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Article 10

Wills - Adopted Son as "Lawful Issue"

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there is a debt independent of the security transaction and if it is clear that no sale was intended, the instrument is a chattel mortgage. *Keystone Finance Corp.* v. *Krueger,* 17 F. (2d) 904 (C.C.A. 3d, 1927). A transaction which provided for a deficiency judgment has been held a chattel mortgage even though the parties labelled the instrument a conditional sale contract. The instrument was held to come within the chattel mortgage recording statute. *Weber Showcase and Fixture Co.* v. *Waugh,* 42 F. (2d) 515 (W.D. Wash. 1930). Conversely, a conditional vendor was refused a deficiency judgment. *Mills Novelty Co.* v. *Morett,* 266 Mich. 451, 254 N.W. 164 (1934). But the Uniform Conditional Sales Act which has been adopted in Wisconsin provides that if the proceeds of the resale are not sufficient to pay the balance due on the purchase price the vendor may recover the deficiency from the purchaser. WIS. STAT. (1939), §§ 122.22. *Douglass* v. *Ransom,* 205 Wis. 439, 237 N.W. 260 (1931).

An equity of redemption is an incident of a chattel mortgage but not of a conditional sale. *Panchoff* v. *Heller,* 176 Minn. 493, 223 N.W. 911 (1929). But here also the Uniform Conditional Sales Act narrows the difference between chattel mortgages and conditional sales, since under it the purchaser has an equity of redemption of ten days after retaking the goods if the vendor fails to give at least twenty days notice of his intention to retake the goods. WIS. STAT. (1939) §§ 122.18, 122.19, 122.20.

The transaction in the principal case was hardly the usual type of conditional sale, but it seems clear that a sale rather than a mortgage was intended. Although the transaction was designed to secure a person who had advanced money, it does not appear that a debt had been created. Rather, there was an alternative provision contemplated by the instrument. If the well produced, those who had helped to finance the project were to share in the profits; otherwise, they were to get a certain amount of the equipment which their money had bought. Title was to pass to them on the happening of a certain event. There was no debt. Neither a deficiency judgment nor an equity or redemption was contemplated.

JOSEPH E. TIERNEY, JR.

Wills—Adopted Son as "Lawful Issue."—An appeal was taken from an order denying appellant's claim as the adopted son of the adopted son of the testatrix to take under her will, as the "lawful issue" of the adopted son. The Minnesota statutes defined "issue" as meaning the lineal descendants of an ancestor. The court *held* that adoption gave the adopted child the status of issue under a statute (Mason Minn. St. 1927 § 8630) which provides that "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 adopting parents or their relatives the same as though he were the legitimate child of such parents . . .". The court reasoned that the statute conferred upon the adopted child the status of a natural one and, referring to *In re Sutton's Estate,* 161 Minn. 426, 201 N.W. 925 (1925), added that the adopted child is a "lineal descendant." *In re Holden's Trust,* (Minn. 1940) 291 N.W. 104.

Generally, whenever the question of the rights of adopted children to inherit from their adoptive parents has arisen, the courts have been very liberal and have treated such children as natural children. In *O'Connell* v. *Powers,* 291 Mass. 153, 197 N.E. 162 (1935), the court declared that the word "issue" includes

the adopted child within the meaning of the words in the descent statutes. In another case, the adopted child was said to be a "lineal descendant." *In re Moore's Estate,* 7 Cal. App. 2d. 722, 47 P. 2d. 533 (1935).

From the general tenor of the Wisconsin cases, it would seem that the rule would conform to that of the principal case. WIS. STAT. (1939) § 322.07 provides that "A child so adopted shall be deemed, for the purposes of inheritance and succession and for all other legal consequences and incidents of the natural relation of parents and children, the same to all intents and purposes as if the child had been born 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."

Referring to this statute, the Wisconsin Supreme Court decided that the order of adoption changes the status of the child, destroys the parental relationship between it and its natural parents, and creates a new relationship between the child and its adoptive parents which has all the incidents of a status. *Stickles* v. *Reichardt,* 203 Wis. 579, 234 N.W. 728 (1931). In fact, where a child is adopted after a will have been made, by virtue of WIS. STAT. (1939) § 238.10, he will take the same share as if the testator had died intestate, being treated for such purpose as a child born in lawful wedlock. *Sandon* v. *Sandon,* 123 Wis. 603, 101 N.W. 1089 (1905). The Wisconsin Attorney General has given an opinion, in the same vein, that an adopted child is eligible for the benefits of an "educational bonus" granted to the "children of a veteran" under the Laws of Wisconsin. 20 Atty. Gen. 855 (1931). But where there is a will, it will govern the rights of the adopted children according to the intent of the testator. *Lichter* v. *Thiers,* 139 Wis. 481, 121 N.W. 153 (1909).

Not only would the adopted child take under its adoptive parents but it would share also in the estate of its natural parents. In *Estate of Sauer,* 216 Wis. 289, 257 N.W. 28 (1934), passing upon this latter point, the court stated that the statute cited above "does not explicitly or unmistakably give or deny to the adopted child the right to inherit from its natural parents." Under the principles set forth in *Nunnemacher* v. *State,* 129 Wis. 190, 108 N.W. 627 (1906), the right to inherit from relatives of the blood is a natural and an inalienable right with which the Legislature has no right to interfere.

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