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Adoption

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a. In offers for bilateral contracts, this would be only the moment necessary for the making of the promise;

b. In offers for unilateral contracts, this would be only the time necessary for the performance of the act or forbearance requested.

II. After the expiration of the delays in IA and IB, above, the proposer is free to change his intention, and need not declare so or notify the other party of such fact;

A. However, if the acceptance comes to his knowledge before the lapse of time mentioned in III, the proposer must immediately notify the accepter of his change of intention or be presumed to have continued in that intention and be bound to the contract.

III. Yet, if the acceptance comes to the knowledge of the proposer so long after his proposal that he cannot be presumed to be still of the intention which his proposal expressed, the acceptance need not be considered more than a counter offer.

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ADOPTION

The scope of the present inquiry includes the form and the civil effects of adoption, particular attention being directed to the new Adoption Act[1] and to its probable effect on Louisiana jurisprudence.

Prior to 1865, adoption in Louisiana was possible only by means of a special legislative act.[2] Although adoption had existed under the Spanish regime,[3] it was abolished by the Code of 1808,[4]

(1929); Dreyfous Co. v. Keifer, 11 La. App. 364 (1929); Picou v. St. Bernard Parish School Board, 132 So. 130 (La. App. 1924); Foster v. Morrison, 145 So. 13 (La. App. 1933).

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1. La. Act 428 of 1938.

2. For examples of such adoptions, see La. Acts 26 and 65 of 1837; La. Acts 69, 139, 217, and 235 of 1852; La. Act 100 of 1859.

3. Las Siete Partidas, 4.16.1-10.

4. La. Civil Code of 1808, p. 50, 1.7.35.

and the Code of 1825[5] had a similar provision. Act 48 of 1865 was the first of a series of legislative measures which culminate in the new Adoption Act of 1938.[6]

WHO MAY BE ADOPTED AND BY WHOM

Article 214 of the Civil Code of 1870 provides that any person may be adopted except those illegitimate children who cannot be legally acknowledged. However, the Acts of 1932 and 1938 provide that any person may be adopted "except one who has in him or her the blood of another race."[7] If the repealing clauses of these acts are not to be disregarded in this matter, it would follow that incestuous and adulterous bastards who cannot now be acknowledged[8] are no longer barred from adoption by their blood parents.

With regard to the persons who may adopt, Article 214 has been superseded almost entirely by recent legislation which provides the following rules: (1) The adopter of a person under seventeen must himself be over twenty-one,[9] and if married must have the concurrence of the other spouse;[10] (2) the adopter of a person over seventeen must himself be over twenty.[11]

FORM

For Adoption of Persons under Seventeen

Under Act 31 of 1872 and Act 48 of 1924, a notarial act was the only form required for the legal adoption of minors. Act 13 of 1928 required this notarial act to be recorded in the office of the Registrar of Conveyances. The 1932 statute required, in addition to the notarial act, the supervision and approval of the Juvenile

5. Art. 232, La. Civil Code of 1825.

6. La. Act 48 of 1865 as amended by La. Act 17 of 1867 and La. Act 64 of 1868; La. Rev. Stats. of 1870, § 2322 et seq. [Dart's Stats. (1932) § 4839.3]; Art. 214, La. Civil Code of 1870; La. Act 31 of 1872 and La. Act 48 of 1924 (repealed by La. Act 46 of 1932); La. Act 243 of 1926 [Dart's Stats. (1932) § 4858-4860]; La. Act 13 of 1928 (repealed by La. Act 46 of 1932); La. Act 46 of 1932 [Dart's Stats. (Supp. 1937) § 4827-4829]; La. Act 233 of 1936 [Dart's Stats. (Supp. 1937) § 4839.10-4839.25]; La. Act 428 of 1938.

7. La. Act 46 of 1932, § 1; Act 428 of 1938, § 1.

8. Art. 204, La. Civil Code of 1870.

9. La. Act 428 of 1938, § 1.

10. La. Act 428 of 1938, § 7. It may therefore be questioned whether a parent can concur with the present spouse in the adoption of its own child which is not the child of said spouse.

11. La. Act 46 of 1932, § 1, as amended by La. Act 44 of 1934, § 1. The language which requires the act of adoption to be "signed by the adoptive parent or parents" is not as mandatory as the specific requirement that both

Court. However, in the *Succession of Dyer*, the Supreme Court of Louisiana held that, in conferring upon the Juvenile Court jurisdiction in adoption proceedings, section 11 of the 1932 statute was unconstitutional.[12] As a result of this decision the form continued to be merely a notarial act duly recorded, as it was prior to the 1932 statute.

In an attempt to remedy this situation a constitutional amendment of 1936[13] conferred civil jurisdiction in adoption matters upon the Juvenile Courts. However, by amending only that section of the Constitution which pertained to the Juvenile Courts outside of Orleans parish, the amendment failed to confer jurisdiction upon the Juvenile Court of Orleans parish. Thus while judicial supervision and approval were required everywhere else, a notarial act duly recorded still continued to be the only form necessary in Orleans parish.

To render the form of adoption the same throughout the state, a further amendment[14] was made to the Constiution conferring civil jurisdiction in adoption matters upon the Juvenile Court of Orleans parish.

For Adoption of Persons over Seventeen

Article 214 of the Revised Civil Code of 1870 provided for the adoption of majors, but the provision was ineffective since no procedure was indicated.[15] This gap was bridged by Act 109 of 1924 which provided for a notarial act signed by both adopter and adopted and its recordation in the mortgage records of the parish wherein the adopter resided. This statute was superseded by Act 46 of 1932 (as amended by Act 44 of 1934) which placed adopted persons in two categories (those under seventeen and those over seventeen) and provided for the adoption of persons over seven-

spouses concur in the adoption of a person under seventeen (supra note 10) and it might be questioned whether concurrence of the other spouse is absolutely necessary for the adoption of a person over seventeen.

12. Succession of Dyer, 184 La. 251, 166 So. 68 (1936). When the Constitution created the Juvenile Courts (of Orleans parish, La. Const. 1921, Art. VII, § 96; of all other parishes, La. Const. 1921, Art. VII, § 52) it conferred only criminal jurisdiction over children under seventeen. Consequently, La. Act 46 of 1932, § 11, attempted to confer upon this court of limited jurisdiction a power not authorized by the Constitution.

13. See La. Act 324 of 1936 [Dart's Const. (Supp. 1937) Art. VII, § 52]; and also the amendment as proposed by La. Act 198 of 1938 adopted Nov. 8, 1938).

14. La. Act 390 of 1938, adopted as an amendment to La. Const. of 1921, Art. VII, § 96, on November 8, 1938.

15. Succession of Pizzati, 141 La. 645, 75 So. 498 (1917). The procedure set out in Act 31 of 1872 was only for the adoption of minors.

teen by authentic act to be signed by adopter and adopted, or by the adopted's legal representative if he were a minor, and gave jurisdiction over such cases to the various district courts. This is the present state of the law with respect to the adoption of persons over seventeen, since all subsequent adoption acts pertain only to the adoption of those under seventeen.

CIVIL EFFECTS

Adoption creates an artificial parent-child relationship. Unlike the legitimated child who has all the rights of a legitimate child,[16] it is provided in Article 214 that the rights of an adopted child are restricted so as not to interfere with the rights of forced heirs. Act 428 of 1938 fixes the status of an adopted child under seventeen only insofar as the adoptive parents and the blood parents are concerned. The remainder of this comment will therefore be devoted to a consideration of the civil rights of such adopted child with regard to its adoptive and blood parents and with regard to their respective relations, and vice versa.

Inheritance Rights of the Adopted Child

The 1938 Act states that the adopted shall "become an heir . . . to the extent provided by existing law."[17] In a recent case the court considered that the rights of forced heirs embraced only that interest in a succession of which they could not be deprived.[18] It would therefore follow that as long as adopted children do not infringe upon the forced portion of the legitimate issue they should share and share alike in an intestate succession.[19] Where there is no legitimate issue and the adopter dies intestate leaving a father and mother or either, the surviving parent or parents are entitled only to their légitime; and the adopted child will receive the remainder, since he enjoys all the rights of a legitimate child as long as there is no interference with the rights of forced heirs.

Since the adopted child is a forced heir,[20] the question of the extent of the adopted's légitime becomes pertinent when the

16. Arts. 198, 199, 200, La. Civil Code of 1870; see Davenport v. Davenport, 116 La. 1009, 41 So. 240 (1906).

17. La. Act 438 of 1938, § 6.

18. See Alexander v. Gray, 181 So. 639, 643 (La. App. 1938).

19. If there were one legitimate child and three adopted children, it would seem that the legitimate child would receive one-third (Art. 1493, La. Civil Code of 1870) and the remaining two-thirds would be divided equally among the three adopted children.

20. Succession of Hosser, 37 La. Ann. 839 (1885).

adopter disposes of his estate by donation inter vivos or mortis causa. The forced portion of the adopted in the estate of the adopter depends upon the existence or non-existence of other forced heirs. There is no square holding as to what the forced portion of the adopted child is when he concurs with other forced heirs; but there is a pronouncement[21] to the effect that the adopted child's légitime should be taken from the disposable portion remaining after the rights of other forced heirs are satisfied. It therefore follows that, when the other forced heirs are the mother and father or either of them, the adopted child's légitime is the same as that reserved to a legitimate child under Article 1493 of the Revised Civil Code of 1870; and when there is legitimate issue of the adopter, the légitime of the adopted child is calculated on the basis of the total number of children (both legitimate and adopted).[22] Although this is in apparent conflict with the rules which provide for the disposable portion,[23] such a solution seems to be the only equitable one and appears to be justified by the fact that the adopter should realize that, since the Louisiana law favors the forced portion, he is limiting his freedom of disposal by adopting a child. It can easily be seen that while this rule would be practical in most instances it could not be applied in a case where there are large numbers of both legitimate and adopted children (for instance, where the deceased leaves three legitimate children and four adopted children). It is suggested that if such an unlikely situation should arise, the only equitable solution would be to divide the disposable portion equally among the adopted children.

Where the adopter dies intestate leaving no other forced heirs, the adopted child takes the whole succession to the exclusion of collaterals and natural children,[24] since Article 214 provides that an adopted child has all the inheritance rights of a legitimate child except that he shall not interfere with the rights of forced heirs.

These are applicable both where the succession is composed entirely of what was the adopter's separate property and where

21. Succession of Dielman, 155 La. 496, 502, 99 So. 416, 418 (1924).

22. If there were one adopted child and one legitimate child, the legitimate child should get one-third (Art. 1493) and the adopted child should get one-fourth (Art. 1493, subjected to the restriction in Art. 214).

23. The disposable portion is determined in accordance with Arts. 1493 et seq., La. Civil Code of 1870; see also Succession of Greenlaw, 148 La. 255, 86 So. 786 (1920).

24. The term "lawful children or descendants" as used in Arts. 918 and 919, La. Civil Code of 1870, would seem to embrace adopted children.

either a part or all of the succession is composed of what was his share of the community property. Likewise, the part of the community property inherited by the adopted child is subjected to the usufruct of the surviving spouse as provided by Article 916, because the adopted child should have no greater rights than a legitimate child.[25]

Since neither the new 1938 Act nor Article 214 makes any definite provision for inheritance rights between the adopted child and the adopter's relatives, it is submitted that no such rights are created; a person is not privileged to create heirs for another by the fiction of adoption nor to divert from its natural course the descent of property left by those who were not parties to the act of adoption. Since adoption is a matter of statutory law, it has only such legal effects as the statute of its creation attributes to it.[26] In other jurisdictions, where statutes have not specifically given rights to the adopted child in the succession of the adopter's relations, it has generally been held that he becomes the heir of the adoptive parent only, and is given no rights in the succession of the relatives of the adoptive parents.[27] The adopted child, however, usually retains his inheritance rights in the successions of relatives of his blood parents.[28]

Section 6 of the 1938 Act specifically provides that the adopted child "shall cease to be the heir of its parents, whose obligation toward it for support shall also cease . . ." Since the statute does not expressly deprive the adopted child of his right to inherit from blood relations other than the blood parents, it would seem that, following the strict construction usually applied to adoption statutes, the adopted child retains his rights to inherit from such blood relations. The adoption simply fixes the status of the child with regard to its blood and adoptive parents and does not otherwise effect a change in families. If this view is

25. Succession of Teller, 49 La. Ann. 281, 21 So. 265 (1897).

26. Cf. State ex rel. Karpe, 151 La. 585, 92 So. 124 (1922).

27. E.g., Bradley's Estate, 185 Wis. 393, 201 N.W. 973, 38 A.L.R. 1 (1925); Hockaday v. Lynn, 200 Mo. 456, 8 L.R.A. (N.S.) 117, 118 Am. St. Rep. 672, 98 S.W. 585, 9 Ann. Cas. 775 (1906); Van Derlyn v. Mack, 137 Mich. 146, 66 L.R.A. 437, 109 Am. St. Rep. 669, 100 N.W. 278, 4 Ann. Cas. 879 (1904); Batcheller-Durkee v. Batcheller, 39 R.I. 45, L.R.A. 1916E, 545, 97 Atl. 378 (1916); In re Powell, 112 Misc. 74, 183 N. Y. Supp. 939 (1920), affirmed in 193 App. Div. 965, 184 N. Y. Supp. 945 (1920). Contra: Shick v. Howe, 137 Iowa 249, 14 L.R.A. (N.S.) 980, 114 N.W. 916 (1908); Stearns v. Allen, 183 Mass. 404, 97 Am. St. Rep. 441, 67 N.E. 349 (1903).

28. E.g., In re Darling's Estate, 173 Cal. 221, 159 Pac. 606 (1916); In re Landers' Estate, 100 Misc. 635, 166 N. Y. Supp. 1036 (1917); In re Monroe's Ex'rs, 132 Misc. 279, 229 N. Y. Supp. 476 (1928).

accepted, the conclusion necessarily follows that the adopted child would still represent his blood parents in the successions of blood relatives.

In the light of Article IV, section 16 of the Constitution that "no law shall be passed abolishing forced heirship" a question might arise as to whether that part of section 6 of the 1938 Act which provides that the adopted child "shall cease to be the heir of its (blood) parents" is constitutional. It is suggested that Article IV, section 16 of the Constitution means that forced heirship as an institution should not be abolished. No restraint is placed by the Constitution upon the power of the Legislature to change the status of a person. Moreover, it cannot be said that the doctrine of forced heirship has been prejudiced, since the adopted child does become a forced heir[29] in the succession of his adoptive parents.

Rights of the Descendants of the Adopted Child

In *Salatich v. Hellen*,[30] a federal district court, applying Louisiana law, held that a descendant of a deceased adopted child was not a forced heir of, and could not represent, the deceased in the succession of the adoptive parent. The argument that an adopted child was only an irregular heir and could therefore not be represented seems to be erroneous in view of the codal provision that an adopted child has all the inheritance rights of a legitimate child, one of which is that his descendants shall represent him in successions after his death. However, the 1938 Act provides that the adopted child shall cease to be the heir of its blood parents and obviously excludes the issue of the adopted child from representing him in their succession. It would therefore be inequitable now not to allow descendants of the adopted person to represent him in the successions of the adoptive parents.

Inheritance Rights of Others in the Estate of the Adopted Child

We now turn to the question of the rights of both the blood and adoptive relatives in the adopted's succession, where the adopted leaves no descendants. Act 256 of 1936 provides that "Adoptive parents shall have all the rights of inheritance of parents in the estates of their adopted child as are enjoyed by

29. Succession of Hosser, 37 La. Ann. 839 (1885).

30. Salatich v. Hellen, 4 F. Supp. 474 (S.D. Cal. 1933), noted (1934) 8 Tulane L. Rev. 431.

parents in the estates of their legitimate children." This Act, in connection with the provisions of the 1938 Act excluding the adopted child from the succession of the blood parents must by necessary implication prevent the blood parents from inheriting from the adopted child. If we accept, as we must, the view that there has been no change of families, the members of the blood family other than the blood parents retain their rights of inheritance with regard to the adopted child. Conversely, the adoptive relatives other than the adoptive parents are entirely excluded.

CONCLUSION

The 1938 Act settles definitely only the status of an adopted child with regard to its adopted and blood parents. With respect to other blood and adoptive relatives, the Act is silent, thus leaving to the courts a measure of discretion on this point. The conclusion was reached above that in the present state of the law there is a complete substitution of parents but not of family. However, although this is necessary under the rules of statutory construction heretofore applied to adoption statutes, it leads to certain difficulties. For example, where the adopted represents the blood parent in the succession of the blood grandparent, we have the anomalous situation of one representing a person of whom he was not even the presumptive heir. Furthermore, the results of the law as it now exists are not in harmony with Article 2315, which in some instances gives a right of action for the wrongful death of the adopted person to the blood parents, and to the descendants of the adoptive parents, yet both of these classes of persons would be excluded entirely as heirs under an interpretation of the 1938 Act based on the idea that an adoption is a substitution of parents only. Thus, where the adopted child meets death because of the wrongful act of a third party, and leaves only a blood brother and an adoptive brother, the blood brother under our construction of the 1938 Act would inherit the estate of the deceased, but the right of action for the wrongful death would survive in favor of the adoptive brother. It is suggested that the problems herein raised would be solved and the law of adoption freed from serious ambiguity by amending the 1938 Act so as to provide for a complete change in family by an adoption instead of a mere substitution of parents.

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