Louisiana Law Review

Volume 10 | Number 3
Student Symposium: Comments on the Conflict of Laws
March 1950

The Rights of One Legitimated or Adopted in Another State in a Louisiana Succession

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THE RIGHTS OF ONE LEGITIMATED OR ADOPTED IN ANOTHER STATE IN A LOUISIANA SUCCESSION

Civil law countries have traditionally held a more humanitarian view toward the legal status of children born out of wedlock than have common law countries.[1] This different attitude was reflected in the civil law's recognition of the possibility of legitimation of a child born out of wedlock by the subsequent marriage of his parents, a possibility which did not exist in common law countries until it was introduced by nineteenth or even twentieth century legislation. In line with the traditional civil law approach, Article 199 of the Louisiana Civil Code of 1870 provides: "Children legitimated by a subsequent marriage have the same rights as if they were born during the marriage."[2] This liberal rule makes it important to determine the effect in Louisiana succession matters of a legitimation perfected in another state. The precise problem raised is illustrated by the following hypothetical situation.

D, a domiciliary of Louisiana, dies intestate, leaving movable and immovable assets situated in Louisiana. He is survived by *A* and *B*, who both claim to be entitled to share in the succession as *D*'s children under the Louisiana Civil Code. *A*, whose birth in lawful wedlock is not being questioned, contests *B*'s claim to a share in the succession, maintaining that *B* is not *D*'s legitimate child. *B* was born at a time when *D* was a domiciliary of State *X*. *B*'s mother was not married to *D*. While still domiciled in State *X*, *D* performed acts which elevated *B* to the status of a legitimated child under the law of *X*; however, under Louisiana law these same acts would not amount to a legitimation. *A* therefore claims that *B* cannot share in *D*'s succession in Louisiana.

I

It is hornbook law that the rules governing the descent of immovables are to be determined by the law of the situs of the land and that problems of distribution of movable property are

1. Doe ex dem. Birtwhistle v. Vardill [1839] 5 Barn. & C. 438, 8 Dowl. & R. 185, 7 Clark & F. 895, 7 Eng. Reprint 1308, 6 Bing. N.C. 385, 1 Scott(N.R.) 828. Relying on the English Statute of Merton, under which birth in lawful wedlock was necessary to entitle the child to inherit land, it was held that a legitimation effected in Scotland would not entitle the child to take English lands as heir. The rule requiring birth during wedlock as a prerequisite to inheriting real property has been changed by the so-called Legitimacy Act of 1926, 16 & 17 Geo. V, c. 60, §§ 1, 3.

2. This article was Art. 219, La. Civil Code of 1825, and is substantially the same as La. Civil Code of 1808, 1. 7 ,23, p. 48, and as Art. 333, French Civil Code.

to be determined by the law of the decedent's last domicile.[3] Thus, the law of the situs of the land or the law of the decedent's last domicile determines the class of persons entitled to take in case of intestacy. As to whether or not an individual belongs to a class entitled to inherit, two categories of laws contend to decide: (1) the law controlling descent or distribution of the property, and (2) the law which, apart from any question of property rights, determines the general personal status of a claimant. Most courts have recognized the status acquired under the personal law of the claimant in determining his inheritance rights.[4] Although the tendency is to recognize the effect of a foreign-created status if it benefits the child, there is no obligation imposed by the federal constitution compelling such recognition.[5] A statute of succession may allow illegitimates to inherit as such, but as it neither requires nor creates a status of legitimacy, it does not apply to problems of succession which are subject to some other law.[6]

3. In United States v. Fox, 94 U.S. 315, 24 L.Ed. 192 (1876), the court said: "It is an established principle of law, everywhere recognized, arising from the necessity of the case, that the disposition of immovable property, whether by deed, descent or in any other mode, is exclusively subject to the government within whose jurisdiction the property is situated."

See Stumberg, The Status of Children in the Conflict of Laws (1940) 8 U. of Chi. L. Rev. 42, 44: "When litigation involving the right of succession calls for the application of principles of conflict of laws, the almost universal judicial reaction is to refer to the law at the situs in the case of land and to the law at the domicil of the decedent at the time of death in the case of movables."

4. Restatement, Conflict of Laws (1934) §§ 134, 143; Annotation (1904) 65 L.R.A. 181. Wharton has stated: "The better reasoning and weight of authority establish, as a general principle of private international law, the proposition that the status of a person as legitimate or illegitimate, fixed by the proper law (i.e., the law that would determine his status if the particular property right in question were not involved), is to be accepted in other jurisdictions for the purposes of the descent of real property and the distribution of personal property." 1 Wharton, Conflict of Laws (1905) 552.

5. In Olmsted v. Olmsted, 216 U.S. 386, 30 S.Ct. 292, 54 L.Ed. 530, 25 L.R.A. (N.S.) 1292 (1910), it was said that "the courts of one state are not required by the full faith and credit clause of the Federal Constitution to give effect to the statute of another state legitimizing children born prior to the marriage of their parents, so as to control the devolution under a will of the title to lands in the state, particularly where to give effect to such statute would disturb interests already vested when the statute was enacted."

In Hood v. McGehee, 237 U.S. 611, 35 S.Ct. 718, 59 L.Ed. 1144 (1915), an Alabama statute of descent expressly excluded children adopted by proceedings in another state. It was held that the rights of inheritance of property are governed and controlled by the laws of the state of the residence of the ancestor in the case of personal property, and that a state may by its statutes of descent and distribution exclude children adopted by proceedings in another state without violating any federal right.

6. Pfeifer v. Wright, 41 F.(2d) 464 (C.C.A. 10th, 1930), noted in (1931) 5 Tulane L. Rev. 314, where plaintiff, an illegitimate, was denied a claim to estate of deceased father in Oklahoma. Plaintiff claimed under a Kansas statute which provided that illegitimate children should inherit from their

The problem of just which law is to determine the status of a person claiming in the succession, even conceding, arguendo, that the status is to be determined by the personal law of the claimant and not by the law governing the descent or distribution of the property, has caused much uncertainty.[7] In the case of an alleged legitimation through the subsequent marriage of the parents, it could be argued that the personal law which should decide status is that of the state where the subsequent marriage took place, or the state where the father or mother was domiciled at the time of the subsequent marriage, or the state where the child was born. If an act of acknowledgment by the father is claimed to have conferred the legitimate status, the law which should decide the effect of the act might be that of the state in which the alleged acts of acknowledgment were performed, or the state of the father's domicile at the time he performed the acts, or the state of his domicile at the time of the child's birth. When the illegitimacy has resulted from the invalidity of the marriage of the parents, the law which should determine the child's status might be that of the state where the marriage was celebrated, or of the state where the parents were domiciled at the time of the marriage, or of the state where the child was born. Without attempting to decide which of the above laws are the correct ones, it is assumed for the purpose of this comment that there has been a valid status of legitimacy created in another state. Professor Rabel assumes it to be fairly well settled that the law of the domicile of the parents at the time of the act or subsequent marriage decides the question of status.[8] Stum-

father whenever they had been recognized by him as his children. The statute was construed as not having the effect of legitimation but as controlling inheritance of Kansas land, and as such it could have no effect on the inheritance of property in Oklahoma.

In Vergnani v. Guidetti, 308 Mass. 450, 32 N.E.(2d) 272 (1941), it was held that an Italian statute providing that in default of other heirs, natural children could succeed was not the type of statute that changed the status of an illegitimate Italian child to that of legitimacy, but was merely a statute of inheritance enabling an illegitimate to inherit as an illegitimate, and the statute could be given no effect in the descent of property in Massachusetts.

7. For a good cross section of cases, see (1931) 73 A.L.R. 941, (1946) 162 A.L.R. 626. In determining legitimacy, most courts look to the law of the parents' domicile because it is the parents' acts that determine the status. Usually the law of the father's domicile has been held to control the legitimation. Wolff, Private International Law (1944) 399-404; Stumberg, loc. cit. supra note 3.

Beale states: "The law of the father's domicil determines the legitimacy of the child. If, by the law of that domicil, the child is not legitimate, the child is illegitimate everywhere." 2 Beale, Conflict of Laws (1935) 705, § 138.1.

8. 1 Rabel, The Conflict of Laws (1945) 576: "It is equally certain in the United States that neither the law of the domicil of the child nor that of the mother controls any act of legitimation by the father." Id. at 587: "It does

berg,[9] Beale,[10] Mann,[11] Taintor,[12] and Wolff[13] are in substantial accord. But conceding that another state has accorded the status of legitimate child to a claimant, the question remains whether a Louisiana court in a succession proceeding will recognize that status, or, even if recognizing it, will give the claimant the same rights he would be entitled to in the state creating the status. As previously stated, a state may refuse or allow a person the right to inherit regardless of his status elsewhere.[14]

In the Illinois case of *Hall v. Gabbert*,[15] a share in the descent of Illinois land was claimed by a person who alleged that he had been legitimated under the law of a foreign state. It was held that no law other than that of Illinois could determine the conditions under which a person would be regarded as having been legitimated for purposes of descent of Illinois land. In reaching this conclusion the court stated:

"In a republic consisting of as many independent commonwealths as does ours, with each commonwealth invested with the power of determining the rules of descent and heirship within its borders, and with people constantly changing from one to the other, if we should be called upon to determine the rights of descent of real estate in our own state by the legal status of claimants as affected by the laws of other states, any rules that we might attempt to adopt would be both unsettled and uncertain."[16]

In *Fuhrhop v. Austin*[17] the Illinois court refused to allow children born in Arkansas and legitimated under an Arkansas "saving statute" to inherit Illinois land. The claimants were children of a man who had not divorced his first wife, although his second wife (the claimant's mother) had married in good

not matter whether the foreign legitimation has been executed in a form not known at the forum, as for instance by a special statute, nor whether the child would have been barred from legitimation by the policy of the forum."

9. Stumberg, Conflict of Laws (1937) 302: "Legitimation of a natural child is governed by the law of the domicil of the parent at the time of occurrence of the event upon which a claim of legitimacy is based."

10. 2 Beale, op. cit. supra note 7, at 705, § 138.1: "The law of the father's domicil determines the legitimacy of the child. If, by the law of that domicil, the child is not legitimate, the child is illegitimate everywhere." See also id. at §§ 139.2, 139.3, 140.1.

11. Mann, Legitimation and Adoption in Private International Law (1941) 57 L. Q. Rev. 112.

12. Taintor, Legitimation, Legitimacy and Recognition in the Conflict of Laws (1940) 18 Can. B. Rev. 589, 691.

13. Wolff, Private International Law (1944) 399-404.

14. Stumberg, Conflict of Laws (1937) 302.

15. 213 Ill. 208, 72 N.E. 806 (1904).

16. Hall v. Gabbert, 213 Ill. 208, 216, 72 N.E. 806, 809 (1904).

17. 385 Ill. 149, 52 N.E.(2d) 267 (1944).

faith. The Arkansas statute provided that the issue of a legally void marriage are legitimate, but Illinois still had the common law rule that issue of a void marriage are illegitimate. The court again relied on the principle that the descent of real estate is governed by the law of the situs, and that no one can take except those who are recognized as legitimate heirs by that law.

In *Stoltz v. Doering*,[18] the same court refused to allow an illegitimate child, born and acknowledged in Germany and entitled to inherit land there, to inherit land located in Illinois from her father. Although it is not clear whether the child had legitimate status in Germany, the court inferred that it would make no difference unless legitimate status were also conceded by the law of Illinois.

In *Withrow v. Edwards*,[19] the Virginia court awarded a money judgment for the wrongful death of claimant's father. Under the law of South Carolina, plaintiff's birthplace, she was illegitimate because the decedent was not divorced from his first wife at the time he married the claimant's mother. A Virginia statute provided, however, that the issue of marriages deemed null in law should nevertheless be legitimate. The court concluded that at the time of decedent's death he was domiciled in Virginia, and that the child was a distributee in Virginia regardless of her status elsewhere.[20]

In *Sneed v. Ewing*[21] the Kentucky court indicated that a claimant legitimate by the law of the situs of the land could inherit the land even though illegitimate elsewhere.

In *Wolf v. Gall*[22] the California appellate court held that in succession matters the courts of that state would apply California statutes to determine the status of the claimant. If the claimant could show that he is entitled to take as a legitimate child under the California statutes, it is immaterial that by the law of his own country he is illegitimate. Here the statute in question was held to confer legitimate status on the claimants even though their father was an alien and domiciled outside California at the time

18. 112 Ill. 234 (1885).

19. 181 Va. 344, 25 S.E. (2d) 343 (1943)(modified on other grounds on rehearing in 181 Va. 592, 25 S.E.(2d) 899 [1943]).

20. In the *Withrow* case the court quoted Mr. Justice Lurton in Jones v. Jones, 234 U.S. 615, 618, 34 S.Ct. 937, 938, 58 L.Ed. 1500, 1503 (1914), where he said: "If one claim the right to succeed to the real property of another as heir, and his right is denied because he must trace his pedigree or title to or through an alien, a bastard, or a slave, the question is one to be determined by the local law."

21. 5 J. J. Marsh. 460, 22 Am. Dec. 41 (1831).

22. 32 Cal. App. 286, 163 Pac. 346 (1916).

he performed the acts which resulted in legitimation. It is not clear whether movable or immovable property or both were involved in the estate claimed.

The *Wolf* case was relied on by the majority opinion in the California Supreme Court case of *In re Lund's Estate.*[23] In this case the father performed acts in New Mexico and Minnesota which, by the law of those states, were not sufficient to legitimate the claimant, but which were sufficient under California law. Then the father moved to California and there died. The court concluded that the California statute giving legitimate status to the claimant would apply and that he was entitled to a full share in his father's estate (presumably consisting of both movable and immovable property). The theory was that, if a state is not compelled to accept a person's status as legitimate when conferred by another state, then also it is not compelled to refrain from treating as legitimate a person still regarded as illegitimate elsewhere. The dissent in the *Lund* case preferred the old rule, especially as set forth in *Blythe v. Ayres,*[24] to the effect that the law of the father's domicile at the time of the alleged legitimating act is the proper law to determine the status of both parent and child, and that the father must, at the time of the acts alleged to have legitimated, be domiciled in a jurisdiction wherein those acts are recognized as legally sufficient.

In *Smith v. Derr's Administrators*[25] the Pennsylvania court held that a legitimation, even by a decree of a court of competent jurisdiction in another state, would not be recognized in Pennsylvania for the purpose of descent of real property in that state.

In *Re Bruington,*[26] where children of a void marriage, celebrated in New Jersey, claimed to be legitimate by virtue of a New Jersey statute providing that children of such a marriage are legitimate, the New York court refused to recognize this status of legitimacy, which would have enabled the children to inherit immovable property of their father in New York, on the ground that the legislature of New York had not recognized such children as legitimate and the court would not go against this public policy.

In *Lingen v. Lingen,*[27] where the claimant to his father's

23. 26 Cal.(2d) 472, 159 Pac.(2d) 643 (1945). This case is commented on in (1945) 59 Harv. L. Rev. 128 and (1945) 33 Calif. L. Rev. 633.
24. 96 Cal. 532, 31 Pac. 915, 19 L.R.A. 40 (1892).
25. 34 Pa. St. 126, 75 Am. Dec. 641 (1859).
26. 160 Misc. 34, 289 N.Y. Supp. 725 (1936).
27. 45 Ala. 410 (1871).

estate was conceived in Alabama, born in France out of wedlock and subsequently legitimated under the law of France by his father's acknowledgment there, the Alabama court refused to allow the child to inherit immovable property in Alabama, since nothing had happened that would have legitimated him under the law of Alabama.

In *Williams v. Kimball*[28] the Florida court held that the status as legitimate of a person born out of wedlock, for the purpose of inheriting land in Florida, is to be determined by the law of Florida and not by the law of the state in which the status as such was acquired.

In all these cases the courts apparently departed from the so-called "majority rule" and refused to give effect to the status acquired by a claimant in another state in deciding questions of inheritance. In some of the decisions a higher status was accorded and in some a lesser. In the latter group, where a foreign legitimation was not recognized, it might be argued that the courts refused to allow inheritance because of a hold-over of the English common law theory based on the Statute of Merton[29] to the effect that birth in lawful wedlock is a prerequisite to the inheritance of real property. This argument has little force, however, because many of the states not recognizing the foreign legitimation had legitimation laws of their own, which enabled legitimated persons to inherit land. Some of the states were undoubtedly influenced by the idea that a state should not grant a legitimated resident of another state the right to inherit land in the state where the land is, when he could not have been legitimated by the law of that state. This would be giving non-residents greater rights than those given residents in the same situation. A more practical basis for deciding status to inherit immovable property by the law of the situs of the immovable is the public interest in security of land titles and transactions. When a transaction involving land is contemplated, the title searcher must check the public records of the place where the land is. If the rights of an illegitimate child, who possibly has been legitimated, are involved, it would be an almost impossible task for the title searcher to decide the effect of the action alleged to have created legitimate status by a law other than the law of the situs of the land. We have seen that several different laws contend to be the personal law of the child. It is easy to imagine a case where one

28. 35 Fla. 49, 16 So. 783, 26 L.R.A. 746, 48 Am. St. Rep. 238 (1895).
29. See note 1, supra.

or several of these contending laws would be impossible to determine, because of difficulties of distance, language or uncertainty in the law. So the great public interest in the certainty of land titles would seem to be a valid reason for deciding all questions of who may and who may not claim succession rights to land by the *lex rei sitae*.

The situation is somewhat different in connection with the inheritance of movables. The argument for certainty of title is not conclusive, for usually there are no records kept. There is then no compelling policy reason, save perhaps convenience, for applying the law of the decedent's last domicile to decide the status of a claimant to movables in the succession, and so it would seem that the personal law of the child should determine his status, whatever that "personal law" might be. In an attempt to draw further away from the stigma which has attached to illegitimacy, a modern court might recognize the status given by the personal law of the child claiming movables; but if the law of the decedent's last domicile (the law governing inheritance of the movables) would confer a higher status upon the child, the court could then recognize this higher status to benefit the child.

The Louisiana cases dealing with succession to immovables seem to follow the "majority rule." In *Scott v. Key*[30] it was held that an illegitimate child who was born in Arkansas of parents domiciled in Arkansas and subsequently legitimated by a special act[31] of the Arkansas legislature thereby acquired a status of legitimacy which would be recognized in Louisiana in determining his rights as heir of his father's immovable property situated in Louisiana. The theory of the majority was that the Arkansas statute was a personal statute and followed the child wherever he might be. Chief Justice Merrick dissented on the ground that the right of deciding who should inherit immovables had always been considered as belonging to the state where the immovables are situated, and that only those who were so entitled under Louisiana law should inherit.

In *Succession of Caballero v. The Executor*[32] the claimant was born as the illegitimate child of Caballero and a negro woman while they were domiciled in Louisiana. Subsequently all three removed to Spain, where the subsequent marriage of the

30. 11 La. Ann. 232 (1856).
31. The act was passed Oct. 27, 1835, and was entitled "an Act to legitimate the son of Samuel Estell."
32. 24 La. Ann. 573 (1872).

parents was valid and had the effect of legitimating the child under Spanish law. The parents could never have married and the child could never have been legitimated under Louisiana law. The court held that the status of legitimation created in Spain made the claimant legitimate for all purposes. The legitimation was also effective in causing Caballero's testament disposing of Louisiana property to fall under Article 1705 of the Revised Civil Code.[33] Thus a status was accorded to a non-resident which could not have been accorded to a resident because of a prohibitory statute.[34]

Succession of Petit[35] involved movable property in Louisiana. Deceased and a natural child lived in France. The Louisiana court refused the natural child an equal share in the movables with the collateral relations, although it would have received such a share under French law. Thus the court refused to apply the majority rule on succession to movables and would give no effect to the law of the decedent's last domicile to the prejudice of the Louisiana heirs. However, legitimate status was not conferred on the child even by the law of France.

So the Louisiana court has followed the trend of the majority in recognizing a foreign created status for the purpose of inheriting immovable property in Louisiana, and allowing the law of the situs to control its descent. But the court has refused to allow a child to inherit Louisiana movables even though he was so entitled under the law of the decedent's last domicile (the well-settled rule elsewhere). The rule followed in the situation involving immovables, where the foreign status was recognized even though it could not have been created under the law of the situs, might well have been departed from in the interest of certainty of land titles. In the situation involving movables, where the Louisiana court rejected the well-settled choice of law rule as to distribution of movables of a decedent's estate, an adherence to the rule would have been justified in the interest of benefitting the illegitimate child and of uniformity in choice of law rules.

33. Art. 1705, La. Civil Code of 1870: "The testament falls by the birth of legitimate children of the testator, posterior to its date."

34. In Greenhow v. Jones, 80 Va. 636, 56 Am. Rep. 603 (1885), the Virginia court held that the offspring of illicit intercourse between a white person and a negro domiciled in Virginia could not, under the Virginia statute providing that the subsequent marriage of the parents and recognition of the child by the father should have the effect of legitimating the child, be legitimated by a marriage subsequently performed in a state where the law permitted such marriages, where by the law of Virginia such a marriage would not be valid.

35. 49 La. Ann. 625, 21 So. 717 (1897).

Our swiftly changing concepts as to which interests are deserving of greatest protection would justify adoption by the Louisiana courts of the situs rule to decide the status issue in the case of immovable property, and the law of greatest benefit to the child rule in the case of movable property.

Thus, attempting to answer the original hypothetical case posed as a Louisiana court should answer it in the future, where *A* is contesting *B*'s rights to *D*'s Louisiana succession, we arrive at different conclusions for the movable and immovable property. Since *D*'s acts of acknowledgment were not sufficient to legitimate *B* in Louisiana, the Louisiana immovable property should not be subject to a claim by *B*, so that all subsequent title searchers may look to Louisiana law and be certain that *A* has a good title. But as to the movable property, where there is no title searching problem, since *B* had acquired legitimate status by his personal law, he should be allowed the benefit of this status to inherit the Louisiana movables equally with *A*. Had *B* not been considered legitimate by his personal law, but had been considered legitimate by the law of the decedent's last domicile, which is also the law of the situs of both movable and immovable property in our hypothetical situation, then *B* should inherit the immovable property because legitimate by the law of its situs and also the movable property because legitimate by the law of the decedent's last domicile.

II

A similar problem arises when we consider the effect of a foreign adoption upon the rights of the adoptee in a Louisiana succession. Louisiana Act 454 of 1948 re-enacts Article 214 of the Revised Civil Code so that an adopted child, his lawful issue, and the adopter are all subject to the same rights and duties toward each other as if the adopted were a legitimate child. Thus the adopted and his issue are forced heirs.[36] As the Louisiana court had held that a prior will falls by the subsequent legitimation of a child, just as by the subsequent birth of a child,[37] a contrary rule as to the effect of a subsequent adoption was not in harmony with the tenor of our law and was overturned by another 1948 statute.[38] The adoption provisions of other states

36. See Louisiana Legislation of 1948 (1948) 9 LOUISIANA LAW REVIEW 24, 28, for a more complete analysis. Also note the possible unconstitutionality of parts of the act in view of La. Act 318 of 1944, amending La. Const. of 1921, Art. IV, § 16.

37. Succession of Caballero v. The Executor, 24 La. Ann. 573 (1872).

38. La. Act 334 of 1948 amends Art. 1705, La. Civil Code of 1870, so that an adoption revokes a previously made will, thus overturning the cases of

may or may not confer such complete reciprocal inheritance rights; and if the state whose law governed in the adoption proceedings granted only a limited right of inheritance to the parties concerned, the Louisiana court in a Louisiana succession must decide whether this limited right is to be enlarged by the fact that the property is situated in Louisiana. Of course Louisiana courts may refuse to give any effect to the status created by the foreign adoption in questions of inheritance of Louisiana property.[39] Pretermitting the question of jurisdiction of a state to create a valid status of adoption, let us assume that a valid adoption has taken place in a state other than Louisiana.[40] Stumberg is of the opinion that a restriction on the adopted child's rights to inherit, imposed on the child by the law of the place of adoption, should be regarded as a rule of succession, and that if the adopted child is entitled to inherit under the laws of the state where the property is situated, then he should not be hampered by a contrary law of the place of adoption.[41] In the same vein Beale urges:

"Whether an adopted child may inherit land from its adoptive parent depends upon the law of the state of the situs of the land. The usual American view is that a child legally adopted in one state may inherit land in another state which has a statute allowing its own adopted children to inherit."[42]

Rabel takes the opposite view that the adoptee should have only the inheritance rights he obtained at the place of adoption, on the theory that it would be unjust to both adoptive parent and child to hold that the mere fact of moving to another state will upset the incidents of the adoptive relationship entered into in the home state, as possibly the adopter never intended the adoptee to inherit at all.[43] Mann says that the law governing

Succession of McRacken, 162 La. 443, 110 So. 645 (1926) and Succession of Carré, 212 La. 839, 33 So. (2d) 655 (1948), noted in (1948) 22 Tulane L. Rev. 661.

39. Stumberg, Conflict of Laws (1937) 302.

40. Restatement, Conflict of Laws (1934) § 142, provides: "The status of adoption is created by either: (a) the law of the state of domicil of the adopted child; or (b) the law of the state of domicil of the adoptive parent if it has jurisdiction over the person having legal custody of the child or if the child is a waif and subject to the jurisdiction of the state."

See also Brown v. Hall, 385 Ill. 260, 52 N.E.(2d) 781 (1944), to the effect that courts at the situs of the property are not bound to give full faith and credit to an adoption decree of a court of another state, when such other state had no valid jurisdiction to render the order of adoption.

41. Stumberg, Conflict of Laws (1937) 310.

42. 2 Beale, Conflict of Laws (1935) 967, § 247.1. Restatement, Conflict of Laws (1934) § 247: "Whether an adopted child is an heir and the extent to which he may inherit an interest in land is determined by the law of the state where the land is."

43. 1 Rabel, The Conflict of Laws (1945) 657. In accord with the idea that

adoption should not exclude rights of succession granted by the law controlling inheritance unless the adoption itself dealt contractually with the exclusion or modification of the child's right of inheritance.[44] Goodrich indicates that the *lex rei sitae* should apply its own limitations or extensions to the rights of the adoptee, regardless of those imposed by the law of the state of adoption.[45]

Practically all courts have recognized the effect of a valid foreign adoption for inheritance purposes, where the state whose laws controlled the succession also had adoption laws. The tendency has been to accord to the adoptee the same rights he would have received had he been adopted in the state whose laws control the succession. In the descent of immovables, the obvious interest in the security of land titles may have influenced this trend, so that the title searcher would have no doubts about the possible rights of an adopted child. The same difficulties are here evident as were noted in the attempt to determine the status of legitimacy of a claimant to a succession and his consequent rights by his personal law. It is far simpler to look to the law immediately at hand, that is, the law of the situs of the immovable. Furthermore, courts are notably reluctant to give greater rights to a person whose status arose in another state than to a person of similar status in their own state. Only this latter argument is valid in a situation involving inheritance of movables.

In *Phillips v. Phillips*[46] the North Carolina court recognized the status acquired by a Texas adoption, where full rights of inheritance were allowed, but allowed the child only the inheritance rights she would have acquired had she been adopted in North Carolina at the time she was adopted in Texas. A recent North Carolina statute had conferred full rights of inheritance on adoptees, but it had expressly provided that it should not apply to prior adoptions.[47]

In *Crossley's Estate*[48] the Pennsylvania court's recognition of the foreign adoption extended only to the rights incident to that status which would have accrued had the status been created

the adoption effects a limitation on a child's capacity to inherit which should not be enlarged by another law where the inheritance rights are greater, is Wolff, Private International Law (1944).

44. Mann, supra note 11, at 129. See also 1 Wharton, Conflict of Laws (1905) 568, to the effect that the *lex rei sitae* may qualify the adoptive status fixed by the law originating the status, but it cannot enlarge that status.

45. Goodrich, Conflict of Laws (3 ed. 1949) 449.

46. 227 N.C. 438, 42 S.E.(2d) 604 (1947).

47. N.C. Gen. Stat. (1943) 48-6, 48-15.

48. 135 Pa. Super. 524, 7 A.(2d) 539 (1939).

under Pennsylvania law. The property involved was personalty, and the Pennsylvania law governed its distribution. The theory applied was that where there is a difference in inheritance rights between the state of adoption and the state where the right to inherit is asserted, the latter should control.

In *Re Youman's Estate*[49] the Minnesota court found that the child who was adopted in Illinois could inherit Minnesota land, and thus enlarged the rights of inheritance originally conferred by the Illinois decree of adoption. Illinois law would not allow an adopted child to inherit from the lineal or collateral relatives of its adoptive parents, but Minnesota law would allow such inheritance. Conceding the Illinois adoption to be valid, the court held that the child's capacity to inherit must be determined by the law of the place where the realty is, or the law of the place where the decedent was last domiciled in the case of personal property, and refused to consider the qualification on the child's right to inherit imposed by the state of adoption, as affecting the child's capacity to inherit in Minnesota.

In *Barrett v. Delmore*,[50] the Ohio court, after recognizing a New York adoption even though the person, being above the age of minority, could not have been adopted in Ohio, concluded with the idea that once the status created in another state is recognized, the recognizing state will treat the adoptee just as though he had been adopted under the law of the recognizing state.

The Illinois case of *Keegan v. Geraghty*[51] stands for the proposition that the status established by adoption in another state will be recognized only to the entent that it is consistent with the laws and public policy of the state whose laws control the descent of the real property and the distribution of the personal property.

In *Re Dennis*[52] the Vermont court recognized the rule that the legal status acquired by an adoption in New Hampshire and the consequent capacity to inherit the decedent's property would be recognized in Vermont, but only insofar as they were not inconsistent with the laws and policy of Vermont regarding the inheritance of Vermont personalty.

But in *Slattery v. Hartford-Connecticut Trust Company*[53]

49. 218 Minn. 172, 15 N.W.(2d) 537, 154 A.L.R. 1171 (1944).
50. 143 Ohio St. 203, 54 N.E.(2d) 789, 153 A.L.R. 192 (1944).
51. 101 Ill. 26 (1881).
52. 98 Vt. 424, 129 Atl. 166 (1925).
53. 115 Conn. 163, 161 Atl. 79 (1932).

the Connecticut court, on the theory that capacity to inherit is determined by the law of the place of adoption, accorded to the child rights of inheritance which were more extensive than those given to children adopted by the law controlling the inheritance of the property. Connecticut law would not allow an adopted child to inherit from his real father, but only from his adopted father, while the law of Michigan, where the child was adopted, allowed him to inherit from both. The Connecticut court allowed him to inherit from his real father who died in Connecticut, perhaps on the ground that his reasonable expectations at the time of being adopted in Michigan should not be ignored.

In *Boaz v. Swinney*[54] the Kansas court interpreted an Illinois adoption as restricting the right of inheritance given the child there adopted and then denied the child the right to inherit Kansas land from the brother of the child's predeceased adoptive father, although admitting that if such a right had been given by Illinois, it would have been recognized in Kansas; the theory was that an adopted child has no right of inheritance from its adopted relations other than that given by the law under which he is adopted.

Thus when the courts of the state whose law controls inheritance have considered the inheritance rights of one adopted in another state, they have (a) treated the adoptee just as if he had been adopted in their own state, or (b) regarded the law of the state of adoption as limiting the capacity of the child to inherit so that he has lesser rights than would one adopted in their own state, or (c) regarded the law of the state of adoption as so determinative of the adoptee's rights of inheritance that he has been accorded those rights in inheriting property in their own state even though the latter state conferred lesser rights in its own adoption decrees.

Few Louisiana cases dealing with foreign adoptions in succession matters have been found, but in *Alexander v. Gray*,[55] where the claimant to Louisiana land based his claim on a purported Kansas adoption, the Louisiana appellate court, although not regarding the Kansas adoption as valid, proceeded to discuss the rights claimed by the child just as if he had been adopted in Louisiana. The court indicated that it would follow the rule that the right of inheritance of an adopted child is governed by the law of the place in which the succession takes place just as if the

54. 79 Kan. 332, 99 Pac. 621 (1909).
55. 181 So. 639 (La. App. 1938).

child had been adopted in that place and not by the law under which the adoption actually took place.

In *Succession of Caldwell*,[56] where Caldwell had adopted his niece in Massachusetts just prior to his death, the court recognized the status of adoption thus created. The property to be distributed consisted exclusively of movables, and the court appeared to assume that the rights to be accorded the adoptee would be those she would have obtained under a Louisiana adoption.

In view of the limited Louisiana jurisprudence on the succession rights of one adopted in another state, the way is open for our courts to adopt rules most favorable to Louisiana interests. The aim of certainty in our land titles would be furthered if the right of the adoptee to inherit Louisiana immovables were to be determined solely by Louisiana law just as if the child had been adopted in Louisiana. This interest, it is believed, outweighs the problematical consideration of whether the parties to the foreign adoption contemplated such inheritance or not. The Louisiana courts will probably treat the inheritance of movables by the adoptee in the same manner, although the compelling consideration of certainty of title is not present. Certainly this is the simplest way to handle the problem. If our primary consideration is benefit to the adoptee, his interests could hardly be impaired by treating him as if he had been adopted in Louisiana, inasmuch as our present adoption law gives such full rights of succession.

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56. 114 La. 195, 108 Am. St. Rep. 341 (1905).