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# THE RIGHTS OF AN ADOPTED CHILD TO INHERIT UNDER THE CALIFORNIA PROBATE CODE

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The California Legislature, in a recent amendment to section 257 of the Probate Code, has, due to inartistic drafting, left to judicial conjecture the determination of its scope and intent of the cited section. The act purports to clarify the rights of inheritance of an adopted child and the correlative rights of the adopting parents, their ancestors and collateral relatives to inherit from the adopted child. This discussion, however, will be restricted to the rights of the adopted child, for those provisions which affect the adopted child's rights will similarly affect the rights of both the adoptive and natural relatives. The broad purpose of this comment is to view objectively the problems confronting those who, in the practice of probate law, will find it necessary to construe this statute.

In order to appreciate more fully the true significance of the 1955 amendment to Probate Code section 257, it behooves one to review the past acts of the Legislature. This, however, can only be done in the light of legislative intent coupled with judicial construction given the section in cases applying it.

## *Historical Background*

Since the subjects of adoption and inheritance are purely statutory,[1] neither having been available to the individual at common law, any rights or obligations arising in regards to these subjects must have been expressly designated by statute. The earliest California statute regulating adoption provided specifically in a subsection its effect upon inheritance:

> A minor, when adopted, shall be entitled to the name of the party adopting, and the two thenceforth shall bear towards each other the legal relation of parent and child, and the minor shall enjoy all the legal rights and be subject to all the duties appertaining to that relation; except, however, that if the adopted child leaves descendants, ascendants, brothers or sisters, the party adopting, nor his relatives, shall not inherit the estate of the adopted child, nor any part thereof; nor shall it be lawful. . . .[2]

This statute clearly excludes the collateral relatives of the adopting parents and the adopting parents themselves from inheriting from the adopted child when there is left surviving the deceased adopted child any blood relative.

However, with the adoption of the Civil Code in California, specifically Civil Code section 228, the clause regarding inheritance was excluded and the new section reads as follows:

> A child, when adopted, may take the family name of the person

[1] In re Calhoun's Estate, 44 A.C. 405, 282 P.2d 880 (1955).
[2] STAT. OF CALIF., 1869-70, Chap. 385, § 6, p. 531.

adopting. After adoption, the two shall sustain towards each other the legal relation of parent and child, and have all the rights and be subject to all the duties of that relation.[3]

This section of the Civil Code has remained in its present form since 1874 and until 1931 was the statute controlling the rights of inheritance of an adopted child. The Legislature in 1931 enacted a correlative section in the newly formed Probate Code which assumed this function. During the period 1874-1931, the one case which did most to construe the rights of inheritance of an adopted child was *In re Darling's Estate.*[4] In this case the right of an adopted child to succeed to the estate of his natural grandparent was contested and in finding that the child's rights to so inherit were not affected by the adoption proceedings, the court said:

"The adoption statutes of this state do not purport to affect the relationship of any person other than that of the parents by blood, the adopting parents and the child. It is the person adopting and the child who, by the express terms of the section, after adoption 'shall sustain towards each other the legal relation of parent and child and have all the rights and be subject to all the duties of that relation', and it is the parents by blood who, from the time of the adoption, are 'relieved of all parental duties towards, and all responsibilities for the child so adopted, and have no right over it', and are, in the eyes of the law, no longer its parents. The adoption simply fixes the status of the child as to its former and adopted parents. To its grandparents by blood it continues to be a grandchild, and the child of its parents by blood. It does not acquire new grandparents in the persons of the father and mother of the adopting parents."[5]

The construction placed on Civil Code section 228 by the court in *In re Darling* survived the test of frequent litigation and its reasoning has been applied in numerous cases judging the rights of inheritance of an adopted child.[6] Two of these cases, *Estate of Esposito*[7] and *Estate of Jones,*[8] were, however, decided after 1931, during which year the Legislature adopted the Probate Code and enacted section 257, which read as follows:

An adopted child succeeds to the estate of one who has 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. 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.[9]

In enacting Probate Code section 257 into law, the Legislature did

[3] STAT. OF CALIF., 1869-70, at p. 195.
[4] 173 Cal. 221, 159 P. 606 (1916).
[5] *Id.* at pp. 225-6, 159 P. at 610.
[6] In re Estate of Pence, 117 Cal.App. 323, 4 P.2d 202 (1931); In re Estate of Jones, 3 Cal. App.2d 395, 39 P.2d 847 (1934); In re Estate of Esposito, 57 Cal.App.2d 859, 135 P.2d 167 (1943).
[7] *Supra* note 6.
[8] *Supra* note 6.
[9] STAT. OF CALIF., 1931, p. 599.

not create any new rights of inheritance in an adopted child but merely made a "restatement as would best serve clearly and correctly to express the existing provisions of the law."[10] Hence, the reasoning of *In re Darling's Estate, supra,* that adoption affects only the relationship between the adopted child, the adopting parents and the natural parents insofar as inheritance is concerned continued unchanged under the new Probate Code section. And section 257 continued to be so construed from 1931 through the case of *In re Calhoun's Estate,*[11] which was decided in 1955.

The court in the last cited case, determined that where an adopted child died intestate leaving natural brothers and sisters, the natural daughter of the adoptive parents was not intestate's sister within the statutes regulating succession. And in so determining the court said, concerning the effect of Probate Code section 257 and the adoption trends generally:

> "When the original adoption statutes were enacted, adoptions were infrequent and occurred when the parents consented to the adoption of their child by persons known to them or as a consequence of the assumption of care and custody of an orphan by a blood relative. Under present day conditions it may be the better social policy to substitute the relationship of the adoptive family for that of the blood relatives. With many children placed for adoption by agencies licensed for that purpose there has developed a demand for secrecy as to the identity of the blood relatives, and in most cases, for all practical purposes, an adopted child is entirely cut off from his natural family relationships.
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> "This court may not usurp the legislative function to change the statutory law which has been uniformly construed by a long line of judicial decisions (Citations). Moreover, any change should be made only after a complete examination of all of the consequences. If adoption is to effect a complete substitution in family relationship, the legal rights of collateral relatives should be fully considered in connection with statutes relating to pretermitted heirs, inheritance taxes and the like."[12]

The majority opinion, cited in part above, coupled with a strong dissent by Justice Traynor, contributed substantially to the passage, in April 1955, of Assembly Bill 3734, which amends Probate Code section 257. The section as amended now reads:

> An adopted child shall be deemed a descendant of one who has adopted him, the same as a natural child, for all purposes of succession by, from or through the adopting parent the same as a natural parent. An adopted child does not succeed to the estate of a natural parent when the relationship between them has been severed by adoption, nor does such natural parent succeed to the estate of such adopted child, nor does such adopted child succeed to the estate of a relative of the natural parent, nor does any relative of the natural parent succeed to the estate of an adopted child.

The courts of California are, as a direct result of this amendment,

[10] See note 1 *supra* at 409, 282 P.2d at 884.
[11] 44 A.C. 405, 282 P.2d 880 (1955).
[12] See note 1 *supra* at 411, 282 P.2d at 886.

confronted once again with the problem of determining the right of an adopted child to inherit from the ancestors and collateral relatives of the adoptive parents and, further, the corresponding rights of these relatives to inherit from the adopted child. The legislative intent in passing this bill should, and undoubtedly will be, a controlling factor in determining these rights, but, only so far as this intent may be determined from the language of the statute itself. The courts are confined to this narrow construction primarily because no record of committee hearings on the matter were kept.

In order that we may more expediently deal with the effect of section 257, as amended, on the inheritance rights of an adopted child, it might be wise to break the statute down into two sections, the first being the rights taken away from the child and, second, the rights supposedly given the child, and then to discuss them in that order.

### *Rights Lost by Adopted Child*

The code section, insofar as its effect upon the relationship of parent and child is concerned, would seem to be no more than a reiteration of the original section 257 for it clearly severs any right of inheritance of the child from the natural parent, or the natural parent from the child. The portion of section 257 which applies in this regard reads: ". . . An adopted child does not succeed to the estate of a natural parent when the relationship between them has been severed by adoption, nor does such natural parent succeed to the estate of such adopted child. . . ." This portion has been carried down by the Legislature from the date of passage of the first adoption law in 1869 and has been uniformly construed in all cases litigating the matter.

Section 257, as amended, does not, however, limit itself to severing the relationship between parent and child, but by this amendment would seem to go much further than has any previous statute and severs all ties between the adopted child and relatives of the natural parent. This portion of the section states: "[N]or does such adopted child succeed to the estate of a *relative* of the natural parent, nor does any relative of the natural parent succeed to the estate of the adopted child." (Emphasis added.) The intent of the Legislature here seems, for the most part, clear, leaving only the definition of the term "relative" to judicial construction. Black's Law Dictionary defines relative as: "A kinsman; a person connected with another by blood or affinity."[13] If this definition is applied, the adopted child is deprived of all rights of inheritance which he previously had from his natural grandparents, his natural brothers and sisters and all other relatives of his natural parents. This portion of the statute clearly changes the rights of the parties from that which existed prior to this amendment and further

[13] BLACK, LAW DICTIONARY (4th ed. 1951).

manifests the displeasure of the Legislature with the result of *In re Calhoun*, which it summarily overrules, at least in principle.

***Rights Received—an Enigma***

In taking away the right of the adopted child to succeed to the estate of natural relatives and the converse, the statute is quite explicit. Not so with the rights given the child in the same code section. In attempting to determine the intention of the Legislature in this regard there could be as many constructions as there are tribunals to construe.

The new section provides in part: "An adopted child shall be deemed a descendant of one who has adopted him, the same as a natural child, for all purposes of succession by, from or through the adopting parent the same as a natural parent. . . ." A myriad of questions arise from the mere reading of this portion of the statute, each of which must be answered by judicial interpretation rather than by clearly expressed legislative intent which would, of course, be far more desirable to the practicing attorney and judges alike.

Of prime concern to one attempting to interpret the meaning or effect of the statute, is the definition of the word "descendant." In using this particular term, did the Legislature intend to insert the adopted child completely in the line of descent of the adopting parents' family, thus giving to said child a substitute for those rights taken from him by the latter portion of the statute, or did the Legislature only intend to create a new line of descent beginning with the adopting parent? If its intent was the former, then why qualify the right with the words "of one who has adopted him"? And further, if the former applies, the portion authorizing the adopted child, for purposes of succession, to take "from and through the adopting parent" is surplusage for the descendant has not only the right to take from and through the adopting parent, but also to take in his own right from the ancestors and collateral relatives of the adopting parents. If, however, the Legislature intended to create a new line of descent from the adopting parent, it has deprived the adopted child of the right to inherit from natural grandparents and collaterial relatives without giving him a suitable replacement in the adoptive family. Either position could quite logically be taken and maintained by counsel.

The section further provides that the adopted child shall be treated as a natural child "for all purposes of succession by, from and through the adopting parent." A thorough search of the authorities has failed to indicate how one might inherit "by . . . the adopting parent." Hence, any effort to construe the intent of the Legislature in this regard would be at best merely speculative. It would seem that the word was inserted as a possible shotgun measure and is extraneous.

The code section then grants to the adopted child the right to succeed

". . . from or through the adopting parent." The adopted child has by this portion of the statute been given but one new right which he did not have under the previous statutes regulating this matter. By permitting the adopted child to take "through the adopting parent," the Legislature has permitted him to take from the adopting parents' ancestors and collateral relatives by right of representation. The adopted child has, since the enactment of the Civil Code in 1872, been permitted to take "from . . . the adopting parent," and this provision in the statute is a mere reiteration of a right previously enjoyed by the child. The big problem insofar as this portion of the statute is concerned, is: Did the Legislature intend, by specifically stating that the adopted child could succeed "from or through the adopting parent," to limit the rights of inheritance to those stated or merely to place emphasis on but two of general rights of inheritance conferred upon the child by this section.

Probably the most perplexing problem of the entire section is whether or not the Legislature intended to permit the adopted child to take in his own right, as distinguished from inheritance by right of representation, from the adopting parents' ancestors and collateral relatives in the same manner as would a natural child of the adopting parents. If it did so intend the code section which describes the adopted child quite generally as a "descendant of one who has adopted him," it is inadequate for it fails to define the word descendant so as to preclude its being subjected to judicial interpretation which might, conceivably, not coincide with the legislative intent. It has been the policy of California courts to strictly construe the rights granted persons under both adoption and inheritance statutes and should this policy be continued it is doubtful that the adopted child will be permitted to inherit from adoptive parents' relatives other than by right of representation.

The situation is best summarized by the words of Chester G. Vernier:

> "Certainly the problem of inheritance is of such importance as to call for an express pronouncement by the legislatures. Those jurisdictions which do not have express provisions may be fairly criticized on that score. However in the jurisdictions that do deal with the problem the statutes are sketchy, insufficient and unsatisfactory. Some factual situations are covered, but others are completely ignored, and the courts are left to struggle with the incomplete efforts of the legislatures. The problem of policy is certainly of sufficient magnitude to call for legislative action; the results should not be left to inference, as they have been in many instances. Perhaps the policy of Pennsylvania's statute which effects a complete substitution of inheritance rights from the natural to the adoptive family is not the wisest; but the Pennsylvania legislature must be commended as the only one to cover fully the problems which arise with regard to inheritance rights after an adoption."[14]

[14] VERNIER, AMERICAN FAMILY LAWS, Vol. IV at 411 (1936).