Changes Made by the New Adoption Law

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By JOHN S. STRAHORN, JR.*

The Maryland Legislature of 1947 made some rather drastic changes in the adoption law of the State.1 It is proposed herein to discuss those changes, along with any cases2 decided under the old law since the time of the earlier article3 in the REVIEW by the same author, which had described the adoption law of the State as of six years ago, now, and as some four years prior to the recent changes. The sequence of topics herein will parallel that of the earlier article.4

The statute of 1892, the original Maryland adoption law, had been amended four times, prior to the recent revision by the 1947 Legislature. In 1924 a provision was made for concurrent jurisdiction where either the petitioner or adoptee resided; in 1935 adoption jurisdiction was extended to the residents of Federal reservations within Maryland; in 1937 provision was first made for the judicial adoption of adults; and in 19455 a provision was enacted for the

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1 Md. Laws, 1947, Ch. 599, as amended by Md. Laws (Sp. Sess.) 1947, Ch. 19, and by Senate Bill 235, Session of 1949, now before the Governor, all of which repealed and re-enacted Md. Code (1939) Art. 16, Secs. 78 and 82 and which repealed Ibid., Art. 16, Secs. 78A, 79, 80, 81, 83 and 84, and added Md. Code Supp. (1947) Art. 16, Secs. 85A through 85S, and Ibid. Art. 93, Sec. 139A.

2 These cases are treated herein, infra, at footnotes 11, 20, 23, 31 and 32.

3 Strahorn, Adoption in Maryland (1943) 7 Md. L. Rev. 275. It is planned in this supplemental article to cite only the previous article for propositions of law under the older statute. At the beginning of each section herein a footnote will indicate the parallel pages in the earlier article. With some exceptions, that will constitute the only citation of authority on matters decided under the old law.

4 The sub-topics treated in this article, together with indication of the footnote numbers near where the respective subjects may be found, will be set out here:

**Introductory topics:** Compliance with statute (n. 10); Adoption of adults (n. 13).

**The procedure for adoption:** Territorial jurisdiction and recognition of foreign decrees (n. 15); Joint and several adoptions, capacity to adopt (n. 17); Notice and consent (n. 19); “The best interests and welfare of the child” (n. 21); Revocation of adoption (n. 22); and Change of name, birth certificates (n. 24).

**The consequences of adoption:** Custody, earnings and services (n. 28); Support and maintenance (n. 29); Inheritance (n. 30); and Revocation of wills (n. 34).

**Concerning the curative act:** (Circa n. 34.)

5 Md. Laws 1945, Ch. 343, adding Md. Code Supp. (1947) Art. 16, Sec. 78A.
sealing up of records and proceedings in adoption cases. All of these amendments of the original adoption law of 1892 were preserved intact, or further extended in spirit in the revision of 1947. This latter revision rather made drastic changes in the basic adoption law, or made additions not inconsistent with the changes that had been made in the more than half century that had elapsed since the first enactment of any Maryland adoption law.

As a result of considerable public concern about the shortcomings of the Maryland adoption law as it then stood, the Legislature of 1945 passed a resolution asking the Governor to appoint a Commission to study the adoption law of the State and to report to the next Legislature its recommendations for improvements. The Governor appointed such a Commission, under the Chairmanship of Hon. Eugene O'Dunne, retired Associate Judge of the Supreme Bench of Baltimore City. This Commission met periodically in the interim and ultimately reported its recommendations to the 1947 Legislature, calling for the enactment of two statutes. One, actually enacted as Chapter 600 of the Acts of 1947, revised the law governing the licensing of child care agencies in Maryland, a topic incidentally impinging on that of adoption, although not to be treated in detail herein. The other statute, which became Chapter 599 of the Laws of 1947, did drastically revise the pre-existing adoption law of the State, and it is the purpose of this article to discuss its effects.

In the course of enacting Chapter 599 of the Acts of 1947, seven of the counties of the state were specifically exempted from the application of the new law. These are the counties of the Fourth and Seventh Judicial Circuits, i.e., Allegany, Washington, Garrett, Calvert, Prince George's, St. Mary's and Charles counties.

Inasmuch as doubts arose as to the effect of this exemption, a Curative Act was thought necessary, and one was

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6 The report of the Commission, reflecting the resolution for its appointment, appeared in the Baltimore Daily Record of June 1, 1946.
7 Md. Laws 1947, Ch. 600, adding various new sections and amending others of Md. Code (1939) Art. 88.
8 Supra, n. 1.
so enacted as Chapter 19 of the Special Session of 1947. At the end of this article there will be more extensive discussion of the problems presented by the exemption and the Curative Act. Throughout the ensuing discussion, indication will be made whether the particular detail is State-wide or subject to the exemption.

In addition, the Legislature of 1949 made one change further in the adoption law, also concerning the matter of territorial jurisdiction, and this will be discussed later in this article.9

Compliance With the Statute10

There is nothing novel in the revision statute with reference to the idea that adoption is purely statutory and has no common law basis. Thus it is, that the previous idea, that adoption can be had only in compliance with a statute, is carried forward.11 There is one aspect of the statute, however which pervades the whole problem, and which should be mentioned here.

This is to be found in Section 85A, a declaration of legislative policy, which prefaces the entire new statute, and is of State-wide application. It reads as follows:

[STATE-WIDE]

"85A. (Legislative Policy.) The General Assembly hereby declares its conviction that the policies and procedures for adoption contained in this sub-title are socially necessary and desirable, having as their purpose the three-fold protection of (1) the adoptive child, from unnecessary separation from his natural parents and from adoption by persons unfit to have such responsibility; (2) the natural parents, from hurried and abrupt decisions to give up the child; and (3) the

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9 Senate Bill 235, repealing and re-enacting Art. 16, Sec. 85B of the 1947 Adoption Revision Law. The effect of this will be discussed, infra, c. n. 16.
10 Cf. 7 Md. L. Rev. 277-282.
11 See Besche v. Murphy, 59 A. 2d 499 (Md. 1948). This case is the subject of a casenote, which will appear in this issue of the Review, and no further reference than this passing one will be made to it. It concerns the enforceability of a contract to adopt, and no change in the law as between the two statutes is involved. In fact, neither statute throws particular light on the problem of enforceability of a contract to adopt. Rather the case goes off on the principles of contract and equity law, although it does also concern the problem of imperfect adoption. See (1949) 10 Md. L. Rev. 72.
adoopting parents, by providing them information about the child and his background, and protecting them from subsequent disturbance of their relationships with the child by natural parents."

This last proviso of the policy section of the statute is interesting, particularly in view of the criticism\(^2\) that previously had been directed at statutes of the older Maryland type, and of the type usually enacted in the Nineteenth Century. Now, the interests of the adopting parent are recognized along with those of the adopted child. The older Maryland statute, and for that matter many of the similar statutes enacted in the last Century, had been subject to criticism that they gave particular emphasis only to the interests of the child as a result of the adoption, and did not contain any adequate provisions for the protection of the interests of the adopting parents.

As will be pointed out, however, the newly enacted Maryland statute rectifies this oversight, and contains adequate provisions for the correlative protection of the adopting parents and other adopting family, as well as the inevitable provisions for protecting the interests of the adopted child following the adoption itself. Thus, it will be seen, particularly with reference to the inheritance provisions, that the new law now recognizes that some protection should be given to the adopting family, along with that of the natural family and adopted child, in providing for the sequelae of an adoption.

\(Adoption of Adults\(^3\)

It was not until 1937 that the old Maryland law provided for the judicial adoption of adults. Theretofore such adoptions were arrived at by special acts of the Legislature. The new adoption law, both in its State-wide provisions for all the counties, and in the overlapping retention of the old provision for the exempted counties, continues this pro-

\[^2\] See Kuhlmann, \textit{Intestate Succession by and from the Adopted Child} (1943) 28 Wash. U. L. Quart. 221.

\[^3\] Cf. 7 Md. L. Rev. 283-4.
vision for the adoption of adults, and for similar consequences to follow such adoption as for that of infants.

The curative act of the 1947 Special Session had to leave the overlapping provisions for the adoption of adults both in the otherwise State-wide provisions and in the retained provision of the old law for the seven exempted counties. Sections 85E and 85-O of the new law, decreed to be State-wide in effect, provide for the adoption of adults and apply in all of the counties of the State. A provision remaining in Section 78, otherwise retained in force in the seven exempted counties of the State, also provides for the adoption of adults, although it is not inconsistent with the State-wide provisions also applicable. Sections 85E and 85-O read as follows:

[STATE-WIDE]

"85E. (Who May Be Adopted.) Any person, whether a minor or an adult, may be adopted."

[STATE-WIDE]

"85-O. (Adults.) Persons over twenty-one years of age may be declared to be adopted, on the petition of the adoptive parent or parents, the consent of the person to be adopted, and notice to the nearest next of kin of the petitioner or petitioners, if upon hearing had the Court shall be satisfied that the adoption should be granted. The legal effect of such an adoption shall be the same as that of the adoption of a minor, except as to guardianship."

But, there is no conflict in the overlapping special procedures for the adoption of adults. The older statute, still also in force in the seven exempt counties, had provided that the adoption of an adult should be decreed on notice to the next of kin of the petitioner, and if "such adult shall so desire". The new statute similarly provides for notice to the nearest next of kin of the petitioner, the "consent of the person to be adopted", and "if the Court shall be satisfied that the adoption should be granted." This last clause is nominally novel in the new law, but some such discretion would seem to have been implicit in the older law.
PROCEDURE FOR ADOPTION\textsuperscript{14}

The new statute, in its Section 85A of State-wide application, preserves the older idea that jurisdiction for adoption shall lie in the courts of Equity, i.e., the Equity side of the Circuit Courts in the counties, and either of the two Circuit Courts in Baltimore City.

With reference to the style of an adoption case for a minor, the new statute in its Section 85F, which is subject to the exemption of the seven counties, specifically provides that such cases shall be docketed "Ex parte in the matter of the petition of . . . for the adoption of a minor." This would indicate a policy of the new statute to avoid disclosing who is to be adopted. As was pointed out in the earlier article, the customary docket entry in Baltimore City had previously disclosed the name of the child to be adopted and, no doubt, the practice in the counties still exempt from the new law will continue to be whatever local custom dictates.

As a result of the exemption of the seven counties from the provisions of Section 85F, and because the provisions of that Section are so novel and detailed, as against the lack of any specific detail in the old statute, the procedure for beginning an adoption case will be drastically different in various parts of the State. In all but the seven counties, the provisions of Section 85F will apply, and in those seven counties the locally variant procedures, permissible because of the lack of explicit detail in the old statute, will, no doubt, continue to prevail. The provisions of Section 85F are:

\textbf{[SEVEN COUNTIES EXEMPT]}

"85F. (Petition.) Every petition filed for the adoption of a minor under 21 years of age shall be under oath or affirmation of the petitioner and the titling thereof shall be substantially as follows: 'Ex parte in the matter of the petition of . . . for the adoption of a minor.' The petition or the exhibits annexed hereto shall contain the following information:

"(a) The name, sex, date and place of birth of the person to be adopted, and the names and addresses

\textsuperscript{14} Cf. 7 Md. L. Rev. 285.
and residences of the natural parents, if known to the petitioner;

"(b) The name, address, age, business or employment of the petitioner, and the name of the employer, if any, of the petitioner;

"(c) The names and relationship to the petitioner of any members of the immediate family of the petitioner, and the relationship, if any, of the person to be adopted to the petitioner;

"(d) The race and religious affiliation, if any, of the person to be adopted, or of his natural parent or parents;

"(e) The race and religious affiliation, if any, of the petitioner;

"(f) The names and addresses of the natural persons, and the institutions which have had physical or legal care and custody of the child since its birth, and the period of time during which such natural persons and institutions have had such care and custody and whether the homes of such natural persons and institutions were duly registered or licensed under the laws of the State with reference to foster homes;

"(g) Any change of name which may be desired.

"If any of the above facts are unknown to the petitioner, the petition shall state this fact. If any of the above facts are known to a child care or child placement agency, which as a matter of social policy declines to disclose them to the petitioner, the facts may be disclosed to the court in an exhibit filed with the petition by the agency in question. If more than one petitioner joins in a petition, the requirements of this section shall be applicable to each petitioner."

The specific details of the above requirements have not been ruled upon, and little comment is necessary at this time. It is apparent that the policy of the new statute in this regard is that full disclosure shall be made at the start of the case of as many facts as are relevant to determination of the issue of whether to decree the adoption. This requirement of full disclosure, of course, bears on the ensuing topics herein, of notice and consent, and of the best interests and welfare of the child. It is obvious that disclosure of the above facts enables the court better to deter-
mine who is entitled to notice, and whose consent is manda-
tory, and whether the best interests of the child will be
served for it to decree the particular adoption.

The new statute in a Section of State-wide application,
has a provision which reiterates, although supersedes a
similar statute enacted in 1945, i.e., old Section 78A, con-
cerning sealing of papers and records in adoption cases.
The present Section 85R reads as follows:

[STATE-WIDE]

"85R. (Records.) Records and papers in adoption
proceedings, from and after the filing of the petition
shall be sealed and opened to inspection only upon an
order of the Court; provided, that in any proceeding in
which there has been an entry of a final decree before
June 1st, 1947, and in which the records have not
already been sealed, the records and papers shall be
sealed only on motion of one of the parties to the pro-
ceeding. In either case said seals shall not be broken,
and said papers shall not be inspected by any person,
including the parties to the proceeding, except upon
order of the Court. The Clerks of the several courts
shall keep respectively separate dockets for adoption
proceedings."

A novel provision, not found in the old law, appears in
Section 85P, which also is subject to the exemption of the
seven counties. This prohibits, and makes criminal the
receiving of compensation for arranging an adoption, with
certain proper exceptions for hospital, medical, and legal
fees. The Section reads as follows:

[SEVEN COUNTIES EXEMPT]

"85P. (Prohibited Compensation.) It shall be un-
lawful for any agency, institution, or individual ren-
dering any service in connection with the placement
of a child for adoption to charge or receive from or on
behalf of either the natural parent or parents of the
person to be adopted, or from or on behalf of the per-
son or persons legally adopting such person, any com-
pensation whatsoever for the placement service, but
this shall not be construed to prohibit the payment by
any interested persons of reasonable and customary
charges or fees for hospital or medical or legal services.
“It shall be the duty of the State’s Attorney in each county and in Baltimore City to prosecute all violations of this section, and any agency, institution or individual convicted of violating this section shall be subject to a fine not to exceed one hundred dollars or to imprisonment not to exceed three months, or both, for each offense.”

This provision is to be explained, no doubt, by the information found in the public press in recent years to the effect that certain unscrupulous persons have been engaged in arranging adoptions, sometimes not for the best interests of the child, in order to earn fees from childless parents who may wish to adopt a child and are impatient of the delay in obtaining a child through normal, non-mercenary agencies. Then too, one heard during the late war, of adoptions being arranged for no other purpose than to increase the military allotment to the wife from an absent member of the armed forces. The exceptions in the Section are of obvious soundness.

There is another item, in the new statute, of State-wide application, which is novel as a matter of statutory law, although it merely confirms the previous understanding in the matter. This provides clearly for an appeal, and it, Section 85Q, reads as follows:

[STATE-WIDE]

“85Q. (Appeal.) Any party to an adoption proceeding may appeal to the Court of Appeals from any interlocutory or final order or decree of the trial court, within the period specified generally for appeals in equity cases.”

While there was no special statutory detail about this in the previous law of adoption in Maryland, yet it was understood and so practiced that a party could appeal to the Court of Appeals as in other cases in Equity, as witness the fact that many appeals had been taken under the older practice.
NEW ADOPTION LAW

Territorial Jurisdiction and Recognition of Foreign Decrees

The new law, in certain provisions which are State-wide in effect, has considerably clarified the conflict of laws problems that belong under the instant heading. Section 85B reads as follows:

[STATE-WIDE]

"85B. (Jurisdiction and Venue.) The Circuit Courts of the several counties of this State, sitting in equity, and any court of Baltimore City having equity jurisdiction, shall have jurisdiction of all petitions for adoption under this sub-title. Any such petition may be filed in the county, or in Baltimore City, as the case may be, in which (1) the petitioner or petitioners have their domicile; or (2) the person to be adopted is domiciled; or (3) any lawfully licensed child placement agency, having legal or physical care, custody or control of the person to be adopted is located; or (4) such petition may be filed in any court having equity jurisdiction which had prior to the filing of the petition for adoption assumed a continuing jurisdiction over the custody of the person to be adopted. Provided, however, except in (4) above no such petition shall be filed unless either the person to be adopted or the custodian shall be physically within this State and subject to the jurisdiction of the courts thereof."

First, with reference to jurisdiction and venue, the new statute carries forward the idea of the older statute as amended, which had provided concurrent jurisdiction in the county either where the petitioner or the adoptee resided, and it now provides for that under other terminology. Then, as well, it created a third possible county that can entertain the case, i.e., the county where is located any lawfully licensed child placement agency having the legal or physical care, custody, or control of the person being adopted.

In addition, the 1949 amendment has added a fourth alternative to the third one of the 1947 revision. The 1949

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15 Cf. 7 Md. L. Rev. 286-291.
16 Senate Bill 235, cited supra n. 9.
statute adds the fourth possibility of jurisdiction in any county where there was already pending a continuing custody proceeding concerning the person to be adopted. This seems a very plausible addition. It does have a caveat that it shall not be necessary that the Court shall have power over the child to be adopted.

The 1947 Statute had included that requirement for the exercise of jurisdiction on the first three bases, above, as is seen from the verbiage of the statute. It seems obvious that it would be futile to include that requirement for the fourth basis which otherwise is one which is eminently sound.

It will be noted that the older statute had provided for the residence either of the petitioner or the adoptee, whereas the new statute, as now amended, provides for the domicile of one or the other under those two bases of jurisdiction and so it is that the question of what is meant by domicile is now substituted for the former question of what is residence. In fact the 1947 statute had provided for the "location" of the person to be adopted, but this was changed in the 1949 amendment to apply to the domicile of that person as well as of the petitioner and therefore the similar problem arises now as to what is meant by domicile instead of residence as under the older statute. Whereas under the former statute it might have been necessary to translate residence into domicile to apply the law, now the converse will be true and it may be necessary to interpret domicile to mean residence in order to arrive at a sensible interpretation of the present law.

The new statute has a provision, re-iterating that of the amended old statute, extending adoption jurisdiction to Federal reservations within Maryland. Section 85C reads as follows:

[STATE-WIDE]

"85C. (Federal Reservations.) 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, Section 8
of Article I of the Constitution of the United States, and of Sections 31 and 32 of Article 96 of the Annotated Code of Maryland (1939 Edition), 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 purposes of jurisdiction in the courts of equity of this State in all petitions for adoption."

The new statute, in its provision concerning recognition of the adoption decrees of other states, has a solution of the matter far superior to that which appeared in the older statute. The older statute had referred only to recognition of adoption decrees for inheritance purposes, and apparently it gave to persons adopted in the courts of other states such rights in Maryland property as the law of the adopting state would have given in property there located. This always seemed rather odd, insofar as it applied. Furthermore, the old statute had no provision concerning the recognition of adoption decrees for other than inheritance purposes, although the courts had filled the gap by so recognizing foreign adoptions for such purposes in other connections than inheritance. Section 85M now provides:

[STATE-WIDE]

"85M. (Legal Effects of Final Decree.) Upon entry of a final decree of adoption, the legal effects of an interlocutory order shall be confirmed and continued.

"The status of adoptive relationship created by a valid final decree of adoption in another jurisdiction shall be given full faith and credit by the courts of this State. When the question is properly presented to a Court in this State and if the party against whom judgment would be rendered is subject to the jurisdictional processes of the courts of this State, the courts shall apply the legal effects of a final decree of adoption made in this State to such adoptive relationship created by a final decree of adoption in another jurisdiction."

The new statute purports to cover all problems for which recognition of a foreign decree of adoption may arise, and it does so by providing that full faith and credit shall be given to the status of adoptive relationship created by
a valid final decree of another jurisdiction, and that when the question is properly presented, the court shall apply the legal effects of a final decree of adoption in Maryland to such adoptive relationship created elsewhere.

There is one puzzling clause in the section of the new law on the recognition of foreign decrees. This has the caveat that such recognition shall be given to foreign decrees (and the legal effects of a Maryland decree applied to the relationship) if the party against whom judgment would be rendered is subject to the jurisdictional processes of this State.

This would seem to be superfluous, inasmuch as if the courts of this State have no jurisdiction over the party against whom the proceeding be rendered, the judgment would be generally void, whether it would concern recognition of a foreign adoption or anything else. It would be rather peculiar if the Legislature meant to insist on in personam jurisdiction in every case where a foreign decree was to be recognized, particularly as in many cases where the problem will come into focus, it will be because Maryland has jurisdiction in rem over property and the like, and is otherwise exercising it on that basis. It is to be hoped that the interpretation of the above clause as being superfluous will prevail, and that the consistent result of full recognition of foreign adoption decrees and application of Maryland consequences when so recognized, will obtain in all proper cases before our courts, whether based on in personam jurisdiction or in rem jurisdiction over the subject matter before the court.

Joint and Several Adoption; Capacity to Adopt17

The new statute is considerably better with reference to problems arising under this heading. In the first place, it is clarified that only persons over 21 years of age may petition to adopt others. This was assumed to be so under previous law, but had not been made clear therein. Section 85D reads:

17 Cf. 7 Md. L. Rev. 292-294.
“85D. (Who May Adopt.) Any person over twenty-one years of age may petition the court to decree an adoption. If the petitioner has a husband or wife living, competent to join in the petition and not separated from the petitioner under circumstances which would give the petitioner a legal ground for divorce or annulment, such husband or wife shall join in the petition. If the marital status of the petitioner changes after the time of filing the petition, and before the time of the entry of a final decree of adoption in the case, the petition shall be amended accordingly, it being the intent of this section that married persons who are living together and competent may adopt a person only upon the joint action of both. Provided, however, that if either the husband or wife is a natural parent of the person to be adopted, such natural parent need not join in the petition with the adopting parent, but need only give his or her consent to the adoption, as provided elsewhere in this sub-title.”

The new statute also carries forward the idea found in the old one that adoption by a married person should be only a joint adoption by both of the spouses at the same time, barring exceptional situations which might tolerate several adoption by one of married persons without the other joining. Of course, a single person, divorcee, widow or widower, may adopt severally, and there is no problem in that regard.

Where the old statute would tolerate several adoption by a married person only with the consent of the other, or where the other was insane, or the parties were living apart because the other had committed divorce grounds, the new statute is stricter in this regard. The new statute has no provision for the mere consent of the other spouse to a several adoption. It would apparently permit several adoption only where the other spouse is incompetent, or is living apart from petitioner under circumstances entitling petitioner to a divorce or annulment.

The statute goes on to point out that it is the intent thereof that adoption by married persons must be joint, if the parties are living together and competent. The only
provision for the mere consent of the other spouse concerns the somewhat separate problem of adoption by a step-parent who has married the natural parent of the child to be adopted. It is provided in that situation that the step-parent may adopt severally, with only the consent of the natural parent thereto, and specific provision is made for the procedure and consequences when that is to be done. The further provisions of Section 85N, of State-wide force, are:

[STATE-WIDE]¹⁸

"85N. (Legitimation.) Whenever the petitioner is a spouse of the natural parent of the person to be adopted, and the natural parent consents to the adoption or joins in the petition for adoption the Court may in its discretion dispense with the investigation, report, and interlocutory decree provided for in this sub-title, but in all other respects the procedure shall be similar to the procedure prescribed by this sub-title for the adoption of minors; and the decree shall have the effect of reserving unto the natural parent all his or her natural relationships, rights and obligations to the person adopted by the spouse."

Thus it appears that the new statute resolves the doubts speculated about in connection with the old law, as to whether the natural parent and the step-parent should join as co-petitioners for the adoption of the former’s child, and as to the possible consequences that might have obtained under the old law where only the step-parent was the petitioner, and the natural parent did not join in the petition as a co-adopter.

Under the new law, all these doubts are resolved, and the result is the same whether the natural parent and the step-parent join, or only the step-parent petitions, with the consent of the natural parent. The result is that thereafter

¹⁸ Attention should be called to the unfortunate parenthetical title given this section by the Legislature, i.e., legitimation. The content of this section indicates that it applies equally to the marriage to the mother of an illegitimate child followed by adoption by the husband, and to adoption by either spouse of the other's legitimate child by a former union. The word is an unfortunate one. It does recognize that adoption and legitimation accomplish essentially the same thing juridically.
the new spouses are to be regarded as the legal parents of the adopted child who was born naturally to one of them, and has been adopted by the other of them.

**Notice and Consent**

The provisions of the old law in this regard will continue to prevail in the seven exempt counties, inasmuch as Sections 85G and 85H come within the exemption of that group of counties. But, for the rest of the State, these Sections read as follows:

[**Seven Counties Exempt**]

"85G. (Consent.) Every petition for adoption shall be accompanied by written statements of consent, subscribed and sworn to before a person authorized by law to administer an oath, as specified in this section, except that the Court may in its discretion permit any petition to be filed without a necessary consent if such consent is added to the petition before the time set for hearings; but in no event shall an interlocutory or final decree of adoption be made without having the consents required by this section unless for reasons satisfactory to the Court, it shall appear proper to dispense therewith.

"Consent to any proposed adoption shall be obtained from:

"(a) the person to be adopted, if he is ten years of age or over; and also,

"(b) both the natural parents, if married, if they are alive and have not lost their parental rights through court action or voluntary relinquishment or abandonment; or

"(c) one natural parent, if the other is not alive or has lost his parental rights as mentioned in (b) above; or

"(d) the mother of a child born out of wedlock, except that if the child has been legitimated according to the laws of any jurisdiction, the consent of the father shall then also be required, if he is alive and has not subsequently lost his parental rights through court action or voluntary relinquishment or abandonment; or

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19 Cf. 7 Md. L. Rev. 284-97.
“(e) the mother of a child born in wedlock, if the illegitimacy of the child has been established to the satisfaction of the Court, and notice, as is provided by Section 85H of this sub-title, has been given to the husband of the mother of the child; or

“(f) the legal guardian of the person to be adopted, if parental rights have been transferred by court action to such guardian; or

“(g) the executive head of any public or private child care or child placement institution or agency which through court action or voluntary relinquishment has been given the care, custody and control of the person to be adopted, including the right to consent to such an adoption; or

“(h) the State Department of Public Welfare or its local unit within the jurisdiction of the Court, in any condition of fact not hereinbefore covered.

“Any consent obtained under the provisions of this section may be revoked and cancelled at any time during the adoption proceedings prior to the entry of an interlocutory decree of adoption. Withdrawal of consent shall thereafter be prohibited, unless permitted by the Court at a hearing at which all parties to the adoption proceedings are given an opportunity to be heard.

“Minority of a natural parent shall not be a bar to such parent’s consent to adoption, and the adoption shall not thereby be invalidated.”

[Seven Counties Exempt]

“85H. (Notice.) Due notice of pending adoption proceedings shall be given immediately upon the filing of a petition by summons, order of publication or otherwise, as the Court may order to be given to any person or persons whose consent is necessary thereto. Provided, however, that any party or parties who have formally given their consent to the proposed adoption, as provided elsewhere in this sub-title, shall be held thereby to have waived the requirement of notice to them under the provisions of this section. Provided further, however, that in no event shall a consent executed by a natural mother before the end of the first thirty days of the child’s life constitute a waiver of the requirement of notice provided for in this section.”
The provisions for notice in Section 85H serve to clarify some doubt under the older law, although it was understood that much the same result had been reached by interpretation. There is preserved the flexibility as to the giving of the notice, because the court may still order it to be given by summons, or order of publication, or otherwise to those persons entitled to receive it, i.e., any person or persons whose consent to the adoption is necessary. Thus there are related the twin problems of notice and consent, treated in the statute in reverse order of the treatment in the previous article, and in this one, which parallels it.

The new statute ratifies the idea that the filing of a consent by persons entitled to notice and whose consent is necessary shall make further notice to them unnecessary. The provision has the sensible caveat, however, that a consent executed by the natural mother during the first thirty days of the child's life shall not be considered a waiver of the requirement of notice.

Within the framework of the new statute, the problems of notice that were left unsolved on the surface of the older statute, are now bound up with the other matter of the consent to be given, and so it is that further treatment of notice is to follow in connection with the more explicit provisions of the new statute as to the obtention of necessary consent from all interested parties.

The consent provisions of the new statute are very explicit, with one exception, and that is noted at the end of the first paragraph of Section 85G, which provides that in no event shall a decree be made without having the required consent "unless for reasons satisfactory to the court, it shall appear proper to dispense therewith". This seems obscure to the present writer, and leaves uncertain whether the statute means to permit a discretionary waiver of consent in unusual situations, despite the explicit terms of the following portion of that Section as to the necessary consent of all persons who are interested in the matter. Thus it would seem that the delicate problem of putting through a desirable adoption of a child who was
born illegitimate, where the natural mother had validly relinquished her interest in the child, and it is desired that she should not know where the child has been adopted, is still left with us by the equivocal provision seemingly allowing the court for proper and satisfactory reasons to dispense with the otherwise required consent. It remains to be seen how far this clause will be interpreted as relaxing the otherwise strict consent rules of the new statute.

In requiring, subject to the caveat above, the consent of the indicated persons as a necessary operative fact, the new statute does go beyond the old statute, which had not made the consent of any person, except for that of a mature child to be adopted, or an adult to be adopted, a really operative fact. That only allowed the lack of consent to be considered on the merits of the cause. This was because the old statute in general only required notice to the interested persons, and still would have permitted the court to decree the adoption without their consent, and even over their objection. But, the Court of Appeals by decision had indicated that it would rarely tolerate an adoption over the objection of someone entitled to notice in the matter. So it was that by case law a practical requirement of consent, tantamount to the mandatory or discretionary one of the new statute, had been arrived at. The new statute, at least, crystallizes this idea into statutory law.

20 In Lagumis v. Lagumis, 186 Md. 97, 46 A. 2d 189 (1946), the Court of Appeals affirmed the trial court's action in granting the adoption, on the petition of the natural mother and the step-father, that the child of the mother by a previous marriage should be adopted by them and have the name changed. This petition was opposed by the natural father. The Court recognized the difficulty of the situation, but found on all the facts, with dissent by two judges, that it was proper to grant the adoption for the best interests of the child, inasmuch as the adopting father had a good position, paying $100 a week as a chef, while the natural father was a bartender in New York City making $60 a week, and living with his second wife. While the natural father wished to see the child and have charge over him, yet the Court felt that, all things considered, it was better that the adoption be granted, and it so did grant, in view of the older Maryland law that did not require consent of the natural parents before the adoption, but only fair notice to them and that the adoption should be for the best interests of the child.

In White v. Seward, 187 Md. 43, 48 A. 2d 335 (1946), the Court of Appeals affirmed the trial court in dismissing the petition for adoption filed by the foster parents against the natural parents, where the child had been placed in a foster home while the father was in military service, but upon his return and obtaining employment and a pension he and the mother had reunited and wished to have the child back with them, and so resisted the
The detailed provisions about the obtention of the necessary consent, seen in the above quoted Section 85G, call for little comment, other than to remark that they have carefully surveyed the field of all interested persons in the question of adoption. By the alternative provision in the case of children in institutional care, they may have solved some of the difficulty as to needing to give notice to relatives who have really abandoned the child, and who should properly be kept in the dark as to adoption of the child by some appropriate person. The provisions that consent once given may be withdrawn only before the termination of the proceedings, and that a minor parent may nevertheless give a valid consent, are both obviously sound.

adoption petition filed by the foster parents. The Court reviewed the cases, including the recent Lagumis case, and found that it was not a proper case for decree and adoption against the express opposition of the natural parents who, as here, were able to care for the child and wished it not to be adopted. The Court was not convinced that the best interests and welfare of the infant would be promoted by promptly separating the child, too young to be consulted, from the mutual love and affection of the parents, even though the foster home might prove to be a most excellent one. Consequently the Court denied adoption, falling back on the point that the Chancellor had the parties before him.

In Atkins v. Gose, 56 A. 2d 697 (Md. 1948), there was a petition for adoption by a married couple to adopt the child of a married woman, where the natural mother alone opposed the adoption, and the putative father, her husband, not only did not oppose the adoption, but specifically denied the paternity of the wife's child. The trial court granted the adoption, and on appeal by the mother in opposition, the Court of Appeals affirmed and held that the adopting parents were entitled to the adoption. The case came up under the old law and, while the Court mentioned the new statute, they pointed out that it did not apply to this case in view of the time of the original adoption proceedings. The Court recognized that under that old law it was rare to grant an adoption against the opposition of the natural parent or parents, but pointed out that it had been done in other cases where the situation was strong enough to justify it and they so found it here. The child was only three years of age, so that its wishes in the matter could not be considered and the whole problem was for the best interests and welfare of the child. The petitioners for adoption were two very respectable persons maintaining an excellent home, the husband being a Lieutenant in the Navy with a secure position. The natural mother had had a rather spotty career, and had been divorced for her adultery by the husband in question here, although the Court pointed out that she had improved her standing and at the time was leading a more stable life. But it further pointed out that her home, though well kept, was crowded by another child by her latest marriage who had a physical defect, and by three children of an earlier marriage, one of whom was an epileptic. Furthermore, the mother, being employed, could not be in attendance at the home as much as would be desirable. All things considered, the Court felt that it was desirable for the best interests of the child, to grant this adoption in spite of the opposition of the mother in this case, and they affirmed on the ground that the Chancellor had all of the parties before him and could judge the matter best.
"The Best Interests and Welfare of the Child"$^{21}$

Both the old statute and the new statute agree on the substantive rule of law to determine the merits of an adoption case, in that they both focus on the point that "the best interests and welfare of the [such] child" shall determine whether the Chancellor shall grant or deny the requested adoption. While it happens that the provisions of Sections 85-I, 85J, 85L carry the exemption of the seven counties, yet there are still preserved on a State-wide basis the same standards for a decree of adoption. The only difference is that the new law has much more explicit detail about procedures for implementing this idea, while the old law, still enforced in the seven counties, leaves it to the discretion of the individual Chancellor, but subject to locally variant rules for so implementing the standard, as to what determines the best interests of the child in question. The three sections of the new law, carrying the exemption of the seven counties, will now be set out here, for the purpose of further discussion:

[SEVEN COUNTIES EXEMPT]

"85-I. (Investigation.) Upon the filing of a petition, except in those cases in which the Court shall have such intimate and personal knowledge of the facts and circumstances as to enable it to determine the matter without the aid of an investigation or, unless a report by one of the agencies hereinafter mentioned is filed with the petition, the Court may direct the State Department of Public Welfare, or one of its local units, or a child placement agency licensed by the State Department of Public Welfare, or in its discretion may direct its own Probation Department or other officer or appointee of the Court:

"(1) To make an investigation—

"(a) of the truth of the allegations of the petition;

"(b) of the former environment, antecedents and assets, if any, of the person to be adopted, for the purpose of ascertaining whether such person is a proper subject for adoption;

$^{21}$ Cf. 7 Md. L. Rev. 297-301.
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“(c) of the home of the petitioner or petitioners, to determine whether the home is a suitable one for such person;

“(d) of any other circumstances and conditions which may have a bearing on the adoption and of which the Court should have knowledge;

“(2) To report to the Court the findings of such investigation in a written report.

“(3) To recommend to the Court whether a final decree declaring the adoption prayed for in the petition should be immediately granted, or whether the Court should pass an interlocutory decree granting temporary custody of the person to be adopted to the petitioner or petitioners, as hereinafter set forth. Any written report submitted to the Court shall be filed with, and become part of, the records in the case.”

[SEVEN COUNTIES EXEMPT]

“85J. (Hearing.) If no investigation is ordered by the Court or if no report be filed within 60 days, or such time as extended by the Court, after a copy of the petition and the order providing for the report is served upon the agency directed to make the investigation, or if a report is filed recommending that the petition be either granted or denied, the Court may proceed with a hearing upon the petition and pass such order or decree as it may deem proper in the premises.

“If a report is duly filed and it contains a recommendation that it would be for the best interests of the minor that the petitioner or petitioners should have the custody of the minor for a trial period, the Court shall upon hearing had either pass a final decree or an interlocutory decree of adoption granting to the petitioner, or petitioners, the temporary custody of the child for a limited period of time, not to exceed one (1) year, the Court, in the meantime, retaining jurisdiction of the case, or take such other action as in its discretion it may deem to be in the best interests of the minor.

“The Court may revoke its interlocutory decree for good cause shown at any time before the entry of the final decree, either on its own motion or on the motion of one of the parties to the adoption. After such revocation notice shall be given thereof to all those persons or parties who were given notice of the original petition
for adoption, and an opportunity for all such interested persons or parties to be heard.

"All hearings with reference to adoption shall be of a confidential nature with as much privacy as the Court may approve."

[Seven Counties Exempt]

"85L. (Final Decree.) Before the end of the trial period, the Court may request a supplemental written report from the agency making the original report showing the result of such trial period and making a recommendation to the Court in regard to the advisability of the passage of a final decree, declaring the adoption prayed for in the petition. If the Court be satisfied from the original report, the supplemental report, or from testimony taken, or otherwise, that the best interests and welfare of the child will be promoted by the passage of a final decree declaring the adoption of the person to be adopted, the Court shall, thereupon, pass such final decree of adoption.

"No attempt to invalidate a final decree of adoption by reason of any jurisdictional or procedural defect shall be received by the Court, or by any Court of this State, unless regularly filed with such Court within one year following the entry of the final decree."

It will be noticed that the provisions above concerning the careful investigation of the circumstances, as they may bear on whether the adoption will be for the best interests of the child, have the unusual caveat that the investigation may be dispensed with where the court shall have intimate and personal knowledge of facts and circumstances as to enable it to determine the matter without such aid. It so happens that this exception parallels the one found in the similar rule of the Supreme Bench of Baltimore City, adopted a decade or so ago, which itself contains the same exceptional clause dispensing with the otherwise further investigation if in the discretion of the court there were facts for it to indicate that there was no question in the matter. But for this unusual circumstance of the facts indicative of the desirability of the adoption being before the court in some connection, the new statute goes beyond
the requirement of the previous Baltimore City rule and calls for a very careful investigation of the desirability of the child's being adopted.

There is the further exception that a preliminary report by one of the agencies which might make the investigation directed by the court will take the place of a subsequent investigation so ordered. But, lacking this, the statute provides that the investigating agency should determine on behalf of the court as to what recommendation they should make.

It will be noted that Section 85J introduces the novel procedure of an interlocutory decree of adoption, allowing a "breathing spell" between the initial determination of the desirability of adoption and the final determination at the close of the case. The provision for calling for supplemental reports pending the final decree of adoption is, of course, merely an extension of the idea both of having an investigation and of having a breathing period between the interlocutory and the final decrees of adoption.

The provision for as much privacy in the proceedings as the case allows of is, of course, implicit both in the idea of the best interests of the child, and in the idea, mentioned above, that the records are to be sealed up and kept confidential. The provisions for revocation of an interlocutory or final decree will be discussed further along in this article in another connection.

The statute does not purport further to implement the idea of what does constitute the best interests and welfare of the child, and so it is that any case law under the similar provisions of the old statute will be still available for precedent in interpreting the substantive rule carried forward into the new statute.

Revocation of Adoption

While the old statute had no provision as such for the revocation of an adoption once granted, and left the possibility to be that of either a new adoption by the original family, or an attack on the adoption for fraud in its original

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*Cf. 7 Md. L. Rev. 301-303.*
obtention,²³ the new statute has more explicit terminology about it.

With reference to the interlocutory decree of adoption under Section 85J, it is provided that the court may revoke such decree for good cause at any time before final decree, on motion by one of the parties. Notice must be given to all persons who were given notice of the original adoption in order for such action to be taken.

Further reference is made to revocation in the final paragraph of Section 85L which provides that no attempt to invalidate a final decree for its jurisdictional or procedural

²³The case of Dunnigan v. Dunnigan, 182 Md. 47, 31 A. 2d 634 (1943), appeared just as the previous article was being published. It reversed a divorce case on Plaintiff's appeal, from denying the divorce, but the adoption point was not directly in focus. It so happened that it merely reflected that there had been an adoption of the children by the grandparents on the side of the wife, and that in the course of the proceedings the adoption had been stricken out with the consent of the mother. Beyond that there was no adoption law involved in the case.

In Falck v. Chadwick, 59 A. 2d 187 (Md. 1948), there was a petition to revoke an adoption of a child born to a New York couple who had separated, and who had authorized a New York lawyer to find a foster home for it. He found a couple in Maryland, and in his office all four parties consented to the adoption in writing, which consents were laid before the Maryland court, and formed the basis of the adoption decree granted on April 15, 1947. Four months later, the natural parents filed this petition to revoke the decree. They alleged that their consent had been obtained by coercion and fraud, in that the husband had been induced by representations that the child would be adopted regardless, and if he would not consent he could not reconcile with his wife, and the wife alleged that she had been coerced by being led to believe that the adoption would be provisional for six months, at the end of which time she could make up her mind finally. The couple had since become reconciled, and had brought habeas corpus against the New York lawyer, who then disclosed the Maryland adoption. The case principally involved the power to revoke an equity decree after the thirty-day period as of which it becomes enrolled, and the Court discussed the exceptions in cases in general that do permit that for fraud. The Court recognized the general rule that in cases alleging fraud, as distinguished from mistake or surprise, an enrolled decree cannot be revoked except upon original bill, but they qualified that where there had not been a hearing on the merits and it was an ex parte case, as here, they found that it was not necessary to go to another bill for fraud when the original case was ex parte, but the proceeding may be by petition. The Court recognized that adoption cases are as final as other cases and that adoption was unknown to the common law. The intent is that when issues have been adjudicated, and decrees have been entered, the adopting parents shall have the same rights as natural parents to custody. Although the Court has no longer authority to entertain petitions from time to time for renewal or modification of the decree, yet the Court felt, that in the interest of the child, the Chancellor was correct in letting the case be reopened to see whether the consent of the parents, relied on in the proceedings, was intelligently and voluntarily given. Thus they affirmed the overruling of the demurrer to the petition.

In Associated Catholic Charities v. McCraw, Circuit Court of Baltimore City, Daily Record, December 27, 1948, the Court, Judge Moylan, the Juvenile Court Judge, sitting in Circuit Court, granted a petition to revoke
defects shall be received by any court unless filed within one year following the entry of the final decree. While this may not have been intended to extend the possibility of revocation, as such, which did not exist under the older statute, yet it certainly puts a limitation on any attempt at revocation, to the extent to which such attempt is possible. Thus it is that, subject to the changes in these connections, applicable only in part of the State, the seven counties are exempt from this, the possibility of revocation has not been very much changed.

Change of Name; Birth Certificates

The old law, still in force in the seven counties, and the new law, in force in the rest of the State, are in substantial accord on the power to change the name of the adopted child as an incident of the adoption. This is because the old law, Section 82, and the new law, Section 85F(g) reach the same result, in that the former provides that if the petition contains a prayer to that effect the court may decree a change of name, and the latter provides that the petition shall include a description of any change of name which may be desired. Thus, but for the technical difference in the source of authority, there is still permitted the change of the name of the adopted child to that of the adopting parents, which, obviously is what is contemplated.

With reference to obtaining a substituted birth certificate, showing the adopted name, and concealing the fact of and rescind a decree of adoption which had been obtained in 1943 by the now-defendant McCraw, concerning two children whose mother was dead, and whose putative father's address was unknown, and the infants were then in custody of a Catholic Charity, having been committed by the trial court. The adoption had then been opposed, but after investigation by the Probation Department, the Court had then granted it. It turned out that the petitioner, who was a deck-engineer on a sea-going vessel, had concealed a long criminal record at the time of the adoption, although he now contends he was asked no questions about that in the investigation, and that his motive in putting the adoption through had been to insure that these children should become the beneficiaries of considerable insurance under which he was covered as a merchant mariner. The Court recognized the authority to set aside a decree of adoption, even after enrollment, in case of fraud, or mistake, or irregularity, and felt that this was a proper case for it. The revocation was opposed by the original petitioner, because he wished to have the children placed with friends of his, although they had been in institutional care the entire time.

Cf. 7 Md. L. Rev. 303-305.
once having a former one, under the old law or statute so permitting, no change has been made. Because this possibility flowed from another statute than the adoption statute, the change in the adoption law has made no difference, and so it is that the particular registrar of vital statistics should continue to issue such substituted birth certificates, whether the adoption be under the old law in the seven counties or under the new law in the rest of the State.

**The Consequences of Adoption**

Both clarification and drastic changes have been accomplished by the new statute concerning the consequences of an adoption under local procedure. The State-wide provisions of Section 85K read as follows:

[STATE-WIDE]

"85K. (Legal Effect of Interlocutory Decree of Adoption.) From and after the entry of an interlocutory decree of adoption or from and after the entry of a final decree of adoption where no such interlocutory decree is entered, the following legal effects shall result:

"(a) Except as otherwise expressly provided in this section, the person adopted shall be, to all intents and purposes, the child of the petitioner or petitioners; unless and until such interlocutory order of adoption is revoked the person adopted shall be entitled to all the rights and privileges and subject to all the obligations of a child born in lawful wedlock to the petitioner or petitioners.

"(b) The natural parents of the person adopted, if living, shall after the interlocutory decree be relieved of all legal duties and obligations due from them to the person adopted, and shall be divested of all rights with respect to such person; provided, that nothing in this sub-title shall be construed to prevent the person adopted from inheriting from his natural parents and relatives under the laws of this or any other State.

"(c) The term "child" or its equivalent in a deed, grant, will or other written instrument shall be held to include any adopted person, unless the contrary

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25 Md. Code (1939) Art. 43, Sec. 22.
26 Cf. 7 Md. L. Rev. 305 et seq.
plainly appears by the terms thereof, whether such instrument was executed before or after the entry of the interlocutory decree of adoption, if any, and if none, before or after the entry of the final decree of adoption."

The statute has not further clarified the problems discussed before, concerning whether there may be marriage between persons in adoptive relationships, and the converse one of any limitations on the adoption of persons already related to the petitioner. Rather the statute has dealt with the ensuing topics of custody, earnings and services; of support and maintenance; of inheritance; and perhaps only incidentally with the final topic of revocation of will. The various subdivisions of the statute will be mentioned and quoted as the points are treated, but the principal Section 85K is here reprinted for convenience.

Custody, Earnings and Services

Where the old statute had been silent on the point of how far the adopter became entitled to the custody, earnings, and services of the child, and how far the natural parents ceased to have such claims, the courts had in effect settled the thing in favor of the adopter by their interpretation. The new Statute, in Article 85K, parts A and B, makes this perfectly clear, in that it provides that the person adopted shall be, for all intents and purposes, the child of the petitioners, and shall have all the rights and privileges and all the obligations of a child born in wedlock to the petitioner or petitioners, and that the natural parents shall after the decree be relieved of the duties and obligations, and divested of all rights with respect to such persons.

This should make it perfectly clear, therefore, that the purpose of the adoption is to substitute the adopting parents in place of the natural parents for these purposes, and

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27 As this article was going to press the newspapers carried the information that former Governor Chase S. Osborn of Michigan had married his adopted daughter, earlier adopted by him when she was an adult. This was done in Georgia, and first the adoption decree was rescinded; and the marriage then occurred.

28 Cf. 7 Md. L. Rev. 307-310.
to entitle them as much to the custody, earnings, and services as if the child had been born in lawful wedlock.

With reference to custody, there is a provision in Section 85J, which is subject to the exemption of the seven counties, concerning the award of the temporary custody of the child for a limited period not to exceed one year pending a final decree. This, of course, is merely a detail of the novel procedure, which for the first time provides for an interlocutory decree pending a final one. It is a helpful provision to enable the court to be quite sure that the adoption will be for the best interests of the child when finally granted. Of course, after this, then the adopting parents become fully entitled to the custody of the child, as much so as the natural parents would have been, and the natural parents no longer have the normal presumptive claim of parents to the custody of their children if such be from their interests.

Support and Maintenance\(^{29}\)

The provisions of Section 85K, parts A and B, cited in the preceding discussion, would seem also to give the answer to be that the new statute has completely clarified the question of support and maintenance of the child, in that it imposes the duty to do so on the adopting parents and relieves the natural parents of their previous obligation.

Inasmuch as the language of these subsections is relatively stronger than that of the old law, it may be arguable that more certain answers are given to certain incidental problems for support and maintenance, such as were discussed in the earlier article. These include questions of whether the child is to be regarded as a child of the adoptive parent for purposes of Workmen’s Compensation, for the Lord Campbell’s Act, and conversely for the purposes of the indigent parent’s statute, which punishes adult children who fail to support their destitute parents.

Upon this latter point there may be stronger considerations of policy, but as the statutory sections read in Section

\(^{29}\) Cf. 7 Md. L. Rev. 310-313.
85K, it may be well argued that it is now more clear that the adopted child may be prosecuted for failing to support his adopting parents. Of course, as was suggested before, a distinction may be here observed between one adopted as an infant and one adopted as an adult, to the end that, perhaps, the adult adoptee should be the less relieved of his duty to support his natural kin and perhaps less obligated to support the adopting kin, and vice-versa for one adopted while an infant.

It is certainly the policy of the new statute to effect a more complete translation of the adoptee from the natural family to the adopting family, and so it may be argued that the stronger policy in this regard will either make more certain the suggestion to that end expressed in the old article, or more certainly clarify points that were there speculated about.

Inheritance

This stronger policy of the new statute in effecting a more complete translation of the child to the adopting family, in general, shows itself particularly in the provisions of the statute and the included amendment to Article 93 of the inheritance provisions. The new adoption law not only added the Sections 85A through 85S, but it also added a new Section of Article 93, entitled Section 139A, which reads as follows:

[STATE-WIDE]

"139A. In the application of the provisions of this sub-title there shall be no distinction between a legally adopted child and a child by birth, to the end that such adopted child shall take from, through and as a representative of its adopting parent or parents and the lineal or collateral kindred of such adopting parent or parents in the same manner as a child by birth and to the end that upon the death of an adopted child intestate without surviving descendants, such child's property, exclusive of the share of such child's surviving spouse, shall pass and be distributed in the same manner as if such child had been born to such adopting parent or parents in lawful wedlock."

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30 Cf. 7 Md. L. Rev. 314-320.
Also in the added Sections of Article 16 is found a pair of provisions, in a Section of broader scope, printed above, but which will be reprinted here for convenience in discussing inheritance:

[STATE-WIDE]

"85K(b) . . . provided, that nothing in this subtitle shall be construed to prevent the person adopted from inheriting from his natural parents and relatives under the laws of this or any other State.

"(c) The term 'child' or its equivalent in a deed, grant, will or other written instrument shall be held to include any adopted person, unless the contrary plainly appears by the terms thereof, whether such instrument was executed before or after the entry of the interlocutory decree of adoption, if any, and if none, before or after the entry of the final decree of adoption."

The new statute made drastic changes in the previous law, not only as to inheritance by and from adopted children in the case of intestacy, but also as to the status of adopted children with reference to mention of "child" or "children" in instruments executed concerning the devolution of real or personal property.

Section 139A not only provides what the former law did, that the adopted child should inherit from the adopting parents in the case of intestacy, but contains the novel provision that the adopted child shall also inherit as if a natural child from a remoter kinsman in the adopting family. This is achieved by the provision referring to parent or parents and lineal or collateral kindred, and that the child shall take through and as a representative of the adopting parents from such remoter kindred.

Thus it is that under the new law, an adopted child could take as a grandchild to inherit the property of the adopting parent's own parents, or as a niece or nephew.\(^n\)

\(^n\) The then recent case of MacNabb v. Sheridan, 181 Md. 245, 29 A. 2d 271 (1942), was discussed in the earlier article, n. 123. The Court of Appeals would, no doubt, have reversed as the law then stood, had the appeal been properly before them, because of the line of authority under the older statute to the effect that the adopted child inherited only from the adopting parents, and not through them by representation, as the trial court had
to inherit the property of the brother or sister of the adopting parent, if such die intestate. This was not so under the older law.

Similarly, under the provision of Section 85K, part C, the adopted child would take from such a grandparent or uncle or aunt under a will or deed or other document which had merely left property to the "child" of the one who had adopted. This is different from the older law, in that the older law interpreted "child" as including an adopted child only as to instruments executed by the adopter. Now, the opposite is true, and it is presumed that the draftsman of the instrument meant to include adopted children, unless the contrary be clearly shown, so that today an adopted child is equivalent to a natural child for purposes of taking under a written document using that word.

On the other hand, the adopted child continues to inherit from the natural kinfolk, under the special provisions of Section 85K, part B, which provide that nothing in that permitted in that case. Today, of course, under the new statute, if applicable, the result as in the trial court would occur, inasmuch as the new statute does provide what the trial court (erroneously) there allowed under the old statute, that is, inheritance not only from the adopting parents but also from the collateral and lineal kinfolk of the adopted parents as if born naturally in lawful wedlock.

32 In Emerson v. Alexander, Circuit Court No. 2 Baltimore City, Baltimore Daily Record, April 18, 1949, opinion by Mason, J., the Court applied the pre-1947 adoption law to the trust created by the will of a testator who died prior to that date, but concerning the devolution of the estate as to the principal beneficiary who had died subsequent to the effective date of the new adoption law. It was held that the only natural child of the latter took to the exclusion of another adopted child of the latter, inasmuch as the law, as of the time of the settlor's death, provided that "child" or "issue" would not include an adopted child other than an adopted child of the one using the phrase. As the Court's opinion pointed out, the 1947 revision may make a different result as to instruments governed by the new law.

In Staley v. Safe Deposit and Trust Company, 56 A. 2d 144 (Md. 1947), the case incidentally involved the problem of whether the word "child" in a written instrument should include adopted children, but as the Court of Appeals resolved the question, no adoption law of Maryland or anywhere else resulted. It was a proceeding for a declaratory judgment as to the point governed by the law of Illinois. The instrument was a trust agreement containing a reference to the child of one of the parties, and the problem sought to be resolved was the one mentioned in the text, and as to which there has been a change in the Maryland law in the interim, but the Maryland law was not involved here. The Court of Appeals refused to answer the question, finding it not a proper case for declaratory procedure, and finding doubts as to the sufficiency of jurisdiction over the proper parties anyhow. Thus it was that while the case potentially involved the problem, at least under the law of Illinois, not even that remote aspect of it was mentioned, in view of the dismissal of the bill, for a combination of jurisdictional doubts and impropriety of declaratory relief.
title shall prevent the adopted child from continuing to inherit from its natural family. This clause must have been added out of a super-abundance of caution, lest there be some doubt as to the constitutionality of depriving the adopted child of his expectancy from its natural family.

Thus the result it now that the adopted child inherits from both families. It was understood that the adopted child always did inherit, nevertheless, from the natural family, although the older law entitled it to inherit only from the adopting parents and not from the rest of the adopting family. Thus it is now that the older law has been expanded to add to the right to inherit, that from remote adopting kinfolk, as well as the adopting parents and the natural relatives, inheritance from whom is still preserved by the proviso in the statute.

On the further point, of who inherits from the adopted child in the event of his death intestate, perhaps a more drastic change has been made by the new statute. Prior to the new statute, it was understood that only the natural kinfolk inherited from the adopted child, in case of intestacy, save for the very narrow exception of property already inherited from one or both of the adopting parents, which said property exceptionally went back into the adopting family.

Now, under Section 139A, it seems just the opposite, and the natural kinfolk are completely cut out from inheriting from the adopted child; the adopting parents, if still alive, inherit all of the child’s property if otherwise entitled, and remoter adopting kinfolk will be heirs to the extent that they would be if the child had been born naturally in lawful wedlock.

It had been pointed out in the earlier article that the old state of the law allowed for a potential injustice, in that it would result in property going to the natural kinfolk who had perhaps long since forgotten the child, to the exclusion of the adopting kinfolk, who perhaps had expended money and effort rearing the child. It was there suggested that a trust device would be necessary to avoid this possible injustice, and that conveying property rights
on adopted children, at least while still infants, and incapable of making a will, would have to be thought about carefully.

Of course, the reverse treatment in the new statute might lead to that same injustice, to the extent to which property might come to the adopted child from his natural kinfolk, and thus would then go to the adopting family upon death intestate, under the terms of the present statute. But, it is less likely that property of any considerable amount will come to the adopted child from his natural family and go to the other family now, than would have been the case under the older state of the law. Thus no likely injustice will follow from the reversal of front on the matter of who inherits from an adopted child in the event of death intestate. It was apparently too difficult to work out a scheme that would keep the respective family's property on the side from which it came, and the solution was apparently worked out in the fashion brought out in the present statute.

Beyond the three specific clauses of the statute quoted above, the application of two other parts of Section 85K would bear it out that it is the purpose of the new statute to effect complete translation to the adoptive family, and to entitle them to inherit from the adopted child, and that the natural ones could no more inherit. Section 85K, part A, includes the idea that the adoptee should be to all intents and purposes the child of the petitioners, and Section 85K, part B the converse idea that the natural parents shall be divested of all rights respecting the adopted person. These two general ideas would also dictate the answers, more specifically rendered by the three portions quoted next above herein.

The question of change in the law of inheritance of Maryland property by persons adopted under proceedings in other states has already been discussed in an earlier part of this article and will not be reiterated here.

The question of the effective dates of the inheritance provisions in the seven exempt counties, and the rest of the state, will be discussed in the concluding portion of
this article. But, beyond that, although similar to it, is a question that has been called to the attention of this writer. This is the matter of whether the novel inheritance provisions for Maryland property will be applied to persons adopted prior to the effective date in the given area of the new inheritance rules, be that June 1, 1947, or November 10, 1947. The terms of Section 85S might seem, at first glance, to indicate the answer, but it is believed that they are concerned with another sort of problem, so that the immediate question will have to be answered by case law. Section 85S reads as follows:

[SEVEN COUNTIES EXEMPT]

"85S. (Interpretation.) This sub-title shall not affect any adoption for which a final decree was entered before June 1, 1947, nor any adoption proceedings pending as of that date, except as expressly stipulated herein. All laws inconsistent with the provisions of this sub-title are hereby repealed to the extent of such inconsistency. If any provisions of this sub-title, or the applicability thereof to any person or set of circumstances, is held invalid, the remainder of this sub-title and the applicability thereof to other persons and sets of circumstances shall not thereby be affected."

It is believed by this writer that the above section was not meant to give the answer to the query as to inheritance but rather to provide that adoptions decreed prior to the effective date or pending at the time should not be affected by changes in the procedure or other details of the statute. It is not thought that it was meant to restrict the variation in the inheritance provisions to adoptions first decreed after that time.

It would seem, conceding that the death of the testator or settlor occurred after the effective date of the statute, that the distribution of his property should be determined by the law of inheritance then in force, and that the fact of the adoption having been decreed prior to the effective date of the statute should make no difference.

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88 This was the specific point in Emerson v. Alexander, supra, n. 32.
Furthermore, this interpretation would seem to be indicated by the fact that the clause in Section 85S, above, refers to "this sub-title", which means only the Article 16 provisions of the 1947 Act, not the Article 93 one, which is the principal inheritance provision. Beyond that, Section 85S is subject to the exemption of the seven counties, whereas all the new inheritance provisions are now statewide. Thus the opinion stands that this Section was not meant to limit the expanded inheritance provisions merely to post-1947 adoptions.

The intended policy of the statute is further borne out by a reference to the clause in Section 85K, part C, which, in expanding the meaning of child in any instrument executed by any person, specifically stated it to be so expanded whether the instrument had been executed before or after the entry of either the interlocutory or final decree of adoption. This would seem to show the legislative intent to make the adoption, and the expanded benefits therefrom, retroactive so as to include instruments executed prior thereto. By the same token, it would seem that it was intended to expand the benefits of adoptees who have already been adopted prior to the change in the law as to such benefits.

Of course there may be the constitutional argument, but it would be hard to see how giving additional benefits would be a deprivation of property, unless it would be a deprivation of the expectancy of others who stand to take a greater share. It might be more plausible to argue the unconstitutionality of taking away from the natural parents the expectancy of inheriting from the adopted child, which expectancy was so under the old law but is no longer so under the new law, and that their consent might not have been given had they expected disinheritance.

No doubt, the answer will have to be given at the judicial level, as to whether the changed rules of inheritance do apply to persons adopted prior to June 1, 1947 or November 10, 1947, as the case may be.
Revocation of Wills

The new statute contributes very little to this problem, and this is because the general rule of revocation of wills merely states that the adoption of a child, as birth, will, in certain instances, cause a total or partial revocation of a will. The only point that comes to mind is that the expansion of recognition of foreign adoptions might create a problem as to whether a foreign adoption will now, where it might not have earlier, be counted under the revocation of wills statute for this purpose. Like the problem discussed in the preceding section at the very end, this may well have to wait for judicial decision, but it is doubtful that any change in this regard was made by the new statute.

Concerning the Curative Act

As was pointed out earlier in this article, the revision act of 1947 carried with it an exemption of the seven counties of Allegany, Washington, Garrett, Calvert, Prince George's, St. Mary's, and Charles, comprising the Fourth and Seventh judicial circuits. Doubts immediately arose as to the significance of this exemption, and as a result, a curative act was approved for the Special Session of 1947 by the Legislative Council, and it was subsequently enacted as Chapter 19 of the Laws of that Special Session.

It is proposed herein to discuss intensively and at one place the various problems created both by the exemption in the original revision act, and the enactment of the curative act, and to treat of the extent to which the respective provisions of the old law and the new law are now in force or had been in force in various parts of the State as a result of this exemption and subsequent curative act. The original act took effect on June 1, 1947, and the curative act took effect on November 10, 1947, and so it is that the greatest questions arise as to the state of affairs between those two dates.

*Cf. 7 Md. L. Rev. 320-321.
*See supra n. 1 for the full legislative detail.
No doubt it was an oversight in the original revision law, with its exemption of the various counties, that the seven counties were exempted from all of the provision of the new law. It was this oversight that created the need for some sort of curative act to clarify the matter. No doubt it was intended only to exempt those counties from those procedural provisions of the new act which rather drastically changed the adoption procedure. These drastic changes, no doubt, created the distaste for the new law on the part of the representatives from those counties.

Be that as it may, the exemption applied to the entire revision act, and thus as it stood would have exempted those counties from the substantive provisions of the new act as well.

Two schools of thought immediately developed about the effect of this oversight. One was that both the procedural and substantive provisions of the old adoption law remained in force in those seven counties, while the new provisions were in force in the remaining parts of the state. The other was that there was no adoption law any longer in force, either procedural or substantive, in the seven exempt counties, by virtue of the provisions of the repealer and the particular phraseology of the exemption clause.

Despite views to the contrary, the present writer was of the opinion that the former view was the correct one and that all of the old adoption law, both procedural and substantive, remained in force in the seven exempt counties. This was for the reason that the exemption of them applied not only to the novel procedure and other rules of the new statute, but as well to the repealer of the provisions of the old adoption law, so that for those counties the old adoption law remained in force.

Be that as it may, some clarification was obviously necessary in order to resolve doubts in the matter in so far as it was possible to do so, and so it was that the Legislative Council, acting in advance of the Special Session of the Fall of 1947, approved the draft of the subsequently enacted curative act designed to remedy the
oversight that had been committed in this initial exemp-
tion of the seven counties in the original revised law.

The effect of this curative act was to declare the legis-
lative intent to be that at least thereafter, the purely 
procedural provisions of the new act should apply in all 
the State except the seven exempt counties, and that the 
old procedure should remain in force in those seven. Fur-
thermore, it was declared to be the legislative intent that 
the substantive, including the inheritance provisions of 
the new act, should be, at least thereafter, of State-wide 
application, and should be applied in all counties. This 
was done by effecting a complete repeal of all but two 
sections of the old adoption law, and by repealing those 
two sections, except for the exempt counties.

But for the curative act, there would have been some 
rather disastrous consequences under the adoption law 
as it then stood, whichever of the two views set out above 
about the situation should have been held to prevail. For 
that matter, to the limited extent to which litigation may 
arise which is governed by the state of the law between 
the effective date of the original act and that of the cura-
tive act, these consequences may yet be seen.

If the view that the adoption law had been entirely 
repealed for the seven exempt counties should have pre-
vailed, this would have been most distressing, inasmuch 
as it would not have been possible to institute adoption 
proceedings in those areas. Furthermore, for lack of a 
substantive adoption law, there would have been no inher-
ance provisions in favor of adopted children, nor any 
other legal protection for the relationship of adopted parent 
and child.

On the other hand, if the view that the entire old law 
remained in force in the seven counties had prevailed, 
there would have been, at least with reference to the inher-
itance of property, the astounding result that property 
would devolve by one rule of law in one part of the State 
and by another rule in another part of the State. Thus 
if a person should have died intestate, possessed of prop-
erties lying within the respective two parts of the State,
different persons might take his property, where adoption was a factor to be considered, depending on which rule of law was to be applied. There would have been necessary the development of an inter-county conflict of laws, analogous to the normal inter-state conflict of laws, with the resultant rule that the law of the place of the domicile of the intestate would have governed personal property, and the law of the place of the situs of the property would have governed real property. It can be seen what unfortunate consequences might follow if this state of affairs continued. It might still have to be applied to that litigation that may be governed by the rules extant in the interim.

In the Legislature there was added a further Section, beyond those included in the draft approved by the Legislative Council. This, Section 4A of the Act, further provided that the legislative intent had been, in enacting Section 139A of Article 93, that said Section was intended to be State-wide in application, and should thereafter be so applied and understood. This Section is the provision put into the Testamentary Law article to govern inheritance from and by adopted children, and to complement the sections in the revised Article 16, which deal with inheritance by adopted children.

In the first place, this additional section was probably superfluous, although no doubt it was added out of a superabundance of caution in order to make the legislative intent more clear. That, of course, was probably sufficiently clear in the main body of the Special Session curative act, which obviously had the purpose of providing that, at least thereafter, the inheritance provisions and other substantive ones should be State-wide in application.

The present writer doubts that this section either purports to or could constitutionally accomplish (for the seven counties) the retroactive dating back of Section 139A until June 1, 1947, the time of the first effect of the adoption law revision. While it is probably constitutionally possible to validate procedures had in the interim in those counties, yet the writer doubts the possibility of dating back the substantive inheritance provisions, if as a matter of
law, they were not already in force by virtue of the revision act itself, and it seems as though they were not.

But, at least, the curative act was able to accomplish the objective of straightening out the procedural details, and to make it clear that the substantive or inheritance provisions should be State-wide after November 10, 1947, thus leaving only a brief interval during which the inheritance provisions may have been in doubt.

It is the present writer's opinion that the old inheritance provisions remained in force in the exempt counties until November 10, but that the new inheritance provisions went into effect in the rest of the State on June 1, 1947.

Furthermore, it is believed that the old procedural provisions are, as a result, continuously in force in the exempt counties without regard to date, and that the new procedural provisions went into force in the rest of the State on June 1, 1947.

As was pointed out earlier in this article, certain matters, perhaps technically of a procedural nature, have been made State-wide in effect by the curative act. These cover the adoption of adults, the jurisdiction and venue provisions, including that for Federal reservations, the sealing of the records, and the provisions as to who may adopt. This was done for the reason either that the new law followed almost exactly the provisions of the old law, or constituted an improvement on it in a non-controversial way. Thus it was desirable that all these provisions should be State-wide in effect, even though they did not deal with inheritance or truly substantive matters.

There were left for the exemption of the seven counties only the truly procedural matters of a controversial nature, as to which the members of the bar of those counties did not wish the change to be made. These particular provisions have been discussed in detail before and need not be reiterated here. The writer is sympathetic with the bars of these counties in finding the novel procedures distasteful, and while he deplores diversity of rule around the State, yet he can understand the reason for not wishing to face such strange procedures.
In the last analysis, probably a sensible compromise has been arrived at by the curative act. Only the most controversial and purely procedural matters have been made divergent around the State, whereas all the other non-controversial, substantive, and desirable propositions are of State-wide force, as they no doubt should be. If we are to have different rules around the State on such important matters, it is desirable at least that the divergence be restricted insofar as possible. It is believed that the curative act of 1947 accomplished this by preserving on a State-wide basis most of the things desirable of so being preserved, leaving only the pure procedure under different rules in different areas.