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CASES NOTED

CONFLICT OF LAWS—RIGHT OF INHERITANCE OF DESCENDANTS OF ADOPTED CHILD

Appellant's mother was formerly adopted in Texas and reared in California by the intestate and her husband, the adopting parents. The intestate, the surviving adoptive parent, died domiciled in California, and was predeceased by appellant's mother. At the time of the adoption the adopting parents signed a document reciting that the adopted girl should henceforth enjoy all "rights and privileges as if born to us." In the lower court there was an order revoking letters of administration of the intestate estate, previously issued to the appellant. *Held*, on appeal, that the Texas adoption, which bestowed the status of legal heir on appellant, did not give her the capacity to take; however, the document constituted a continuing offer to adopt, which appellant's mother had accepted by continuing to live with the adopting parents in California, thus creating a valid contract. Appellant, as a lineal descendant of the intestate, is entitled to letters of administration of her estate. Order reversed. In re *Grace's Estate*, 200 P.2d 189 (Cal. App. 1948).

The status acquired by adoption in one state will be recognized in another state which has statutory provision for adoption.¹ Since each state follows its own laws of inheritance as to realty within its borders and the personality of its domiciliaries,² the court correctly stated that Texas law should be determinative of appellant's *capacity*—California law of her *right*—to inherit. Its application of these rules to the facts seems open to criticism. Under the law of Texas³ adoption entitled the person adopted only the rights and privileges of a legal heir, rather than those of a natural child⁴ and such a legal heir could pass none of his inheritance rights to his descendants.⁵ But California law does allow

1. *Finley v. Brown*, 122 Tenn. 316, 123 S. W. 359 (1909); *Ross v. Ross*, 129 Mass. 243, 37 Am. Rep. 321 (1880); *Appeal of Woodward*, 81 Conn. 152, 70 Atl. 453 (1908) (an adoption legally made is not terminated by a change in domicile); see *Mott v. First National Bank*, 98 Fla. 444, 124 So. 36 (1929). *But see Brown v. Finley*, 157 Ala. 424, 425, 47 So. 577, 578 (1908). RESTATEMENT, CONFLICT OF LAWS § 143 (1934).

2. *Hood v. McGehee*, 237 U. S. 611 (1915); *Calhoun v. Bryant*, 28 S. D. 266, 133 N. W. 266 (1911); *Finley v. Brown*, *supra*. RESTATEMENT, CONFLICT OF LAWS §§ 247, 305, comment *b* (1934).

3. "Article 1. Any person wishing to adopt another as his legal heir may do so by filing . . . a statement in writing . . . [reciting], in substance, that he adopts the person named therein as his legal heir . . ."

"Article 2. Such statement in writing . . . shall entitle the party so adopted to all the rights and privileges, both in law and equity, of a legal heir of the party so adopting him. . . ." ACTS OF TEXAS (1850), c. 39, P. D. 30, 31 (this act has since been repealed).

4. *Cochran v. Cochran*, 43 Tex. Civ. App. 259, 95 S. W. 731 (1906); see *Bell v. Thomsen*, 116 Tex. 325, 273 S. W. 1109 (1925); *Hoch v. Hoch*, 162 S. W.2d 433 (Tex. App. 1942).

5. *State v. Yturria*, 109 Tex. 220, 204 S. W. 315 (1918); *Harle v. Harle*, 109 Tex. 214, 204 S. W. 317 (1918).

descendants of adopted children to inherit from the adopting parents, making no distinction between adopted and natural children in such matters.⁶ The court reasoned that Texas gave appellant's mother the *status* of legal heir, citing several Texas decisions⁷ to support its finding. These cases involved the question of inheritance rights of parties adopted in Texas as to property in which Texas law determined the right to inherit. Having already determined that appellant's mother had been legally adopted under Texas law, the court should not have considered itself bound by decisions, as here California law determines the right to inherit.

The court also relied on *Shaver v. Nash*.⁸ In that case one adopted under the Texas statute⁹ later moved to Arkansas and there claimed the enlarged inheritance rights granted by that state to those adopted under its own law. The court held that Texas law governed both his status as an adopted child and his right to inherit. However, most jurisdictions differentiate between the status created by the act of adoption, and the separate and incidental inheritance rights emanating from this status.¹⁰ Since this court professes to follow the majority view, reliance on the *Shaver* case appears erroneous.

There would seem to be no such status as that of a partially adopted child; a child is either adopted or not. Furthermore, the law of inheritance is a mere incident to adoption without significance outside the state of its enactment.¹¹

The contract theory propounded by the California court appears to have been unnecessary. The decision did not have to rest solely on a few words fortuitously incorporated into the adoption agreement.

CONSTITUTIONAL LAW—DUE PROCESS—RIGHT OF STATE TO PROHIBIT UNION SECURITY CONTRACTS

Defendants were convicted by a North Carolina court for violating a state statute¹ making it illegal to discriminate against union or non-union men

6. *In re Smith's Estate*, 73 Cal. App. 2d 291, 166 P.2d 74 (1946); *In re Estate of Hebert*, 42 Cal. App. 2d 664, 109 P.2d 729 (1941); *In re Moore's Estate*, 47 P.2d 533 (Cal. Civ. App. 1942).

7. See notes 4 and 5 *supra*.

8. 181 Ark. 1112, 29 S. W.2d 298 (1930).

9. See note 3 *supra*.

10. *In re Riemann's Estate*, 124 Kan. 539, 262 P. 16 (1927); *Anderson v. French*, 77 N. H. 509, 93 Atl. 1042 (1915) (overruling in effect, though not expressly, *Meador v. Archer*, 65 N. H. 214, 23 Atl. 521 (1889)); GOODRICH, *CONFLICTS OF LAWS* 384 (2d ed. 1938). *Contra*: *Meador v. Archer*, *supra*; *In re Sunderland's Estate*, 60 Iowa 732, 13 N. W. 655 (1883).

11. *In re Riemann's Estate*, *supra* (where the Kansas Court expressly reversed its prior position); *Calhoun v. Bryant*, *supra*.

1. N. C. Laws 1947, c. 328 § 2 ("Any agreement or combination between any employer and any labor union or labor organization whereby persons not members of such union or organization shall be denied the right to work for said employer, or whereby such membership is made a condition of employment or continuation of employment by such employer or whereby any union or organization acquires an employment monopoly