

Adoption: Adopted child inherits from natural parents

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NOTES AND COMMENT

Adoption: Adopted child inherits from natural parents.—The Supreme Court of Minnesota in the case of *Roberts v. Roberts* (Minn. 1924) 199 N. W. 581, holds that an adopted child may inherit property from his or her natural parent. In this case the natural father of an adopted child having remarried and having two other children by such subsequent marriage, died intestate. On appeal from the probate court the district court held that the adopted child could participate in the estate of the natural father as an heir. The wife and children of the subsequent marriage made a motion for a new trial which motion was denied, and on appeal the order denying it was affirmed by the Supreme Court. The question is entirely one of statutory construction, the Legislature never having expressly spoken. The adoption statute¹ defines the status of an adopted child as follows: "Upon adoption such child shall become the legal child of the persons adopting him, and they shall become his legal parents with all the rights and duties between them of natural parents and legitimate child. By virtue of such adoption he shall inherit from his adoptive parents or their relatives the same as though he were the legitimate child of such parents, and he shall not owe his natural parents or their relatives any legal duties; and in case of his death intestate the adopting parents and their relatives shall inherit his estate as if they had been his parents and relatives in fact." There is nothing found in this which makes inapplicable the general rules of descent² under which the child would inherit from her father as would her half-brother, half-sister, and stepmother.

In *Wagner v. Varner*,³ a father after adopting two children of his daughter, died leaving no will. The court held that the children so adopted could inherit from him as his own children and could also inherit the share of their deceased mother.

In *Burnes v. Burnes*⁴ the Missouri court says: "As to the adoption of children and the rights of inheritance the laws of Missouri alone control." "The adoption of children is a statutory proceeding and all recitals of the statute are mandatory. . . ." "It is not a question of their education, nor of their control, nor of exacting obedience. Nor can the adoption paper be construed as a will, nor can it be enforced as a contract. Nor can the child inherit from one person's estate in the dual capacity of a blood relation and as an adopted child. But the child can inherit from his adopted parents even though he was adopted without his knowledge or consent. And he can inherit both from his natural father and the adopting father. Such is and has been the law of Missouri."

¹ Laws 1917, C 222 (Gen St Supp 1917—7151-7161)

² G. S. 1913—7236-7238.

³ 50 Iowa 532.

⁴ (C. C.) 132 Fed. 485. Affirmed 137 Fed. 781.

Where there is a second adoption the question arises whether the child inherits from both the first and second adopting parents. *In re Klapps Estates*⁵ the court decides that although an adopted child may inherit from both his natural and adoptive parents, in case of a second adoption, the first adoption is *ipso facto* revoked and the child loses the right to inherit from the first adoptive parents. The later Kansas case of *Dreyer v. Schricht*,⁶ takes an opposite view and says of the holding in the former case: "The law creates the capacity to inherit and not birth or adoption. The law invests those born and those adopted with that capacity without distinction. Some other law must be found which destroys the capacity in one case and not in the other, or it persists without regard to whether it originated with birth or adoption."

In case *In re Darling*,⁷ is contrary to all those discussed above in that it holds that an adopted child cannot recover as the heir of his natural father. It does hold, however, that such a child can recover as the heir of his grandfather (father of his natural father).

Wisconsin has no leading cases on the subject. Section 4024 of the Statutes⁸ which defines the rights of the adopting parents and the adopted child definitely provides that a child who is adopted, becomes capable of inheriting from his adoptive parents. He is not, however, made capable of taking property expressly limited to the "heirs of the body" of such parents. In no place does this statute deprive the child of the right to inherit from his natural parent.

R. F. ROCHE.

Attorney and Client: "Ambulance Chasing" is a violation of profession.—In the recent case of *Chunes v. Duluth R. R.* (Minn. 1924.) 298 Fed. 964. we have the following interesting case presented.

On March 20, 1923, Messrs. Dahl & McDonald, attorneys at law, commenced an action based on personal injuries in the state court of Dakota County, Minnesota. The case was removed to the federal court on diversity of citizenship.

On March 26, 1923, a second action on the same cause was instituted by them in the state district court of Wright County, Minnesota. This case was also removed to the federal court for diversity of citizenship.

On March 29, 1923, a third suit was started on the same cause, in the name of the plaintiff, in the state court of St. Louis County by Messrs. Barton & Kumuchey, attorneys at law, which was also removed to the federal court for the same reasons as the others.

⁵ 197 Mich. 615, 164 N. W. 381.

⁶ 105 Kansas 495, 185 Pac. 30.

⁷ 173 Cal. 221, 159 Pac. 606.

⁸ Sec. 4024, Wis. Stat. A child so adopted shall be deemed, for the purposes of inheritance and succession by such child, custody of the person and right to obedience by such parents by adoption, and all other legal consequences and incidents of the natural relation of parents and children the same to all intents and purposes the same as if the child had been borne in lawful wedlock of such parents by adoption, excepting that such child shall not be capable of taking property expressly limited to the heirs of the body of such parents, etc.