THE LEGITIMATION AND ADOPTION ACT.

It is a principle of our law that every one is presumed to know it. That being so, the man of average education should be able to read a Statute, and gather some idea of its meaning. Unfortunately there are a number of Statutes on the books which not only cannot be construed with certainty but cannot even be understood. Two examples will suffice. In 1921 the Legislature of Ontario passed The Legitimation Act, providing for the legitimatizing of children born out of wedlock, by the subsequent marriage of their parents; and The Adoption Act, providing for the adoption of a child or young person by any person of full age wishing to do so. Prior to these Statutes, illegitimate children and adopted children laboured under the difficulty that the former could not inherit from male parents and the latter could not inherit at all, unless provision was made for them by will.

The Legitimation Act had apparently two objects, viz.: to remove from the unfortunate offspring of unmarried parents the stigma of illegitimacy; and to provide for the maintenance, education and support of such offspring. As to the first of these objects, it is doubtful whether any Statute can have any such effect. No amount of legislation can enforce in the minds of those who are aware of a child's illegitimacy a forgetfulness of the unfortunate circumstances of his birth. A charitable view of such matters belongs solely to the realm of morals, which are purely subjective. The law can not and never will successfully invade the realm of morals, but must confine its operation to the purely objective realm of outward behaviour.

But the law can remove a great disability that exists by reason of the law, by giving an illegitimate child property rights which as a *filius nullius* he has not heretofore had. In a similar way the law can give property rights to adopted children whose adopted parents have failed to make provision for them by will. But an examination of the two Statutes referred to suggests that perhaps the results hoped for have not been attained.

The Legitimation Act provides that if the parents of an illegitimate child marry each other after the birth of the child, the child "shall for all purposes be deemed to be and to have been legitimate from the time of birth." Had the Statute gone no further, the words "for all purposes" would have enabled the illegitimate child to

inherit equally with any other children of its parents, any property not disposed of by the parents by will. An illegitimate child has always been competent to inherit by will, so that the Statute can refer only to succession where there is no will. But The Legitimation Act goes on to provide that "a child born out of lawful wedlock, notwithstanding the subsequent intermarriage of his father and mother, shall be *postponed* as to inheritance to a child born in lawful wedlock to the same father under a previous marriage to another woman or to the same mother under a previous marriage to another man." These words, if they have any meaning at all, effectually replace the stigma which the Act was apparently intended to remove. But it is difficult to arrive at their meaning. If a child is legitimate for all purposes he is competent to inherit, and under the Devolution of Estates Act inherits equally with the other children of his parents. How he can be *postponed* as to inheritance to any of the children with whom he inherits equally is a question in arithmetic hard to solve.

The Adoption Act enables a child to be adopted under an order of the Court, and then makes some very curious provisions for inheritance by the adopted child. It states that "a person who has been adopted in accordance with the provisions of this Act shall take the same share of property which the adopting parent could dispose of by will as he would have taken if born to such parent in lawful wedlock and he shall stand in regard to the legal descendants, but to no other kindred of such adopting parent, in the same position as if he had been born to him."

This enactment is even more cryptic in its meaning than The Legitimation Act. The concluding words of the section may have the effect of making an adopted child unable to inherit unless the adopting parent has children begotten by himself. For the Act states that the adopted child is in the same position as if born to the adopting parent only in regard to the legal descendants of such parent, but is not in the position of a child of such parent in regard to any other kindred to such adopting kindred. Consequently in the case of a married man adopting a child and dying without having begotten children of his own, the adopted child, not being a child with regard to the widow or next of kin of the adopting parent, who are not legal descendants cannot inherit as against the widow and next of kin. Those who adopt children are mostly persons who have no children of their own; and if the suggested construction of the Act is the correct one, the Act will apply to a very small class of persons, and fail to apply to a class whom the legislature must have intended

to benefit. The only escape from this extraordinary result is to give the words "legal descendants" a meaning to include any one who could inherit from the adopting parent, whether children and grand children or collaterals. If this construction is adopted, the concluding words of the enactment seem to be utterly without object.

"We must not make a scare-crow of the law." Now that the legislation dealt with annually by the Province has assumed such proportions, it seems only the part of caution that proposed legislation should be submitted to persons having the necessary legal training to ensure its proper framing.

In England bills of importance are submitted to specially trained members of the legal profession, members of what is known as the Parliamentary Bar. Some idea of the care with which legislation is prepared before introducing it into the British Parliament may be gathered from the words of Sir Leslie Scott, K.C., M.P., in moving the Second Reading of the Law of Property Bill, 1922. The Solicitor-General said in part: "The Bill is not a brand-new invention. It is not a new-fangled, ready made scheme of law. It is the slow and gradual product of half a century's work by legal reformers, building on existing foundations. In that work are associated the names of many Lord Chancellors—Lord Cairns, Lord Selborne, Lord Halsbury, Lord Haldane, and last but not least, Lord Birkenhead. A series of great conveyancers of Lincoln's Inn, on instructions from the Law Society, have drafted various bills, the main provisions of which now find a place within this Bill. They began with one, in 1895, drafted by the late Mr. Wolstenholme, that great conveyancer, and Mr. Cherry, the distinguished, though unofficial draftsman, who is mainly responsible for the present Bill, to whom Parliament and the nation owe a great debt for the skill he has shewn in his draftsmanship and the devotion he has given to his task. It was followed by draft Bills dealing with Settled Land, Conveyancing, Trustees and Personal Representatives similarly prepared. Then came Lord St. Aldwyn's Royal Commission, followed by two very large Bills subsequently amalgamated into one, and introduced by Lord Haldane into the House of Lords just before the War. Next came my own Committee, which included four equity counsel of great skill and experience, and three equally skilled and experienced solicitors. In 1920 the present Lord Chancellor introduced it in the House of Lords. After a Second Reading in the House of Lords it was referred to a Joint Select Committee of the two Houses. That Joint Committee sat for months." The Bill appears also to have been submitted to other judges and counsel not mentioned above and to the

several Law Societies and other bodies who might be expected to be of assistance and whose approval was important.

When it is remembered that whenever an Act of Parliament comes in question which has a doubtful or equivocal meaning, great expense is caused not only to litigants but to the country at large, it seems time to take stock of the present position and provide something to offset the lack of training in our legislators. It is the ordinary British method to train her armies after a war has begun, but that method is pursued only at the expense of great loss both in money and men. It cannot be considered as an ideal method for carrying on the business of a country in times of peace.

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ILLNESS PUZZLED THE JUDGE.—When Mr. Justice Eve had before him an application for the adjournment of a case in the Chancery Court recently, Sir Thomas Hughes, K.C., explained that an important witness was suffering from "colitis, complicated by myocarditis."

Mr. Justice Eve: I don't know the last complaint, but colitis is stomach-ache.

Sir Thomas Hughes: Myocarditis is inflammation of the heart.

Mr. Justice Eve: Or just a little wind round it. I am sorry for your client, but if medical men would only talk in language we understand, we might appreciate the sufferings and pangs of clients coming here.