

tion of certain cases of homicide wherein it had turned out that by reason of a failure of the prosecutor to prove the death of the person charged as having been murdered, it so happened that such person sometimes survived the person accused as his murderer.⁷ The reasoning in an earlier lower court case was that the rule was based on the danger incident to convictions of persons charged with crime when no crime was in fact committed.⁸

The rule applied in the principal case would not have been effective if the defendant had either plead guilty or made a confession in open court. The court in *State v. Ferranto*⁹ held that a plea of guilty in a capital offense should be accepted cautiously and the trial judge should fully advise the accused of his rights and be satisfied that he acts freely after being so advised. This illustrates the desire on the part of courts to protect the defendant but there is no rule requiring that there be evidence introduced to establish the *corpus delicti* before the plea of guilty or the confession in open court will be permitted. It would seem that the reason usually given for the rule as to admissibility of extrajudicial confessions would also be present in judicial confessions and pleas of guilty.¹⁰ Although some courts in other states have held that the rule of the principal case does not obtain where the confession was that of a misdemeanor,¹¹ there is no indication that the rule will be so modified in Ohio.

R. L. R.

DESCENT AND DISTRIBUTION

RIGHT OF ADOPTED CHILD TO INHERIT THROUGH ITS ADOPTIVE PARENTS

In an action to determine heirship brought by the administrator of the estate of Ella Saxby, deceased, where the rival claimants were a first cousin of the deceased and a designated heir of a brother of the deceased, the Court of Appeals affirmed the Common Pleas Court in holding that a designated heir can inherit from but not through the declarant.¹ In support of this holding the court in a *dictum* draws an analogy to the adoption statute, Ohio G.C. Sec. 10512-19.

⁷ *State v. Maranda*, 940 Ohio St. 364 at 370, 114 N.E. 1038 (1906); cited *supra* note 5.

⁸ *State v. Wehr*, 6 Ohio N.P. 345, 9 Ohio Dec. 459 (1898).

⁹ *State of Ohio v. Ferranto*, 112 Ohio St. 667, 148 N.E. 362 (1925).

¹⁰ However on this point see Ohio Gen. Code, sec. 13448-2, which reads: ". . . If the offense charged is murder and the accused is convicted by confession in open court, the court shall examine the witnesses, determine the degree of the crime and pronounce sentence accordingly."

¹¹ See 22 CORPUS JURIS SECUNDUM, sec. 839, p. 1472 (1940).

¹ *Southern Ohio Savings Bank & Trust Co. v. Boyer*, 66 Ohio App. 136, 31 N.E. (2d) 161, 32 Ohio L. Abs. 626 (1940).

The general trend of adoption legislation has been to make the relationship between adoptive parent and adopted child more closely resemble the natural parent-child relationship. The growth of the Ohio adoption statute is indicative of that trend.² However with respect to inheritance by the adopted child through the adoptive parent the progress along this line has been hampered by the strict construction of the courts. Thus at the present time a majority of jurisdictions follows the rule that an adopted child cannot inherit through its adoptive parent,³ but there is a sizeable minority opposed to that position.⁴ Since the statutes in each jurisdiction vary as to wording any comparison on the basis of majority or minority rule lends little support to either view. Behind this strict construction lies the principle that consanguinity is favored in the determination of heirship. To allow an adopted child, who is a stranger to the blood line, to inherit property from the ancestors and collateral relatives of the adoptive parent is not consonant with the general rules of inheritance.

The reported cases involving General Code sec. 10512-19 are not numerous. Of the decisions which have referred to that statute the principal case is representative. The court there indicates that should the occasion arise it would construe it as not having changed the rule that an adopted child can inherit from but not through the adoptive parent. In support of this the court cites several Supreme Court cases.⁵ Since all of these were decided before the passage of the present statute it would seem that they are no longer authority on this point.⁶ Nevertheless the principal case does not stand alone in its view. Adhering to the same proposition is *Reinhard v. Reinhard*,⁷ which is a direct holding that adopted children cannot take as *issue* of a parent of their adoptive parent where the testator's will devised property to the "issue" of such person. In *Rogers v. Miller*,⁸ a trust deed was involved and the adopted children were not permitted to take as children of the settlor's deceased son, their adoptive parent, but the court there indicates that the rights of the

² See Ohio G.C. sec. 10512-19, Ohio G.C. sec. 8030, Revised Statutes sec. 3140.

³ 38 A.L.R. 8; 120 A.L.R. 837; 1 AM. JUR. 663; ATKINSON, HANDBOOK OF THE LAW OF WILLS (1937) p. 68; MADDEN, HANDBOOK OF THE LAW OF PERSONS AND DOMESTIC RELATIONS (1931) p. 362.

⁴ *Id.*

⁵ *Albright v. Albright*, 116 Ohio St. 668, 157 N.E. 760 (1927); *Phillips v. McConica*, 59 Ohio St. 1, 51 N.E. 445 (1898); *Quigley v. Mitchell*, 41 Ohio St. 375 (1884); *Upson v. Noble*, 35 Ohio St. 655 (1880). But see *Shearer Adm. v. Gasstman*, 15 Ohio L. Abs. 103, 31 Ohio N.P. (N.S.) 219 (1933), which is a Probate Court decision allowing an adopted child to inherit *through* its adoptive parent.

⁶ Ohio G.C. sec. 10512-19, effective Jan. 1, 1932, contains words designed to overcome the effect of these decisions. See note 16 *infra*.

⁷ 23 Ohio L. Abs. 306 (1936).

⁸ 43 Ohio App. 198, 182 N.E. 654 (1932).

adopted children were fixed under General Code sec. 8030 which was still in effect at the time of the adoption.⁹ Two other cases are of interest in this connection. *Smith v. Hunter*,¹⁰ which was decided before the enactment of General Code sec. 10512-19, allowed adopted children of the life tenant to take as remaindermen where the limitation over was to the "heirs at law" of the life tenant. This holding was reaffirmed in a more recent case involving the same problem.¹¹ Of course these two cases have been distinguished on the ground that the adopted child takes directly from the testator and not through the adoptive parents. Still the ever recurring objection that the adopted child is a stranger to the blood, which operates so effectively to prevent an adopted child from inheriting through its adoptive parent, would also seem to be a valid objection here.

Due to the complexity of the rules governing the construction of statutes it is impossible to say with certainty that the statute has been misinterpreted. However, there are some well recognized principles of statutory construction which would seemingly lead to a different interpretation. Without considering whether adoption statutes derogate from or completely change the common law,¹² it is clear that the old rule of construction that statutes in derogation of the common law shall be strictly construed has no application to the third or Remedial Part of the Ohio General Code.¹³ Undoubtedly the primary objective in construing any statute is to give effect to the legislative intent.¹⁴ As an aid in determining this the court may resort to the journals of the Legislature and will give effect to any manifest intent appearing therein.¹⁵ When the former Ohio G.C. sec. 8030 was repealed by the present adoption statute the following words were added to the then existing adoption law: (referring to the adopted child) "but shall be capable of inheriting property expressly limited by will or by operation of law to the child or children, heir or heirs at law, or next of kin, of the adopting

⁹ Ohio G.C. sec. 8030 repealed by Ohio G.C. sec. 10512-19.

¹⁰ 86 Ohio St. 106, 99 N.E. 91 (1912).

¹¹ *Hummel v. Davis*, 22 Ohio L. Abs. 49 (1936).

¹² 1 AM. JUR. p. 625 notes 18 and 19.

¹³ Ohio G.C. sec. 10214: "The provisions of part third and all proceedings under it, shall be liberally construed, in order to promote its object, and assist the parties in obtaining justice. The rule of common law, that statutes in derogation thereof must be strictly construed has no application to such part; but this section shall not be so construed as to require a liberal construction of provisions affecting personal liberty, relating to amercement, or of a penal nature."

¹⁴ See authorities cited note 15 *infra*.

¹⁵ *Toledo v. Public Utilities Commission*, 135 Ohio St. 57, 61, 19 N.E. (2d) 162, 13 Ohio Op. 329 (1939); *Caldwell v. State*, 115 Ohio St. 458, 466, 154 N.E. 792 (1926); *State ex rel Davis v. Hildebrant*, 94 Ohio St. 154, 165, 114 N.E. 55 (1916); *State ex rel Construction Co. v. Rabbitts*, 46 Ohio St. 178, 181, 19 N.E. 437 (1889); *State ex rel Peters v. McCollister*, 11 Ohio 46, 55 (1841).

parent or parents, or to a class including any of the foregoing."¹⁶ According to the comments and source notes of the Special Committee of the Ohio State Bar Association which drafted this statute and recommended it for passage these words were added for the express purpose of permitting the adopted child to inherit not only *from* but also *through* the adopting parents.¹⁷ Under the present construction of the adoption statute the addition of the above quoted words has made no change in the Ohio law, yet ordinarily it is presumed that every amendment is for the purpose of effecting some change.¹⁸ As indicated above, the Supreme Court has already construed General Code sec. 8030 as not giving the adopted child the right to inherit through its adoptive parent.¹⁹ Four years later the Ohio Legislature repealed that section and replaced it with the present General Code sec. 10512-19. Where the Legislature repeals a law soon after its construction by the courts there is a presumption that it intended to counteract the effect of such interpretation.²⁰

The provisions of General Code sec. 10512-19 are broad and aim to place the adopted child on a par with natural born children by divesting the natural parents of all legal rights and obligations due from them to the child, and from the child to them, and transferring these legal rights and obligations to the adoptive parents. More specifically the adoptive parents are invested with the legal right to obedience and maintenance on the part of the child, and in turn the adopted child is invested with every right, privilege and obligation in respect to education, maintenance and rights of inheritance as if born in lawful wedlock. The only limitations provided for are: First, an adoptive child is not capable of inheriting property expressly limited to the heirs of the body of the adopting parents; Second, that on the death of the adopted child without issue, property which came to it from its adopting parents shall descend to the next of kin of the adopting parents, rather than to the next of kin of the adopted child. The rights and privileges referred to in the statute include property rights as well as personal rights.²¹ By way of comparison it is significant that the statute dealing with the

¹⁶ With the exception of the first sentence of former Ohio G.C. sec. 8030 which now appears in Ohio G.C. sec. 10512-18, all of that former statute was included in Ohio G.C. sec. 10512-19 and the above quoted words were added.

¹⁷ See comments under Ohio G.C. 10512-19.

¹⁸ *Lytle v. Baldinger*, 84 Ohio St. 1, 8, 95 N.E. 389, Ann. Cases 1912B 894 (1911); *Ohio Valley Electric Ry. Co. v. Hagerty*, 14 Ohio App. 398, 402, 32 Ohio C.A. 145 (1921); 37 OHIO JUR. p. 768; 25 R.C.L. 1051.

¹⁹ See note 5 *supra*.

²⁰ *State ex rel McCrehen v. Brown*, 108 Ohio St. 454, 458, 141 N.E. 69 (1923).

²¹ *Kroff v. Arnheim*, 94 Ohio St. 282, 114 N.E. 267 (1916). See note 27 *infra*.

effect on a will of afterborn or pretermitted heirs²² and the one regarding bequests to charitable purposes,²³ both expressly place adopted children on an equal footing with those who are natural born. However, it should be noted that adopted children are not referred to in the "lapse statute" which allows the *issue* of a devisee or legatee who predeceases the testator to take the devise as the devisee would have, had he survived the testator.²⁴ Under an old Ohio case the word "issue" as used in that statute had a very technical meaning and did not include adopted children,²⁵ but the more recent cases have not so limited the meaning of that word.²⁶ Statutory changes probably account for this difference. Certainly the wording of General Code sec. 10512-19 appears to be broad enough to bring adopted children within the scope of the word "issue."

The social desirability of encouraging adoptions by according to adopted children a position of equality is unquestionable. The legal effect of this is summarized in General Code sec. 10512-19. As pointed out above, this provision does place two limitations upon the adopted child's right of inheritance. It might be urged that the mention of these limitations is exclusive of all others.²⁷ Even without that rule of construction as an aid, it is submitted that the *dictum* in the principal case, to the effect that an adopted child cannot inherit through its adoptive parent, is contrary to the express wording of the statute, and that it is based upon authority which has been superseded.²⁸

J. P. M.

²² Ohio G.C. sec. 10504-49 allows a child who is adopted by the testator after he has made his will, to take a proportionate share in absence of an expression of intent to disinherit the adopted child.

²³ Ohio G.C. sec. 10504-5. This statute invalidates bequests for charitable purposes if made within one year of the testator's death, and an adopted child or its lineal descendants may have the benefit of such an invalid bequest.

²⁴ Ohio G.C. sec. 10504-73.

²⁵ Phillips v. McConica, 59 Ohio St. 1, 51 N.E. 445 (1898), cited noted 5 *supra*.

²⁶ The case of *Cochrel v. Robinson*, 113 Ohio St. 526, 149 N.E. 871 (1925), holds that a declarant who dies leaving only a designated heir does not die without issue within the meaning of the "half and half statute," former Ohio G.C. sec. 8577 now Ohio G.C. sec. 10503-5. *Miller v. Shepard*, 29 Ohio App. 22, 162 N.E. 788 (1928), is a similar case holding that the deceased who left surviving him an adopted child did not die without issue within the meaning of the "half and half statute." In *Harrison v. Hillegas*, 28 Ohio L. Abs. 404, 13 Ohio Op. 523, the court considers an adopted child as an issue of the adopting parent in applying the "lapse statute" note 24 *supra*.

²⁷ *Ransom v. The New York Chicago & St. Louis Railway Co.*, 93 Ohio St. 223, 112 N.E. 586, L.R.A. 1916E 704 (1915); *Kroff v. Arnheim*, 94 Ohio St. 282, 114 N.E. 267 (1916). The cases cited here and in note 21 *supra* were decided before the passage of Ohio G.C. sec. 10512-19, but they are based upon provisions in former Ohio G.C. sec. 8030 which have been reenacted in the present statute.

²⁸ But see Note (1938) 4 OHIO ST. L.J. 97.