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Parent and Child--Adoption--Liability of Natural Parent for Support (Betz, petitioner, v. Horr, respondent, 160 Misc. 674 (1936))

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Limitations,[16] the action would be barred. Since no notice had been given, the defendant would not be liable to the decedent in case of her survival, therefore, the plaintiff has no cause of action under the Decedent Estate Law.

H. K.

PARENT AND CHILD—ADOPTION—LIABILITY OF NATURAL PARENT FOR SUPPORT.—The petitioner, twenty-three years of age, legitimate daughter of the respondent, was adopted by her maternal grandparent soon after her mother's death, when said petitioner was twelve years of age. She was well provided for by her grandparent, until, due to an illness, she was removed to a hospital. Now, upon her discharge from the hospital, being physically incapable of working for some time, having no property or means of support, and likely to become a public charge, she petitions for support from her natural parent—her foster parent being unable to provide for her. Defendant contends that by the express provisions of the statute establishing the effect of adoption, he was relieved of all parental duties, responsibilities and rights.[1] *Held,* an order of adoption under the statute [2] does not result in such a complete severance from parental ties as to relieve the natural parent from all liability. It was not the intention of the legislature to allow a parent by his own act to be relieved of this liability when as in the case at bar, the child is about to become a public charge. *Betz, petitioner* v. *Horr, respondent,* 160 Misc. 674, 290 N. Y. Supp. 500 (1936).

Adoption, although completely unknown at common law,[3] was practiced in antiquity.[4] And in those states which derive their jurisprudence from the common law, adoption is based entirely on statute which must be strictly complied with and strictly construed.[5]

Domestic Relations Law, Section 114, relied upon by the defendant, at the outset expressly states that the effect of adoption is to

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[16] Kelliher v .New York Central R. R., 212 N. Y. 207, 105 N. E. 824 (1914); Casey v. Auburn Tel. Co., 155 App. Div. 66, 139 N. Y. Supp. 579 (4th Dept. 1913).

[1] N. Y. DOM. REL. LAW § 114—Effect of adoption. "Thereafter the parents of the person adopted are relieved from all parental duties toward, and all responsibility for, and have no rights over such child, or to his property by descent or succession."

[2] In New York DOM. REL. LAW §§ 110–118 govern adoption.

[3] Matter of Thorne, 155 N. Y. 141, 49 N. E. 661 (1898).

[4] For history of adoption see Matter of Ziegler, 82 Misc. 346, 143 N. Y. Supp. 512 (1913), also Hockaday v. Lynn, 200 Mo. 456, 98 S. W. 585 (1906). Adoption was practiced by Egyptians, Hebrews, Greeks, Assyrians, and Romans. First N. Y. adoption statute was passed in 1873.

[5] Murphy v. Brooks, 120 Misc. 704, 199 N. Y. Supp. 660 (1923); *In re* Monroe's Ex'rs, 132 Misc. 279, 229 N. Y. Supp. 476 (1928).

relieve the natural parent of all his duties toward and all responsibility for, and all rights over the child. That standing by itself would lead to the conclusion that the statute contemplated a complete severance of the parental relationship. As a matter of fact, the general trend of the majority of prior decisions [6] in this state has been to adhere to a literal construction and application of this portion of the statute. It must be remembered, however, that in all these cases which closely adhere to the severance principle, the state was never financially interested in the adoption although socially it is conceded the state should be interested in every adoption.[7] These prior decisions, not involving the issue in the instant case, solely adjudicated the rights between the natural parents, foster parents and the adopted child.

The case under discussion, the first of its kind in New York,[8] moves in the opposite direction, repudiating the doctrine of severance. The decision is best understood when we bear in mind the salient feature of the case, namely that the petitioner is "about to become a public charge." This phrase has aided the development of public welfare legislation in this state culminating in the recent passage of additional public welfare statutes,[9] and as a result, wherever possible, the courts will place the burden of support of indigents upon the family and relatives rather than upon the state.[10] The court construes the statutory [11] provisions, which are expressly contrary to the holding in this case, to mean that it was never the legislative intent [12] that a natural parent could completely shed liabilities, which at common

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[6] Cases in accord with severance principle. *In re* Cook, 187 N. Y. 253, 79 N. E. 991 (1907); *In re* MacRae, 189 N. Y. 142, 81 N. E. 956 (1907); Carpenter v. Buffalo General Electric Co., 213 N. Y. 101, 106 N. E. 1026 (1914); Ryan v. Sexton, 199 App. Div. 159, 181 N. Y. Supp. 10 (2d Dept. 1920) (foster mother inherits); *In re* Hurter, 11 Misc. 85, 181 N. Y. Supp. 75 (1920) (foster father inherits).

[7] *In re* Hurter, 11 Misc. 85, 181 N. Y. Supp. 75 (1920).

[8] In Texas adoption modifies the Spanish law. It merely gives the adopted child the right to inherit but does not make him a child of adoption. Taylor v. Deseve, 81 Tex. 246, 16 S. W. 1008 (1891). The natural father is liable for the support of the adopted child. Texas, like Louisiana, is a civil code state. Its policy of adoption is therefore different from the common-law states.

[9] N. Y. PUBLIC WELFARE LAW § 125 (Effective Jan. 1, 1930); N. Y. DOM. REL. CT. ACT § 101 (Effective Oct. 1, 1933).

[10] Hodson v. Grumlich, 156 Misc. 199, 280 N. Y. Supp. 193 (1935); Tolley v. Moliswaski, 159 Misc. 89, 287 N. Y. Supp. 245 (1936).

[11] N. Y. DOM. REL. LAW § 114, referring to the adopted child: "His rights of inheritance and succession from his natural parents remain unaffected by such adoption." N. Y. DOM. REL. CT. ACT § 101 (4): "The parents, the grandparents, the children and the grandchildren of a dependent adult who has been a resident of the city at any time during the twelve months preceding the filing of the petition for his support, and who is unable to maintain himself and is likely to become a public charge, are hereby declared to be severally chargeable with the support of such poor relative." The court does not mention §§ 914, 915 of the N. Y. CODE OF CRIM. PROC., nor N. Y. PUB. WELFARE LAW §§ 125, 128. Note: These sections do not exclude from liability, a natural parent.

[12] "The legislature has supreme control of the subject and may give heritable blood where nature did not." *In re* Cook, 187 N. Y. 253, 79 N. E. 991 (1907).

law he could never avoid, to such an extent that between the natural parent who can support but is unwilling, and the state, the burden should fall upon the state.

M. M. B.

PRINCIPAL AND AGENT—SCOPE OF AGENT'S AUTHORITY—FRAUD.—Plaintiff was induced to purchase a motor truck through the fraudulent representation of the defendant's salesman as to its capacity. The plaintiff negligently failed to read the written agreement after the misrepresentations relied upon had been made. The agreement contained a provision in large type immediately above the plaintiff's signature that no representations had been made to the purchaser except those embraced in the contract. This was followed by a true recital of the truck's capacity. Upon discovery of the fraud the plaintiff elected to rescind [1] and brought this action to recover the purchase price. Defendant contends that the agent exceeded his authority and that plaintiff, being guilty of gross negligence in not reading the contract should be estopped from pleading the antecedent fraud. *Held:* Judgment for plaintiff. An agent empowered to sell property is clothed with apparent authority to make the usual representations concerning such a sale and his principal will be bound by the representations, although they constitute a direct violation of specific instructions. Fraud will annul the entire transaction even where gross negligence is present, and a principal in defending an action for rescission based on the fraud of his agent is liable for having ratified by implication. *Angerosa,* et al. v. *White,* 248 App. Div. 425, 290 N. Y. Supp. 204 (4th Dept. 1936).

Apparent authority of an agent is that authority which he appears to have by reason of the nature of his duties, or by reason of some act or conduct on the part of his principal.[2] Representations concerning the quality or condition of an article are within the apparent scope of authority of an agent entrusted with soliciting sales.[3] A principal who holds an agent out as having apparent authority to make representations according to common business usage, if the agent's representations are relied upon by a third party, will be held liable although the agent exceeded his real authority.[4] However, the principal will not be

[1] "A transaction into which one is induced to enter by reliance upon untrue and material representations as to the subject matter, made by an agent entrusted with its preliminary or final negotiations, is subject to rescission at the election of the person deceived." RESTATEMENT, AGENCY (1924) vol. I, § 259.

[2] 1 WORDS AND PHRASES, 1st Ser., p. 441.

[3] Mayer v. Dean, 115 N. Y. 556, 560–561, 22 N. E. 261 (1889).

[4] Wen Kroy Realty Co. v. Public National Bank & Trust Co. of New York, 260 N. Y. 84, 91, 183 N. E. 73 (1932); Bickford v. Menier, 107 N. Y. 490, 494, 14 N. E. 438 (1887).