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RECENT DECISIONS

ADOPTION—RIGHT OF NATURAL RELATIVES TO INHERIT FROM ADOPTED CHILDREN.—Magda Fodor was adopted pursuant to New York law in 1909. She died intestate in 1945, leaving no issue, her foster parents and husband having predeceased her. This proceeding was instituted by the administrator of her estate to determine who would inherit certain real property,¹ which decedent received from her foster parents, located in New York State. Claims to the property were asserted by the natural brothers of the intestate and by her foster first cousins. The court found for the foster first cousins, *holding* that the effect of an adoption is to preclude the right of inheritance by natural relatives from the adopted child while permitting such inheritance by the relatives of the foster parents. *Matter of Fodor*, 117 N. Y. S. 2d 331 (Surr. Ct. 1952).

There was no common-law right of adoption in the United States and consequently all rights existing between an adopted child and his foster relations are regulated by statute.² In New York, the statute³ confers a reciprocal right of inheritance⁴ between the adopted child and his foster parents,⁵ other adopted children of his foster parents,⁶ and the natural children of his foster parents.⁷ With regard to foster relatives not within the immediate family, the adopted child may not inherit from them,⁸ although they may take as legal next of kin from the adopted child.⁹ It appears that the adopted

¹ The real property was sold by the administrator, but the proceeds of the sale are treated as real property for the purpose of distribution.

² See *Carpenter v. Buffalo Gen. Elec. Co.*, 213 N. Y. 101, 104, 106 N. E. 1026, 1027 (1914); *Matter of Marsh*, 143 Misc. 609, 610, 257 N. Y. Supp. 514, 516 (Surr. Ct. 1932).

³ N. Y. DOM. REL. LAW § 115.

⁴ This article will only deal with situations in which the adopted child dies intestate.

⁵ "The foster parents . . . and the foster child . . . shall have . . . the rights of inheritance from each other." N. Y. DOM. REL. LAW § 115.

⁶ "Foster children . . . shall have . . . the right of inheritance from each other." *Ibid.*

⁷ "Foster children and natural children shall have . . . the right of inheritance from each other." *Ibid.*

⁸ *Matter of Hall*, 234 App. Div. 151, 254 N. Y. Supp. 564 (3d Dep't 1931), *aff'd mem.*, 259 N. Y. 637, 182 N. E. 214 (1932); *Hopkins v. Hopkins*, 202 App. Div. 606, 195 N. Y. Supp. 605 (4th Dep't 1922), *aff'd mem.*, 236 N. Y. 545, 142 N. E. 277 (1923); *Matter of Powell*, 112 Misc. 74, 183 N. Y. Supp. 939 (Surr. Ct.), *aff'd mem.*, 193 App. Div. 965, 184 N. Y. Supp. 945 (4th Dep't 1920).

⁹ *Carpenter v. Buffalo Gen. Elec. Co.*, 213 N. Y. 101, 106 N. E. 1026 (1914).

child is accorded the full status of a natural child only within the family group.¹⁰

The right of reciprocal inheritance among the members of a natural family is a right given by the state.¹¹ The Decedent Estate Law provides that the adoption of a person by another family shall not affect the existing inheritance rights within a natural family except as provided by the Domestic Relations Law.¹² The salient provisions of the Domestic Relations Law prescribe that the natural parents are relieved from all parental duties toward the adopted child and forfeit *their* right to inherit from him, while preserving the child's right to inherit from his natural parents.¹³ No express alteration of the inheritance rights of other members of the natural family was made by this statute.

Prior to the instant case, in *Matter of Landers*¹⁴ the court held that an adopted child could inherit from her natural brother. However, the apparently heretofore unaltered complementary right of the natural brother and sister to inherit from the adopted child was put in doubt by conflicting dicta.¹⁵ The present case answered the question, holding that blood relatives may not inherit from their natural sister after she has been adopted. The rationale of the court is that when the natural parents relinquished their rights, the substructure which joins the blood relatives with the adopted child was removed and therefore anyone who must trace his relationship through a natural parent may not inherit from the adopted child.¹⁶

¹⁰ Once one goes beyond the immediate family, the statute imposes upon the child a hybrid nature: that of a "natural" child to permit the collateral foster relatives to inherit from him; that of a "stranger" to prevent a right of inheritance by the adopted child from his foster relatives.

¹¹ See *Irving Trust Co. v. Day*, 314 U. S. 556, 562 (1942); *Matter of Jackson*, 176 Misc. 1020, 1021, 29 N. Y. S. 2d 569, 571 (Surr. Ct. 1941).

¹² N. Y. DEC. EST. LAW § 83 (14).

¹³ "After the making of an order of adoption the parents of the foster child shall be relieved of all parental duties toward . . . and shall have no rights over such foster child or to his property by descent or succession The rights of a foster child to inheritance and succession from his natural parents remain unaffected by adoption." N. Y. DOM. REL. LAW § 115.

¹⁴ 100 Misc. 635, 166 N. Y. Supp. 1036 (Surr. Ct. 1917).

¹⁵ ". . . [T]he adoption does not take from the child the right to inherit from its natural kindred . . . or from its natural parents, although the latter by giving him in adoption have surrendered all the right in them, or in their blood to inherit from him." *Matter of Heye*, 149 Misc. 890, 894, 269 N. Y. Supp. 530, 536 (Surr. Ct. 1933), *aff'd mem.*, 241 App. Div. 907, 271 N. Y. Supp. 1042 (4th Dep't 1934); see *Ryan v. Sexton*, 191 App. Div. 159, 162, 181 N. Y. Supp. 10, 12 (2d Dep't 1920) (dicta in these cases support the instant case holding). *But cf.* *Matter of Monroe*, 132 Misc. 279, 281, 229 N. Y. Supp. 476, 478 (Surr. Ct. 1928); *Matter of Landers*, *supra* note 14, at 641, 166 N. Y. Supp. at 1039.

¹⁶ *Matter of Fodor*, 117 N. Y. S. 2d 331, 334 (Surr. Ct. 1952).

Adoption legislation is in derogation of the common law and the New York courts have therefore strictly construed these statutes.¹⁷ The strictness of construction is best exemplified by the courts' refusal to imply, despite the recognition of the inequity, the right of an adopted child to inherit from the collateral relatives of his foster parents, although the statute, in the opinion of some courts, expressly authorizes the converse.¹⁸ The holding in the instant case is not only predicated upon an implication, but the implication is derived from a statutory passage regulating an *entirely different* set of rights, *i.e.*, between natural parents and adopted children. The approach, therefore, utilized by the court involved a radical departure from the prevailing law of construction.

The aim of the adoption statute is to constitute an adopted child a "natural" child of the foster family.¹⁹ To accomplish this, it was necessary that all control by the natural parents over the child be removed. This the statute adequately provides for, and nothing more. No reference is made to other members of the natural family.²⁰ It is the *capacity* of natural parents and not the blood tie which the statute affects. Assume that a father adopts the daughter of his son; the natural father is now the foster brother of his natural daughter. Upon her death intestate, the natural father will take even though the blood relationship still exists.²¹ In the case at bar the court reasoned that one whose inheritance rights are traced through the *natural parent* is precluded from taking when the parental substructure is eliminated. Where a natural parent abandons his child, such parent is precluded from taking an intestate share from the child.²² But the brothers and sisters of such child, who trace their relationship

¹⁷ See *Matter of Marsh*, 143 Misc. 609, 614, 257 N. Y. Supp. 514, 519 (Surr. Ct. 1932); *Matter of Monroe*, *supra* note 15, at 281, 229 N. Y. Supp. at 478.

¹⁸ ". . . [S]ome apparent inequity is to be found. Whereas the adopted child is not permitted to inherit from the collateral relatives of the foster parent, the reverse is true respecting their inheritance from him. . . . [T]his . . . result is caused by the terms of the statute itself and not by reason of its judicial interpretation" *Matter of Marsh*, 143 Misc. 609, 614, 257 N. Y. Supp. 514, 520 (Surr. Ct. 1932). The method by which the court, in the *Carpenter* case, pieced together the statute in order to justify their determination, is open to reproach.

¹⁹ See notes 5, 6, 7 and 9 *supra*.

²⁰ See note 13 *supra*. For illustrations of the extent to which this control is severed, see *Betz v. Horr*, 276 N. Y. 83, 11 N. E. 2d 548 (1937) (natural parent under no duty to support destitute adopted child); *Matter of MacRae*, 189 N. Y. 142, 81 N. E. 956 (1907) (after foster parents die, not necessary to obtain consent of natural parents to a second adoption); *Gross v. Gross*, 110 Misc. 278, 179 N. Y. Supp. 900 (Sup. Ct. 1920) (divorce decree ordering father to support his child set aside upon child's adoption).

²¹ See *Matter of MacRae*, *supra* note 20, at 151, 81 N. E. at 958 (dissenting opinion); *Carpenter v. Buffalo Gen. Elec. Co.*, 213 N. Y. 101, 106 N. E. 1026 (1914) (natural mother took as foster aunt).

²² N. Y. DEC. EST. LAW § 87(e).

through the natural parent, may take.²³ In view of these two illustrations, the author is of the opinion that the reasoning of the court is open to sharp criticism.

The court's determination is clearly an encroachment upon the jurisdiction of the legislature. While the court's action was unwarranted, the primary fault lies with the legislature. Section 115 of the Domestic Relations Law should be amended so as to remove all ambiguity in reference to the effect of this statute upon Section 83(14) of the Decedent Estate Law.²⁴



ARBITRATION—CONFIRMATION OF PENAL AWARDS FOR BREACH OF CONTRACT.—On July 1, 1952, the Appellate Division in the First Department decided two cases of first impression, both of which dealt with the confirmation of an arbitrator's award.¹ In the first of these, *Matter of East India Trading Co. (Halari)*,² the Court held that the award of "penal damages" pursuant to an express provision therefor in the arbitration contract was enforceable, and consequently judgment for plaintiff was modified to include the penalty. The second case, *Matter of Publishers' Association (Newspaper Union)*,³ held that an award of penal damages, likewise expressly authorized in the arbitration agreement, was unenforceable; and judgment for plaintiff was modified by reversing so much of the award as granted penal damages.

Article 84 of the New York Civil Practice Act provides for the judicial enforcement of contracts of arbitration, and supplements the inadequate common-law remedies which heretofore existed.⁴ The article comprehends both the submission of an existing dispute and a contract to arbitrate future controversies, including those involving labor organizations and employers, or employer associations.⁵ In

²³ *Accord*, *Matter of Peters' Estate*, 104 N. Y. S. 2d 647 (Surr. Ct. 1951).

²⁴ The following sentence is suggested: "The provisions of this section shall have no effect upon the existing right of inheritance between the adopted child and his blood relatives."

¹ N. Y. CIV. PRAC. ACT § 1461 (motion to confirm award). Of the seven judges who sat on these cases, only Callahan and Cohn, JJ., participated in both.

² 280 App. Div. 420, 114 N. Y. S. 2d 93 (1st Dep't 1952) (3 to 1 decision). Although a notice of appeal had been filed, the appeal was never perfected since the issue would become moot upon the expiration of the collective bargaining agreement.

³ 280 App. Div. 500, 114 N. Y. S. 2d 401 (1st Dep't 1952) (3 to 2 decision).

⁴ See *Sandford Laundry, Inc. v. Simon*, 285 N. Y. 488, 493, 35 N. E. 2d 182, 185 (1941); see Note, 24 ST. JOHN'S L. REV. 254, 267 (1950).

⁵ N. Y. CIV. PRAC. ACT § 1448.