it happened) Montgomery took out a certificate of insurance in the defendant, naming the plaintiffs as beneficiaries and describing them therein as “adopted children”. He never legally adopted them. At that time the rules of the society permitted the designation of children, without specifying whether adopted children were included. Montgomery continued paying the fees on the certificate until the time of his death. In 1913, prior to his death, the by-laws of the society were changed to allow payment of benefits to adopted children only if legally adopted. These children, as the Court pointed out, could not have been legally adopted in 1913, as they were then adults and the then extant law did not cover the adoption of adults. The Court of Appeals decided in favor of the plaintiffs’ right to recover, through an estoppel against the society, which had accepted the payments all along in knowledge that the children were “adopted.” But for the estoppel, the member and his designated beneficiaries would have been bound by the 1913 by-law change.

An occasional informal mode of adoption is by written agreement between the “adopting” parents and the officials of the foundling home from which the child is procured for rearing. This problem was presented to our Court in Zimmerman v. Thomas. In 1879, the Nursery and Child’s Hospital of Baltimore agreed in writing with one Thomas that, as soon as an enabling act was passed, it would execute an indenture binding out and committing a certain
child to Thomas and his wife "for adoption". Shortly thereafter, the Legislature of 1880 enacted Chapter 64, authorizing that hospital to bind out and control the destitute children under its care and, in pursuance thereof, the hospital did execute the indenture earlier agreed upon. The indenture provided that the child was placed with the new parents for the purposes of adoption; and it included an agreement on their part to rear, maintain, and educate her, and to adopt and treat her as if their own legitimate offspring.

The question in the case was whether, as a result, the child became the child of Thomas and wife for purposes of inheritance, and the Court held that she did not. There had not been any attempt at compliance with the act of 1892. The Court held that the enabling act and the indenture executed thereunder did not create a true adoptive relationship. The 1892 law did include specific provision for inheritance by an adopted child, and the Court adhered to the view that only by compliance with it could that follow. While the Court did not completely go into it, yet they indicated what seemed already established under the terms of the 1892 statute, that the child would not have taken the estate in question even if she had properly been adopted under the 1892 law.\textsuperscript{22}

But the Court put the decision against the child squarely on a rule that the legal consequences of adoption do not follow from a binding out by an orphanage, even under a statute authorizing that. The Court felt that the relation created by the indenture was not as complete as that contemplated by true statutory adoption, particularly as there was reserved some control by the institution over the child in the event that the new parents did not perform their agreement sufficiently well.

A recent Maryland case, \textit{Spencer v. Franks},\textsuperscript{23} enunciated clearly the strict statutory nature of adoption. The trial court had decreed the adoption, but had qualified the decree by adding to it: "With leave to parents to occasion-

\textsuperscript{22} Md. Code (1939) Art. 16, Sec. 83, \textit{infra}, n. 122; and see also text, \textit{infra}, supra n. 120 et seq.

\textsuperscript{23} 173 Md. 73, 185 A. 306, 114 A. L. R. 263 (1937).
ally see the child." After the time for appeal from that decree was passed, further litigation developed about the custody of the child, and on appeal from that the Court of Appeals held that the qualifying phrase was not properly inserted in the decree, that it was beyond the jurisdiction of the Chancellor, and that it was severable from the rest, so that the void part could be stricken out, leaving the adoption decree remaining; all this despite that the adopting parents had not appealed from its inclusion in the decree.24

In reaching this conclusion, the Court pointed out that adoption is purely statutory, and the measure of the Chancellor's authority is the statute.25 The statute confers jurisdiction merely to adopt, and to decree change of name incidentally. The statute authorized no other decree. It contemplated that custody should be an exclusive right in the adopting parents, and a provision for partial custody in the natural parents would defeat the statutory provisions which extinguished rights in the natural parents by providing the natural parents "shall be freed of all legal obligation towards" the child. The Court also pointed out that there was implicit in the qualifying clause a continuance of the Chancellor's jurisdiction over the child, whereas the intent of the Legislature was that the decree of adoption should be final and binding, exhausting the court's jurisdiction.

This recent decision further substantiates the point that adoption is an artificial statutory creature, the details of which are determined by the statute authorizing adoption, and they are not to be extended by analogy to more flexible procedures usually found in equity.

24 While it might be argued that the adopting parents should have been bound by the inclusion of the clause in the decree, not having appealed from it, yet it must be remembered that the adopted infant himself was affected by its inclusion, and the failure of the adult parties to appeal could not bind the infant as to a matter so vitally affecting his interests.
25 Contrast Emerson v. Emerson, 120 Md. 584, 600, 87 A. 1033 (1913), where three of the seven judges sitting dissented on the ground that there was no power in a divorce court to incorporate into a divorce decree an agreement of the parties as to the wife's support which went beyond what the court, of its own power, could have ordered. The ruling of the majority in the Emerson case is, therefore, apparently different for divorce cases from the rule of Spencer v. Franks for adoption cases.
Adoption of Adults

Prior to 1937 the general adoption statute permitted the adoption only of minors by judicial procedure, although occasional special laws were passed by the Legislature each providing that a certain named adult person should thereafter be the adopted child of another named person. The 1937 Legislature amended the general adoption law so as to make it cover both the adoption of adults and of minors, and, because of this, Governor Nice vetoed the special adoption acts passed at that session. Several of the cases discussed in the preceding section herein concerning the need for statutory authorization of adoption happened to involve attempts by various methods to accomplish the adoption of adults prior to the recent extension of the general adoption law to cover that situation.

The principal motive for formally adopting an adult person would be, of course, to make certain that the adoptee shall inherit the property of the adopting person in the event of the latter's dying intestate either because of a failure to execute a will, or from a finding of invalidity of an attempted execution of one. There is absent the other motive, more likely predominant when an infant is adopted, of insuring the continued custody of the child in the petitioner. When an adult is adopted, there results no duty in the petitioner to support the adoptee, inasmuch as the duty of a natural parent ceases with majority of the child. Whether an adult adoptee could be prosecuted under the criminal statute for non-support of the adopting parent, if indigent or destitute, is part and parcel of the

26 See supra, ns. 17 and 20.
27 E. g., Md. Laws 1935, Ch. 417, 418.
28 Md. Laws 1937, Ch. 172, amending Section 78, infra, n. 36
30 In Hillers v. Taylor, supra, n. 17, the “adoptee” was an adult at the time. In Clayton and Carves v. Supreme Conclave, Improved Order of Heptasophs, supra, n. 20, the adoptees were infants at the beginning of their relation to the supposed adopting parent, but had become adults by the time of the change of the society’s by-law. In Supreme Council of American Legion of Honor v. Green, supra, n. 19, it is probable that the contractual “niece” was an adult at the time, although the point is not clearly brought out.
31 Md. Code (1839) Art. 27, Secs. 98-104.
larger problem, discussed elsewhere, of whether that statute applies to any adopted child.

There is as yet no judicial construction of the provision for the adoption of adults. The amending statute provided that all the provisions of the extant adoption statute should apply in the case of the adoption of adults, except as otherwise provided. Under the specific provisions of the amending statute, the procedure for the adoption of adults differs slightly from that for the adoption of minors, although the legal sequelae of the decreeing of an adoption are the same.

When the prospective adoptee is an adult, the notice required by the statute must be given to the next of kin of the petitioner, rather than to the parents or guardians of the adoptee, as is required in the case of an infant. There is no mention in the statute of any legally operative reasons that the next of kin can assert in opposition to an adoption of an adult. No doubt the provision was inserted to give them a chance to guard against the possibility of surprise, fraud, undue influence, and mental incapacity.

The non-requirement of notice to the next of kin of the adoptee is plausible in the light of the general rule that natural parents and children continue to be the heirs of each other even after the child has been adopted by another. Possibly, an adult who had been adopted would continue to be obligated to support his natural parents under the criminal statute applicable to that problem. The next of kin of the adult adoptee thus have nothing to lose or gain by the decreeing or denying of such an adoption. The requirement that the court shall investigate and find that the adoption will promote the best interests of the adoptee apparently does not apply to the adoption of adults, as merely the consent of the adult to be adopted is required.

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32 Infra, circa n. 105, et seq.
33 See discussion, infra, circa n. 125, et seq.
34 Infra, circa n. 105, et seq.
35 Section 78, infra, n. 36.
ADOPTION

THE PROCEDURE FOR ADOPTION

Under the Maryland statute adoption is accomplished by a judicial proceeding, based upon a petition filed by the prospective adopting parent or parents, in an Equity court, i.e., on the Equity side of the Circuit Courts in the counties, and in either Circuit Court or Circuit Court No. 2 of Baltimore City, which latter two courts exercise the Equity jurisdiction in Baltimore City exclusively. If the court decides to grant adoption, a decree to that effect is passed.

Customarily, an adoption case is docketed in the trial court as an ex parte case in the name of the infant or adult to be adopted. On the dockets in Baltimore City a typical heading is "Ex parte in the Matter of the Adoption of ABC, an infant." When such cases are uncontested, it is usual for the adoption to be decreed, and there is no appeal. In contested cases, on appeal, the style of the case is usually adversary in nature, with the name of the appellant, be he petitioner for or opponent of the adoption, first, and that of the other side as appellee.37

The detailed points of the adoption procedure will be discussed in turn under the ensuing sub-heads. Two cases, in general, give some preliminary insight into adoption procedure broadly, and they have been frequently discussed elsewhere in this article. One is Waller v. Ellis.38

36 Md. Code (1939) Art. 16, Sec. 78: The several equity courts of this State, upon the application of any person residing in the city or county where such application is made, or the equity court in the city or county where a person to be adopted resides, shall have power to pass a decree declaring any person the adopted child of the petitioner, upon such reasonable notice to the parents or parents, guardian or guardians, of such child, if any there be, where a child is to be adopted, or to the next of kin of the petitioner where an adult is to be adopted, by summons, order of publication or otherwise, as the court may order to be given, provided that the court passing the decree shall become satisfied, upon careful investigation, in the case of a child, that the best interests and welfare of such child will be thereby promoted, and provided further, that the child, if of sufficient intelligence and capacity to give an understanding assent, or such adult, shall so desire.

Except as otherwise provided herein, the adoption of an adult shall be governed by the laws applicable to adoption of a child, and an adopted adult shall have the same rights as if adopted during minority.

37 No doubt, the appeal would be docketed as an ex parte proceeding if the adoption were denied by the trial court, of its own motion, without any objection being filed by another party than the petitioner.

38 160 Md. 15, 179 A. 289 (1935).
which contained considerable detail about the filing of testimony, the right of objectors to the adoption to be heard, and the need for allowing the prospective adoptee to be interrogated as a witness. Spencer v. Franks,39 analyzed at length elsewhere with reference to the need for compliance with the statute, also contained an elaborate treatment of the statutory nature of the procedure.

The ensuing sub-topics of the procedure problem which now follow are, territorial jurisdiction and recognition of foreign decrees; joint and several adoptions and capacity to adopt; notice and consent; "the best interests and welfare of such child;" revocation of adoption; and change of name and birth certificates. After those will then follow the third main heading herein, the consequences of adoption.

**Territorial Jurisdiction and Recognition of Foreign Decrees**

As in so many other topics of Domestic Relations law, adoption involves some rather difficult problems of the Conflict of Laws type. As is the case for divorce, the rule of substantive law to be applied by a Maryland court in granting or denying an adoption is the Maryland rule, regardless of what contacts the facts of the case may have with other states. The problems are, rather, those other Conflict of Laws questions of territorial jurisdiction and recognition of foreign decrees.

With respect to territorial jurisdiction, the statute40 explicitly provides that the case may be brought either in the county where the petitioner resides, or (since 1924) that where the prospective adoptee resides. Where both are resident in Maryland, but in different counties, this would provide concurrent jurisdiction (or venue) in those two counties.

Where one of the two parties concerned lives in Maryland and one not, then the venue would be in the one Maryland county where that one resides.

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40 Section 78, supra, n. 36.
There would seem to be no question about this latter problem when the child to be adopted is the one resident in Maryland, and the Court of Appeals so indicated in *Waller v. Ellis*, although it denied the petition for adoption on the merits. The child was living in Maryland with maternal grandparents, and the petitioner was an uncle living in Delaware, who filed the petition in Maryland in the county where the child lived. The Court stated that there would have been jurisdiction to grant the adoption had it been desirable on the merits.

The Court took the view that permitting adoption (in a proper case) at the petition of a non-resident and against a resident child would aid the benevolent purpose of adoption statutes, and it relied on the view of the Restatement of Conflict of Laws, which states that: "The status of adoption is created by either: (a) the law of the state of domicil of the adopted child; or (b) the law of the state of domicil of the adoptive parent if it has jurisdiction over the person having legal custody of the child or if the child is a waif and subject to the jurisdiction of the state."42

In the converse situation, more difficulty would seem to be presented, although the statute, as it has read since 1892, would seem to authorize granting the adoption to a resident petitioner with reference to a non-resident child. The similar statute43 for divorce jurisdiction is so applied. If, however, the child or his custodian be not physically present in Maryland, so that the Maryland courts have no power to enforce the custody aspects of decreeing an adoption of an infant child, then the problem of giving immediate effect to the adoption decree rendered when the petitioner only is resident becomes one of its recognition by the courts of other states. The statute contains no such requirement as is indicated by the Restatement in this situation, that Maryland shall have jurisdiction over the custodian, or that the child shall be in Maryland and a waif.44

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41 *Supra*, n. 38.
42 *Restatement, Conflict of Laws* (1934) Sec. 142.
43 Md. Code (1939) Art. 16, Sec. 38, as amended Md. Laws 1941, Ch. 516.
44 *Restatement, Conflict of Laws* (1934) Sec. 142.
It might also be argued that the Maryland statute's provision for concurrent jurisdiction either where petitioner or adoptee lives merely fixes the venue within Maryland of an adoption case, granted that the case is of a sort where Maryland has interstate jurisdiction to decree the adoption. Waller v. Ellis would not be inconsistent with this suggestion, and there would still remain a possibility that, as a matter of constitutional requirement, some such supplementary factor as the Restatement requires would be necessary over and above mere residence of the petitioner.

Implicit in the whole question is the problem presented by so many territorial jurisdictional rules, whether "residence" as a requirement means technical legal domicile or merely physical presence for purposes of customary daily activities. Particularly in the case of a minor, the technical legal domicile may well be elsewhere even though the child is physically present, because in Maryland custody. Legitimate children take the domiciles of their fathers, and illegitimates those of their mothers, and these change with changes of domiciles of the respective parents until majority. A judicial answer to this problem of non-residence of the child to be adopted may well go off on determining the question whether "residence" means full domicile or something else.

The potential enforceability of the decree in other states would not seem to be relevant on the question whether to grant it here to a resident petitioner against a non-resident child. This would follow by analogy to the divorce rule. Maryland grants divorces under circumstances where, until recently, they were not necessarily entitled to compulsory recognition in other states. The statute would seem to be clear to the effect that an adoption may be decreed even though the child has neither physical presence nor technical legal domicile in Maryland, so long as the petitioner shall reside here.

45 Prior to Williams and Hendrix v. North Carolina, 63 S. Ct. 207 (U. S., 1942), and under the overruled case of Haddock v. Haddock, 201 U. S. 562 (1906), other states did not have to give full faith and credit to Maryland divorces based on domicil of plaintiff alone, and obtained on mere newspaper advertisement.
The discretionary power of the court to deny an adoption where it is not for the best interests of the child might well lead to denial in contested cases where it is indicated that there will be resistance to the enforcement of the decree in other states. On the other hand, it might be argued that it could be desirable to grant an adoption at the residence of the petitioner, without any discernible contacts between the child and the granting state, and regardless whether other states would recognize it for custody purposes, in order that a resident petitioner could use the adoption device as a way of insuring inheritance from him by the object of his wishes. The Restatement's insistence on jurisdiction over the custodian, or the child's being physically present as a waif, seems to proceed on the idea that custody is the sole objective of an adoption, and it overlooks the property aspect thereof. If the granting state has a valid reason for decreeing the adoption, what difference should it make whether other states will recognize it. This is particularly so with reference to the adoption of adults.

The question of what is "residence" in Maryland has also caused difficulty with reference to the omni-present local problem of those persons who reside on Federal territory within the limits of Maryland. A 1935 amendment to the adoption statute provides that such persons shall be regarded as residents of Maryland for purposes of proceedings for adoption. This statute was inspired by the unfortunate Lowe case, which had ruled that they were not such residents for divorce purposes, and which had

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46 Md. Code (1939) Art. 16, Sec. 79: All persons residing on property lying within the physical boundaries of any county of this State or within the boundaries of the City of Baltimore but on property over which jurisdiction is exercised by the Government of the United States by virtue of the 17th Clause, 8th Section of the First Article of the Constitution of the United States, and Sections 31 and 32 of Article 96 of the Annotated Code of Public General Laws of Maryland, shall be considered as residents of the State of Maryland and of the County or of the City of Baltimore, as the case may be in which the land is situate for the purpose of jurisdiction in the Courts of Equity of this State in all applications for the adoption of infants.

47 Lowe v. Lowe, 150 Md. 592, 133 A. 729, 46 A. L. R. 983 (1926). The separate opinion of Bond, C. J., dissenting on the jurisdictional point, pointed out that one of the unfortunate results of the rule of the majority opinion would be to deprive such residents of access to Maryland courts for purposes of adoption, inter alia.
resulted in an earlier statute changing the rule for divorce purposes so as to allow such residence to suffice.

With reference to the converse problem of Maryland recognition of adoptions decreed by the courts of other states, specific provision in the statute gives the answer partially and a judicial construction would seem to give the rest. The statute provides that any "inhabitant" of another State who was adopted in accordance with its laws shall be entitled in Maryland to the same rights of inheritance as would follow in the State where the adoption was decreed, except as they may conflict with the provisions of the other parts of the Maryland statute.

On the surface, this would not seem inconsistent with the view of the Restatement. In the first place, the Restatement sets up standards, outlined above which are similar to each other, for both the power to grant an adoption in the first place, and for its being entitled to recognition in other states if once granted. The further pronouncement is made that other states will give the same effect to an adoption as the state decreeing it. Specifically concerning inheritance of realty is it provided that the law of the state where the land lies determines whether the adopted child is an heir and the extent to which he inherits.

But a triple criticism could be made of the Maryland statutory section. In the first place, the word "inhabitants" merely further complicates the area of the dispute about whether "domicil" and "residence" are synonymous when used as operative words for purposes of territorial jurisdiction. Then, too, the statute only purports to answer questions of recognition of foreign adoptions for certain, not all purposes of the consequences of adoption, viz.,

49 Md. Code (1939) Art. 16, Sec. 84: Any inhabitant of any other State adopted as a child in accordance with the laws thereof shall upon proof of such fact be entitled in this State to the same rights of inheritance and distribution as he or she would have enjoyed in the State where adopted except in so far as they may conflict with the provisions of the five preceding sections.
50 RESTATEMENT, CONFLICT OF LAWS (1934) Sec. 142.
51 Ibid, Sec. 143.
52 Ibid, Sec. 247.
the inheritance of property. There is no mention of custody, earnings, services, or support. Finally, even for the limited purposes, the statute does not purport to recognize all foreign adoptions, but only those decreed in states where the jurisdictional residence was that of the adoptee. As the statute reads, an adoption decree granted by another state to a resident petitioner and against a non-resident adoptee would not entitle the latter to inherit Maryland property.53

It remains to be seen, therefore, whether either for inheritance or for all purposes, we will recognize adoption decrees granted under circumstances where we ourselves are authorized by our statute to grant them, viz., against a non-resident child and in favor of a resident petitioner. If we adhere to the view of the Restatement that the granting state must either be the domicile of the adoptee, or have jurisdiction over him through his custodian or as a waif, we may refuse to recognize decrees we ourselves would grant, unless, further, future judicial decision writes the Restatement limitations into our concurrent jurisdiction statute for purposes of our own granting of adoptions.

With reference to the difference between recognition for inheritance purposes and recognition for other purposes, it would seem that the Court of Appeals has already answered that question, and has supplied the defect of the statutory section, in Victory Sparkler Co. v. Gilbert.54 In that case the child had been adopted by the adopting parents in Delaware, where all then lived, by a proper proceeding under Delaware law. The mother and child moved to Maryland, where the child was killed in an industrial accident, and the adopting mother claimed compensation as a “mother” under the local Workmen’s Compensation law. The Court held her to be entitled as a mother and thus not only interpreted the Compensation law to extend to adoptive relationships, but also gave effect to an adoption decree of another State in a situation not covered by the statutory provision mentioned above.

53 See infra, circa n. 133, for other mention of the awkwardly phrased nature of this section.
54 160 Md. 181, 153 A. 275 (1931).
Typically, of course, a petition to adopt is filed by a husband and wife jointly, because the most frequent situation involves an infant's being reared in a family other than his own. The Maryland statute not only provides for this, but it also recognizes that petitions may be filed by an individual severally, be he or she married, widowed, divorced, or single. In fact, as the statute reads, several adoption would seem to be the contemplated rule, and joint adoption by husband and wife the exception, as special provision for the latter is made in a section following the first and general one, which itself speaks in terms of the "petitioner."

It would probably be a safe assumption that two persons not husband and wife to each other would not be permitted to adopt jointly, in view of the basic use in the statute of the term "petitioner", and the specific provisions for spouses. But, granting this to be so, in the case of several adoption there are no limitations on who may adopt. The Maryland statute contains no such rule as is found in the statutes of some other states, requiring the adopter to be older than the adoptee by a stated number of years. In fact, as our statute reads, one might adopt a person older than himself, even one of his own direct ancestors.

While the statute has no specific requirement that the adopter shall be an adult, yet this would inevitably seem to follow from the general rule that an infant is not sui juris. To be sure, the law permits some infants to marry and produce children by natural processes. Even then, it would be difficult to visualize a judicial interpretation of the statute which would permit an infant to adopt

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55 Md. Code (1939) Art. 16, Sec. 80: The husband and wife may file a petition jointly praying the court to decree the adoption by them jointly of any child, but no decree of adoption shall pass where the petitioner is a married person unless it be shown that the husband or wife of the petitioner consents to the adoption, or is hopelessly insane, or that the parties are living apart under such circumstances as would entitle the petitioner to a divorce.

56 A dictum in Spencer v. Franks, 173 Md. 73, 195 A. 306, 114 A. L. R. 263 (1937) points out that when a child is adopted by husband and wife jointly it becomes the child of both adopting parents.
through "next friend", or even if emancipated, whatever that means.

One limitation is imposed on several adoption other than by husband and wife jointly. If the sole petitioner is then a married person, the adoption may not be decreed unless the other spouse consents, or is hopelessly insane, or the parties are living apart under such circumstances as would entitle the petitioner to a divorce.\textsuperscript{57} The statute does not specify what kind of divorce is meant, whether \textit{a vinculo}, \textit{a mensa}, or both. There would seem no question that, if the grounds be for an \textit{a vinculo} one, the consent is dispensed with, but it is not so clear that it is also dispensed with merely for the commission of \textit{a mensa} grounds alone. To be sure, if the \textit{a mensa} ground be desertion, it will become an \textit{a vinculo} one within eighteen months, so that there is a real problem only for cruelty and vicious conduct. For that matter, frequently when the innocent spouse has separated because of one of these, constructive desertion occurs anyhow, and after eighteen months will entitle to an \textit{a vinculo} divorce.

This requirement of consent or equivalent circumstances when a married person wishes to adopt severally would provide an obstacle in the situation outlined earlier,\textsuperscript{58} wherein a person might wish by adoption indirectly to accomplish the effect of legitimation of his own illegitimate child under circumstances where it could not be done directly by legitimation. For, if the obstacle to legitimation is that the father is married to another woman, and thus cannot marry the mother of the child even if she be still alive, the other spouse's consent or equivalent circumstances must occur before the indirect legitimation by adoption may be brought about.

Occasionally adoption is used in the case of step-children, i.e., where one of the natural parents is dead or divorced and the other, having custody of the child, has married again. While at first glance it would seem a matter of indifference whether the petition be filed jointly

\textsuperscript{57} Section 80, \textit{supra}, n. 55.
\textsuperscript{58} \textit{Supra}, n. 11.
by the natural and the step-parent, or by the step-parent alone with consent of spouse, yet it must be remembered that if an adoption be decreed on the several petition of the step-parent, it might have the effect of depriving the natural parent of his or her presumptive claims in the event of a separation of the spouses. Thus it is that it is better that the petition in such a case be filed jointly by the spouses, who are the natural and step-parents, respectively. One occasionally sees instances of adoptions of grand-children by grand-parents, or of nieces and nephews by uncles and aunts, and the statute allows these by its implications

**Notice and Consent**

Twin questions naturally arising in the adoption field are those of the necessity of giving notice to and obtaining the consent of the persons affected by an adoption, viz., the adoptee, and the next of kin of both the adoptee and the adopter. The Maryland statute provides for notice to the parent or parents, guardian or guardians, of an infant child to be adopted; or, if the prospective adoptee be an adult, then for notice to the next of kin of the petitioner, not of the adoptee. The trial court is given discretion as to how the notice shall be transmitted, and may order it to be given by "summons, order of publication, or otherwise." Of course, where those persons entitled to notice enter into a written consent in advance of the adoption, the filing of the consent in the papers of the case is usually taken as dispensing with notice to them in other fashion, as well it may.

An interesting problem arises with reference to who is entitled to notice when an illegitimate child is sought to be adopted. There is no Maryland adjudication on

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59 Quaere, may one adopt his or her husband or wife? The motive for doing this would be (if there were no other children) to make certain that the adoptee would inherit all, not merely a fractional part, of the adopter's property in the event of death intestate.

60 Section 78, supra, n. 36.

61 Consider also, with reference to the adoption of children shortly after birth, the Maryland statute, Md. Code (1939) Art. 27, Secs. 622 to 626, which forbids, save in enumerated exceptional situations, the separation of a child under the age of six months from its mother for the purpose of placing it in a foster home or institution.
the point, but for lack of specific treatment of it in the statute, it may well be assumed that the mother of an illegitimate is entitled to the notice, but the father is not. On the other hand, in the case of legitimate children, where the parents have been separated or divorced and the custody has been awarded to one or the other, or even to neither, both would seem entitled to notice nevertheless, in view of the fact that decreeing an adoption involves more than custody, and there is general authority to that effect.

There is no stated requirement of notice to the prospective adoptee, but that is bound up in the requirement of consent of the adoptee in those instances where he or she is an adult or is of sufficient age to comprehend. Thus implicitly notice and more is dictated in those situations where notice could be important.

While the statutes of some states make mandatory the consent of the natural parents where an infant is to be adopted, that is not so in Maryland, and, as just mentioned, the only reference to consent is in the requirement that an adult shall consent to be adopted, and that the infant shall also consent if "of sufficient intelligence and capacity to give an understanding assent." Then, too, there is the requirement, discussed elsewhere,\(^6\) that the spouse of a married petitioner shall consent to a several adoption, in the absence of certain equivalent circumstances allowing a several adoption without such consent.

While our statute does not make mandatory the consent of the natural parents to the adoption of an infant, and mere notice to them is sufficient, yet the Court of Appeals has indicated that it will not permit trial courts to decree adoptions over the expressed objection of the natural parent or parents, save in very strong cases. In Connelly v. Jones\(^6\) it thus refused the adoption, although it was obvious that the custody of the child would continue in the unsuccessful petitioners. But in Alston v. Thomas\(^6\) it did decree the adoption over the protest of the sole sur-

\(^6\) Supra, n. 57.
\(^6\) 165 Md. 544, 170 A. 174 (1933).
\(^6\) 161 Md. 617, 158 A. 24 (1931).
viving natural parent, having found that he had abandoned the child. These cases are discussed more at length in the section following herein, with reference to the problem of the merits of adoption cases.

In Waller v. Ellis, also discussed in the ensuing section, the Court denied the adoption sought by an uncle (the parents being dead) against the wishes of the grand-parents, who had custody of the child. The adoption was denied, however, on the merits of the case, as not being for the best interests and welfare of the child, rather than for mere lack of consent or noting of opposition by the grand-parents, the custodians, and the other formal guardians of the child. The Court pointed out that the consent of custodians or guardians, even of natural parents, was not essential to adoption jurisdiction.

Waller v. Ellis also threw some further light on the statutory requirement of consent (called “assent” and “desire”) by an adult adoptee or by an infant one if of sufficient “intelligence and capacity.” In the trial court the respondents had offered the child, the prospective adoptee, as a witness, and the court refused the offer. This was held error, for in no other way could the court find out whether the child was of sufficient intelligence and capacity other than by examining her at the request of the side offering her as a witness. In this case the child was nine years old at the time the petition was filed.

Where the natural parents, or guardians if the parents be dead, actually consent to the adoption, the case usually becomes routine, as this serves to dispense with notice, and, whether properly or not, it is usually taken as indicating that the adoption is for the best interests of the child.

A problem that arises in connection with the granting of consent by natural parents to an adoption is whether they can confer such consent upon condition of being allowed occasional contact with or custody of the child, or the privilege of retaking custody in the event that the adopting parents die or become divorced. This was an-

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"169 Md. 15, 179 A. 289 (1935)."
"Ibid, 169 Md. 26."
swered in the negative in *Spencer v. Franks*,\(^6\) where the Chancellor, in decreeing an adoption, had added to the decree a clause entitling the natural parents to see the child occasionally. In subsequent litigation this clause was held beyond the power of the Chancellor to insert, and void, but, being separable, the remainder of the adoption decree stood despite the void provision.

From this the lesson remains, that if natural parents do consent to an adoption, they must be ready to surrender all claims to the child, because our adoption law does not recognize the concept of a quasi or incomplete adoption. The same lesson is brought out by *Backus v. Reynolds*,\(^8\) discussed elsewhere on the point of revocation of adoption, to the effect that if an adoption is once validly decreed, particularly when with consent of natural parents, a subsequent change of mind by the natural parents will avail not.

Somewhat the same thing is brought out in converse fashion in *Zimmerman v. Thomas*,\(^9\) where the Court found that the “binding out” by an orphanage prior to 1892 did not create a complete adoption, and part of its reasoning was about a provision in the indenture which had reserved to the orphanage the right to reclaim the child if the foster parents’ custody proved improper. This reservation of control, the Court thought, was inconsistent with the true adoptive relationship later made possible by the still extant act of 1892.

"The Best Interests and Welfare of Such Child"

The substantive law governing the question whether the Chancellor should decree an adoption at petitioner’s request is delusively simple, on paper. If the prospective adoptee is an adult, it may be decreed simply upon his consent. If the prospective adoptee is an infant, consent is required if he be sufficiently mature to comprehend, and, regardless of such maturity, the Chancellor shall decree the adoption of an infant only if he shall find “that the

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\(^8\) 159 Md. 601, 152 A. 109 (1930).
\(^9\) 152 Md. 263, 136 A. 636 (1927).
best interests and welfare of such child will be thereby promoted. This "best interests" principle is the same as the one that is supposed to guide the adjudication of custody litigation.

Thus the test is entirely subjective, depending on the facts of the particular case, as it should be. It would be fruitless to attempt to generalize about when and when not the best interests of a child would be served by an adoption. Many adoption cases are routine, where all concerned are in agreement that decreeing the adoption is for the best interests of the child. In this connection, however, the Supreme Bench of Baltimore City has recently adopted a new Equity Rule the effect of which is to require an investigation of the desirability of decreeing an infant's adoption by a probation or other court officer, save where the Chancellor is already possessed of sufficient information to enable him to determine the question without the aid of an investigation. The Chancellor is required thereunder to consider such report, together with such other evidence and exhibits as may be offered, before the passage of any final decree of adoption.

Few cases are contested, however, and few of these get to the Court of Appeals. It is proposed to discuss those few which have gone there on the merits of the question whether to decree the adoption, so that some insight into judicial attitudes as to when an adoption will be for the best interests of the adoptee may be obtained, even if generalizations are impossible.

In Alston v. Thomas the petitioners, husband and wife, filed a petition against the natural father seeking to adopt the child. The mother of the child had died in a public hospital, and, after the child's birth and the mother's death, the father had advised a nurse at the hospital that he could not receive the child into his home, as it was already over-

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70 Section 78, supra, n. 36.
71 See Md. Code (1939) Art. 42, Sec. 21, to the effect that "the determination of the [habeas corpus] case shall be guided and controlled by a parental consideration of what is demanded by the best interest of such minor."
72 Baltimore Daily Record, December 7, 1942.
73 161 Md. 617, 158 A. 24 (1931).
crowded, and he orally assented to the child's being placed elsewhere. The hospital placed it in the custody of petitioners, who became attached to it and sought the adoption. The Court found that the father had abandoned the child, and it had become a public charge; and he was even unable to support his other children without charitable assistance; and that the home of the foster parents was a suitable place for the child's welfare; and it reversed the lower court and ordered the decreeing of an adoption.

In Connelly v. Jones the Court reversed the trial court's action in decreeing the adoption, although from the facts of the case it was obvious that the petitioners would still continue in custody of the child, which itself was not what the natural father, the surviving parent, was opposing as, apparently, he was opposed merely to the formal adoption. When the child was three the mother, becoming ill, placed the child with her own aunt, now petitioner in adoption, and there the child remained, in Queen Anne's County. The mother was hospitalized and died. The father lived in Baltimore City where he worked until the economic depression of 1932 caused him to become unemployed, and he and another child were then subject to charitable assistance. The father made occasional trips to the Eastern Shore to see the child, but he could not afford this often, nor was he able to contribute more than a nominal sum toward the child's maintenance.

The testimony all showed, and the father himself conceded, that the great-aunt's home was a desirable place for the child to be. The Court said that, had the question before it been merely one of custody, the great-aunt would have been awarded it, as the father was unable to maintain it. But the Court was reluctant to take the extreme step of decreeing the adoption, which would deprive the father of his relationship to the child. The Court stated that the meaning of the statute was that natural parents should be deprived of their relationships against their wills only under extraordinary conditions which did not exist in the case.

74 165 Md. 544, 170 A. 174 (1933).
In Waller v. Ellis\(^7\) the Court of Appeals reversed a decree of adoption and dismissed the petition. The natural parents were dead. The child, aged nine, was living in Maryland with her maternal grand-parents who, along with the guardians, opposed the petition. The petitioner, aged 58, was the child’s uncle, who lived with an unmarried sister, aged 60, and a feeble-minded brother, aged 61. There were allegations in opposition to the petition which suggested that the petitioner had an ulterior economic motive in seeking the adoption, and that he had customarily cruelly mis-treated members of his household, and had allowed his brother, the child’s father to become despondent, and insane, without providing medical treatment, all of which allegedly had led up to the brother’s suicide.

The testimony for the petitioner was never properly incorporated into the record of the case, and, therefore, the Court ignored it. Witnesses also testified for the respondents, and their testimony was properly before the Court, and the Court found it to show that decreeing an adoption was improper. The grand-parents were found to be respectable, substantial, and highly regarded citizens of the county, whose manner of rearing their own children had merited the approval of the neighbors, and they had similarly cared for the grand-daughter; they wished to keep the child; she wished to remain. There was some testimony as to “trouble” between the petitioner’s family and the people in his community. On all these facts, the Court found that the best interests and welfare of the child would be served by keeping her with the grand-parents and by denying the uncle’s petition to adopt, which would have carried with it the probability of being in his custody in circumstances far less conducive to her welfare.

Some insight into the Court’s attitude toward the problem of the merits of the case is also afforded by Backus v. Reynolds,\(^8\) where the Court dismissed a bill brought by the natural parents to rescind and set aside an adoption earlier decreed. The Court found no proof of fraud, mis-

\(^7\) 169 Md. 15, 179 A. 289 (1935).
\(^8\) 159 Md. 601, 152 A. 109 (1930).
take, duress, surprise, or defect in the adoption proceedings, and remarked that the allegations of the original petition for adoption had set forth facts giving the original court jurisdiction to pass the decree.

The petition had set out the consent of the natural parents; that the petitioners possessed ample means to provide for the proper support and maintenance of the infant to insure her future welfare and happiness; that the petitioners had had the custody of the child and had become greatly attached to it; and that the natural parents had been divorced; and that the natural mother had placed the child with the petitioners. It can well be taken from these facts that, other things equal, they suggest that the best interests of the child did demand the decreeing of an adoption.

Revocation of adoption

The title of this sub-topic is somewhat of a misnomer, for there is no provision in the Maryland statute for the revocation, in the strict sense, of a validly decreed adoption. That is, there is neither provision for such revocation in a contested case, against the will of the adopting parents; nor, for that matter, even for revocation with the mutual consent of the adopting parents and the natural next of kin who either had consented, or were at least notified, when the original adoption was decreed.

In the former case, the most that could be done by those seeking completely or partially to revoke the adoption against the wishes of the adopting parents would be to institute either a new adoption proceeding or a custody one in their own names. But such proceedings would have no more chance of success than they would have against natural parents who oppose adoption or deprivation of custody.

In the latter case, where both the adopting parents and the natural next of kin are in agreement on terminating the adoption, it would seem that the only proper procedure would be to have the natural relatives adopt the child as
their own, by new proceedings, with the consent of the first adoptive parents, and upon the Court's finding that such new adoption is for the child's best interests.

Rather, the only steps which can be taken by the natural relatives or other interested parties in order directly to upset a once decreed adoption would be under general procedures for attacking a decree for improprieties in its obtention. This was brought out in Backus v. Reynolds, the principal Maryland case on the topic.

In that case the child had been born to the natural mother after the father, her husband, had deserted her; and the parents were later divorced. The mother was unable to support the child and it was placed with foster parents who later wished to adopt it. The natural mother, after having the legal effect of the adoption explained to her, consented to it, as did the natural father. The petition for adoption set out facts indicating it to be for the best interests of the child that it be adopted; and an adoption was duly decreed.

A few months after the adoption the natural mother married her second husband, and shortly thereafter brought this proceeding by independent bill (the adoption decree having become enrolled) to have the decree of adoption annulled on alleged grounds of mistake, fraud, duress, and a noncompliance with the statute. The Court of Appeals pointed out that an adoption decree could be annulled after enrollment only for some one of those reasons (including surprise), but it found none of them to be present and so affirmed the dismissal of the bill of complaint.

Thus it is that a subsequent change of mind by the natural parents after having once consented to the adoption

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7a See Dunnigan v. Dunnigan, 31 A. (2d) 634 (Md., 1943), where a decree of adoption in favor of grand-parents was stricken out on the petition of the child's father, on the ground that he was not a non-resident, where the proceedings had been on the basis of his non-residence. The petitioners in adoption had consented to the striking out, and the case on appeal did not involve the adoption point.

77 Md. 601, 152 A. 109 (1930).

78 In Spencer v. Franks, 173 Md. 73, 195 A. 306, 114 A. L. R. 263 (1937), the natural parents had also made allegations of recently discovered fraud in their effort to undo the adoption, but the Court found the proof trivial and insufficient.
ADOPTION

will avail not after an otherwise valid adoption decree has become enrolled. But this would seem to follow from the local rule that consent of the natural parents is not absolutely necessary to an adoption (although notice must be given), as the court may decree an adoption against their wishes in a strong enough case. When the natural parents do specifically consent, this shows both sufficient notice to them, and probably that the adoption is probably for the best interests of the child.

Adoption is meant to be permanent, and it is probably salutary that our statute contains no mention of revocation in the true sense. In fact, in *Spencer v. Franks*, the Court pointed out that the intention of the statute was that the decree of adoption should be final and binding, not subject to the continuing jurisdiction of the court. With the entry of the final decree, the Chancellor, for most purposes, exhausts the jurisdiction of the court.

It is here suggested, therefore, that even if a Chancellor should, upon the request of and with the mutual consent of all the parties concerned in the original proceeding, reopen the decree and rescind it, this act would, no doubt, be void as beyond his jurisdiction, akin to the act of the original Chancellor in *Spencer v. Franks* in appending a qualifying phrase to the decree purporting to entitle the natural parents to occasional contact with the child.

**Change of name; Birth Certificates**

The statute specifically provides that the court decreeing an adoption may provide in the decree for the change of name of the adopted child, if the petition contains a prayer to that effect. Thus it is made unnecessary to pursue the separate and more complicated equitable procedure for change of name in cases other than adoption, with its usual requirement of newspaper advertisement as notice to all concerned.

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**Footnotes**

78 *Supra*, n. 78.
80 Md. Code (1939) Art. 16, Sec. 82: If the petition contains a prayer to that effect, the court may also decree that the name of the child be changed.
81 Md. Code (1939) Art. 16, Sec. 118.
A recent statute makes provision for the substitution, in the event of an adoption, of a new birth certificate in the files of the proper Vital Statistics officials, the State Department of Health for births in the counties, and the Baltimore City Health Department for City births. This procedure apparently would apply whether a change of name is decreed, or where, because the last name of the adoptee was already the same as that of the adopter, no judicial order for such change was necessary.

Under its terms, whenever a child has been adopted (as also when an illegitimate has been legitimated, or its paternity established), the Registrar of Vital Statistics, on request, removes from his files the child’s original birth certificate, and substitutes therein a new birth certificate identical in contents with the original, except that the names of the adopting parents are filled in the blanks calling for parents’ names, instead of the names of the natural parents; and, if the decree changed the child’s name, the new name is entered as the child’s name. There is no mention of the fact of adoption. The original birth certificate in the names of the natural parents is then sealed up, the seal not to be broken save by court order or by order of the Registrar for adequate reason.

When certified copies of the child’s birth certificate are called for, they are then made of the new or substituted certificate, and the fact of adoption is thus protected from unnecessary disclosure. Of course, if it should be absolutely necessary to prove original parentage then, by court order, the seal may be broken and the original one copied and certified. For normal purposes, of course, a certified copy of the substituted one will suffice. For that matter, much use of birth certificate information is made without even having a completely certified copy, because the Registrars also issue both engraved certificates stating that a birth certificate has been filed in certain names, and informal cards merely stating the basic facts, which latter are used for public school enrollment. These latter two

82 Md. Code (1939) Art. 43, Sec. 22.
are identical in form for substituted certificates with those used in the case of natural birth.

The provision for this substitution of birth certificates in the case of adoption is a most salutary one. It not only enables the adopting parents who wish to do so to conceal the fact of adoption from a child adopted while still a baby, but, far better, it enables both the parents and the child, even where the child is told of his adoptive status, to avoid embarrassment from having unnecessarily to disclose the fact of adoption to third persons. As birth certificates are becoming more and more necessary in modern life, it is well that provision has been made for this substitution of them in the case of adoption. Counsel for petitioners in adoption may well call the clients' attention to this statute. 83

THE CONSEQUENCES OF ADOPTION

Granting a valid adoption to have been decreed, there now remains the final main heading, what legal consequences follow therefrom. In general, the same sequelae follow as if the adoptee had been born the legitimate child of the adopter. But there are minor differences that need to be set out, discussed, and speculated about, and these will follow. 83a

One problem of the consequences of adoption has been the subject of neither statutory nor case-law treatment, and so only brief speculation about it here will be given, without making it a separate sub-head. That is the matter of whether inter-marriage is lawful between persons in adoptive relationships where it would not be lawful in similar natural relationships. Put specifically, may there be marriage between adopting parent and adopted child, or between adoptive brothers and sisters, merely to mention the two closest forbidden relationships? Neither the

83 The State Bureau of Vital Statistics has had prepared printed forms distributed to the county Clerks' offices, to be given to counsel for petitioners in adoption, for use in applying for the substitution of a birth certificate after adoption.

83a Concerning the position of adopted children under the naturalization laws, see U. S. C., Title 8, Sections 502(h), 716.
marriage statute\(^8\) nor the adoption law affords the answer, and apparently the question has not yet arisen in the Court of Appeals.

The Maryland marriage law does forbid intermarriage between a person and his or her step-parents or parents-in-law, these being the affinity relationships analogous to the forbidden intermarriage of parent and child. By further analogy, in view of the fact that adoptive parentage is even more intimate than affinity parentage of the step- or in-law sort, the former should be forbidden.

On the other hand, the marriage law does not forbid intermarriage between brother-in-law and sister-in-law, nor between step-brother and step-sister. By analogy to that permission, it might be argued that marriage between adoptive brother and adoptive sister ought also to be permitted. An interesting question also arises whether, if adoptive relatives wish to intermarry, it would be a criminal offense for them to conceal the fact of adoptive relationship in applying for the license.\(^5\)

It may be that the first judicial answer to the question whether the prohibited degrees include adoptive relationships will be given through such a criminal prosecution, or in a mandamus case to compel the issuance of the license where the relationship by adoption is disclosed. More than likely, if the marriage is actually performed, and no direct annulment suit is brought, and the question arises after the death of one of the parties, the courts will hold that the impediment, if any, makes the marriage only voidable by proceeding, and so will avoid the question whether the marriage should have been performed in the first place.\(^6\)

Perhaps a distinction may yet be made between adoptions during infancy and adoptions of adults, on the theory that more intimate relationships arise from the former, making permission to marry less desirable. Conversely, the ques-

\(^8\) Md. Code (1939) Art. 62, Sec. 2.
\(^5\) Md. Code (1939) Art. 62, Sec. 5, as amended Md. Laws 1941, Ch. 529.
\(^6\) As in Harrison v. State, use of Harrison, 22 Md. 468, 85 Am. Dec. 658 (1864) where the marriage of uncle and niece was held merely voidable by proceeding, not void \textit{ab initio}. 

tion is, may one adopt his own spouse? Nothing in the statute bears on this, either.

The sub-topics which follow are, the rights to the custody, earnings, and services of the adoptee; the respective duties of adopted child and adopter to support the other; inheritance by and from the adopted child; and the effect of adoption of a child as a revocation of the adopter's will.

_Custody, Earnings, and Services._

Perhaps the most important of the consequences of the adoption of an infant is that the adopting parent acquires exactly the same right to the custody, earnings, and services of the adoptee as he would have, during minority, in the case of his own legitimate child. But, oddly enough, nothing in the Maryland adoption statute so provides. The statute was apparently drafted entirely in terms of the rights of the adoptee, for the nearest thing in it to the present topic is the provision that the adoption shall entitle the adopted child to the same rights of protection, education, and maintenance as if born to the petitioner in lawful wedlock. It is also provided that the natural parents shall be freed from all legal obligation toward the child.

While the statute is silent about the adopter's right to custody, yet the Court of Appeals has supplied the oversight by interpretation and, proceeding from the provisions stated above in favor of the adoptee, it has spelled out the adopter's rights to custody. No doubt, the incidentals thereto follow along.

This was principally arrived at in _Spencer v. Franks._88 There, at the time of the original adoption decree, the Chancellor had appended thereto a qualifying clause entitling the natural parents occasionally to see the child. At this, a later stage, the adopting parents successfully sought to have the clause stricken out, and the natural parents unsuccessfully attempted a three-fold attack, first, by seeking to have the clause kept in and enforced; second, by

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87 See supra, n. 59.
attempting to nullify the entire adoption decree for fraud in its obtention; and, third, by bringing an independent custody proceeding on the basis that the custody in the adopting parents was not for the best interests of the child.

The Court found the qualifying clause beyond the jurisdiction of the Chancellor in the adoption case, and that it was severable, so that the decree would stand; that there was no proof of fraud in the obtention and that there was no showing that a continuance of custody in the adoptive parents was detrimental to the child. Thus, the natural parents were completely deprived of any claim to custody of the child.

From this it can be taken that the effect of adoption is to take away from the natural parents and to confer on the adopting ones that presumptive claim to unhampered custody of the child which usually results from legitimate birth in favor of the natural parents. As a result, an adoptive parent can be deprived of complete custody only under those circumstances which would lead to deprivation of a natural parent when there was no adoption in the picture.

The Court found that exclusive custody in the adoptive parents was a natural corollary of the infant's being entitled to protection, education, and maintenance from them, and of the natural parent's obligations being terminated. The Court also said that the statute clearly contemplated that the adoptive infant should not be subject to the conflicting authority of natural and adoptive parents. The Court cited Waller v. Ellis, where a somewhat similar conclusion was announced, more or less by way of dictum. There, in the course of denying a petition for adoption of a child then in the custody of its grandparents, who op-

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90 The Court's finding that the qualifying clause was severable from the main adoption decree overruled any possible contention that the whole decree was void because it contained a part in excess of the court's jurisdiction.

91 See Zimmerman v. Thomas, 152 Md. 293, 136 A. 636 (1927), discussed in the text supra, circa n. 21, et seq., on the point that true adoption did not result from the indenture in that case because, among other reasons, the hospital had reserved some oversight of the relations between the child and the "adopting" parents.

91 169 Md. 15, 179 A. 289 (1935).
posed the adoption, the Court had pointed out that to grant the uncle's petition would be to entitle him to the child's custody to the exclusion of the grandparents who then had it.

Of course, the other side of the shield must be considered. Not only does the adoptive parent acquire a right equivalent to that of a natural parent, upon adoption, to custody, but such adoptive parent can be deprived of custody for exactly the same reasons as a natural parent, viz., that the continued custody is not for the best interests of the child. This was recognized, though rejected on the merits, in *Spencer v. Franks.*92 So, too, the concluding statement in *Backus v. Reynolds,*93 where a bill to annul and rescind an adoption was dismissed, recognized the power of equity to readjust custody against the adopting parents if their custody proved positively improper.

In *Alston v. Thomas*94 the Court of Appeals reversed a peculiar ruling of the Chancellor, who had confused the problems of custody and adoption. The foster-parents had sought adoption, and the natural father, the sole surviving parent, resisted it. The Chancellor declined to decree adoption, but did award the "permanent custody" of the child to petitioners. This the Court of Appeals reversed, as it decided that an adoption outright should have been decreed. It was pointed out that our law does not recognize such a thing as "permanent custody", as any award of custody, as such, is temporary in the sense that it is subject to modification for supervening changes in conditions affecting the child's welfare. Outright adoption, on the other hand, is relatively more permanent, in that it creates a presumption in favor of continued custody in the recipients, equally as hard to overcome as the presumption in favor of natural parents.

So, too, in *Connelly v. Jones,*95 the distinction between an award of custody and the decreeing of an adoption was emphasized. There, the Court of Appeals reversed the

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93 159 Md. 601, 152 A. 109 (1930).
94 161 Md. 617, 158 A. 24 (1931).
95 165 Md. 544, 170 A. 174 (1933).
Chancellor’s decreeing an adoption to a great-aunt over the opposition of the natural father, sole surviving parent. The circumstances there were more favorable to the father than in *Alston v. Thomas*. The Court said that, had the question been one of custody instead of adoption, they would have awarded it to the great-aunt. In fact, it was obvious that the father was not going to dispute the custody in her for the time being, but what he was opposing was his being forced to relinquish all future claim to custody, did his situation improve. This would have followed had the adoption decree been affirmed. These cases, too, bear out the point that the successful petitioner in adoption obtains exactly the same right, no more, no less, to the custody of the child as would normally be possessed by the natural parents of a child who had not been adopted by others.

There has been no decision at all in Maryland about the parallel problems of the rights to the earnings and services of the adopted child during his minority but it would be a safe generalization, by analogy to the rule for custody, and following general authority on the point, that the adopting parent alone is entitled to the earnings and services of the child, including the right to sue for loss of services resulting from injury to or seduction of a minor.

**Support and Maintenance**

An important consequence of adoption is the effect it may have on the question of the duty to support, between adoptee and adopter, and, for that matter, between adoptee and natural parent. The statute clarifies certain of the problems that may arise when it provides that the adopted child shall receive “the same rights of protection, education, and maintenance as if born to such petitioner in lawful wedlock.” Similarly, the natural parents are relieved of such duties by the provision that they “shall be freed of all legal obligation towards” the child. This

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96 Madden, Persons and Domestic Relations (1931) 360.
97 Section 81, infra, n. 111.
98 Ibid.
ADOPTION makes it clear that adoption of an infant imposes on the adoptive parent the full legal duty of support, no doubt enforceable by any one of the three existing legal devices for compelling this from natural parents, viz., criminal prosecution,\textsuperscript{99} equity order,\textsuperscript{100} or suit in assumpsit to recover for money and goods advanced.\textsuperscript{101} By the same token, the natural parent is absolved from this duty. There is no problem, of course, of support of the adoptee when an adult is adopted.

The Selective Service regulations,\textsuperscript{102} currently of interest, recognize that an adopted child is the equivalent of a natural child for purposes of draft deferment for dependency. The Maryland Workmen's Compensation Law likewise recognizes an adopted child as a child for compensation purposes by its provision\textsuperscript{103} that "child" or "children" shall include adopted children, whether members of the deceased's household or not. This was commented on in \textit{Scott v. Independent Ice Co.},\textsuperscript{104} where the Court held that, as the law then stood (it has subsequently been changed), an illegitimate child was not entitled to compensation even though living in the household of the deceased. The Court remarked on the fact that the statute already contained a provision in favor of adopted children and, from specific mention of them, concluded the Legislature had not intended to include illegitimates, else it would have mentioned them also. The Court also cited the provision of the adoption law which entitles adopted children to receive support from the adopting parents as supporting their conclusion in the case.

The previous discussion has been concerned with the duty of the adopting parent to support the child. The converse problem is, to what extent does the adopted child acquire a duty to support the parent, comparable to that

\textsuperscript{99} Md. Code (1939) Art. 27, Secs. 89 to 96.
\textsuperscript{100} Md. Code (1939) Art. 16, Secs. 41, 85.
\textsuperscript{101} See Kriedo v. Kriedo, 159 Md. 229, 150 A. 720 (1930); Alvey v. Hartwig, 106 Md. 254, 67 A. 132 (1907); and Boggs v. Boggs, 138 Md. 422, 114 A. 474 (1921), for leading Maryland cases on this.
\textsuperscript{102} Selective Service Regulations, Secs. 622.32, 622.33.
\textsuperscript{103} Md. Code (1939) Art. 101, Sec. 80 (10), as amended, Md. Laws 1941, Chs. 627, 773.
\textsuperscript{104} 135 Md. 343, 109 A, 118 (1919).
of a natural child? Or, to what extent is the adoptee relieved of his otherwise existent duty to support his natural parents?

Coming up by way of a Workmen's Compensation problem, one Maryland case has had to deal with the question of support of adoptive parent by adopted child. This was Victory Sparkler Co. v. Gilbert,¹⁰⁵ which recognized an adoption under the law of Delaware, and held that an adopting mother was a "mother" under the provisions of the Workmen's Compensation Act and so was entitled to compensation. While there has been no decision in Maryland on the point, yet it would seem that, by analogy to the Victory Sparkler holding, adoptive relationship should entitle to recovery under the Maryland Lord Campbell's Act¹⁰⁶ for wrongful death, as readily as would natural parent and child relationship. Thus an adopted child, or an adoptive parent, should as readily be entitled to damages for the death of the other as would one in a natural relationship. Here again, the question is suggested whether a distinction will be drawn between adoption of an infant and adoption of one already an adult.

This suggests the question whether an adopted child is compellable to support the adoptive parent under the other local rules which are applicable to natural children. It so happens that the only local legal device for directly compelling natural children to support their parents is the criminal statute¹⁰⁷ which punishes adult children who do not provide support for their destitute and indigent parents. Unlike the converse situation of support of children by parents, there is no other legal device, such as an equity order, or suit in assumpsit for necessaries furnished, in the case of a parent who is in need of support from children.

There has been no decision by the Court of Appeals on the point whether the destitute parent statute goes to adopted children as well as natural ones. It would seem as plausible to argue that "child" or "parent" in the desti-

¹⁰⁵ 160 Md. 181, 153 A. 275 (1931).
¹⁰⁷ Md. Code (1939) Art. 27, Secs. 98-104.
tute parent law means adopted child or parent as it was for the Court of Appeals in the Victory Sparkler case to find that "mother" in the Workmen's Compensation Law included adopting mother. But, perhaps, a distinction could be made on the ground that the Court favors a liberal interpretation of the Compensation Law,\textsuperscript{108} while the desti-
tute parent one, being a criminal statute, must be strictly construed. The latter conclusion would be bolstered by the fact that the adoption law itself makes specific pro-
vision\textsuperscript{109} for when "child" shall mean adopted child, and that, therefore, the Legislature intended that it should not include adoptive relationships in other than the enumerated cases.

Another problem suggests itself, and it has been treated neither in the statute nor by case adjudication. Is an adopted child, under the destitute parent statute, compell-
able to support his natural parents? By using the logic of Spencer v. Franks\textsuperscript{110} (that explicit provision for duty of support in the adopting parent implicitly gave him the sole claim to custody) we might say that the specific re-
lease of the natural parents from their duty to support the child automatically carries with it their surrender of their expectation of receiving support from the child if they become destitute.

But a further distinction suggests itself. Would it be significant whether the adoptee were an infant or an adult at the time of the adoption? It is plausible to argue that one adopted while an infant should be compellable to sup-
port only the adoptive parents who supported him in infancy, and yet it ought to be impossible for an adult person, by arranging for an adoption and consenting thereto, to escape his duty of supporting his natural par-
ents who, supposedly, did support him during infancy. After all, the problem is a rather narrow one, for it only arises within the field of the criminal statute for non-
support of indigent parents, which itself is rarely called on to be applied even to natural children.

\textsuperscript{108} Victory Sparkler Co. v. Gilbert, \textit{supra}, n. 105.
\textsuperscript{109} Section 83, \textit{infra}, n. 122.
\textsuperscript{110} 173 Md. 73, 195 A. 306, 114 A. L. R. 263 (1937).
Inheritance

Not the least important questions arising in the adoption field are those concerned with inheritance by and from adopted children. Primarily the problem is that of inheritance in the case of intestacy, but an incidental question of inclusion of adopted children in classes specified in wills also may arise. An adopted child may, of course, be disinherited by the adopting parent as freely as may natural children be disinherited.

The principal provision111 of the adoption statute on the point is to the effect that adoption entitles the adoptee to the same rights of inheritance and distribution in the petitioner's estate as if born to petitioner in lawful wedlock. There are also special provisions for inheritance from the adopted child,112 for the meaning of the word "child" with reference to adopted children when used in written instruments,113 and for inheritance of Maryland property by those adopted under the laws of other states,114 all of which will be discussed more intensively at proper places herein.

Many Maryland cases touching on the question of inheritance by adopted children have merely involved the problem whether the adoption statute of 1892 was sufficiently complied with, and these have been discussed elsewhere from that angle. Thus, *Hiss v. McCabe*115 and *Fisher v. Wagner*116 merely pointed out that the "adopted"

111 Md. Code (1939) Art. 16, Sec. 81: The effect of such decree of adoption shall be to entitle the child so adopted to the same rights of inheritance and distribution as to the petitioner's estate, and the same rights of protection, education and maintenance as if born to such petitioner in lawful wedlock, and the natural parents of such child shall be freed from all legal obligation towards it, provided that where such child inherits property from its adopted parent or parents, upon it dying intestate without issue the property thus inherited shall descend and be distributed to the same persons who would take the same by inheritance and in course of distribution if the child had been the child of the adopted parents born to them in lawful wedlock; provided, however, that this shall not be construed to limit or interfere with the power of disposition over such property by gift, grant, devise, bequest or otherwise by said adopted child.


113 Section 83, *infra*, n. 122.

114 Section 84, *supra*, n. 49.

115 45 Md. 77 (1876), *supra*, n. 14.

ADOPTION

children took nothing inasmuch as either the adoption was well before 1892, or the death in question took place before then. The same result was indicated in Holriter v. Wagner with reference to the claim of an “adopted” daughter to appointment as administrator. Then, too, Supreme Council v. Green, and Clayton v. Heptasophs which also involved non-compliance with the statute, dealt with fraternal insurance benefits rather than inheritance of property in the strict sense.

Until the Winter of 1942-43, there had been only two cases really involving inheritance by and from legally adopted children, and, in fact, one of these went off on non-compliance with the 1892 law, although the Court therein, by dictum, did point out that the same result would have been reached had it been complied with. This was Zim-merman v. Thomas where the adopting parent’s brother had left property to the “children” of that parent. The Court held that the adopted child did not take under the bequest, pointing out that even under the 1892 law, if complied with, “child” in a legal document means adopted child only when used in documents executed by the adopting parent. From this it follows that an adopted child does not inherit from any others in the adopting family than the parent or parents, and will not share in a class described as “children” in the wills of others than the adopting parent.

This same result was arrived at in Eureka Life Insurance Co. v. Geis and Hollstein where the adopting parent’s own mother, in her will, upon a condition which had happened, devised certain ground rents to her own “right heirs.” The Court held that the adopted grand-child did not take, emphasizing the specific provision in the statute.

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117 139 Md. 603, 116 A. 569 (1921), supra, n. 16.
118 71 Md. 263, 17 A. 1048, 17 A. S. R. 527 (1889), supra, n. 19.
120 152 Md. 263, 136 A. 636 (1927).
121 121 Md. 196, 88 A. 158 (1913).
122 Md. Code (1939) Art. 16, Sec. 83: The term “child” or its equivalent in a deed, grant, will or other written instrument shall be held to include any child adopted by the person executing the same, unless the contrary plainly appears by the term thereof, whether such instrument be executed before or after the adoption.
to the effect that "child" means only an adopted child of the person executing the document, and the further provision that the adopted child becomes the heir of the adopting parent.

In MacNabb v. Sheridan, decided by the Court of Appeals at the October Term, 1942, a similar problem was potentially presented, although, as it turned out, the Court of Appeals did not have to decide the point of adoption law. In that case the decedent died intestate, owning real estate and leaving several heirs. The real estate had been sold by a trustee appointed by the court for that purpose. The appellee was an adopted daughter of a brother of the decedent's, which brother had pre-deceased the decedent. The auditor's report of the proceeds of the partition sale had excluded this adoptive niece, and she filed exceptions, which were sustained by the trial court, the court holding that she was entitled to share as a niece. The trustee, after obtaining the court's permission to do so, appealed from this ruling, but none of the other heirs joined in the appeal.

The Court of Appeals dismissed the appeal without deciding whether the trial court was right or wrong in allowing the adoptive niece to share. The dismissal was on the ground that the statute allowing trustees to appeal did not cover this situation, so that one of the other heirs should have taken the appeal. The appellant's brief had cited both Zimmerman v. Thomas and Eureka Life Insurance Co. v. Geis as dictating a reversal on the merits, and it is hard to see how the Court could have avoided reversing if the case had been properly before it, in view of these cases.

A further question arises, does an adopted child nevertheless inherit from his natural parents and other relatives in the event of their deaths intestate? For lack of specific provision in the statute otherwise, and following general authority, the answer is that he does inherit from his

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123 29 A. (2d) 271 (Md., 1942).
124 Md. Code (1939) Art. 5, Sec. 43.
125 MADDEN, PERSONS AND DOMESTIC RELATIONS (1931) 363, n. 41.
natural relatives despite being adopted. The question has not yet been decided in Maryland but the answer would seem obvious.

A still further problem is this: Who inherits from an adopted child in the event of his death intestate? The statute has specific provision with reference to property earlier inherited from the adopting parents, to the effect that if the child shall die intestate and without issue, such property shall descend and be distributed to the same persons as if the adopted child had been born in lawful wedlock to the adopting parents. This means that such property stays on the adopting side, instead of going to the natural relatives. It is specifically provided however, that an adopted child may dispose of such property by gift, grant, devise, bequest, or otherwise.

Other property of the intestate adoptee, however, would descend and be distributed to his natural relatives, rather than to the adopting parents or other adoptive relatives. This would seem to follow from the statute's failure to provide otherwise, and from its specific treatment of the included question of property originally inherited from the adopting parents. However, it would seem potentially unjust that the natural parents or other relatives, rather than the adopting parents, should receive property acquired by the adoptee, merely because he failed to make or was incapable of making a will, when the adopting parents were the only ones who probably expended their own money and effort in his rearing. But the conclusion remains, following general authority, that the specific provisions of the adoption statute for abnormal inheritance were meant to be exclusive, and the result is that, while the adopted child inherits from the adopting parents, they do not inherit from him, and that natural relatives will take to the exclusion of adopting parents and other rela-

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126 Section 81, supra, n. 111.
127 For an interesting case involving a somewhat different solution of the same problem by the Illinois statute, see Carter Oil Co. v. Norman, 131 F. (2d) 451 (C. C. A. 7th, 1942).
128 MADDEN, PERSONS AND DOMESTIC RELATIONS (1931) 366.
tions, save in the narrow case of property acquired by
inheritance from the adopting parents.

It would well seem that the statute should be amended
or supplemented in order to avoid this potential injustice,
by making specific provision for inheritance from an
adopted child. It is suggested that adopting parents might
well be made the first class to inherit if there be no children
of the adoptee, and that natural relatives should not in-
herit at all save where there are no surviving children nor
adopting parents and then only if the nearest natural kin
be closer in degree than the nearest adoptive kin.

Lacking such statutory reform of this obvious injustice
under the existing adoption law, it is possible, by careful
draftsmanship of instruments conferring property on
adoptees, to determine that the adopting parents shall take
to the exclusion of the natural relatives in the event of
the adoptee's intestate death. This can particularly be
done in settling property on an infant adoptee, in order
to guard against the possibility of death prior to attaining
the age of capacity to make a will. The obvious course
is to leave the property in trust for the infant adoptee until
attaining sufficient age to make a valid will, with provision
for remainder to the adopting parents in the case of the
infant's death before attaining that age.

Considerable thought should be given to this problem
when the adopted infant is the beneficiary of a life insur-
ance policy, for which a trust or "optional mode of settle-
ment" can be established in line with the previous sug-
gestion.

With reference to property inherited from one of the
adopting parents, the specific provision in the existing
statute would avoid the injustice, for it would go back
to the other adoptive parent or to some relative on that
side, but life insurance benefits would end up in the hands
of the natural relatives if the beneficiary later died intest-
tate, unless some such provision as is outlined above were
made.

Thus, unless a trust or some other device is used, prop-
erty directly bequeathed to an adopted grand-child
(adopted child of one’s own child) would end up in the hands of the natural relatives upon death intestate unless that result were guarded against. The doctrine of worthier title might possibly avoid that as to property coming by bequest or devise from the adopting parents themselves, rather than by inheritance, but it may be, under the ramifications of that exotic doctrine, that even as to property bequeathed or devised by the adopting parents, it would go to the natural relatives in the event of the adoptee’s death intestate, as the law now stands, as it would in the case of property given inter vivos. That possibility, more than anything else, suggests the need for statutory reform of the problem of inheritance from an adoptee.

The question of inheritance of Maryland property by those adopted in other states has already been dealt with elsewhere, in connection with Conflict of Laws problems in general. Under the specific Maryland statutory treatment of the problem, one adopted elsewhere would not inherit unless the law of the state of adoption would entitle him to, and then only if such law is not inconsistent with the specific provisions of the Maryland law. As was pointed out above, this statute is most confusing and awkwardly drawn, and there is little profit in speculating about the various possible results under it, lacking any adjudication under it in the Maryland cases. Here, too, there is need for statutory reform to the end that those

129 Thus, if property came to the adoptee under the adopter’s will, the doctrine of worthier title (if applicable) would make this be regarded as having come by descent and thus clearly it would stay on the adopter’s side of the family if the adoptee died intestate. There is a question, of course, whether the effect of Section 81, supra, n. 111, is to apply to keep the property in the adopting family regardless whether the property comes from adopter to adoptee by descent or under a will. The statutory phrase “such child inherits property from” might be limited to taking by intestacy or more broadly apply to taking by will.

130 See Reno, The Doctrine of Worthier Title as Applied in Maryland (1939) 4 Md. L. Rev. 50, 54-55, to the effect that the Maryland version of the doctrine would apply only where there is a single heir who is also devisee. Thus, only if the adopted child be the only child, would the doctrine of worthier title aid the situation.

131 Supra, supra, n. 49, et seq.

132 Section 84, supra, n. 49.

133 For an example of the kind of conflict that arises when there are differences in the rules of the state of adoption and the state where the land lies, see Anderson v. French, 77 N. H. 509, 93 A. 1042 (1915).
validly adopted elsewhere shall inherit Maryland property exactly as if they had been adopted by a Maryland proceeding.

Revocation of Will

One of the minor sequelae of adopting a child is the effect it may have by way of working a total or partial revocation of a previously executed will of the adopting party. Under a statute\(^\text{134}\) passed in 1937 for the primary purpose of clarifying the problem of the effect on a will of marriage and/or birth of issue, it is provided that adoption, and also legitimation of a previously illegitimate child, shall have exactly the same effect as birth of legitimate issue.

Under this statute it is clear that if the sequence of events be will, marriage, adoption, then the will executed before the marriage is totally revoked. While it is not quite so clear, yet it is arguable that the will is also totally revoked when the sequence be will, adoption, marriage; or when it be adoption, will, marriage. These latter results would also seem to follow under the statutory provision that “a will shall be revoked by the subsequent marriage of the testator coupled with birth, adoption or legitimation of a child by him.” The phrase “coupled with” could indicate that the adoption might precede the marriage, or, for that matter, the will, so long as the marriage is after the will.

When there is no marriage, or the will is executed after marriage, subsequent adoption of a child does not totally revoke a will executed prior to the adoption, and the second part of the statute then applies. Under it, if the testator has either (A) made no provision at all for any child, or (B) has provided for an existing child or children and has also provided for children subsequently adopted (or born or legitimated), then the subsequently adopted children take either nothing in case (A) or what if anything is provided for them in case (B). If, however, such

\(^{134}\) Md. Code (1939) Art. 93, Sec. 338. For treatment of the Maryland law about this prior to the 1937 statute, see Lentz, Revocation of a Will by Birth of a Child (1936) 1 Md. L. Rev. 32.
a testator provides for an existing child or children without providing for subsequently adopted ones, then such subsequently adopted ones, if they survive the testator, each take an intestate share, although the will otherwise stands.

In this final respect, as in the others, we see how the tendency is to assimilate legitimate birth, subsequent legitimation, and adoption, with respect to the legal consequences which respectively follow.