except by proof of actual malice. This is the orthodox view. *Popke* v. *Hoffman*, 21 Ohio App. 454, 153 N.E. 248 (1926); *Ely* v. *Mason*, 97 Conn. 38, 115 Atl. 479 (1921). But there is some authority for saying that a lack of probable cause would defeat the privilege. *Holway* v. *World Pub. Co.*, 171 Okla. 306, 44 Pac. (2d) 881 (1935); *Hodgkins* v. *Gallager*, 122 Me. 112, 119 Atl. 68 (1922).

The manager's statement to the prospective employer was also conditionally privileged. When statements about a servant are volunteered, courts frequently insist that the defendant, if he is to be privileged, should have a legal or, at least, a moral duty to speak. *Fresh* v. *Cutter*, 73 Md. 87, 20 Atl. 774, 25 Am. St. Rep. 575, 10 L.R.A. 67 (1890); *The Norfolk and Washington Steamboat Co.* v. *Davis*, 12 App. D.C. 306 (1898). But when the information is given in response to a bona fide inquiry by some one who has an interest in the subject matter, it is clear that the occasion is privileged. *Doane* v. *Grew*, 220 Mass. 171, 107 N.E. 620, L.R.A. 1915 C, 774, Ann. Cas. 1917 A, 338 (1915); *Solow* v. *General Motor Truck Co.*, 64 F (2d) 105 (1933); *Rosenbaum* v. *Roche*, 46 Tex. Civ. App. 237, 101 S.W. 1164 (1907). Again malice would rebut the privilege but the court finds no evidence of that here.

The court's holding that whether the occasion was privileged or not, when the facts are undisputed as they were here, was a question for the court, is in line with the great weight of authority. *Mauk* v. *Brundage*, 68 Ohio St. 89, 67 N.E. 152, 62 L.R.A. 477 (1903); *Stewart* v. *Riley*, 114 W. Va. 578, 172 S.E. 791 (1934); annotation in 26 A.L.R. 833.

EUGENE C. STEEL

DESCENT

INHERITANCE OF DESIGNATED HEIR THROUGH DECLARANT

George Crommer, brother of Ida Shaffer Smith, designated as his heir-at-law Minnie M. Frazee who was the mother of defendants Lu Ella Banta and La Taska Grace. George Crommer and Minnie M. Frazee died before Ida Shaffer Smith. Delia M. Rogers *et al*, heirs of Ida Shaffer Smith, filed a petition in common pleas court seeking the partition of real estate descending from Ida Shaffer Smith. In a cross petition, defendants Lu Ella Banta and La Taska Grace allege their right to part of this estate claiming as heirs of Ida Shaffer Smith. The common pleas court held that defendants had no such right. The court

of appeals affirmed this. *Rogers et al* v. *Crommer et al*, 24 Ohio L. Abs. 508 (1937).

Since the common law makes no provisions for the adoption of children or designation of heirs, the decisions are based entirely on statutory law. *Power et al* v. *Hafley et al*, 85 Ky. 671, 4 S.W. 683 (1887); *Helms* v. *Elliott*, 89 Tenn. 446, 14 S.W. 930 (1890); *In re Cadwell's Estate*, 26 Wyo. 412, 186 Pac. 499 (1920). The court in the principal case assumed throughout that the rules as to adopted children are applicable to designated heirs. The Ohio statute of designating an heir, Gen. Code, sec. 10503-12, provides that " * * * the person thus designated will stand in the same relation, for all purposes, to such declarant as he or she could, if a child born in lawful wedlock * * * ." Ohio Gen. Code, sec. 10512-19, the adoption statute, provides that the child " * * * shall be invested with every legal right, * * * in respect to * * * the rights of inheritance * * *as if born to them in lawful wedlock; * * * " That these statutes create the same rights in the designated heir and adopted chil dis stated in *Cochrel, a Minor* v. *Robinson et al*, 113 Ohio St. 526, 149 N.E. 871 (1925); *Davis* v. *Laws et al*, 27 Ohio N.P. (N.S.) 193 (1928). The principal case states that the adopted child may take *from* the adopting parent but cannot take *through* him from the ancestors of such parent. The following cases support this statement. *Quigley* v. *Mitchell*, 41 Ohio St. 375 (1884); *Phillips* v. *McConica*, 59 Ohio St. 1, 69 Am. St. Rep. 753, 51 N.E. 445 (1898); *Albright* v. *Albright*, 116 Ohio St. 668, 157 N.E. 760, 5 Ohio L. Abs. 349 (1927). This view is upheld by the majority of American jurisdictions. 1 R.C.L. 622; *Estate of Sunderland*, 60 Iowa 732 (Supplement), 13 N.W. 655 (1882); *Kettell* v. *Baxter*, 50 Misc. (N.Y.) 428, 100 N.Y. 529 (1906); *Merritt* v. *Morton*, 143 Ky. 133, 136 S.W. 133 (1911); *Moore* v. *Estate of Moore*, 35 Vt. 98 (1862); *Miller* v. *Wick*, 311 Ill. 269, 142 N.E. 490 (1924). This is true whether the adopted child is attempting to take from the direct or from the collateral kin of the adopting parent. *Hollencamp* v. *Greulich*, 6 Ohio L. Abs. 566, 27 Ohio N.P. (N.S.) 344 (1928). The theory back of these cases is that a stranger to adoption proceedings who does not recognize the existence of this artificial relation should not have his property diverted from the natural course of descent into a foreign line.

The principal case also contains a *dictum* that property once vested in the declarant will flow *through* the designated heir to his heirs. For this to be true, the statute of descent and distribution must be interpreted as applying to designated heirs. In Ohio this statute contains no express

reference either to adopted children or to designated heirs. Reference is only to children and lineal descendants. This is true in most jurisdictions. The court concluded that adopted children and designated heirs are meant to be included in the statute through the use of the doctrine of *pari materia*. Laws *pari materia*, or concerning the same subject matter, are to be construed in reference to each other—Bouvier's *Law Dictionary*, p. 2454. The court cited *Cochrel* v. *Robinson*, *supra*, as authority for interpreting the statute of descent and distribution and the statute of designation of heir as being *pari materia*. The use of this doctrine is well established. *Porter* v. *Rohrer*, 95 Ohio St. 90, 115 N.E. 616 (1916); *The Ohio River Power Co.* v. *City of Steubenville*, 99 Ohio St. 421, 124 N.E. 246 (1919); *Maxfield, Treas.* v. *Brooks*, 110 Ohio St. 566, 144 N.E. 725 (1924); *Chapek* v. *City of Lakewood*, 11 Ohio App. 203, 30 Ohio C.A. 541 (1919). Most jurisdictions interpret the words children and issue as Ohio does. *In the Matter of the Estate of Newman*, 75 Cal. 213, 7 Am. St. Rep. 146, 16 Pac. 887 (1888); *Power* v. *Hafley*, *supra*; *In re Cadwell's estate*, *supra*; *In re Walworth's Estate*, 85 Vt. 322, 82 Atl. 7 (1912). But the holdings are not entirely uniform. *Jenkins* v. *Jenkins*, 64 N.H. 407, 14 Atl. 557 (1888); *Stanley* v. *Chandler et al*, 53 Vt. 619 (1881); *New York Life Ins. and Trust Co.* v. *Viele*, 161 N.Y. 11, 55 N.E. 311 (1899). The objection that inheritance is diverted into a foreign line, which is made against inheriting through a declarant, cannot be made here. There is ample authority to justify the court's *dictum*. *Kroff* v. *Amrhein et al*, 94 Ohio St. 282, 114 N.E. 267 (1916); *Gray et al* v. *Holmes et al*, 57 Kan. 217, 45 Pac. 596 (1896); *Fiske* v. *Lawton*, 124 Minn. 85, 144 N.W. 455 (1913); *Bernero* v. *Goodwin et al*, 267 Mo. 427, 184 S.W. 74 (1916); *In re Webb's Estate*, 250 Pa. 179, 95 Atl. 419 (1915). Both the holding as to inheritance through the declarant and the *dictum* as to inheritance from him are well supported in principle and by the decisions in comparable adoption cases.

JEROME H. BROOKS

EVIDENCE

INFERENCE ON AN INFERENCE

One Hozian, the plaintiff, an employee of the Cleveland Window Cleaning Company, was injured by a crane while cleaning windows in the defendant's factory. At the trial the plaintiff testified that he had noticed a person who he thought was a foreman giving instructions to the workmen in the factory. The plaintiff's counsel asked Hozian