RECENT CASES

Adoption—Liability of Natural Parents for Destitute Adopted Children—[New York, Illinois].—In New York a disabled and destitute girl of twenty-three was adopted as a child, after her mother's death, by her maternal grandparents who are now insolvent. Threatened with becoming a public charge, she sued her natural father for support. *Held*, two judges dissenting, for the plaintiff. *Betz v. Horr* (N.Y. Sup. Ct., App. Div., 2d Jud. Dept., Mar. 30, 1937).

In Illinois a minor child of divorced parents was adopted by his maternal grandparents. After the grandfather died insolvent, the natural mother adopted the child but was unable to support him. She claimed support from the father. *Held*, one judge dissenting, the father was forever relieved of all liability by the first adoption. *Dwyer v. Dwyer*, 286 Ill. App. 588, 4 N.E. (2d) 124 (1936).

When the adopting parents are unable to support the child either the state or the natural parents must assume the responsibility. For state support it is urged that the parent should be able to start afresh, to enter into new family relationships and other commitments without the threat of unexpected liability. For parental support it is urged that the burden should not be on the tax-payers, and that such a rule would merely enforce a customary behavior pattern.

The history of child support in Anglo-American law indicates a consistent tendency to increase the responsibility of the natural parent. Early common law courts, reluctant to interfere with family discipline, refused any enforcement of parental support. See *Kelley v. Davis*, 49 N.H. 187 (1870); *Gordon v. Potter*, 17 Vt. 348 (1848). The first legal enforcement was under the poor laws, requiring contribution to authorities for the support of pauper children. 43 Eliz., c. 2 (1601); 4 Vernier, American Family Laws § 234 (1936). Later, criminal penalties were provided for the desertion of dependent children. 4 Vernier, American Family Laws § 206 (1936). Courts began to permit recovery by the mother or next friend or by third persons who furnished necessaries, but this liability was reciprocal to the father's right to the earnings and custody of the child. *Freeman v. Shaw*, 173 Mich. 262, 39 N.W. 66 (1912); *Sassman v. Wells*, 178 Mich. 167, 144 N.W. 478 (1913). Today the right of support is commonly independent of the right to earnings and custody. Mo. Rev. Stats. 1909, § 2375; *Daughty v. Engler*, 112 Kan. 583, 211 Pac. 619 (1923) (illegitimate child); *State v. Washnesky*, 187 Minn. 643, 246 N.W. 366 (1933) (child in custody of deserting wife); *Geary v. Geary*, 102 Neb. 511, 167 N.W. 778 (1918) (child in custody of mother, parents divorced); *Gibbons v. Gibbons*, 75 Ore. 500, 147 Pac. 530 (1915) (parents divorced, child in custody of insolvent mother and stepfather). Even where the child has been emancipated, liability for support revests in the father upon sudden illness or emergency. *Porter v. Powell*, 79 Iowa 151, 44 N.W. 293 (1890); *Hendrikson v. Town of Queen*, 149 Minn. 79, 182 N.W. 952 (1921).

This trend lends support to the proposition that adoption merely suspends the parental responsibility, to be revived upon the inability of the adopting parents to furnish support, unless the statute caused adoption to completely sever the parent-

child relationship. While the New York statute provides that the *parent* is "released from all parental duties toward or responsibility for" the child, the Illinois statute releases only the *child*'s obligation, depriving the parent only of his rights. Cahill's N.Y. Cons. L. 1930, c. 14, § 114; Smith-Hurd's Ill. Rev. Stats. 1935, c. 4, § 8. It is astonishing that the two courts arrived at opposite decisions, each seemingly contradictory to the statute involved, because of contrary policy determinations. That both legislatures intended some relationship to remain is clear from the express statutory reservation of the right of the adopted child to inherit from his natural parents. Cahill's N.Y. Cons. L. 1930, c. 14, § 114; Smith-Hurd's Ill. Rev. Stats. 1935, c. 4, § 5. Except in questions of inheritance the natural parent-adopted child relationship has had little discussion. However, see *In re Gertrude Masterson*, 45 Wash. 48, 87 Pac. 1047 (1906) (natural parents' preferred claim to guardianship); *In re MacRae*, 189 N.Y. 142, 81 N.E. 956 (1907) (consent of natural parents to second adoption); *In re Puterbaugh's Estate*, 261 Pa. 235, 104 Atl. 601 (1918) (failure of adopted child to qualify as "child" under a will). Under civil law codes, the source of American adoption statutes, it is clear that contingent parental responsibility remains after adoption. Loewy, Germ. Civ. Code § 1764 (1909); French Civ. Code, art. 352 (Cachard's 2d ed. 1930); Aust. Gen. Civ. Code § 183 (Altman, Jacob and Weiser's ed. 1931); Ital. Civ. Code, art. 211 (Franchi, 1931) (new draft 1931, § 348) (adopting parents' responsibility "primary," natural parents', "secondary"). The English and Scotch acts and many American statutes, including the New York act, but not the Illinois act, however, apparently relieve the natural parents of all duties, including the duty to support. 16 & 17 Geo. V, c. 29 (1926); 20 & 21 Geo. V, c. 35 (1930); 4 Vernier, American Family Laws § 263 (1936); U.S. Children's Bureau Pub. no. 148 (1926). But in the drawing of the English act, and probably also in the drawing of the others, no consideration was given the problem of the adopted child's loss of support. See 192 Parliamentary Debates, Commons, Fifth Series 927 (1926); 196 *id.* 2643 (1926); Parliament, Report of Committee on Child Adoption (1921). It is difficult, therefore, to criticize the New York court, and it is possible that other similar statutes will similarly be construed away.

Agency—Power of Executor's Attorney To Receive Satisfaction of Compromised Claim—[New York].—After suit had been instituted under a wrongful death statute, a compromise was effected, and the plaintiff, as executor, with the approval of the surrogate, signed a release. The defendant thereupon delivered a check, payable to the plaintiff and his attorney, to the attorney who forged the plaintiff's name, cashed the check at the forwarding bank, and absconded with the proceeds. The forwarding bank sent the check to the drawee bank which deducted the item from the defendant's account. The plaintiff, alleging that the suit had never been discontinued, then filed alternative motions: (1) to compel the defendant to pay the compromise sum, or (2) to permit "the plaintiff . . . . to withdraw, cancel, and vacate the general release. . . . ." From an order denying the motions, the plaintiff appealed. *Held*, first motion granted since the defendant had never paid the agreed compromise sum to the plaintiff. *Berlowitz v. Horowitz*, 292 N.Y.S. 880 (App. Div. 1937).

New York courts passing on the apparent authority of an attorney representing a court-appointed fiduciary have departed from conventional agency rules and have denied an attorney authority to receive satisfaction of the claim owing to his client in the client's fiduciary capacity. *Hondale v. Stafford*, 265 N.Y. 354, 193 N.E. 172 (1934).