

**Opinion No. 414****Children—Adoption—Indians.**

HELD: Whether or not a child, who is one-eighth Indian, is of the white "race" for the purposes of adoption statutes depends upon his environment, the circumstances attending his bringing up, and upon whether or not he has maintained tribal relations with Indians.

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December 23, 1933.

We acknowledge receipt of yours of the 12th requesting an opinion on the following matter: "Is it possible, under Section 5856, for those of the white race to adopt a child that is one-eighth Indian?" Section 5856, R. C. M. 1921, provides: "Any minor child may be adopted by any adult person who is a citizen, or who, under the laws of the United States, may become a citizen of the United States, and is of the same race as the child to be adopted, in the cases and subject to the rules prescribed in this chapter."

"The common classification of races is that of Blumenbach which is five, (1) the Caucasian or white race, to which belong the greater part of the European nations and those of western Asia; (2) the Mongolian or yellow race, occupying Tartary, China, Japan, etc.; (3) the Ethiopian or negro race occupying all of Africa, except the north; (4) the American Red Race containing the Indians of North and South America; and (5) the Malay or Brown race, occupying the islands of the Indian Archipelago." (In re Ah Yup, 5 Sawyer 155.) The American Indian is an anomaly to anthropologists so far as his ancestral derivations are concerned, but it is well settled that he is not of the white "race." Therefore, one of the white race is prohibited from adopting a child who is an Indian, by the statute quoted.

Whether a child of one-eighth Indian blood is an Indian or of another race depends, under the general rule laid down by the courts, upon his environment, whether he has maintained tribal relations with the Indians or not and other facts.

In *Farrell v. United States*, 110 Fed. 942, the court said: "The rule is that children of free parents follow the status of the father \* \* \*. But there is an exception to this rule which has been generally recognized and acted upon by the legislative, executive and judicial departments of this government. \* \* \* It is that the child of a white citizen and an Indian mother who is abandoned by the father and is nurtured and reared by the Indian mother in the tribal relation, and is recognized by the tribe as a member of it, follows the status of the mother and becomes a member of the Indian tribe." It was held in the case of *In re Camille*, 6 Sawyer 541 that the son of a white Canadian father by an Indian woman was not a white person within the meaning of the naturalization laws. This decision did not refer to any tribal relation of the offspring of mixed blood nor to whether the father had abandoned such offspring or not. In 20 Attorney General Opinions (U. S.) 711, it was said: "Presumptively a person apparently of mixed blood residing upon a reservation and claiming to be an Indian is, in fact, an Indian."

It is obvious from the foregoing that the circumstances attending the bringing up of the child will govern in classifying it as an Indian or otherwise. If it has been under the care and custody of a white father as well as the Indian mother, and has not maintained its Indian tribal relations it would be classed as a white person and may be adopted by a white person, otherwise not.

Adoption proceedings must be presented to and passed upon by the District Court, and the best way to have the particular case decided is to advise the interested parties to proceed with adoption in the regular way and let the court decide such case on its merits.