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Descent and Distribution - Ancestral Property - Exclusion of Next of Kin Other Than Half Bloods

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DESCENT AND DISTRIBUTION—ANCESTRAL PROPERTY—EXCLUSION OF NEXT OF KIN OTHER THAN HALF BLOODS—The decedent died intestate owning land which he had inherited from his father. His only next of kin were four blood aunts and uncles on his mother's side, and three blood aunts and uncles on his father's side. The paternal aunts and uncles contended that the land descended to them alone by virtue of a section of the Alabama code, which provides: "There is no distinction made between the whole and the half blood in the same degree, unless the inheritance came to the intestate by descent, devise or gift, from or of some one of his ancestors; in which case all those who are not of the blood of such ancestor are excluded from the inheritance as against those of the same degree."[1] The lower court held that all the next of kin took equally. On appeal, *held,* affirmed. The "unless" clause of the statute can only be a qualification on the rights of half blood collateral kindred. The aunts and uncles are all of the whole blood of the decedent and share equally. *Caffee v. Thompson,* (Ala. 1955) 81 S. (2d) 358.

The statute considered in the principal case exemplifies the treatment given by the codes of thirteen states to ancestral property and inheritance by half bloods.[2] The provision is a highly equivocal amalgamation of two ancient common law rules, one relating to the descent of ancestral property and the other to the exclusion of half blood collaterals.[3] The ambiguous phraseology of this and similar provisions of other codes has led to varying interpretations where whole blood collaterals are concerned. The principal case follows the majority position that the ancestral estate provision, as framed, is not intended to be an application of that ancient doctrine to the entire scheme of descent, but only to half bloods not of the blood of the ancestor.[4] However, the Michigan court in *In re Wortmann's*

[1] Ala. Code (1940) tit. 16, §5.

[2] Ala. Code (1940) tit. 16, §5; Cal. Prob. Code (Deering, 1953) §254; Idaho Code (1948) §14-106; Mich. Comp. Laws (1948) §702.84; Minn. Stat. (1953) §525.17; Mont. Rev. Code Ann. (1947) tit. 91, §91-411; Neb. Rev. Stat. (1943) c. 30, §30-111; Nev. Comp. Laws (Hillyer, 1931; Supp. 1941) §9882-300; N.D. Rev. Code (1943) tit. 56, §56-0112; Okla. Stat. (1951) tit. 84, §222; S.D. Code (1939) tit. 56, §56.0113; Utah Code Ann. (1953) tit. 74, §74-4-17; Wis. Stat. (1953) c. 237, §237.03.

[3] See 42 YALE L. J. 101 (1932); 141 A.L.R. 976 (1942).

[4] In In re Pearsons, 110 Cal. 524 at 527, 42 P. 960 (1895), the California court rejected the contention that the "unless" exception had any application beyond the rights of half blood collaterals, saying: "Kindred of the half blood being the subject of the main proposition of the section is necessarily the subject of the exception which follows

Estate[5] held that the exception applied to paternal and maternal ascendants. In that case, a paternal grandmother was held to inherit land which came to the decedent from his father, to the exclusion of a maternal grandmother. How far the Michigan court would go in applying the "unless" clause of the statute as a qualification on the general scheme of descent is conjectural. A more difficult question than that in the *Wortmann* case will be presented when the two claimants are both members of a preferred class of heirs, rather than members of the broad "next of kin" class, as in the *Wortmann* case.[6] The holding of the principal case is commendable in so far as it minimizes the discrimination, carried over from the common law, against half bloods and those not of the blood of the ancestor, because it will not exclude a claimant from the inheritance unless he falls into both categories. However, a more complete answer to the problem would be to drop all distinction based on half blood and ancestral estate as New York and Ohio have done.[7]

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the word 'unless.'" See also Estate of Ryan, 21 Cal. (2d) 498, 133 P. (2d) 626 (1943); Estate of Kirkendall, 43 Wis. 167 (1877).

[5] 210 Mich. 541, 177 N.W. 967 (1920).

[6] Such a case would be presented if *A's* paternal grandfather devised land to *A*, and *A* later died leaving his parents as his only heirs. Under the Michigan statute, the father and mother would share the land equally, but if the ancestral estate limitation is applied the mother would be excluded. See Ryan v. Andrews, 21 Mich. 229 (1870); Rowley v. Stray, 32 Mich. 70 (1875); Lyon v. Crego, 187 Mich. 625, 154 N.W. 65 (1915).

[7] 13 N.Y. Consol. Laws (McKinney, 1949) §83-11; Ohio Rev. Code (Page, 1954) §2105.06.