

## Comment on Recent Decisions

**ADOPTION—STATUTORY METHOD BY JUDGMENT OF JUVENILE COURT NOT EXCLUSIVE.**—Prior to 1917, the statutory method of adoption in Missouri was by deed. R. S. Mo. (1909) secs. 1671-3. While this statute was in force the Supreme Court held in numerous cases that a court of equity, in a proper case, was authorized to decree an adoption although no attempt had been made to comply with the statutory provision. *Lynn v. Hockaday* (1901) 162 Mo. 111, 61 S. W. 885; *Sharkey v. McDermott* (1887) 91 Mo. 647, 4 S. W. 107; *Kay v. Neihaus* (1923) 298 Mo. 201, 249 S. W. 625. In 1917, the Legislature repealed the above adoption statute and provided for the adoption of children by decree of the juvenile division of the circuit court of the county in which the person sought to be adopted resides. The granting of such decrees of adoption is at the discretion of the court. Mo. Laws 1917, pp. 193-195, R. S. Mo. (1924) secs. 14073-14081. The question whether the new statutory method of adoption was exclusive was presented for the first time in the case of *Drake v. Drake* (Mo. 1931) 43 S. W. (2d) 556.

In that case an intervening petition, in an action for partition of the real estate of the deceased filed by collateral heirs, asked that intervenor's status as an adopted child be decreed or in lieu thereof specific performance of the deceased's contract to adopt be adjudged. The contention was made that intervenor was not entitled to the inheritance rights incident to the adoption relation, because he was not adopted in the form provided by statute. *Held*, the statute does not oust a court of equity of its jurisdiction to award the child the rights incident to the adoption relation, although the statutory method was not observed.

The minority opinion of two dissenting justices is to the effect that since the new statute has removed adoption from the realm of contract to one of judicial proceedings, equity cannot decree specific performance of those judicial proceedings as it might that of the adoption contract or deed; and that since inheritance is not regulated by contract, intervenor cannot claim to inherit under specific performance of the contract to adopt.

It seems probable that in no state other than Missouri would the above decision have been reached. The doctrine of equitable adoption has had a uniquely complete development in the Missouri courts, as is noted in a Wisconsin case, interpreting an alleged adoption contract which had its origin in Missouri. *Genz v. Riddle* (1929) 199 Wis. 545, 226 N. W. 957. Even in some jurisdictions in which adoption by deed still prevails it has been held that courts will not enforce specific performance of parol agreements to adopt and that the statutory method provides the only procedure for valid adoption. *Morris v. Trotter* (1926) 202 Iowa 232, 210 N. W. 131. In those states, as in Missouri, in which judicial proceedings have taken adoption entirely out of the realm of contract the universal holding has been that the statutory method is exclusive. "Adoption proceedings are

wholly statutory, and, when defective, cannot be cured by the application of equitable principles." *St. Vincent's Infant Asylum v. Central Wisconsin Trust Company* (1926) 189 Wis. 483, 206 N. W. 921; *Helm v. Goin et al.* (1929) 227 Ky. 773, 14 S. W. (2d) 183; *Rahn v. Hamilton* (1916) 144 Ga. 644, 87 S. E. 1061.

Although confined to Missouri, the doctrine of equitable adoption seems to work substantial justice. Adoption proceedings have been given a judicial character expressly "for the welfare of the child." R. S. Mo. (1929) sec. 14078; after the adoption relationship has existed for years, a decree of equitable enforcement of a promise to adopt will surely have no harmful effect upon the dignity of the statute. Any other course would allow the heirs of the deceased, who stand in his position, to profit by his wrongdoing at the expense of the child. Such an interpretation of the adoption statute would destroy the rights of the child by applying a statutory provision made expressly for his protection and benefit.

H. J., '34.

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**BUSINESS TRUSTS—BANKRUPTCY—POSITION OF UNIT HOLDERS.**—An estoppel to contest the validity of a sale by a trustee in bankruptcy was held to have arisen because the unit holders in a business trust had filed their claims and received dividends as creditors of the bankrupt estate. *Page v. Arkansas Natural Gas Corp.* (C. C. A. 8, 1931) 53 F. (2d) 27. The tacit approval of such a procedure is significant since this is the first case in which a Federal Circuit Court of Appeals has been called upon to consider the proper treatment of such unit holders in bankruptcy proceedings against the business trust. It is true that the opinion also relies upon doctrines of *res judicata* and merger to sustain its result, but on these later points alone the decision of the same Court on a former appeal was exactly opposite. *Page v. Natural Gas & Fuel Co.* (C. C. A. 8, 1929) 35 F. (2d) 462 (remanded by three different judges to determine if there had been laches in bringing this suit).

It is well settled that a business trust may become a bankrupt. Under the earlier law the phrase "unincorporated company" had been held to include such an organization. *In re Associated Trust* (D. C. D. Mass. 1914) 222 F. 1012; *Gallagher v. Hannigan* (C. C. A. 1, 1925) 5 F. (2d) 171; National Bankruptcy Act sec. 4b, 30 Stat. 547 (1898), 11 U. S. C. sec. 22. It could become a voluntary bankrupt as it was a "person" for this purpose. *Matter of Sargent Lumber Co.* (D. C. E. D. Ark. 1923) 287 F. 154. In 1926 Congress amended the definition of corporation set forth in the first section of the Act so as to include under that head "any business conducted by a trustee, or trustees, wherein beneficial interest or ownership is evidenced by certificate or other written instrument." 44 Stat. (part 2) 662 (1926) 11 U. S. C. sec. 1. In the present case the bankruptcy proceeding was instituted in 1924 and hence was governed by the older law.

In none of the few previous cases dealing with the bankruptcy of these Massachusetts' trusts has the position of the unit holder been seriously