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Descent and Distribution - Intestate Succession from an Adopted Child - Who Aim His "Brothers and Sisters"

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DESCENT AND DISTRIBUTION—INTESTATE SUCCESSION FROM AN ADOPTED CHILD—WHO ARE HIS "BROTHERS AND SISTERS"—Decedent had never married and was predeceased by his natural and adopted parents. The California statute provided that in such a case his property would go to his brothers and sisters.[1] Appellant, the natural daughter of decedent's adopted parents, contended that she was his sole heir under this statute, while respondent, decedent's natural brother, argued that the term "brothers and sisters" meant blood relatives. The superior court applied the common meaning of the words brothers and sisters and held that appellant was not such a person. On appeal, *held,* reversed. Since the entire pattern of the California code indicates an intent to displace completely an adopted child's natural parents with his adopted family, the words "brothers and sisters" meant brothers and sisters known to decedent, i.e., his brothers and sisters by adoption. *In re Calhoun's Estate,* (Cal. App. 1954) 272 P. (2d) 541.

Inheritance from an adopted child is dependent upon existing statutes, for adoption was unknown at common law.[2] If a state does not have a statute which changes the common law, an adopted child's estate on intestacy will normally descend to his wife, his issue, or other blood relatives. This is the rule in the great majority of states,[3] but in an early California case the court read the adoption statute as completely terminating the parent-child relationship as to an intestate's natural father.[4] This result accords with the policy of the California legislature which subsequently passed a statute codifying this judicial

[1] Cal. Prob. Code (1953) §225: "If decedent leaves neither issue nor spouse, the estate goes to his parents in equal shares, or if either is dead to the survivor, or if both are dead in equal shares to his brothers and sisters . . . ."

[2] Adoption was well established in Roman Law. Under Roman Law an adopted child became a member of his foster family for all purposes, including inheritance from him and to him. The Roman Law is relied on as a basis for some of the decisions in this area but this approach is severely criticized on the theory that the inheritance consequences of adoption were dependent on the structure of Roman Society and were not in fact carried forward into France, Germany or other Civil Law countries. See Hardgrove, "Futility of Resort to Roman Law for Interpretation of Statutes on Adoption," 9 MARQ. L. REV. 239 (1925).

[3] See annotation, 42 A.L.R. 534 (1926) et seq. as supplemented by 170 A.L.R. 742 (1947).

[4] In re Jobson's Estate, 164 Cal. 312, 128 P. 938 (1912).

determination.[5] The California statutes relating to adopted children have been amended several more times and each modification tended to integrate more completely the adopted child into his foster family.[6] Thus the court was applying sound principles of judicial construction in reading this section of its statute.[7] In interpreting this California statute the court did not have available an intermediate approach. Under the statutes of other states it is either required, or is possible, for the court to look to the source of the property, and to permit the inheritance to go accordingly. This approach is at least analogous to the common law principle which favors keeping property received by descent in blood lines,[8] and is superior to permitting all of an adopted child's property to go to his natural heirs or next of kin. The principle was once widely used and is still the law of a considerable number of jurisdictions.[9] In still other states, the adoption statutes emphasize the establishment of a family relationship between the adopted child and his foster family without mentioning inheritance rights,[10] and here many socially undesirable results are reached by the courts.[11] The modern trend of society, as evidenced by recent legislative enactments, seems clearly in the direction of complete replacement of the natural family by the adopted one.[12] One of the factors giving impetus to this trend seems to be the change in the number and type of adoptions. In recent years there has been an amazing

[5] Cal. Prob. Code (1953) §257: ". . . An adopted child does not succeed to the estate of a natural parent when the relationship between them has been severed by the adoption, nor does such natural parent succeed to the estate of such adopted child."

[6] See the following sections of the California Statutes: Civil Code (1949) §§228 and 229; Health and Safety Code (1951) §§10252, 10253, and 10253.5; Probate Code (1953) §§223 and 257. The most striking of these statutes is Probate Code §257, which provides that "An adopted child succeeds to the estate of the one who adopted him, the same as a natural child; and the person adopting succeeds to the estate of an adopted child, the same as a natural parent . . . ."

[7] Many courts feel that these statutes are in derogation of the common law and are to be strictly construed, regardless of other expressions of legislative policy in the state statutes. See Upson v. Noble, 35 Ohio St. 655 at 658 (1880); Grimes v. Grimes, 207 N.C. 778 at 780, 178 S.E. 573 (1935); 42 A.L.R. 534 et seq. (1926).

[8] This policy was present in the fifth canon of the English Canons of Descent as announced by Blackstone in 2 BLACKST. COMM., Wendell ed., c. 14. As to the present effect of this theory, see ATKINSON, WILLS, 2d ed., §21 (1953).

[9] See Kuhlmann, "Intestate Succession By and From the Adopted Child," 28 WASH. UNIV. L.Q. 221 at 231 (1943). See also 1 WEST. RES. L. REV. 133, n. 22 (1949) for a list of the states which follow this view.

[10] See Idaho Code (1948) §16-1508; Miss. Code Ann. (1942) tit. 10, §1269; N.D. Rev. Code (1943) tit. 14, §1113; Utah Code Ann. (1953) tit. 78, §30-10.

[11] For a statement of social policy see 1 WEST. RES. L. REV. 133 at 141 (1949). Cf. annotations in note 3 supra.

[12] This general trend can be seen by examining the different alignments of the several states in each of the following articles: 22 IOWA L. REV. 145 (1936), 28 WASH. UNIV. L.Q. 221 (1943), and 1 WEST. RES. L. REV. 133 (1949). Since 1949 several other states have changed their statutes relating to inheritance from adopted children and, in each case, the change favors the adoptive family over the natural family. See Del. Code Ann (1953) tit. 13, §920; Ill. Rev. Stat. (1953) c. 3, §165; N.M. Stat. Ann. (1953) c. 22, §22-2-19; Ohio Rev. Code (Baldwin, 1953) §3107.13; S.C. Stat. L. (1954) No. 698; Tenn. Code Ann. (Williams, 1934) §9572.37; Va. Code (1950) tit. 63, §358, as amended by 1954 Laws, c. 489.

expansion in the number of adoptions,[13] and with this growth has come the establishment of professional adoption agencies, both public and private.[14] While no uniform rules or regulations exist, the majority of these agencies attempt to place very young children with reliable families and to keep all records of the adoption confidential.[15] In these cases the inheritance problems are quite acute for several reasons. First, the child and his adopted family will have little or no knowledge about the child's natural family,[16] and second, the adopted parents will, in the great majority of cases, either have furnished the adopted child with a large portion of his estate, as occurred in the principal case, or will have provided him with the education and training which enabled him to accumulate an estate. Viewed in this light, it would seem that the court in the principal case was merely filling a gap in the statutes in a manner which is entirely consistent with the general approach of the California legislature in dealing with the existing social problems presented by inheritance from an adopted child.

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[13] A survey by U.S. Children's Bureau indicates that the number of children for whom adoption proceedings were filed in 1944 was three times as great as the number filed in 1934, and available information indicates that this trend has continued. See LEAVY, LAW OF ADOPTION SIMPLIFIED (1948).

[14] See U.S. CHILDREN'S BUREAU, ESSENTIALS OF ADOPTION LAW AND PROCEDURE 5-10 (1949).

[15] Id. at 9. See specifically Cal. Health and Safety Code (1951) §§10252, 10253, and 10253.5. These sections provide for the issuing of a corrected birth certificate which makes no mention of the adoption, and also for the filing and sealing of all papers relating to the adoption.

[16] See U.S. CHILDREN'S BUREAU, ESSENTIALS OF ADOPTION LAW AND PROCEDURE 8-9 (1949). The court in the principal case also took judicial notice of this increasing practice.