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# Adoption—Inheritance from Adoptive Parents; Lease—Statute of Frauds—Improvements

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# RECENT CASES

ADOPTION—INHERITANCE FROM ADOPTIVE PARENTS. In 1923, appellant, at the age of nineteen months, was adopted by *A* and wife. Later, when appellant was four and a half years old, *A* and wife consented to her adoption by *B* and wife. A died intestate in 1936. *A's* wife died in 1941 leaving appellant one dollar in her will. Appellant claims a right to inherit as an heir from *A*. *Held:* a child adopted for the second time can inherit from its first adoptive parents. *In re Egley's Estate,* 116 Wash. Dec. 594, 134 P. (2d) 943 (1943).

The cases throughout the country dealing with this precise subject are few, but the Washington court in the principal case seems in line with the majority rule. *Holmes v. Curl,* 189 Iowa 246, 178 N. W. 406 (1920); *Dreyer v. Schrick,* 105 Kans. 495, 185 Pac. 30 (1919); *Villier v. Watson,* 168 Ky. 631, 182 S. W. 869, L. R. A. 1918A 820 (1916).

The theory of the decisions in the majority cases rests partly on such statutes as REM. REV. STATS. §§ 1699 and 1341, making an adopted child to all intents and purposes the natural child and heir of the adoptive parents, and partly on the general rule that an adopted child can inherit from its natural parents. This last mentioned rule is the weight of authority in most jurisdictions including Washington. *In re Roderick's Estate,* 158 Wash. 377, 291 Pac. 325 (1930); *Roberts v. Roberts,* 160 Minn. 140, 199 N. W. 581 (1924); annotation, 132 A. L. R. 773 (1941). The court in the *Roderick* case, *supra,* said, "where a natural parent does not name or provide in his will for a natural child, who has been adopted by others, that as to that child the parent is deemed to have died intestate, and the child does not lose by adoption the right to inherit from its natural parent."

Relying on the efforts of the adoption statute to place the adopted child in the position of a natural child, and on the rule in the *Roderick* case, *supra,* the cases have almost universally held that a child adopted for the second time can inherit from its first adoptive parents when such parents have predeceased the second adoption. *In re Sutton,* 161 Minn. 426, 201 N. W. 925 (1925); *Patterson v. Browning,* 146 Ind. 160, 44 N. E. 993 (1896); *Russell v. Russell,* 14 Ky. Law Rep. 236 (1892); *In re Talley,* 188 Okla. 138, 109 P. (2d) 495, 132 A. L. R. 773 (1941). The reasoning here seems clear enough, since by the adoption statutes in these cases the right of an adopted child to inherit vests on the death of his adopted parent in the same manner as it does in the case of a natural child. Cases deciding this phase of the question, however, have been applied by some courts (including the majority in the principal case) when they are confronted with the *Egley* situation. There seems to be a clear distinction between the cases, however, based on whether the first adoptive parents died before or after the time of the second adoption.

Notwithstanding the above mentioned confusion, the theories of the decisions on either side of the question contained in the principal case are clear enough. Four cases: *In re Egley, supra; Holmes v. Curl, supra; Dreyer v. Schrick, supra;* and *Villier v. Watson, supra,* form the majority. Two cases: *In re Talley, supra;* and *In re Klapp,* 197 Mich. 615, 164 N. W. 381, L. R. A. 1918A 818, form the minority. The construction that the majority decisions give to the similar adoption statutes seems the most logical. By express provisions, the adoption statutes of all the states in which the question has been considered have placed the adopted child, as to in-

heritance, in the same position as that of a natural child. If the courts are to be consistent with the holding in the *Roderick* case, *supra*, that an adopted child can still inherit as the legal heir of its natural parents, it appears only reasonable that the courts must hold that a child adopted for the second time can still inherit as the legal heir of its first adoptive parents. The adoption statutes merely add a new capacity to inherit; they say nothing about cutting off capacity to inherit through a right already acquired.

The cases forming the minority, *In re Klapp, supra*, and *In re Talley, supra*, as well as the dissenting opinion in the *Egley* case, are unwilling to go beyond the *Roderick* rule. They attempt to distinguish the cases permitting an adopted child to inherit from its natural parents from the situation in the present case by asserting a difference between a right given by blood and that given by statute. The reasoning of the minority seems to be that when a child is born, its right to inherit as a natural child is then vested; but the right of an adopted child is only a statutory right, and the statute should not apply when there has been a second adoption. See 16 *Notre Dame Lawyer* 240 (1942), for a note agreeing with this view. It is again submitted, however, that the minority argument does not take into account such statutes as REM. REV. STATS. §§ 1699 and 1341, which place an adopted child in the same status as that of a natural, legal heir.

Although the rule of the *Egley* case may be a logical conclusion based on the statutes and past decisions, such a policy can greatly confuse the settlement of estates. Children adopted for the second or third time may not only inherit from their natural parents and kin, and as the natural children of any of their adoptive parents, but also from collateral kin of those parents who may never have heard of this child.

It is submitted that the problem can best be corrected by the legislature. An enactment making the child the legal heir of the parents, natural or adoptive, who then have the exclusive legal custody of it would seem best. After all, if adoption severs all other obligations and duties owed to, or placed upon, the former parent, why should not the right of the child to be an heir of the former parent be severed?

F. L.

LEASE—STATUTE OF FRAUDS—IMPROVEMENTS. Plaintiffs instituted an action to reform a five-year lease of real property which was defective since not acknowledged by the lessor as required by REM. REV. STAT. § 10551. *P* entered under the lease, paid two years rent at $25 per year, constructed buildings costing $1,225, repaired a road and put in water pipe for $100, and bought machinery for $400. Defendant, having given notice, contends the rights of *P* were terminated at the end of the second year. The lease contained a provision for removal of buildings constructed by the lessee at successful termination of the lease. *P* also testified during the trial that the buildings remained his property and other improvements were solely for his own benefit. *Held*: *P* is entitled to enforcement of the lease. If the acts of one of the parties to a lease have so changed his situation that he cannot be placed in his original position, a court of equity will enforce the lease even though void under the Statute of Frauds. *Garbrick et al. v. Franz et al.*, 13 Wn. (2d) 427, 125 P. (2d) 295 (1942).

The majority rule seems to be that an oral lease within the Statute of Frauds can be enforced in equity if the lessee has made improvements on the premises. Tiffany, REAL PROPERTY, 3rd ed., § 83, citing *Matzger v.*

*Arcade Building and Realty Co.*, 80 Wash. 401, 141 Pac. 900, L. R. A. 1915A, 288 (1914). Although some courts have allowed the mere taking of possession, or possession and payment of rent to take the lease out of the Statute, and the RESTATEMENT OF CONTRACTS, § 197, takes this view as to contracts to transfer an interest in land, these are in the minority and according to Tiffany, *supra*, "most questionable".

The Washington court has definitely followed the majority rule. There have been a good number of local cases covering the various aspects of the problem as to what improvements will, or will not, take a lease out of the Statute of Frauds. These cases seem to present four distinct rules although some cases involve more than one. First, *Matzger v. Arcade Building and Realty Co., supra*, seems chiefly to establish the rule that the giving of part of the consideration for the entire term such as improvements or payments required by the lessor, aside from the rent, will take a lease out of the Statute. Second, improvements not required by the lessor, but of benefit to him are sufficient to take a lease out of the Statute. *McGlauflin v. Holman*, 1 Wash. 239, 24 Pac. 439 (1890), *Lautenschlager v. Smith*, 155 Wash. 328, 284 Pac. 87 (1930), *Lamken v. Miller*, 181 Wash. 544, 44 P. (2d) 190 (1935). Third, improvements required by, or undertaken solely for, the lessee will estop him from setting up the Statute of Frauds as a defense. *Forrester v. Reliable Transfer Co.*, 59 Wash. 86, 109 Pac. 312, Ann. Cas. 1912A, 1093 (1910), *Rowland v. Cook*, 179 Wash. 624, 38 P. (2d) 224, 101 A. L. R. 180 (1934). And fourth, improvements by the lessee for his own benefit only, relying on the lease, are *not* sufficient to enable him to enforce it if the Statute has not been satisfied. *Armstrong v. Burkett*, 104 Wash. 476, 177 Pac. 333 (1918).

In the instant case the lessee made expenditures solely for his own benefit, which were contemplated at the time of making the lease, but not required by it. The reservation in the lease of the right to remove any buildings constructed by the lessee, together with his agreement to pay taxes thereon, seem to establish both his ownership and right to remove them when given notice of the termination of his tenancy. That such an agreement is valid is well established. Tiffany, REAL PROPERTY, 3rd ed., §§ 612 and 617. This fact, as well as the testimony of the lessee that all of the improvements were for his own benefit, indicates that there was no benefit to the lessor from them, nor any consideration going to the entire term. This places the instant case in the fourth category above along with *Armstrong v. Burkett, supra.*

Although the court states that there is some conflict between the *Matzger* rule and that of the *Armstrong* case, the former was clearly and properly distinguished in the *Armstrong* decision itself. There the lessee had made substantial alterations in the premises and expenditures on wall cabinets, and purchased goods for the Christmas trade in reliance on an oral lease, but the court held that these things were not sufficient to take the lease out of the Statute of Frauds. Also in *Watkins v. Balch*, 41 Wash. 310, 83 Pac. 321 (1906), the court held that $300 worth of permanent improvements by the lessee under an oral lease during three years of tenancy was not sufficient to take the case out of the Statute in the absence of clear proof of increase in rental value or material injury to the lessee. While the facts differ somewhat from the instant case the the holding at least indicates that the lessee here should have proved beyond mere inference what his loss would be after sale or removal of his property, and that it should be a substantial injury.

From this analysis it seems clear that the cases supporting the first, second, and third rules, above set out, are clearly distinguishable although the court in the instant case seems to rely on all three to support its decision. The fourth rule should apply unless the size of the expenditure is enough to distinguish this case from *Armstrong v. Burkett, supra,* but the loss to the lessee here should be limited to that which he has proved would accrue to him as a result of the removal of his buildings in determining his change of position.

The court in the instant case says the test is whether the acts of one of the parties have changed his situation to such an extent that he cannot be adequately compensated in damages or placed in his original position. Although the language of the court and the facts of the case imply the overruling of the *Armstrong* decision, the apparent reliance on the *Matzger* case and others which are clearly distinguishable therefrom casts some doubt on the present status of the law.

C. G. F., Jr.

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STATEMENT OF THE OWNERSHIP, MANAGEMENT, CIRCULATION, ETC., REQUIRED BY THE ACT OF CONGRESS OF AUGUST 24, 1912, AND MARCH 3, 1933.

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State of Washington, County of King—ss.

Before me, a notary public, in and for the State and county aforesaid, personally appeared Robert L. Taylor, who, having been duly sworn according to law, deposes and says that he is the business manager of the Washington Law Review & State Bar Journal and that the following is, to the best of his knowledge and belief, a true statement of the ownership, management (and if a daily paper, the circulation), etc., of the aforesaid publication for the date shown in the above caption, required by the Act of August 24, 1912, as amended by the Act of March 3, 1933, embodied in section 537, Postal Laws and Regulations, printed on the reverse of this form, to-wit:

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ROBERT L. TAYLOR,
Business Manager.

Sworn to and subscribed before me this 23rd day of September, 1943.

(Seal) EDITH L. HOPKINS,
Notary Public.

(My commission expires July 15, 1946.)