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Adoption in South Carolina

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LAW NOTES

ADOPTION IN SOUTH CAROLINA

The primary purpose of this note is to present to the South Carolina practitioner the current law of this State relevant to the adoption of children. There is presently under way a movement for the revision of the South Carolina adoption laws and a bill for the purpose will be presented to the General Assembly at the 1957 session.¹ This note is not intended to evaluate that bill but merely to present it for the reader's interest, in order that he may compare the proposed changes with the existing law and draw his own conclusions.

The problems of adoption cannot be covered in one article or even in one volume for the reason that these problems are so many and varied, running the gamut from the strictly legal points of procedure to the social issue of approving or disapproving prospective adoptive parents. This discussion will deal primarily with the legal aspects of adoption, but it should be pointed out that the legal aspects cannot be fully comprehended without at least a cursory treatment of the social problems involved since they are so closely interwoven.

History and Background

It is a familiar fact that in this country as well as in England adoption proceedings are unknown to the common law and are sanctioned only by statutory law.² In England there was no such general statutory provision until 1926.³ Yet the history of adoption goes back to antiquity and the ancient Roman and Greek law forms the basis of adoption laws in many countries today.⁴ India for many centuries has provided for adoption⁵ and rites of adoption in the very earliest society of which we have any knowledge included weird and grotesque simulation of birth.⁶ Under the Justinian Code the adoption had to imitate nature,⁷ and under the Code of Hammurabi, composed

1. See appendix to this note for a copy of that bill, hereafter referred to as the "proposed bill". This bill was drawn by Mr. John W. Thomas, Columbia attorney who is a South Carolina member of the Commission on Uniform Laws, and others, and is essentially the Uniform Adoption Act with a few changes.

2. *Driggers v. Jolley*, 219 S.C. 31, 64 S.E. 2d 19 (1951); *Wright v. Alexander*, S.C., 95 S.E. 2d 500 (1956); MADDEN, PERSONS AND DOMESTIC RELATIONS § 106 (1st ed. 1931).

3. The Adoption of Children Act, 1926, 16 and 17 Geo. 5, c. 29.

4. LEAVY, THE LAW OF ADOPTION 1 (1948).

5. LOCKRIDGE, ADOPTING A CHILD, (Greenberg, N. Y.).

6. GALLAGHER, THE ADOPTED CHILD, (N.Y. 1936).

7. Therefore a eunuch could not adopt, but an impotent person might because he might be cured. Brosnam, *The Law of Adoption*, 22 COLUM. L. REV. 332 (1922).

in 2285 B.C., if the consent of the father and mother was not obtained, the child had to be returned.⁸ The Bible records adoption among the Egyptians.⁹ Adoption was prevalent among the American Indians, but since the common law disregarded adoption, the Indian had to conform to the white man's "civilization".¹⁰

Eventually, in this country there was the beginning of the enactment of statutes necessary to enable a person to take a child into his home and care for it as if it were his own with all the rights and responsibilities of a natural child. Massachusetts was the first of the common law states to pass an adoption statute, enacting it in 1871.¹¹ The first South Carolina general statute pertaining to adoption was enacted in 1892¹² and has undergone major changes over the years.

Persons Who May Be Adopted

As to age the requirement apparently in South Carolina is that the adoptee be a minor.¹³ About two-thirds of the states have specific provisions allowing adoption of adults, and others permit adoption of adults under the general provisions relating to children.¹⁴ South Carolina statutes do not make specific provision for the adoption of adults, and the adoption statutes refer to the adoptee as a child or minor,¹⁵ to the presumable exclusion of adults.

If the child is illegitimate the requirements are more restrictive in that he cannot be adopted unless the father and mother, if both were unmarried at the time of its birth, could lawfully have contracted ma-

8. Hockaday v. Lynn, 200 Mo. 456, 98 S.W. 585; CODE OF HAMMURABI § 186, "If a man has taken a young child to sonship and when he took him his father and mother rebelled, that nursling shall return to his father's house".

9. "[A]nd she adopted him for a son and called him Moses, saying I took him out of water." Exodus 2:10.

10. According to an immemorial custom among the tribes of Indians residing on the reservation, whenever an infant is abandoned by its parents the person caring for it becomes its adopted parent. But it has been stated by one court, "In the matter of marriages between Indians, tribal customs have been recognized by the courts because they were in conformity to natural rights. But the right of adoption is contrary to natural law, and we have been unable to find any case reported where adoption by custom has been sanctioned or maintained." *Non-She-Po v. Wa-Win-Ta*, 37 Or. 213, 62 P. 15 (1900).

11. Uhlenhopp, *Adoption in Iowa*, 40 IOWA L. REV. 228, 229.

12. XXI Stat. 79. See also XXII Stat. 199 (1896); XXIII Stat. 29 (1900).

13. "Any child", CODE OF LAWS OF SOUTH CAROLINA, 1952 § 10-2581; "a minor", CODE OF LAWS OF SOUTH CAROLINA, 1952 § 15-1382 (Children's Courts); "Child", CODE OF LAWS OF SOUTH CAROLINA, 1952 § 10-2583; "such child", CODE OF LAWS OF SOUTH CAROLINA, 1952 § 10-2587; also there is reference to "guardian ad litem for such child" in CODE OF LAWS OF SOUTH CAROLINA, 1952 § 10-2583.

14. LEAVY, *THE LAW OF ADOPTION* 24 (1948); See also annot. 83 A.L.R. 1389.

15. See note 12 *supra*; cf. proposed bill § 18.

trimony under the constitution and laws of South Carolina.¹⁶ Nor can the illegitimate be adopted unless the wife of the adopter (if he has one) consents to the adoption or is the mother of the child.¹⁷ Children of foreign parentage can be adopted.¹⁸

Persons Who May Adopt

The South Carolina general adoption statute provides that any person or persons desiring to adopt may file his or their petition.¹⁹ Neither here nor elsewhere in the statutes is any limitation placed on the age or marital status of the adopter. Thus, presumably, an unmarried minor could adopt a child in this State subject to the court's discretion. In a few states the adopting parent is required to be at least a certain number of years older than the child being adopted.²⁰ Most of these jurisdictions set the number of years at ten, but Idaho and West Virginia require that the adopting parent be at least fifteen years older than the child.²¹ The literature of the United States Children's Bureau states that if the law provides that the child shall be adopted only by "competent persons", the requirement that the parent be a specified number of years older than the child is unnecessary.²²

There is some question as to whether the adoptive parents must be residents of the state. The South Carolina general statute provides that any person may file his petition in the court for the county in which *he or they may reside*.²³ This might appear to limit the adoptive parent to South Carolina residents since a non-resident could not satisfy the requirements of the statute in terms of being a resident of the county in which the suit was brought. There is an alternate venue statute applicable if the child is in an orphan house, which allows the petition to be filed in the county in which the orphan house is located.²⁴ Thus, technically, the only situation in which an out-of-state resident could adopt a South Carolina child would be one where the child was in an orphan house. In practice this is not true. Out-

16. CODE OF LAWS OF SOUTH CAROLINA, 1952 § 10-2585, if the illegitimate child is born to a white person and a negro, he could not be adopted by either race, according to this code section. See CODE OF LAWS OF SOUTH CAROLINA, 1952 § 20-7 forbidding marriage of a white person to "indian", "mulatto", "mestizo", or "half-breed" *Quære* as to an incestuous marriage, which is however, is voidable.

17. CODE OF LAWS OF SOUTH CAROLINA, 1952 § 10-2585.

18. 1953-54 Op. Atty. Gen. 138 (English); 1951-52 Op. Atty. Gen. 60. (Japanese).

19. CODE OF LAWS OF SOUTH CAROLINA, 1952 § 10-2581.

20. LEAVY, *THE LAW OF ADOPTION* 9 (1948).

21. *Ibid.*

22. *ESSENTIALS OF ADOPTION LAW AND PROCEDURE* 12 (U.S. Children's Bureau Pub. 331, 1949).

23. CODE OF LAWS OF SOUTH CAROLINA, 1952 § 10-2581.

24. CODE OF LAWS OF SOUTH CAROLINA, 1952 § 10-2582.

of-state residents are adopting South Carolina children.²⁵ (It may, however, be persuasively argued that since the statute does not limit in express terms the right of adoption to residents of the state, adoption may be effected by non-residents; and that the requirement that the petition be filed in the county of the petitioner's residence is confined to cases where the petitioner is a resident of the state. Under such a construction the venue where a non-resident seeks to adopt is either unrestricted, or, more probably, the residence of the child.) Even though the demand for babies far exceeds the supply²⁶ there seems to be no judicial practice or policy limiting adoption of South Carolina babies to South Carolina adoptive parents.²⁷ The United States Children's Bureau strongly advocates that the petition be limited to the state resident because an adequate study of the adoptive home cannot be made otherwise.²⁸

Next to consider is the question of who can adopt an illegitimate child. Under the South Carolina statute if the person seeking to adopt an illegitimate child has at the time of the filing of the petition either a lawful wife or child he cannot adopt that child unless the wife is the mother of such illegitimate child or unless the wife file her written consent to such adoption.²⁹ There would be difficulty if the man seeking to adopt the illegitimate child had a lawful child but no wife, since no mention is made of procuring the lawful child's consent.³⁰ A reasonable construction would be that, while the failure or inability — such as minority — of the lawful child might prevent the adoption of the illegitimate child, no such bar would be interposed if in fact such consent were given. This conclusion is strengthened by the following considerations: (1) any requirement for consent is presumably for the benefit of the person whose consent is thus required, and if in fact there is consent although there is no requirement for it there need then be no specific provision for consent; (2) a consent would probably operate as an estoppel to assert the invalidity of the proceedings; (3) since the consent of the lawful child is not required if the wife of the adoptive father consents, the lack of such a wife ought not to confer a greater privilege upon the lawful child if in fact

25. 36 S. C. Children's Bureau Ann. Rep. 10 (1956).

26. One estimate is ten requests to one placement, PROTECTING CHILDREN IN ADOPTION 7 (U.S. Children's Bureau Pub. 354, 1955).

27. See note 24 *supra*.

28. ESSENTIALS OF ADOPTION LAW AND PROCEDURE 11 (U.S. Children's Bureau Pub. 331, 1949). It should be noted that this reason for limiting the parent to state residents is not quite so important in South Carolina since there is no statutory provision for investigation of the adoptive home.

29. CODE OF LAWS OF SOUTH CAROLINA, 1952 § 10-2585.

30. The Committee on Jurisprudence and Law Reform of the South Carolina Bar Association discussed this provision in its 1950 report, published in 2 S.C.L.Q. 345, 369.

he consents. From a practical point of view the problem seldom arises, since it is only rare cases that a man without a wife will adopt a child. (*Quaere*: Does the term "lawful child" as used in the statute include an adopted child?)

Where to Bring the Action

The Court of Common Pleas of every county has jurisdiction over adoption proceedings.³¹ If the petition is brought in a county which has a Children's Court the Children's Court, by the terms of the applicable statutes, has concurrent jurisdiction with the Court of Common Pleas.³² The extent to which County Courts may have jurisdiction over adoption proceedings depends upon the language of the statute which defines its jurisdiction. The language of the general statutes authorizing the formation of County Courts³³ is probably not comprehensive enough to include adoption proceedings, but the statutes creating County Courts in particular counties on the whole contain broader language sufficient by implication to include adoption.³⁴ Other courts too may in certain counties be given jurisdiction over adoption, and it is of course advisable and necessary to ascertain from the Code whether in a given county a court other than the Court of Common Pleas has such jurisdiction concurrent with the latter.³⁵

31. CODE OF LAWS OF SOUTH CAROLINA, 1952 § 10-2581.

32. CODE OF LAWS OF SOUTH CAROLINA, 1952 § 15-1382, limited to certain counties, CODE OF LAWS OF SOUTH CAROLINA, 1952 §§ 15-1301 — 15-1428.

33. CODE OF LAWS OF SOUTH CAROLINA, 1952 § 15-612, ". . . It shall likewise have jurisdiction to try and determine all civil cases and special proceedings, both at law and in equity when the value of the property in controversy or the amount claimed does not exceed one thousand dollars . . .".

34. For example, the Richland County Court: "Said County Court shall have concurrent jurisdiction with the Court of Common Pleas in all civil cases and special proceedings, both at law and in equity, when the amount demanded in the complaint does not exceed ten thousand dollars or when the value of the property involved does not exceed ten thousand dollars and in all other civil cases and special proceedings, both at law and in equity, in which there is no money demanded or in which the right involved cannot be monetarily demanded". CODE OF LAWS OF SOUTH CAROLINA, 1952, Suppl., § 15-764. The language is fairly typical of most other county courts, except in terms of jurisdictional amount.

35. For example, as to the Children's Court Division of Domestic Relations Courts in certain counties (Chap. 7 CODE OF LAWS OF SOUTH CAROLINA, 1952 § 15-1171) "It shall also have jurisdiction . . . as to grant orders for the adoption of such children" under circumstances therein set out; § 15-1222, as to Family Court Division of Domestic Relations Courts — "The court shall have all the power, authority and jurisdiction vested in the circuit courts of the state in actions for . . . adoption of children . . ."; § 15-608, Civil Court of Florence — "Said civil court shall have jurisdiction . . . in . . . proceedings for the adoption of children . . .".

But a Domestic Relations Court not established under the provisions of Chapter 7 does not, by virtue of its simply being such a court, have jurisdiction of adoption proceedings, even though the statute establishing it gives jurisdiction "over the persons of minors". *Wright v. Alexander*, S.C., 95 S.E. 2d 500 (1956), dealing with Domestic Relations Court of Laurens County.

It has been suggested that the jurisdiction of adoption proceedings be vested in only one court³⁶ and that such court should be one equipped to deal with cases requiring comprehension of the principles of child welfare work and the services of social agencies.

In the Code Chapter dealing with jurisdiction of Children's Courts it is provided that "When jurisdiction has been obtained by a children's court in the case of any child, unless a court order shall be issued to the contrary or unless the child be committed to an institution supported and controlled by the State, it shall continue for the purpose of this chapter during the minority of the child."³⁷ No similar provision is found in the sections dealing with adoption in the Courts of Common Pleas, and it is at least open to question whether, once an adoption proceeding has been perfected in a Children's Court, that court retains jurisdiction over the adopted child, although the court is given power to revoke the decree for cause. But since the jurisdiction of the Children's Court is conditioned upon consent of the natural parent, or other person who is privileged to give it, a seasonable and proper withdrawal of consent deprives the court of jurisdiction over the minor notwithstanding the code section just referred to.³⁸

The next problem after deciding which court (i. e. Court of Common Pleas, Children's Court, Domestic Relations Court, County Court or other court) has jurisdiction is to determine where the action is to be brought—although in cases where a court other than Common Pleas is concerned the determination of the county in which the action is to be brought must precede the determination of the court, since while all counties have courts of Common Pleas not all counties have such other courts having concurrent jurisdiction. The question usually arises where the adopting parent and the child reside in different counties. The requirement, as has already been noted, is that the petition is to be filed in the county in which the petitioners reside,³⁹ with the exception that the petition *may be* filed in the county where the child is located *if* the child is in an orphan house.⁴⁰ As a matter of policy, it would seem to be more desirable to have the proceeding brought in the county where the petitioners re-

36. ESSENTIALS OF ADOPTION LAW AND PROCEDURE 11 (U.S. Children's Bureau Pub. 331, 1949).

37. CODE OF LAWS OF SOUTH CAROLINA, 1952 § 15-1391.

38. *Driggers v. Jolley*, 219 S.C. 31, 64 S.E. 2d 19 (1951); see section on consent this paper *infra*.

39. CODE OF LAWS OF SOUTH CAROLINA, 1952 § 10-2581.

40. CODE OF LAWS OF SOUTH CAROLINA, 1952 § 10-2582.

side since the local court is in the best position to obtain pertinent information about them.⁴¹

The South Carolina legislature has the power to confer jurisdiction for adoption upon the courts but it does not have the power itself to pass special acts for the adoption of persons.⁴²

Consent

It is generally held that consent lies at the foundation of statutes of adoption.⁴³ Consent of the parties is usually provided for by statute but the general South Carolina statute concerning adoption does not mention consent.⁴⁴ The statute providing for adoption in the Children's Court⁴⁵ provides that the parents or guardian or anyone having charge of such child be made a party to the proceeding and "with their consent" the judge may sanction the adoption. However, even in the absence of a specific provision in the statutes requiring the consent of the natural parents presumably such consent is required. It would be unjust and unnatural to permit a person to adopt another's child without the latter's consent. Thus it is generally held that if the natural parent has done nothing to forfeit the right to the control and custody of the child consent to the adoption is essential.⁴⁶

Consent of the child — In every state, with the exception of three, the consent of the child is required where the child has reached a certain age.⁴⁷ South Carolina is one of the three states which does not provide that the consent of the child must be obtained. In the majority of the states the child's consent is necessary if he is fourteen years old or older.⁴⁸

As has been seen, if one seeking to adopt an illegitimate child has a wife or child, the wife must file her consent unless she is the mother of the illegitimate child.⁴⁹ The consent must be filed in the office of the clerk of court of the county where the petition is filed. The

41. Merrill, *Toward Uniformity in Adoption Law*, IOWA L. REV. 299, 304 (1955).

42. S. C. CONST. ART. 3 § 34, "The General Assembly of this state shall not enact local or special laws . . . V. to authorize the adoption or legitimation of children".

43. Driggers v. Jolley, 219 S.C. 31, 64 S.E. 2d 19 (1951).

44. CODE OF LAWS OF SOUTH CAROLINA, 1952 § 10-2581.

45. CODE OF LAWS OF SOUTH CAROLINA, 1952 § 15-1382.

46. 2 C.J.S., *Adoption of Children* § 21 (1936).

47. LEAVY, *THE LAW OF ADOPTION* 41 (1948); The consent is presumed in the absence of a dissent but if it is proved that the consent was not given the adoption is void. *In re Gunn's Estate*, 227 Mich. 368, 198 N.W. 983 (1924).

48. *Ibid.*; also see proposed bill § 8, if the child is ten years old or older his consent is required.

49. CODE OF LAWS OF SOUTH CAROLINA, 1952 § 10-2585.

statutes do not state whether the permission of both parents of an illegitimate child must be obtained before the adoption may take place. Most states eliminate the necessity of consent of the father and permit adoption on consent of the natural mother alone.⁵⁰

Consent of agencies — It is possible for parents to surrender their child to a child placement agency. In South Carolina the agency is the South Carolina Children's Bureau. This surrender amounts to a relinquishment of all rights to the child and the Children's Bureau becomes thereby the guardian, and consent of the Bureau is essential before the adoption can take place.⁵¹ Thus, when the Bureau finds a person willing to adopt the child the consent of the Children's Bureau is required, but the consent of the natural parents is not required since they have already relinquished their rights by surrendering the child to the Children's Bureau. If the consent of the natural parents is impossible to obtain, the legal guardian of the child or person standing in *loco parentis* may consent. Before any hearing on the petition is had the court will appoint a guardian ad litem.⁵²

There are many instances where one or both natural parents may be incapacitated in one way or another. One may be insane, missing or unknown, and the statutes are deficient in not stating in what instances consent of the parent will be dispensed with.

Withdrawal of consent — The earlier cases support the view that a natural parent's consent to the proposed adoption of a child, given in compliance with a statute requiring such consent, may effectively be withdrawn or revoked by the natural parent before the adoption has been finally approved.⁵³ Later cases show that the trend is toward the position that where a natural parent has freely and knowingly given the required consent to the adoption of his or her child, and the proposed adoptive parents have acted upon such consent it is binding upon the natural parent and cannot be arbitrarily withdrawn.⁵⁴ But where the consent has not been acted upon the con-

50. LEAVY, *THE LAW OF ADOPTION* 42 (1948); However if the mother has abandoned the illegitimate child, her consent is not required. *Graham v. Francis*, 83 Colo. 346, 265 P. 690 (1928).

51. *CODE OF LAWS OF SOUTH CAROLINA*, 1952 § 71-205.

52. *CODE OF LAWS OF SOUTH CAROLINA*, 1952 § 10-2583.

53. Annot. 156 A.L.R. 1011 (1945); In *Lee v. Thomas*, 297 Ky. 858, 181 S.W. 2d 457 (1944), the court said "As a general proposition parents have the primary and superior right to the custody of their offspring above that of all others, but the declared law has injected into such cases a factor of almost equal dignity as that of the right of the parents, and which is the welfare of the child"

54. *Ibid*; *Driggers v. Jolley*, 219 S.C. 31, 64 S.E. 2d 19 (1951).

sent may be withdrawn.⁵⁵ The United States Children's Bureau suggests that after a petition for adoption has been filed withdrawal of consent should not be allowed unless the court decides that the withdrawal is best for the child.⁵⁶

In *Driggers v. Jolley*⁵⁷ it was held that if consent was withdrawn in a Children's Court proceeding the court would be deprived of jurisdiction notwithstanding a statute⁵⁸ which provided that once the Children's Court obtained jurisdiction it continued throughout the minority of the child.⁵⁹ However, the Supreme Court went on to say that since there was no objection to the withdrawal of consent (and in fact the petition was withdrawn) the court lost jurisdiction. The rule seems to be that if the withdrawal is arbitrary and not for the best interests of the child it will not be allowed.⁶⁰

Procedure

Petition—The adoption proceeding is legally started by the filing of a petition.⁶¹ There are no statutory requirements as to what the petition should contain, but generally it sets out pertinent information with regard to the custody of the child, the natural parents, ability to rear and maintain the child, and it usually concludes with a request that the court change the child's name and grant the adoption.

Set forth below is a typical petition where the child has been surrendered to the Children's Bureau. If the child is not in the custody of the Children's Bureau the usual respondents in addition to the necessary child respondent will be the natural parents. In any case the child must be represented in the proceedings by a guardian ad litem.

55. *French v. Catholic, Community League*, 69 Ohio App. 442, 44 N.E. 2d 113 (1942).

56. *ESSENTIALS OF ADOPTION LAW* 14 (U.S. Children's Bureau Pub. 331 1949); Where consent was withdrawn see, *Skaggs v. Cannon*, 293 Ky. 795, 170 S.W. 2d 12; Where consent was considered binding see, *Lee v. Thomas*, 297 Ky. 858, 181 S.W. 2d 457 (1944).

57. 219 S.C. 31, 64 S.E. 2d (1951).

58. *CODE OF LAWS OF SOUTH CAROLINA*, 1952 § 15-1391.

59. See *Bailey v. Mars*, 138 Conn. 593, 87 Atl. 2d 388 (1952), the consent was withdrawn, yet the adoption was allowed. The court based its opinion on the fact that the primary concern is the welfare of the child and even though the consent was withdrawn, once it was given, it gave the court jurisdiction and the court could then decide if the withdrawal was in the best interests of the child. Discussed in 31 Conn. B.J. 314.

60. See note 51 *supra*.

61. *CODE OF LAWS OF SOUTH CAROLINA*, 1952 § 10-2581.

State of South Carolina }
 County of } IN THE COURT OF COMMON PLEAS

John W. Smith and
 Mary Turner Smith,
 Petitioners }
 v. }
 "Baby James", and the
 Children's Bureau of South Carolina,
 Respondents }

The petition of the petitioners respectfully shows this Honorable Court;

1. That heretofore on or about November 1, 1955, respondent "Baby James", whose last name is unknown to petitioners, and who is herein impleaded "Baby James", was voluntarily committed to the Children's Bureau of South Carolina under the provisions of § 71-205 Code of Laws of 1952, and subsequently pursuant to the statute law of South Carolina, said respondent was placed in the custody of Petitioners herein, and has been under the supervision of the respondent, the Children's Bureau of South Carolina since that time, That the said child was born....., 19.....

2. That Petitioners have had the care, custody and control of the said respondent "Baby James" since, that they seek to adopt the said child because they have come to love the child and desire to give it their name and to provide for the said child to inherit from your petitioners as if said child were the natural child of Petitioners.

3. That Petitioner John W. Smith is....., and that the Petitioners are amply able to rear and educate and maintain the said child, and are desirous of so doing, and will give it a good home and rear it in a Christian atmosphere.

WHEREFORE Petitioners pray that the matters herein set forth be inquired into and that an order do issue directing the adoption of "Baby James" by your Petitioners, and that the name of the said child be changed toand for such relief as may be just and proper.

.....
 Attorney for Petitioners

STATE OF SOUTH CAROLINA
COUNTY OF

Personally appeared before me John W. Smith and Mary Turner Smith who being duly sworn, say each for himself and herself;

That they have read the foregoing petition and that the matters and facts stated therein are true.

Sworn to before me this.....day of.....

Notary Public for South Carolina (L.S.)

.....
John W. Smith

.....
Mary Turner Smith

Hearing and decree — After the petition has been filed and notice given to the proper parties, a hearing must be held by the proper court. Generally elsewhere the hearing is held in closed chambers.⁶² In South Carolina the judge may hold it in open court or by reference to a master.⁶³ Some adoption authorities recommend that the proceeding be closed to the public and only immediate parties attend, on the ground that adoption involves matters of intimate and personal concern.⁶⁴

The court may listen to witnesses and generally conduct a full hearing in order to determine whether the adoption is in the best interests of all concerned. If the court is satisfied, it will issue the adoption decree. About half of the states have provisions for an interlocutory decree.⁶⁵ South Carolina has no such provision and the judge's order is a final one. The minor is now legally the child of the adopting parents.

Investigation

If limited to South Carolina statutes this section would prove very short. There is no provision under the statutes relating to adoption for an investigation of the adoptive home to determine its suitability for the child. If the adoption is handled by the Children's Court the statute⁶⁶ states that the judge ". . . may sanction such adoption if the party seeking it seems suitable after investigation by the parole

62. LEAVY, *THE LAW OF ADOPTION* 50 (1948).

63. *CODE OF LAWS OF SOUTH CAROLINA*, 1952 § 10-2584.

64. *ESSENTIALS OF ADOPTION LAW* 19 (U.S. Children's Bureau Pub. 331 1949).

65. LEAVY, *THE LAW OF ADOPTION* 51 (1948).

66. *CODE OF LAWS OF SOUTH CAROLINA*, 1952 § 15-1382.

officer". This is left to the discretion of the court. A conscientious judge will of course see that some investigation is made.

If the custody of the child has been surrendered to the Children's Bureau an investigation is made.⁶⁷ In this case trained social workers determine the suitability of the adoptive home.

Thirty-three states require that an official investigation be made.⁶⁸ But fifteen states do not require such an investigation and as noted South Carolina falls into this minority.⁶⁹

Legal Effect of Adoption

General — It has been held under some statutes that the effect of the adoption decree is to terminate all rights and duties between the child and its natural parents, and instead to make the child legally the child of the adopting parents.⁷⁰ When this relationship is created the child for all practical purposes becomes the child of the adopting parent with the rights, duties and obligations arising from the natural relation of parent and child.⁷¹ But in some jurisdictions the rights and obligations of the natural parents are altered only so far as the statute undertakes to change them.⁷²

In adoption in South Carolina a birth certificate may be obtained from the Bureau of Vital Statistics⁷³ and the certificate will be free of any indication of the fact that the child was adopted and will show the adoptive parents as the real parents, and it will also show the place of birth of the adopted child as the place where the adoptive parents were residing. The child becomes subject to the direction of his new parents,⁷⁴ he may acquire their name,⁷⁵ his domicile depends on theirs,⁷⁶ and his earnings belong to his new parents.⁷⁷

Inheritance and other rights of succession — The principal effect of adoption is that it makes the adopted child a legal heir and gives

67. 36 S.C. Children's Bureau Ann. Rep. 7 (1956).

68. LEAVY, *THE LAW OF ADOPTION* 45 (1948).

69. For a discussion of opposition to investigation see *State Regulation of Child Adoptions* 17 TENN. L. REV. 937, 942 (1943).

70. *In re Chambers Estate*, 183 N.Y.S. 526, 112 Misc. 551 (1920); *Mitchell v. Brown*, 18 Cal. A. 117, 122 P. 426 (1912); *Black, Law Dictionary* (4th ed. 1951).

71. MADDEN, *PERSONS AND DOMESTIC RELATIONS* § 106 (1st ed. 1931).

72. *Barnhizel v. Ferrell*, 47 Ind. 335; 1 C.J., *Adoption of Children* § 124 (1914).

73. *CODE OF LAWS OF SOUTH CAROLINA*, 1952 § 32-1129.

74. *Miller v. Miller*, 123 Iowa 165, 98 N.W. 631 (1904); *Purinton v. Jamrock*, 195 Mass. 187, 80 N.E. 802 (1907).

75. *CODE OF LAWS OF SOUTH CAROLINA*, 1952 § 10-2584 — the decree of adoption may so provide.

76. *Woodward v. Woodward*, 87 Tenn. 644, 11 S.W. 892 (1889).

77. *Tilley v. Harrison*, 91 Ala. 295, 8 So. 802 (1891).

to it the right to inherit from the adoptive parent. The discussion that follows will deal with the extent of that inheritance and other aspects of rights of succession.

A child may be "deeded" by his parents, or the parent having his exclusive custody, under the provisions of a permissive statute.⁷⁸ The chief effect of the statute is to give the transferee the sole custody of the child until it is twenty-one. Custody, however, is not adoption, and it was held, in *Hatchell v. Norton*,⁷⁹ that a child whose custody had been transferred by a written instrument by a widowed mother was not thereby adopted by the transferee, and that upon the latter's death intestate it could not inherit. The holding was based upon the conclusion that an adoption could be effected only through judicial proceedings sanctioned by the adoption statutes. In so holding, the Supreme Court reversed the lower court, which had in effect specifically enforced the arrangement between the mother and the foster parent as a contract to adopt (the instrument being captioned "Adoption of Child" and including the language "He adopts the child . . ."). The lower court's holding, which accords with the majority view,⁸⁰ is based on the equitable maxim that Equity regards as done that which ought to be done, and that where the adopted child is taken into the home, its position changed, etc. the court will enforce the contract to the extent of decreeing that in Equity the child occupies the status of an adopted child, or at least is entitled to the right of inheritance. The Supreme Court's holding rejecting this view, therefore, is that adoption can be effected only by judicial proceedings for the purpose, and that not only will a deed of the child not accomplish an adoption, but that a contract of adoption will not be

78. CODE OF LAWS OF SOUTH CAROLINA, 1952 § 31-52, which provides that the custody of a minor may be disposed of by deed or will.

79. 170 S.C. 272, 170 S.E. 341 (1933), Mr. Justice Bonham in his concurring opinion quotes with approval from *Davis v. Jones*, Adm'r 94 Ky. 320, 22 S.W. 331 (1893), "But the legislature of this state has seen proper to authorize certain parties to make persons not related to them their legal heirs upon certain conditions by petition to the county court having jurisdiction and it has been settled by this court that the authority thus given is the only authority existing in this state by which one person can make another his legal heir, and any agreement by one person to make another his legal heir, not in accordance with said statute is not enforceable . . .".

80. Annot., 27 A.L.R. 1327 (1923); Annot. 142 A.L.R. 84 (1943); *Hickox v. Johnson*, 113 Kan. 99, 213 P. 1060 (1923). Oral agreements to adopt, not followed by legal adoption, have been held to be valid and enforceable. *Winkelmann v. Winkelmann*, 345 Ill. 566, 178 N.E. 118 (1931). A contract made by foster parents with a third person wherein they agree to take, adopt, and care for a child, is not ordinarily worthless, but capable of being enforced against the estates of such foster parents by an action in specific performance, although in no sense is it a legal adoption. *Snuffer v. Westbrook*, 134 Kan. 793, 8 P. 2d 950 (1923).

enforced despite the change of position on the part of the child.⁸¹

Next to be considered when the adoption statutes have been compiled with is to what extent does the adopted child inherit? The General Assembly in 1954 enacted a statute in conjunction with descent and distribution enlarging the scope of inheritance by or from an adopted child.⁸² Before its enactment inheritance was limited to inheritance by the adopted child from the adoptive parents.⁸³ The 1954 statute, it is to be noted, includes a very broad provision which states "for all inheritance purposes without exception the adopted child shall be considered a natural child of the adopting parents." It is not clear whether this section will allow the adopted child to inherit from the blood relatives of the adopting parents; whether kin of the adoptive parents (other than children) may inherit from the adopted child; whether the child is precluded from inheriting from his natural kin; or whether the natural kin can inherit from the child if the adopting parents are dead.⁸⁴ It is manifest that the legislature intended to

81. *Hatchell v. Norton*, 170 S.C. 272, 170 S.E. 341 (1933) was approved in a case not involving inheritance in *Smith v. A. C. L. Ry.*, 212 S.C. 332, 47 S.E. 725 (1948), where the court declined to consider a child as adopted on any equitable principles where there had been no judicial proceedings for adoption.

82. CODE OF LAWS OF SOUTH CAROLINA, 1952 § 19-52.11, "Whenever a child has been legally adopted, such child shall inherit from the adopting parents, and from each of them, and the adopting parents and each or either of them shall inherit from the adopted child, to the same extent as if he were a natural child of the adopting parents. For all inheritance purposes without exception the adopted child shall be considered a natural child of the adopting parents and in the event of the death of such adopted child, his estate shall ascend, descend and be distributed as is otherwise provided by law for natural born children of the same family, to the exclusion of the natural or blood parents of such child. When one of the natural parents be united in bonds of matrimony to the other parent then in such event the rules of inheritance as above set out shall attach as if such child were the natural child of both parents. A natural child shall inherit from an adopted child and an adopted child shall inherit from a natural child as if they were natural children of the adopting parent or parents, and in like manner adopted children of the same family shall inherit from each other."

83. CODE OF LAWS OF SOUTH CAROLINA, 1952 §§ 10-2581, 15-1382.

84. For a discussion of the adequacy of this statute see 7 S.C.L.Q. 196, 203. The 1954 act contains a paradox in the provision that a natural child shall inherit from an adopted child and *an adopted child shall inherit from a natural child* as if they were natural children of the adopting parent or parents, and in like manner adopted children of the same family shall inherit from each other. The paradox lies in the fact that under the general Statute of Descent and Distribution (CODE OF LAWS OF SOUTH CAROLINA, 1952 § 19-52) a brother or sister of the whole blood of an intestate excludes a brother or sister of the half blood. Thus, if an intestate was survived by a brother A of the whole blood and a brother B of the half blood, A would exclude B. But if an intestate who is the child of parents who adopt a child C is survived by a brother A of the whole blood, a brother B of the half blood, and the adopted child C, A and C will take to the exclusion of B. Yet C, who is almost inevitably not at all kin by blood to the intestate, will be on a parity with A who is related by blood to the intestate, and will eliminate B, who is also related by blood in the same degree to the intestate. And, even more strikingly, if there were only B and C, C

allow the adopted child to enjoy extensive rights of inheritance, and it is clear from the express language that the adoptive parents will inherit from the adopted child and an adopted child will inherit from a natural child, but the statute still leaves many important questions unanswered.⁸⁵ Similarly, by express language the natural parents may not under the statute inherit from the child, but as has been noted the statute is silent (except as it may be inferred from general language) as to whether the child may still inherit from his natural parents or from other natural kin. This should either be spelled out in the adoption law,⁸⁶ or the language made so sweeping, by its generality and the elimination of specific consequences, as to leave no doubt of its meaning.

The first of the general adoption acts⁸⁷ limited adoption to legitimate children, although it is probable that prior thereto adoptions effected by special acts (permitted prior to the Constitution of 1895) did not make distinctions in some cases. The second general adoption act was also limited to the adoption of legitimate children,⁸⁸ and adoption of illegitimate children was first permitted by an act of 1900.⁸⁹ The last of these acts, while thus originally permitting adopting of illegitimate children, imposed restrictions in such cases. One of these — that the parents of the child if unmarried must have been free to marry under the laws and Constitution of the state — has been noted already. The other restriction, which is still on the books,⁹⁰ limits the taking from the adoptive father by an illegitimate adopted child, by apparently putting transfers by the father or transmission by his will or inheritance from him by the adopted child within the scope of the Bastardy Act.⁹¹

would exclude B. A drastic solution would be to eliminate all distinction between kindred of the whole and half blood in the Statute of Descent and Distribution.

85. *Ibid.* For a discussion of the problem of descent and distribution and a compilation of the diverse opinions regarding inheritance by or from an adopted child see 31 NOTRE DAME L. 451. See also annot. 123 A.L.R. 1038 (1939).

86. "The decree should also declare that the child is no longer entitled to any of the rights and privileges or subject to any of the obligations of a child in relation to his natural parents." *ESSENTIALS OF ADOPTION LAW AND PROCEDURE* 20 (U.S. Children's Bureau Pub. 331, 1949).

87. XXI Stat. 79 (1892).

88. XXII Stat. 199 (1896).

89. XXIII Stat. 429 (1900).

90. CODE OF LAWS OF SOUTH CAROLINA, 1952 § 10-2587, "No person who adopts any illegitimate child shall give to such child by deed, will or otherwise any greater portion of his estate than is allowed by law unless such person has no lawful wife or issue living at the time of his death, nor shall such illegitimate child inherit, in case of intestacy, from the adopted parent any greater portion of his estate than may be given to such child by deed or will when such intestate leaves a widow or lawful issue surviving him."

91. CODE OF LAWS OF SOUTH CAROLINA, 1952 §§ 57-310, 19-238, limiting gifts

The South Carolina pretermitted heir statute⁹² which permits a child born after the making of a will in which a child is provided for, to share in what has been given to such child or children of the testator named in the will has been held to apply in favor of a child adopted after the execution of the will.⁹³ As a matter of construction the general rule seems to be that a gift to children of the testator includes adopted children, unless it appears that it was not the intention of the testator.⁹⁴ However, the rule of construction also is that if the testator provides for the children of some other person, adopted children of the third person are not included unless a contrary intention appears.⁹⁵

Other effects—As to homestead exemption, an adopted child occupied the same place in the family as a child of the blood, so that an adoptive father can qualify as the head of the family when its sole member, other than himself, is an adopted child.⁹⁶ Under the wrongful death statute a child who was not adopted through judicial proceedings under the statutes cannot recover for the wrongful death of the foster parent.⁹⁷ Under the Workmen's Compensation Acts the term "child" includes a "legally adopted" child, where benefits are payable to a child,⁹⁸ and the term "parent" includes a parent by adoption where benefits are payable to a parent.⁹⁹

Where a child is adopted in one state this status, with the consequent capacity to inherit from such parent, will be recognized in every other state if the law and policy of that state are not essentially different from that of the first state.¹⁰⁰

by a man by deed or will to his mistress or bastard children to one-fourth of his estate if he has a lawful wife or children. The Committee on Jurisprudence and Law Reform in its 1950 report to the South Carolina Bar Association comments that "the language [of the statute] is too muddy to be applied intelligently". 2 S.C.L.Q. 345, 367.

92. CODE OF LAWS OF SOUTH CAROLINA, 1952 § 19-236.

93. *Fishburne v. Fishburne*, 171 S.C. 408, 172 S.E. 426 (1934), where the child provided for in the will was also an adopted child; accord annot. 105 A.L.R. 1176.

94. Annot. 133 A.L.R. 597 (1941).

95. *Ibid.*

96. *Wagner v. Parrott*, 51 S.C. 489, 29 S.E. 240 (1897). The child here had been adopted through a special act of the General Assembly in 1885.

97. *Smith v. Atlantic Coast Line R. Co.*, 212 S.C. 332, 47 S.E. 2d 725 (1948). It is here conceded that if the child had been adopted judicially, the opposite result would have been reached.

98. CODE OF LAWS OF SOUTH CAROLINA, 1952 § 72-6.

99. CODE OF LAWS OF SOUTH CAROLINA, 1952 § 72-16. But this statute is broader than the wrongful death statute, in that a parent is further defined as any person who for three years prior to the death of the injured employee stood in the relationship of parent and was dependent on him.

100. *Cribbs v. Floyd*, 188 S.C. 443, 199 S.E. 677; 1 Am. Jur. *Adoption of Children* § 668 (1936); Restatement of the Law of Conflicts of Laws § 143.

Extent of Compliance Necessary

The fact that adoption exists only by virtue of statutory law presents the question, to what extent must the statutory requirements be observed? In some decisions, especially the earlier ones, the view has been taken that such statutes being in derogation of the common law there must be a strict compliance with every statutory requirement in order for the adoption to be valid.¹⁰¹ The tendency of the modern decisions is away from so harsh a rule, and the better view seems to be that, while the essential requirements of the statute must be observed, the construction should not be so narrow or technical as to defeat an adoption proceeding where there has been a compliance with every material provision.¹⁰² In *Hatchell v. Norton*¹⁰³ the concurring opinion cited several authorities agreeing that the statutes must be strictly construed.¹⁰⁴ It must be noted, however, that in that case there was no attempt to adopt through court proceedings. In *Cribbs v. Floyd*,¹⁰⁵ which came later, the court, dealing with a North Carolina adoption, differing procedurally from the South Carolina statutes, and which might have been irregular, even under North Carolina law, held the adoption not subject to attack, on the basis of estoppel.

Conclusion

In considering adoption statutes what must be kept foremost in mind is that the adoption program is a child centered program and not an adult centered one. "Adoption agencies exist to find the best opportunity for a child; not necessarily to find children for adults."¹⁰⁶ It seems to be evident that the law of adoption is closely interwoven with the welfare of both the community and the individual; and if

101. *Purinton v. Jamrock*, 195 Mass. 187, 80 N.E. 802 (1907); *Bressner v. Saarman*, 112 Iowa 720, 84 N.W. 920 (1901); *In re Cozza*, 163 Cal. 514, 126 P. 161 (1912).

102. *Lachner v. Venus*, 177 Wis. 558, 188 N.W. 613 (1922); *Hopkins v. Gifford*, 309 Ill. 363, 141 N.E. 178 (1923).

103. 170 S.C. 272, 170 S.E. 341 (1933).

104. "A child by adoption cannot inherit from the parent by adoption unless the act of adoption has been done in strict accordance with the statute." *Ferguson v. Jones*, 17 Or. 204, 20 P. 842, 3 A.L.R. 620 (1888); "However as against an adopted child the statute should be strictly construed because it is in derogation of the general law of inheritance." Cyc. 932.

105. 188 S.C. 443, 199 S.E. 677 (1938).

106. Statement by Mr. Joseph Reid, Executive Director of the Child Welfare League of America. "Social agencies are placing children in order to find permanent homes for them. We are not placing children to save an unhappy marriage, to try to prevent a woman from having a psychosis, or for any adult's desire to have children. Rather, we are attempting to fulfill the child's right to have parents." *PROTECTING CHILDREN IN ADOPTION* 26 (U.S. Children's Bureau Pub. 354, 1955).

particular adoption laws are not strict enough to call for the selection of the best possible home for the child and to exclude homes not conducive to the proper physical and spiritual growth of the child, then they are far from adequate.

To allow adoption by out-of-state residents without investigation of the adoptive home would permit a couple found unsuitable in their home state to cross the line into another state, file a petition and take a baby home with them. Clearly this is unfair and unjust to South Carolina parents wanting to adopt, and it is manifestly unfair to the child if the parents who adopt him are in fact unsuitable.

Adoption affects not only the natural parents and the adoptive parents but the community as a whole. The objectives of adoption law¹⁰⁷ are the protection of the child, protection of the natural parents, and protection of the adoptive parents. It is suggested that a fourth might be added and that is the protection of the state from the consequences of delinquency in a child caused by an unsuitable environment.

The adoption laws need to be brought into harmony with the essential principles of child protection. The present adoption law in South Carolina is lacking in many particulars and it is to be hoped that the General Assembly will give the proposed bill its most serious consideration. This writer concurs in the comment of the Committee on Jurisprudence and Law Reform in its 1950 report,¹⁰⁸ "The adoption statute makes bad reading and bad law. If there ever was a statute that needed change both for the sake of clarification and for the sake of erasing inequities, the adoption statute is a prime example."

WM. ELLISON LONG.

APPENDIX

A BILL

TO REGULATE THE ADOPTION OF PERSONS IN THIS STATE
AND TO REPEAL SECTIONS 10-2581 THROUGH 10-2587, CODE
OF LAWS OF SOUTH CAROLINA, 1952, AND 19-52.11.

Be it enacted by the General Assembly of the State of South Carolina:

107. The United States Children's Bureau sets forth three objectives in adoption law "(1) To protect the child from unnecessary separation from parents who might give him a good home and loving care if sufficient help and guidance were available to them; from adoption by persons unfit to have responsibility for rearing a child; and from interference after he has been happily established in his adoptive home, by his natural parents, who may have some legal claim because of defects in the adoption procedure. (2) To protect the natural parents from hurried decisions to give up a child, made under strain and anxiety. And (3) To protect the adopting parents from taking responsibility for children about whose heredity or capacity for physical or mental development they know nothing; from later disturbance of their relationship to the child by natural parents whose legal rights had not been given full consideration." *Id.* at 2.

108. 2 S.C.L.Q. 370 (1950).

SECTION 1. Definitions. As used in this Act, unless the context otherwise requires, "child" means any minor person, and "agency" means any person, authority or agency legally empowered to place children for adoption.

SECTION 2. Who May be Adopted. Any child present within this state at the time of petition for adoption is filed, irrespective of place of birth or place of residence, may be adopted.

SECTION 3. Who May Adopt. The following persons are eligible to adopt a child:

- a. A husband and wife jointly, or either the husband or wife if the other spouse is a parent of the child.
- b. An unmarried person who is at least of legal age.
- c. A married person at least of legal age who is legally separated from the other spouse.
- d. In the case of an illegitimate child, its unmarried father or mother.

SECTION 4. Venue. Proceedings for adoption must be brought in the Court of Common Pleas of the county where the petitioner or petitioners reside, or in such Court of the County having concurrent jurisdiction with the Court of Common Pleas, and the petitioner or petitioners must have resided in this State at least one year prior to the commencement of the action, unless the petitioner is a spouse of a parent of the child.

SECTION 5. Service of Process. The summons and petition in adoption proceedings shall be served in the manner prescribed by law for personal service of summons in civil actions, or, if service cannot be had in this manner, such service may be made by publication and mailing as provided by law for civil actions affecting real property or decree of divorce.

SECTION 6. Persons Required to Consent to the Adoption. An adoption of a child may be decreed when there have been filed written consents to adoption executed by:

- a. Both parents, if living, or the surviving parent, of a legitimate child; provided, that consent shall not be required from one whose parental rights have been judicially terminated; or
- b. The mother alone, if the child is illegitimate; or
- c. The legal guardian of the person of the child if both parents are dead or if the rights of the parents have been terminated by judicial proceedings and such guardian has authority by order of the court appointing him to consent to the adoption; or
- d. The executive head of an agency if both parents are dead or if the child has been relinquished for adoption to such agency or if the rights of the parents have been judicially terminated and custody of the child has been legally vested in such agency with authority to consent to adoption of the child; or
- e. Any person having legal custody of a child by Court order if the parental rights of the parents have been judicially terminated, but in such case the court having jurisdiction of the custody of the child must consent to adoption, and a certified copy of its order shall be attached to the petition.

SECTION 7. Withdrawal of Consent. Withdrawal of any consent filed in connection with a petition for adoption hereunder, shall not be permitted, except that the court, after notice and opportunity to be heard is given to the petitioner, to the person seeking to withdraw consent, and to any agency participating in the adoption proceedings, may, if it finds that the best interests of the child will be furthered thereby, issue a written order permitting the withdrawal of such consent. The entry of the interlocutory or final decree of adoption renders any consent irrevocable.

SECTION 8. Consent of the Child. Consent of the child if ten years of age or over, shall be required. Such consent shall be given in court, or be in writing, in such form as the court shall direct.

SECTION 9. *Petition for Adoption.*

a. A petition for adoption shall be filed in duplicate, verified by the petitioners, and shall specify:

1. The full names, ages and place of residence of the petitioners, and, if married, the place and date of the marriage.
2. When the petitioners acquired or intend to acquire custody of the child and from what person or agency.
3. The date and place of birth of the child, if known.
4. The name used for the child in the proceeding, and if a change in name is desired, the new name.
5. That it is the desire of the petitioners that the relationship of parent and child be established between them and the child.
6. A full description and statement of value of all property owned or possessed by the child.
7. Facts, if any, which excuse consent on the part of a parent to the adoption.

b. One copy of the petition shall be retained by the court. The other shall be sent to any agency participating in the adoption proceeding.

c. Any written consent required by this act may be attached to the petition, or may be filed, after the filing of the petition, with the consent of the court.

SECTION 10. *Investigation.*

a. Upon the filing of a petition for adoption the court shall order an investigation to be made by the Children's Bureau of the State of South Carolina, or by the Department of Public Welfare of the State of South Carolina, or by a private or public welfare organization having as one of its main purposes the care and placement of children, or by a representative designated by the court and shall further order that a report of such investigation shall be filed with the court by the designated investigator within 60 days from the issuance of the order for investigation, unless time therefor is extended by the court. Such investigation shall include the conditions and antecedents of the child for the purpose of determining whether he is a proper subject for adoption; appropriate inquiry to determine whether the proposed home is a suitable one for the child; and any other circumstances and conditions which may have a bearing on the adoption and of which the court should have knowledge. Additional consents, required in Section 6, shall be obtained in the event the original consents were executed prior to the end of the first thirty days of the child's life.

b. The court may order agencies named in subsection (a) of this section located in one or more counties to make separate investigations on separate parts of the inquiry as may be appropriate.

c. The report of such investigation shall become a part of the files in the case and shall contain a definite recommendation for or against the proposed adoption and state reasons therefor.

SECTION 11. *Summary Decree.* If the child is related by blood to one of the petitioners, or is a stepchild of the petitioner, or the court finds that the best interests of the child will be furthered thereby, the court, after examination of the report required in Section 10, in its discretion may waive the entry of an interlocutory decree and the waiting period of six months provided in Section 12 and grant a final decree of adoption if satisfied that the adoption is for the best interests of the child.

SECTION 12. *Interlocutory and Final Decree.* Upon examination of the report required in Section 10 and after hearing, the court may issue an interlocutory decree giving the care and custody of the child to the petitioners, pending the further order of the court. Thereafter the investigator shall observe the child in his adoptive home and report in writing to the court within six months on any circumstances or conditions which may have a bearing on the adoption. After six months from the date of the interlocutory decree the petitioners may apply to the court for a final decree of adoption. The court shall thereupon set a time and place for final hearing. Notice of the time and date of the hearing

shall be served on the department, agency or individual making the investigation required in Section 10. The investigator shall file with the court a written report of its findings and recommendations and certify that the required investigation has been made since the granting of the interlocutory decree. After hearing on said application, at which the petitioners and the child shall appear unless the presence of the child is waived by the court, the court may enter a final decree of adoption if satisfied that the adoption is for the best interests of the child.

SECTION 13. *Effect of Final Decree.*

a. After the final decree of adoption is entered, the relation of parent and child and all the rights, duties and other legal consequences of the natural relation of child and parent shall thereafter exist between such adopted child and the person adopting such child and the kindred of the adoptive parents. From the date the final decree of adoption is entered the adopted child shall be considered a natural child of the adopting parents for all inheritance purposes, both by and from such child, to the exclusion of the natural or blood parents or kin of such child. These rules of inheritance shall also apply to all the parties where one of the natural parents is united in bonds of matrimony to the other adopting parent.

b. After a final decree of adoption is entered, the natural parents of the adopted child, unless they are the adoptive parents, shall be relieved of all parental responsibilities for the child and have no rights over such adopted child.

SECTION 14. *Confidential Nature of Record and Proceedings.*

a. If the court shall so order, all hearings held in proceedings under this act shall be confidential and shall be held in closed court without admittance of any person other than interested parties and their counsel except upon consent of the Court.

b. All papers and records pertaining to the adoption shall be kept as a permanent record of the court and withheld from inspection and filed in the office of the Clerk of Court of Common Pleas. No person shall have access to such records except on order of the judge of the court in which the decree of adoption was entered for good cause shown.

c. All files and records pertaining to the adoption proceedings in the Children's Bureau of the State of South Carolina, or in the Department of Public Welfare of the State of South Carolina, or in any authorized agency, shall be confidential and withheld from inspection except upon order of court for good cause shown.

SECTION 15. *Registration—New Birth Certificate.*

a. For each adoption or annulment of adoption, the clerk of the court shall prepare, within thirty days after the decree becomes final, a certificate of such decree on a form furnished by the state registrar of vital statistics; and before the fifteenth day of each calendar month, the clerk shall forward to the state registrar the certificates prepared by him during the preceding calendar month.

b. The state registrar, upon receipt of a certified copy of an order or decree of adoption, shall prepare a supplementary certificate in the new name of the adopted person, and seal and file the original certificate of birth with the certified copy attached thereto, except, amended or supplementary certificates for the adoption of an adult shall display the words "By Adoption" on the face of the amended or supplementary certificate.

c. The State Registrar shall transmit a certified copy of an order or decree of adoption to the State Registrar in the State of birth of the adopted person when the birth occurred outside of this State.

SECTION 16. *Appeal.* An appeal shall be allowed from any final order, judgment or decree rendered hereunder to the court by any person against whom any such order, judgment or decree may be made or who may be affected thereby in the manner provided for appeals from such court in other civil matters.

SECTION 17. *Foreign Adoption Decrees.* When the relationship of parent and child has been created by a decree of adoption of a court of any other state or nation, the rights and obligations of the parties as to matters within the jurisdiction of this State shall be determined by Section 13 of this act.

SECTION 18. *Adoption of Adults.* An adult person may be adopted by any other adult person with the consent of the person to be adopted or his guardian, and with the consent of the spouse, if any, of a sole adoptive parent, filed in writing with the court. The provisions of Section 1 to 12, inclusive, of this act shall not apply to the adoption of an adult person. A petition therefor shall be filed with the Court of Common Pleas in the county where the adoptive parents reside. After a hearing on the petition and after such investigation as the court deems advisable, if the court finds that it is to the best interests of the persons involved, a decree of adoption may be entered which shall have the legal consequences stated in Section 13.

SECTION 19. *Repeal.* Sections 10-2581 through 10-2587, Code of Laws of South Carolina, 1952, Act No. 698 of the Acts of 1954, and all other acts or parts of acts inconsistent herewith are hereby repealed.

SECTION 20. *Effective Date.* This act shall take effect upon its approval by the Governor.