

1951

# In the Matter of the Estate of Mignon Denhalter Lewis : Brief of Appellant

Utah Supreme Court

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Elias Hansen; Attorney for Appellants;

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**IN THE SUPREME COURT****of the****STATE OF UTAH FILED**

AUG 25 1951

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**IN THE MATTER OF THE ESTATE  
OF MIGNON DENHALTER LEWIS**

Clerk, Supreme Court, Utah

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**APPELLANT'S BRIEF**

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**Appealed from District Court of Salt Lake County****Martin M. Larsen, Judge**

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**ELIAS HANSEN***Attorney for Appellants***Dwight L. King,***Attorney for Respondent*

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# IN THE SUPREME COURT of the STATE OF UTAH

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IN THE MATTER OF THE ESTATE  
OF MIGNON DENHALTER LEWIS

} Case No.  
7724

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## APPELLANT'S BRIEF

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### STATEMENT OF CASE

This is a proceeding for the determination of whether or not William H. English is entitled to a portion of the estate of Mignon Denhalter Lewis. Mr. English claims that his father, William Henry Johnston, was a natural son of Henry Charles Denhalter, who was a brother of the deceased, Mignon Denhalter Lewis. That while his father was admittedly born out of lawful wedlock, it is the claim of Mr. English that he is none the less entitled to participate in the distribution of the estate of Mrs. Lewis because of being the natural grandchild of Henry Charles Denhalter and on account

of Henry Charles Denhalter having acknowledged the father of the claimant as his (Henry Charles Denhalter's) child and on account of said Henry Charles Denhalter having married the grandmother of the claimant. Three of the admitted lawful sons of Henry Charles Denhalter are resisting the claim of Mr. English.

It is established without controversy that Mignon Denhalter Lewis died without leaving surviving her any children, parents or husband and that the next of kin was a sister who was entitled to one-half of the estate and the heirs at law of her deceased brother, who are entitled to the other one-half of her estate. The Court concluded that the three lawful sons of the deceased brother of Mrs. Lewis and Mr. English the claimant are entitled to share and share alike in the one-half of the residue of the estate of Mrs. Lewis. The three lawful sons of Henry Charles Denhalter contend that the claimant, William H. English, is not entitled to participate in the distribution of the estate of Mrs. Lewis and they are prosecuting this appeal from the decree and judgment awarding to William H. English a part of the estate of Mrs. Lewis.

In order to give the court a better understanding of the matters which divide the parties to this proceeding, we have deemed it advisable to give the court an abstract of the material part of the evidence which was offered at the trial.

It was made to appear at the trial without dispute that Henry Charles Denhalter, the claimed grandfather of the claimant, William H. English, died on August 10, 1931.

That William Henry Johnston, the father of the claimant, died on April 29, 1937.

That Mrs. Mignon Denhalter Lewis died on September 5, 1949 (Tr. 3) and that claimant was born out of wedlock. (Tr. 5)

William John Clark, a witness called by claimant, testified in substance as follows: That he resides at 375 Eighth East Street in Salt Lake City, Utah, where he has lived since 1903. That he was acquainted with and a friend of a family by the name of Johnston, but not related to them. That one of the Johnstons was a police officer. (Tr. 5) That he had a number of cleaning women work for him, one of whose name was a Mrs. Rosa; that there was a child born at his home. Over objection of counsel for the Denhalter boys that the testimony was hearsay, he was permitted to testify. That his wife made arrangements with a Dr. Root about bringing a girl to his home to be confined. (Tr. 6) The girl didn't even want to see the baby. She was not at his home more than 3 days; that he never saw the girl; that his wife told him about the child born at his home and that it was a boy. (Tr. 8) That Mrs. Rosa's daughter had the child; that a child was in the home of Mr. Clark a



number of times after it was born. That the Johnstons had the child; that he had difficulty in remembering; that he has nearly lost his mind. (Tr. 10) That after the child was born, Charles Denhalter and the child's mother came to his home and demanded the child about a year or less after the child was born; that when the witness went to the door, Charlie Denhalter threatened to beat the witness up because he would not tell him where the child was. He told Charlie Denhalter that he didn't know where the child was, but it was out of the state. (Tr. 11) That he had not seen the woman who came with Charlie Denhalter to get the child before the time they came to his house; that he saw quite often the child that the Johnstons had for four or five years or maybe five or six years after they received it. (Tr. 12) That when he next saw Henry William Johnston, he was a grown man; that was in 1927 when Henry William Johnston asked if he, Mr. Clark, would tell him, Johnston, who his father was and if he would go to court and swear who his father was which he, Clark, said he did; that he, Clark, told Johnston that his father was Charlie Denhalter; (Tr. 13) that Mr. Denhalter called up Clark and said that his statement about being the father of Johnston raised a big disturbance in his family; that he nearly lost his wife on account of doing that; that he was going to knock his block off. (Tr. 14)

On cross-examination he testified that he was a bartender and was not running a hotel or a hospital at the time the child was born in his home; that he had never



seen the supposed mother of the baby born in his home until she came and demanded the baby; (Tr. 14) that he didn't know that the baby born in his home was taken to the Johnston's home except from what he was told by the women folks; that he was a witness to the adoption of the child by the Johnstons; (Tr. 15) that after the child was taken into the Johnston home, he saw it about twice a month until it was three or four years old and then he did not see him for about 18 years. (Tr. 16)

Mary Ann English testified that she married her present husband in 1937 and that she married Mr. Johnston, her former husband in 1927 or 1924. (Tr. 18) That she came to Salt Lake City in 1927 and met her husband's family consisting of Mrs. Johnston and Frances Loveless; that she also met the Denhalters; that Mrs. Denhalter came to the hospital while she was there; that Mr. Denhalter wanted them to come to their home; (Tr. 19) that arrangements were made to have Mrs. Julia Hummel come to Salt Lake; (Tr. 20) that before she was a Hummel her name was Julia Rosa Denhalter. (Tr. 21) That Mr. Denhalter seemed to be quite happy that he had found Henry Johnston; that Mr. and Mrs. Henry Charles Denhalter provided money for the living expenses of the witness and her then husband; (Tr. 22) that the Denhalters got a house for the witness and her husband and the Johnstons let them have some furniture; that the witness and her husband resided in the home secured for them five or six months and then moved back to the Denhalters, where the child, claimant herein,

was born. That when Mr. Denhalter was home he treated the witnesses son the same as his children; that she stayed at the Denhalter home until her child was four or five months old; (Tr. 23) that the witness and her husband moved into an auto court (Tr. 25) and soon thereafter she and her husband separated and Mr. Denhalter told her husband that if he did not treat his wife, the witness, better he would disown him and that she could come and stay at the home of the Denhalters; that off and on she stayed at the Denhalter's home with her son, the claimant herein, until the boy was five years old; (Tr. 26) that since the death of Henry Charles Denhalter, the Denhalter family have been very congenial with the witness; that on one occasion Dick or Richard Denhalter said that the claimant's father was his half-brother; (Tr. 27) that the Denhalter boys were not denying that; that the claimant was a grandson of their father, (Tr. 29) but they thought that he was not entitled to as much of the estate of Mrs. Lewis as they were; (Tr. 30) that the witness has attempted to get Julia Rosa Denhalter Hummel to come and testify for her; that she has not been able to get in touch with her since she last talked with her which was in 1950; a returned letter addressed to Mrs. Julia Hummel, 1020 West 89th, Los Angeles, California, was received in evidence over the objections of counsel for the Denhalter boys. (Tr. 31-32)

On cross-examination, Mrs. English testified that she was 23 years of age when she first came to Salt Lake

City; that her husband was then 22 years of age; (Tr. 33) that her husband was about 19 years of age when she first met him in Boston, where he was employed as a male nurse; that she and her husband were in Salt Lake about nine months or a year before they met the Denhalters; that after the birth of her baby she and her husband had trouble; that she called up the Denhalters and told them her husband had beaten her and they came down and took her to their home; (Tr. 34) that her husband had been at the Denhalter home some time before he and Mr. Denhalter had trouble because her husband was stealing and selling Denhalter's guns, etc.; that Mr. Denhalter told the husband of the witness that if he did not treat her better, he didn't want to see him again; that Mr. Denhalter tried to get a job for the husband of the witness but he could not hold a a job; (Tr. 35) that Mr. Denhalter said he would make room for the witnesses husband and he, Denhalter, was glad to find him after all these years and he sent for the mother of the boy. (Tr. 36)

Mary Frances Johnston Loveless testified for the claimant. She testified that she is the daughter of John Henry Johnston, who was a police sergeant at the time he was killed, which occurred on July 5, 1911; (Tr. 37) that she remembers that in 1905 of going to Bill Clark's with her folks; that she was six or seven years old and she went out into the kitchen and saw a girl sitting with this baby on her lap getting its clothes on and Mrs. Clark was helping; the baby was a boy and the baby grew up in

the Johnston home and was named William Henry Johnston; that some time after she was visiting at the Clark home with her father and mother and was playing in the front yard when this girl came with a boy and went into the house, and the girl said "I know the people are here with the baby because the little girl that was here that came out in the kitchen when they took the baby, is playing in the front yard," and she says, "and also the baby's bonnett is laying right over there on the couch, so I know they are in the house. Of course there was a big argument and they left and my folks were out in the back of the house with the baby; (Tr. 38) she was permitted to testify over objection that her mother kept a chest and the witness looked in the chest and found a little piece of paper that had the name Julia Rosa on it and Charles Henry Denhalter and the baby's age." A motion to strike the foregoing evidence was by the court denied. (Tr. 40)

Mrs. Loveless further testified that when William Henry Johnston came back from Boston with his wife that she told him that his father was Henry Denhalter and where he lived and she thought he ought to go meet him; that because of doing so, Mrs. Loveless's mother wanted to disown her; that the conversation with her adopted brother occurred about a month after he came to Salt Lake. (Tr. 41)

On cross-examination, the witness testified that when the couple came to the Clark home they wanted the baby, but she didn't know what was said; that the time

the couple came to get the baby was after they were married which as is shown by the marriage certificate, which was received in evidence, occurred on July 31, 1905. (Tr. 42) That they said they wanted the baby. (Tr. 45) That she was six or seven years old at the time. (Tr.46)

Mrs. Elizabeth Denhalter, the surviving widow of Henry Charles Denhalter was called as a witness by the claimant and testified that she met Henry Johnston and his wife when they came to Salt Lake in June 1926; that she saw Mrs. Johnston, now Mrs. English, in the hospital and they were later taken into the home of the witness and her husband; that Mrs. Johnston was ill at the time; that when they came to the Denhalter home, she didn't recall her husband saying anything, (Tr. 48) that she knew that her husband had been married and divorced when she married him; that Mr. Denhalter's first wife was named Julia Rosa and later she married a Mr. Hummel; (Tr. 49) that Mr. Denhalter asked the witness about having the mother of Henry Johnston come to the Denhalter house and Mrs. Denhalter told him to do as he saw fit; that Mr. Denhalter advanced the money for Mrs. Hummel to come to Salt Lake, but the same was later repaid to Mr. Denhalter by Mrs. Hummel. That Mrs. Hummel came late in August and stayed quite some time; that Mrs. Denhalter got very tired of her and almost had to kick her out; that she left late in the fall; that Mrs. Johnston was sick and needed help and Mrs. Denhalter was glad to help her; that she didn't know what went on between Mr. and Mrs. Johnston and her husband;

(Tr. 50) that when the Johnstons took up housekeeping on their own account, the Denhalters helped them and paid the rent; that Mrs. Johnston came off and on to the Denhalter home because her husband didn't furnish her a home; that Mrs. Denhalter took care of Mrs. Johnston when her baby was born, who is the claimant in this proceeding; that the mother went to work when the baby was about 10 months old. (Tr. 51-a)

On cross-examination, Mrs. Denhalter testified that Mrs. Hummel probably did not stay quite two months; that the Johnston boy was sick while he was at the Denhalter home; that the Johnston boy and Mr. Denhalter had difficulty right from the beginning; that the Johnston boy took things and finally Mr. Denhalter kicked him out; that upon one occasion his wife, now Mrs. English, called the Denhalters in the middle of the night because her husband had thrown her out and the Denhalters went and got her and took her to the Denhalter home. (Tr. 51-b) That at that time her son, the claimant, was not more than two or three months old. (Tr. 52-53)

The claimant called as a witness a Mrs. Rella Gleason, who testified that she knew Julia Rosa as a girl; that they lived in the same neighborhood as girls; that she remembered Julia Rosa and Henry Charles Denhalter keeping company and of their being married. (Tr. 52)



Mrs. Ann Clark English, the wife of the claimant, was called as a witness and after much hedging and leading, she testified that Dick Denhalter stated that claimant's father was his half-brother. (Tr. 56-58)

William Henry English, the claimant, testified on his own behalf and stated that on one occasion when he was being introduced one of the Denhalter boys said that he, William English, was his nephew; that on another occasion the three Denhalter boys met with the claimant and his father and mother to talk over the matter of settling their rights in the property of the estate of Mrs. Lewis, at which time Jack Denhalter finally said: "We are not denying that you are, but you are not entitled to as much of it as we are." A motion to strike this evidence because it was an attempt to compromise the litigation was denied.

Alvin Ray English was called as a witness for the claimant and testified that he is the adopted father of William English, the claimant herein; that he had been quite active in investigating the claim of his adopted son; that up to the time the Denhalter boys employed an attorney the Denhalters had not denied that William English was in the blood line of the Denhalters; (Tr. 87) that he recalled the time when the three Denhalter boys had a talk with him, his wife and adopted son; that they gave the impression that they wanted to settle the property of Mrs. Lewis; that at that time nothing was said about whether or not William English was a Den-



halter; that at one time he went with the Denhalter boys to consult a lawyer about the Lewis estate. (Tr. 88-89) On cross-examination he testified that he had adopted and taken care of the claimant since he was a small boy. (Tr. 89)

The Denhalters offered in evidence some court records which show that Julia R. Denhalter secured a divorce from Henry C. Denhalter on July 29, 1910. (Tr. 64-67) No mention is made in the decree of the parties having had any children. It was further made to appear from the court records that John Henry Johnston and his wife, Tishia B. Johnston sought to and were permitted to adopt an illegitimate child, the son of Julia Roberts. (Tr. 69-70) The decree is dated January 8, 1906. (Tr. 71-72)

As a part of the court records appears the following:

### Adoption of William Henry Johnston

To Whom it may concern:

This is to certify that I the undersigned, the Mother of an infant boy do hereby relinquish any claim I have to said child and consent that said boy be adopted by whomsoever the court may see fit to give him to, and I hereby waive all notice of adoption and consent that it may be done without any notice to me.

Julia Roberts

Witness:

Mother

(Tr. 71)

Mrs. W. J. Clark

W. J. Clark

The Consent to adoption is not dated.

The Denhalter boys were sworn and denied having introduced the claimant as their nephew. Charles Richard Denhalter testified that he did not recall saying anything to the claimant's wife about being related to the claimant's father. (Tr. 74) He further testified that he recalled that he and his brothers met with the claimant and his adopted father and mother when they talked about the estate of Mrs. Lewis; that Mr. English, the adopted father of the claimant, had assured the three Denhalter boys that he had conclusive evidence that the claimant was a Denhalter and they went to find out about the facts and to see what could be done. (Tr. 74-75)

On cross-examination he testified that he heard that the claimant had received \$1500.00 out of his grandfather's estate, but that he didn't know how it came about that the \$1500.00 was paid, (Tr. 77) whether it came out of the estate or was paid by Mrs. Campbell to prevent notoriety about the matter. As to the occasion of the Denhalter boys meeting with the claimant and her mother and father, the testimony of the two other Denhalter boys is substantially the same as that above summarized. (Tr. 78)

In order to properly construe the law of this state touching children born out of wedlock, we have thus deemed it necessary to summarize the evidence. We shall

have further comments to make about the evidence in connection with the various provisions of our statutory law.

## ASSIGNMENTS OF ERROR

The appellants assign the following errors upon which they rely for reversal of the Judgment appealed from:

### POINT ONE

The trial court erred in admitting over the objection of the appellants the following testimony of the witness William John Clark.

(a) Well, the arrangements were made between the doctor and my wife and this girl's Mother to bring the baby there or the girl to have her baby, and it was to be given to the Johnstons. This girl didn't even want to see the baby and gave it away as quickly as possible. (Tr. 8)

(b) She, his wife, told him about the birth of the child in his home.

(c) She, his wife, told him that Mrs. Rosa's daughter was the Mother of the child and that it was a boy. (Tr. 9)

(d) That Julia Rosa was the one who purported to have had the child in his home. (Tr. 12)

(e) That he saw the baby born in his home in the Johnston home. (Tr. 12)

## POINT TWO

The trial court erred in admitting in evidence, over the objection of the appellants and in refusing to strike, the following testimony of the witnesses Mary Frances Johnston Loveless.

a() My Mother kept a chest. I guess I can tell that—and I looked in this chest and found a little piece of paper that had the name Julia Rosa on it and Charles Henry Denhalter and the baby's age, and I guess that is about all that was on it, just a little piece of paper about like this. (Tr. 40)

## POINT THREE

The trial court erred in finding that William H. English, the claimant, is the grandson of Henry Charles Denhalter because such finding is not supported by any substantial competent evidence. (R. 6)

## POINT FOUR

The trial court erred in making its Conclusion of Law that the claimant, William H. English, is entitled to participate in the distribution of the estate of Mignon Denhalter Lewis, deceased. (R. 8)

## POINT FIVE

The trial court erred in awarding to the claimant, William H. English, a part of the estate of Mignon Denhalter Lewis, deceased. (R. 10)

## ARGUMENT

## POINT ONE

*The trial court erred in admitting in evidence the testimony of the witness William John Clark as to what he was told by his wife.*

The trial court admitted in evidence the hearsay testimony of the witness Clark, apparently upon the theory that such testimony falls within an exception to the hearsay rule in that it was testimony touching pedigree. There are two reasons why the testimony of Mr. Clark as to what he was told by his wife does not fall within the rule. First, what Mrs. Clark told her husband was not in any sense a matter of family history or pedigree and second, neither Mr. Clark nor his wife were competent witnesses to give hearsay testimony as to the pedigree of the Denhalters.

The authorities teach that hearsay evidence as to the history of a family or what is frequently referred to as pedigree may be established by hearsay testimony. However, what Mrs. Clark told her husband about Mrs. Rosa's daughter being confined in his home, about the arrangements made to have the child adopted by the Johnstons, about the child being a boy, about a Dr. Root waiting on the woman who was confined in his home, etc., is obviously not a matter of family history or pedigree. Moreover, it is quite generally held that "declarations (as to pedigree) must not only have been made by a person

since deceased, but must also have been made by a person related by blood or affinity with some branch of the family, the pedigree which is in question." Vol. 3, page 2080, *Jones Commentaries on Evidence*.

The rule is thus stated in 31 *C.J.S.*, page 976, Sec. 229. "While there appears to be some authority to the contrary as a general rule, for a declaration of pedigree to be admissable, it must have been made by someone related to the family concerned. Consequently, under the general rule, the courts will not receive declarations as to pedigree made by intimate friends, or neighbors or even by persons living in the family, or by servants, however trustworth, or however long employed in the family." Cases are cited in footnotes to the texts which support the same.

## POINT TWO

*The testimony of Mrs. Loveless that she saw a paper in her Mother's chest containing "the name of Julia Rosa and Charles Henry Denhalter and the baby's age" was clearly incompetent. (Tr. 40)*

Before written evidence of pedigree may be received in evidence it must be made to appear that the writing was made or recognized by some member of the family whose pedigree is brought in question. Vol. 3, page 2110 Sec. 1148 *Jones Commentaries on Evidence*.

## POINT THREE

The only testimony of probative value as to the parentage of the claimant, other than incompetent hearsay testimony elicited from the witness Clark, is that this girl, the mother of this baby, and her husband Charles came to the house and demanded the baby about a year or less after its birth and threatened to beat the witness up because he wouldn't tell where the child was. (Tr. 10-12) It may here be noted that Mr. Clark did not, except by hearsay, know who was the mother of the child that was adopted by the Johnstons nor did he know, except by hearsay, where the Johnstons received the child.

The testimony of the witness Mrs. Loveless, touching what she personally knows about the parentage of the father of the claimant is that she saw the mother of the child dressing it and that at a later time the mother of the child and a boy came to get the child and an argument ensued. (Tr. 38)

Mrs. Mary Ann English, the mother of the claimant, testified that Mr. Henry Charles Denhalter stated that he found his boy after all these years, that he sent for the mother of the boy and that Mr. and Mrs. Denhalter helped her and her husband by letting them live in the home of the Denhalters (Tr. 20-23) and later Mr. Denhalter ordered the father of the claimant out of his house. (Tr. 35)



Mrs. Elizabeth Denhalter, the surviving widow of Henry Charles Denhalter, testified that she knew that her husband sent money to have the purported grandmother of the claimant come to Salt Lake, that she knew her husband had been married before she was married to him. That she and her husband took him and his wife into their home (Tr. 48) and Mrs. Hummel, the purported grandmother of the claimant, stayed at the Denhalter home not quite two months. (Tr. 51) That the husband of the witness, Henry Charles Denhalter, and the Johnston boy had difficulty from the time he came to the Denhalter home because he, the Johnston boy, would take things from the house every chance he got and finally her husband kicked him out; that the wife of the Johnston boy called her husband up in the middle of the night because the Johnston boy had thrown her out while they were living in an auto court. (Tr. 51 b)

The foregoing is a brief summary of all of the evidence touching the admission of Henry Charles Denhalter as to his relation to the father of the claimant.

It should be noted at the outset that even if Henry Charles Denhalter was the father of an illegitimate child, he could not possibly know whether or not Henry William Johnston was that child. He had not seen the boy, Henry William Johnston, until the latter was a matured man of the age of 21 or 22 years of age. So also the mother of the child had not seen him from the time he was about three days old until he came to Salt Lake

when he was 21 or 22 years of age. We have heretofore pointed out that the witnesses, Mr. Clark and Mrs. Lovelless, who were permitted to testify about facts calculated to establish the claim that Henry Charles Denhalter was the father of the Johnston boy did so from hearsay or from their own conclusions based upon hearsay. The testimony of the mother of the claimant consists mostly of conclusions and on cross-examination she, in effect, admitted that Henry Charles Denhalter disowned the father of the claimant. The meager testimony touching the claim that Henry Charles Denhalter was the grandfather of the claimant should be viewed in the light of the fact that Henry Charles Denhalter married the mother of the Johnston boy a short time after his birth. That being so the fact that Henry Charles Denhalter accompanied the purported grandmother of the claimant to the Clark home to get the Johnston child would be as consistent with Henry Charles Denhalter being the stepfather of the Johnston child as it would be with the claim that the Johnston child was the natural child of Denhalter. Indeed, if Henry Charles Denhalter was the father of the Johnston boy it is difficult to understand why he did not marry her before the birth of the child. It is also very strange that the purported grandmother of the claimant did not appear at the trial if Henry Charles Denhalter was in truth and in fact the natural father of the Johnston boy. We, of course, can appreciate that Mrs. Hummel the purported Mother of the Johnston child would be unable to testify of her own knowledge that

she was the mother of the person claiming to be the child born to her because she had not seen that child since he was three days old. It is the established law in this jurisdiction that one may not be held to be the illegitimate child of a man and as such entitled to inherit a part of his estate unless among other facts it is shown that such a claimant is in fact the natural child of the person who he claims to be his ancestor. If an acknowledgement of parentage is relied upon, such acknowledgement must be unambiguous. *In re: Roberts Estate* 69 Utah 548; 256 Pac. 1068; *In re Newell's Estate* 78 Ut. 463; 5 Pac. (2d) 230.

In any event as we shall presently point out, the evidence in this case is not sufficient to support a decree or judgment awarding to the claimant any part of the estate of Mignon Denhalter Lewis, deceased.

## POINTS FOUR and FIVE

*The evidence in this case is wholly insufficient to support Conclusions of Law and a Decree awarding to William H. English any part of the Estate of Mignon Denhalter Lewis, deceased.*

Points four and five go to the same question, namely, that the claimant has not brought himself within any provision of the Laws of Utah that entitle him to any part of the estate of Mrs. Lewis.

We again direct the attention of the court to a number of facts which are not in dispute. Such facts are:

Henry Charles Denhalter, the claimed grandfather of the claimant, died on August 10, 1931. (Tr. 4)

William Henry Johnston, the father of the claimant, died on April 29, 1937.

Mignon Denhalter Lewis died on Sept. 5, 1949. (Tr. 3) That Henry Charles Denhalter was a brother of Mignon Denhalter Lewis and that she left surviving her three nephews, Charles Richard Denhalter, Robert Keith Denhalter and Jackson Henry Denhalter, children of her brother, Henry Charles Denhalter, and one sister. That William Henry Johnston was born on or about Dec. 24th or 29th, 1904. (Tr. 43-46) Julia Roberts, the mother, consented to the adoption but the date of the consent does not appear. (Tr. 71) That Henry Charles Denhalter and Julia Rosa were married on or about July 31, 1905 (Tr. 47) and were divorced on July 29, 1910. (Tr. 65-67) That Henry Charles Denhalter did not see William Henry Johnston the natural father of the claimant until 1926. (Tr. 18) That the supposed grandmother so far as appears did not see William Henry Johnston, from the time he was about 3 days old until in 1926. (Tr. 18) That the claimant has been adopted by Alvin Ray English, but the date of such adoption does not appear. (Tr. 87)

So far as we are able to ascertain, in jurisdiction where the common law prevails, the following principles of law are established:

“A person born out of lawful wedlock is a bastard or illegitimate.” 7 Am. Jur. page 628, Sec. 4.

“In the absence of a statute to the contrary the mere fact that the parents of an illegitimate child marry after its birth does not render it legitimate.” 7 Am. Jur. page 665, Sec. 58 and cases there cited. To the same effect see 10 C.J.S., page 61, Sec. 12 and cases there cited.

“Under both the common and civil law an illegitimate child cannot inherit from its father or other blood relatives except probably its Mother.” See Annotation in 24 A.L.R. 584 and 83 A.L.R. 1334.

It is however, within the power of the legislature to change the rule and it has been changed in many jurisdictions, including Utah. See *Cope v. Cope*, 137 U.S. 682, 34 L. Ed 832, 11 Sup. Ct. 222; Annotation 23 A.L.R. 586; 83 A.L.R. 1335; Ann cases 1917 C 826; *Mansfield v. Neff*, 43 Utah 258; 134 Pac. 1160.

There is such a diversity of legislative enactments in the various states of the union that precedents touching a construction of the language of any given statute are frequently not available. Some of the statutes confer upon an illegitimate child a limited right of inheritance from blood relatives, particularly the father and mother, while other statutes merely provide that under a designated state of facts, the illegitimate child is rendered legitimate. As we read the Utah laws touching illegiti-



mate children, some of such statutes confer upon illegitimate children the right of inheritance from the father and mother, while others render such a child legitimate without limitation.

In its Memorandum of Opinion the trial court held that the claimant was rendered legitimate by the provisions of U.C.A. 1943 14-2-14, which provides that "If the mother of any such child and the father shall at any time after its birth intermarry, the child shall in all respects be deemed to be legitimate and the bond for its support shall thereupon become void."

The section of the statute just quoted is a part of the Chapter on bastardy.

The bastardy statute was enacted in 1911. In the original enactment the section just quoted read thus: "If the mother of any bastard child and the reputed father shall at any time after the birth intermarry said child shall in all respects be deemed to be legitimate and the bond for the support of said child shall thereupon become void." Laws of Utah 1911, Chapter 62, Sec. 14, page 87. In Compiled Laws of Utah 1917, the foregoing provision was Sec. 393.

In Revised Statutes of Utah 1933, Sec. 14 of Chapter 2 of Title 14 is the same as it is at present and as it appears in U.C.A. 1943 14-2-14 above quoted. Thus the status of the claimant must be determined by the provisions of U.C.A. 1943 14-2-14 because Mrs. Lewis, from

whom claimant asserts the right to inherit, died on Sept. 5, 1949 and her estate must be distributed by the law as it then provided.

It is, of course, elementary that unless a law is ambiguous there is no occasion to construe it, and the courts may not, under the guise of construction, create an ambiguity and then proceed to construe the ambiguity thus created. 50 *Am. Jur.* page 204, Sec. 225; *Salt Lake Union Stock Yards v. State Tax Commission*, 93 Utah 166; 71 *Pac.* (2d) 538; *Spring Canyon Coal Co. v. Industrial Commission*, 74 Utah 103; 277 *Pac.* 206.

If the statute now being discussed read as it did prior to 1933, there might be some color to the claim that the statute was open to construction because it then read: "If the mother of any bastard child and the reputed father" etc. and then provided that the bond for its support should be void.

The only reason we can conceive of for amending the provision of U.C.A., 1943 14-2-14 from the way it originally read to the way it now reads was to remove all ambiguity in the original language. The expression "such a child" in the present law must mean a child that has been judicially determined to be the child of the person who marries the mother. The word "such" is defined as "of that kind, of the like kind, etc." Unless the word "such" is to be entirely ignored it must refer to a child that has been judicially determined to be the child of



the person who marries its mother. If the language "such a child" meant any bastard child there would have been no purpose of the legislature making the amendment by using the expression "such a child" instead of any bastard child as was done by the amendment of 1933. So, also by substituting the words "the father" in the amendment for the words "the reputed father" the legislature must have had in mind in the amendment the person who has been adjudicated to be the father instead of "the reputed father" as used in the act before it was amended. Moreover, if there should be any doubt about the meaning of the statute as it now is and since 1933 has been such doubt is entirely removed by the language "the bond for its support shall thereupon become void." Obviously there would be no bond to be declared void except the bond of one who has been adjudged the father of a child born out of lawful wedlock.

In connection with what we have said, the attention of the court is directed to the oft repeated holding of the courts that "It is a general rule that the courts, in the interpretation of a statute, may not take, strike or read anything out of a statute or delete, subtract or omit anything therefrom." To the contrary it is a cardinal rule of statutory construction that significance and effect should, if possible, be accorded to every word, phrase, sentence and part of an act. 50 *Am. Jur.* page 219, Sec. 231, and 50 *Am. Jur.*, page 361, Sec. 358 and case cited in foot notes among which is the case of *Dunn v. Bryan*, 77 Utah 604; 229 Pac. 253.

It was urged by counsel for claimant in the court below and the trial court in its Memorandum of Decision held that statutes calculated to legitimate bastard children should be given a liberal and not a strict construction. Such statement will be found in some of the adjudicated cases. We have no quarrel with such view if and when properly applied. In Utah there is no justification for applying a different rule of construction for statutes dealing with the legitimation of bastard children than is applied in the construction of other statutes. U.C.A., 1943 88-2-2 provides that:

“The rule of common law that statutes in derogation thereof are to be strictly construed has no application to the statutes of this state. The statutes establish the laws of this state respecting the subject to which they relate and their provisions and all proceedings under them are to be liberally construed with a view to effect the objects of the statutes and to promote justice.”

The foregoing statute is applicable generally to all statutory laws in this state.

“A liberal construction is subject to the principle that all rules of statutory construction are merely for the purpose of ascertaining the intention of the legislature as expressed in the statute. It does not permit the courts to effectuate its own conception of right by putting into a law that which the legislature never intended to be there. The doctrine of liberal construction does not imply that the legislative mandate may be disregarded, or that the words of the statute may

be ignored or frittered away, or given an unnatural or forced meaning. A liberal construction does not authorize the courts to read into a statute something which does not come within the meaning of the language used, or which unreasonably restricts, or enlarges or extends, by implication, the scope of the statute, or the plain provisions of the law as written, to matters not within the intent of the law, or beyond the field of its purpose, or contrary to its design, or the meaning of the statute as indicated by the context. \* \* \*” 50 Am. Jur., Sec. 387, page 403 and cases cited in foot notes.

To hold that U.C.A., 1943 14-2-14 grants to illegitimate children the same rights of inheritance from all ancestors and collateral blood relatives as are given to legitimate children is to ignore the plain language of our various statutes dealing with illegitimate children.

It is our contention that before an illegitimate child is awarded a right to inherit from collateral blood relatives he must bring himself within the provisions of either U.C.A., 1943 14-2-14 above quoted, or U.C.A., 1943 14-4-12.

There is a very good reason why the law making powers of Utah should grant to illegitimate children the right to inherit from collateral blood relatives when and only when either such illegitimate child is judicially determined to be the natural child of the putative father and such father and its mother thereafter marry or when as provided in U.C.A., 1943 14-4-12, the father of an illegitimate child, by publicly acknowledging it as his own, receiving it as such with the consent of his wife, if he is

married, into his family, and otherwise treating it as if it were a legitimate child thereby adopts it as such and such child is thereupon deemed for all purposes legitimate from the time of its birth. The foregoing provisions of this chapter do not apply to such an adoption.

In either of the foregoing cases there is notice to the world and particularly to the blood relatives of the putative father that he claims the child as his child.

It is a common trait of human nature for people, who have accumulated property, to desire that such property upon death, pass to persons of their choosing. If a person is content, as many are, to have his or her property descend according to the law of succession, no purpose is accomplished by making a Will. Generally speaking, people know who are their relatives born in lawful wedlock and those who have been adjudicated and treated as such. But it is rare that one is advised of a relative's illegitimate offspring in the absence of such offspring being treated as such. If, therefore, one does not know of the existence of an illegitimate child of a blood relative, it would be a grave injustice to one dying intestate to ordain that his or her property should be inherited by a person unknown to him or her, or if known, not advised as to any relationship. Such we conceive is the only reasonable basis for the legislature making the distinction that is made in the various provisions of our law touching the rights of inheritance of illegitimate children. If the legislature had intended to grant illegitimate chil-

dren full rights of inheritance from all next of kin the same as legitimate children, it would have been a simple matter to have so provided. There would be no conceivable purpose to have enacted the various provisions to which we have and shall call attention if the legislature had intended to render an illegitimate child legitimate merely because its mother and putative father married after its birth. If the court below is right in its construction of U.C.A. 1943 14-2-14 the adjudication that the putative father is in fact the father would be wholly without any legal effect as to the legitimation of an illegitimate child, or to its right to inherit from collateral blood relatives. Such a construction is at war with the language of U.C.A. 1943 14-2-14. A number of states have provided that the marriage of the parents of an illegitimate child renders it legitimate, but in such states there are no additional provisions such as are found in U.C.A. 1943, 14-2-14.

We have heretofore quoted the provisions of U.C.A. 1943, 14-4-12 where upon a compliance with the provisions thereof an illegitimate child is deemed legitimate for all purposes.

There are various reasons why neither the claimant nor his father comes within the provisions of that statute. Among them are: Under our statute only minor children may be adopted. U.C.A. 1943, 14-4-1 provides:

“Any minor child may be adopted by an adult person, or a child, not a minor, whose parents are both dead, may be adopted by another adult person as in this chapter provided.”

The provisions of U.C.A. 1943, 14-4-12 and 14-4-1 have both been taken from California where they were construed long before they became the law of Utah. U.C.A. 1943, 14-4-12 is now 230 of the California 1941 Civil Code.

The following cases from California have construed U.C.A., 1943, 14-4-12:

*Estate of Baird*, 193 Cal. 225; 223 Pac. 972;

*Estate of Gird*, 157 Cal. 534; 108 Pac. 499;

137 *Am. St. Rep.* 131;

*Estate of Jones*, 166 Cal. 108; 135 Pac. 288;

*In re Flood's Estate*, 21 Pac. (2d) 579; 217 Cal. 763;

*In re Parcell's Estate*, 53 Pac. (2d) 784;

The cases hold that in order to bring an illegitimate child within the provisions of U.C.A., 1943, 14-4-12, the evidence must establish the following:

1. That the child is illegitimate.
2. That the natural father is the person claimed to be such.

3. Public acknowledgment of the claimed father that he is such.

4. That the child was received into the family with the wife's consent given with the knowledge of the illegitimacy.

5. The the child was treated as a legitimate child.

The case of *In re Estate of Pico*, 56 Cal. 413, adds an additional requisite, namely that the child must be a minor at the time it is claimed the adoption occurred.

Moreover, it is obvious that the claimant's father could not be adopted by the Denhalters because he had been adopted by the Johnstons, and such adoption was still in effect. A child may not have two sets of adopted parents at the same time.

There is an absence of any evidence that Denhalter *publicly* acknowledged that he was the father of the Johnston boy. The only evidence of acknowledgment comes from Mr. Clark, Mrs. English, the claimant's mother and possibly Mrs. Loveless. Indeed, it is not inconsistent with their testimony to conclude that Mr. Denhalter merely claimed to be the stepfather of the Johnston child. As illustration of the requirements of public acknowledgment required by the courts to entitle an illegitimate child to claim a right under a statute such as 1943, 14-4-12, to participate in an estate of the alleged father, we direct the attention of the court to two cases which show the



trend of judicial authority. *Record v. Ellis*, 97 Kan. 754, 156 Pac. 712; L.R.A. 1916 Ed. 654 and *Bisben v. Huntington*, 128 Iowa 166; 103 N.W. 144.

Nor does the evidence show that the father of the claimant was received into the Denhalter family with the wife's consent given with the knowledge of the illegitimacy. The most that can be said to support such a claim is that the father of the claimant was sick and Mrs. Denhalter made no objection to him and his wife temporarily coming to their home. They were not received into the Denhalter family, but claimant's father and mother constituted a family. Mrs. Denhalter knew her husband had been married, but she did not know that claimant's father was an illegitimate child. Indeed, so far as is made to appear, none of the witnesses who testified knew such to be the fact. So also is there an absence of evidence showing that either Mr. or Mrs. Denhalter treated claimant's father as a legitimate child. Quite to the contrary, he apparently had not been at the Denhalter home very long until he was kicked out.

While the court below based its conclusion that the claimant had a right to a part of the estate of Mrs. Lewis by reason of the provisions of U.C.A. 1943, 14-2-14 there are other provisions of our statutory law that require discussion. By both that Section and U.C.A., 1943 14-4-12 an illegitimate child which meets the requirements of either of such sections is deemed legitimate. Not so with the other provisions of our law.

U.C.A., 1943, 101-4-10 provides:

“Every illegitimate child is an heir of the person who acknowledges himself to be the father of such child and in all cases the heir of his mother and inherits his or her estate in whole or in part as the case may be in the same manner as if he had been born in lawful wedlock. The issue of all marriages null in law or dissolved by divorce are legitimate.”

It is significant that the foregoing is a part of the law of succession. It is even more significant that the plain language used therein limits the right of an illegitimate child to being the heir of the mother and the person who acknowledges himself to be the father, while a child which is the issue of a null or a marriage dissolved by divorce is declared to be legitimate. If it were intended to make a child legitimate because of an acknowledgment by the father, the legislature would doubtless have so provided instead of merely providing that such a child was the heir of the father who acknowledged his parentage.

The authorities teach that statutory provisions such as that just quoted are statutes of descent and not legitimate statutes. The law in such particular is thus stated in 10 C.J.S., 119 where it is said:

“While a statute which gives a duly acknowledged or recognized illegitimate child the right to inherit from the father has been regarded as remedial in nature and as one which should be

liberally construed to effect the purpose of its enactment, it is an inheritance statute or statute of descent and not legitimation statute and after recognition or acknowledgment, the child remains illegitimate and inherits as an illegitimate child." Cases are cited in foot notes which support the text.

We have found no case which holds that a statute such as U.C.A., 1943 101-4-10 has the effect of rendering an illegitimate child legitimate. Indeed, to reach such a result would do violence to the language used. It would enlarge the meaning of the language far beyond the idea conveyed. That the Legislature intended to restrict the effect of U.C.A., 1943, 101-4-10 to the right to inherit from the father and mother is made apparent, because otherwise it would have used such language as is used in Section 14-2-14 where it is said that a child which falls within its provisions "shall in all respects be deemed to be legitimate," or such a child as falls within the provisions of Section 14-4-12 where it is said that a child which falls within all of its provisions is "thereupon deemed for all purposes legitimate from the time of its birth," or as is said in Section 101-4-10 that "children who are the issues of void or dissolved marriages are legitimate."

To hold that U.C.A., 1943 101-4-10 gives an illegitimate child a right to inherit from an aunt would be to re-write or at least substantially add to its provisions. If the legislature intended that such a child should inherit from collateral relatives, it would have been a simple matter to have so provided. By providing that "An ille-

gitimate child is an heir of the person who acknowledges himself to be the father of such a child," there was excluded the claim that he was an heir of other persons except, of course, the mother. The courts uniformly accept and apply in the construction of the statutes the doctrine of "Expressio Unius Est Exclusive Alterius," that is the expression of one thing is the exclusion of another. There are numerous cases cited in a foot note to the text in 35 C.J.S. 283 where the doctrine is applied. Numerous other cases will be found collected in 25 C.J. note 17, pages 220 to 223, both pages inclusive. We do not claim to have read all of such cases and feel certain that the court will not undertake such an arduous task. However, if the court is interested, it will find the following Utah cases cited:

*Zamata v. Browning*, 51 Ut. 400; 170 Pac. 1057;

*Tribune Reporter Printing Co. v. Homer*, 51 Ut. 153; 169 Pac. 170;

*State v. Shockley*, 29 Ut. 25; 80 Pac. 865; 867;

*Nichols v. Oregon Short Line R. R. Co.*, 28 Ut. 319, 78 Pac. 866.

Not only do the provisions of U.C.A., 1943 101-4-10 limit the right of inheritance to the father, but it also limits such right to his or her estate. The property of Mrs. Lewis was in no sense a part of the estate of Henry Charles Denhalter.

It should be noted that the authorities are uniform in holding that the use of the word child or children as used in the law of succession means the legitimate children.

There are numerous cases involving statutes like or substantially like our Section 1943, 101-4-10 where it is held that such language does not make an illegitimate child legitimate so as to entitle it to inherit from anyone other than as the statute provides—its parents. Among such cases are:

*Heck v. Smith*, 94 Ga. 809, 22 S.E. 153;

*Hunt v. Hunt*, 37 Me. 333;

*Eddie v. Eddie*, 8 N.D. 376, 73 Am. St. Rep. 765, 79 N.W. 856;

*Stafford v. Houghton*, 48 Vt. 236;

*Reynolds v. Hitchcock*, 72 N.H. 340, 56 Atl. 745;

*Williams v. Kimball*, 35 Fla. 491, 84 Am. St. Rep. 238, 16 So. 783;

*Haraden v. Larrabee*, 113 Mass. 430;

*Thigpen v. Thigpen*, 136 Ga. 541; 71 S.E. 790;

*Voorhees v. Sharp*, 63 N.J. Eq. 216; 49 Atl. 722;

*Re Mericho* 63 How Pr (N.Y.) 62;

*Waggoner v. Miller*, 26 N.C. 486;

*Brown v. Kerby*, 9 Humph, Tenn. 460;

*Jackson v. Jackson*, 78 Ky. 390; 39 Am. Rep. 246;

See 24 A.L.R. page 577, et seq.

*Pratt v. Atwood*, 108 Mass. 40;

There are a few cases containing similar language where a different result has been reached, but as stated by the Supreme Court of New Hampshire in the case of *Reynolds v. Hitchcock*, supra, the language of the statutes so construed is much broader than that used in the New Hampshire statute and is likewise much broader than the language of our statute, U.C.A. 1943, 101-4-10.

In the light of the decision of our Supreme Court in the case of *Mansfield v. Neff*, 43 Ut. 258; 134 Pac. 1160, we have probably gone to greater pains in directing the attention of the court to cases from other jurisdictions where statutes similar to our Section 101-4-10 have been construed. That Section was Section 714, Compiled Laws of Utah 1876. It is identical with Section 2833 R. S. 1898; Sec. 2833 Comp. Laws of Utah 1907. This section is also identical with Vol. 2, Sec. 2742, 2743, Compiled Laws of Utah, 1917. It was thus in effect at the times involved in the case of *Mansfield v. Neff*, supra.

We will quote at some length from that case; to-wit:

“The principal contentions made by appellant, however, are based upon questions of law. He contends that he and his sister still living, and the issue of the sister now deceased, are entitled to the property in question as the heirs of their father, Mathew Mansfield; that the latter was

the heir of John M. Mansfield, who was his son by his plural wife, Margaret Haslam, the only daughter of John Haslam, deceased. In this connection it is contended that under our statute (Comp. Laws 1907, section 2781, which was in force when John Haslam made his will, and has continued in force ever since) the will is of no force or effect as against John M. Mansfield. Said section reads as follows:

“ ‘When any testator omits to provide in his will for any of his children or for the issue of any deceased child, unless it appears that such omission was intentional, such child or the issue of such child must have the same share in the estate of the testator as if he had died intestate, and succeeds thereto as provided in the preceding section.’ ”

“John M. Mansfield, it is contended, comes within the provisions of said section, because he was the only child and representative of John Haslam’s only daughter, who was dead when the will was made and became effective. We cannot yield assent to these contentions. Under the common law, which was in force in the territory of Utah by virtue of the Organic Act, John M. Mansfield was an illegitimate child, because he was the fruit of a plural and not of a legal marriage. If he was an illegitimate child, then he does not come within either the letter or the spirit of said section. The section was copied from the statutes of Massachusetts, and this identical question was squarely determined against appellant’s contentions by the Supreme Judicial Court of that state as early as 1854 in the case of *Kent v. Barker*, 2 Gray (Mass.) 535. It was there held that the statute applies only to grandchildren who are con-



ceived and born as the fruit of lawful marriage. Such a conclusion is reasonable. The statute is, in one sense, a restriction upon the right of disposition of property by will, and hence its terms should not be extended by implication. A grandfather, under the common law, certainly was under no legal obligation to provide for an illegitimate grandchild, nor was such a child, under that law, an heir of his grandparent, and, if he was not, the statute could not have been intended for his protection.

“This is clearly the logic of the case of *Estate of Wardell*, 57 Cal. 484, where it is held that the provisions apply as between the Mother and her illegitimate child, for the reason that such child was the heir of the mother. The California case is therefore a negative authority for the respondents.

“It is contended, however, that the statute applied to John M. Mansfield, for the reason that, under the congressional act of March 22, 1882, known as the Edmunds Law (1 C.L. Utah 1888, p. 110), the issue of plural marriages born before the 1st day of January, 1883 were legitimated. While it is true that the testator died in 1882, some time after the passage of the Edmunds Law, we think that by that act the status of illegitimate children was intended to be affected only as between themselves and their parents. It was not until the legislature of this state in 1896 (Comp. Laws 1907, section 2850) passed a law, much more sweeping in its scope and effect, that the children who were born prior to January 4, 1896, as the fruit of plural marriages, were legitimated for all purposes. See *Rohwer v. District Court*, 41 Utah 279, 125 Pac. 671, where we held that it was

only after the statute of 1896, and the other statutes there mentioned, and not otherwise, that a father could inherit from his illegitimate child. The views held by the majority of this court in the Rohwer case are fully supported by the Supreme Court of the United States in *Cope v. Cope*, 137 U.S. 682, 11 Sup. Ct. 222, 34 L. Ed. 832. There, is however, nothing said in either one of those cases from which it can logically be inferred that the right of inheritance of illegitimate children was extended so as to make them heirs of their grandparents. The right of inheritance of illegitimate children is purely statutory, and, unless the right is given by statute, no such right exists, because the common law conferred none.

“We are of the opinion, therefore, that neither John M. Mansfield nor his father, nor the latter’s heirs, can assail the will of John Haslam, because it was not made to appear that the latter had intentionally excluded John M. Mansfield from the will, for the reason that the latter was not an heir of John Haslam at the time of the latter’s death, or at any other time.”

It will be seen from the foregoing history of Section 101-4-10 that such section was a part of our statutory law at all times involved in the *Mansfield v. Neff* case, yet it was held that such law did not render one who was born when such law was in effect was by such law made legitimate. It is further worthy of note that the law was taken from Massachusetts where its Supreme Court had held and still holds that such statute does not render an illegitimate child entitled to inherit from anyone other than its parents. The case of *Mansfield v. Neff* has never

been reversed and is, we submit, binding upon this court. Obviously the doctrine announced in the case of *Mansfield v. Neff*, supra, the claimant was not entitled to inherit from the father of Henry Charles Denhalter because he was not mentioned in the will of the former.

In the court below the counsel for the plaintiff seems to get some comfort out of the case of *Rohwer v. District Court of First Judicial District*, 41 Utah 279; 125 Pac. 671. It will be noted that the language of the act there involved provided that such children (the issue of plural marriages) are hereby legitimated and such issue are entitled to inherit from both parents and to have and enjoy all rights and privileges to the same extent and in the same manner as though born in lawful wedlock.

As we read the case it makes against and not in support of claimant's contention. Thus the Court holds that section 2850 Comp. Laws of Utah 1907, which section was involved in that case, applied only to plural marriages. On page 287 of the Utah report it is said: "In what way do any or all of the foregoing provisions except those found in section 2850 make the children of void marriages legitimate so as to escape the consequence of that condition? The answer is obvious. Neither one nor all of those provisions have or were intended to have such effect and a child which is the issue of a so-called plural marriage or Mormon marriage is no doubt an illegitimate child and, if it were not for the provisions of section 2850, would have to suffer all the legal if not all the social consequence of that status."

At the time involved in the last above cited case, section 101-4-10 is identical with section 2833 mentioned in that opinion. Thus it will be seen that the court expressly held that a child who merely brings itself within the provisions of 2833 Laws of Utah 1907 now U.C.A., 1943 101-4-10 does not thereby render such child legitimate so as to entitle it to inherit from anyone other than its parents. It may also be noted that Section 14-4-12 of Utah Code Annotated 1943 is identical with Section 10 of Title 2, Comp. Laws of Utah 1907. It is expressly held that the child whose rights were involved in the *Rohwer v. District Court of First Judicial District* case that section 10 of Title 2, Comp. Laws of Utah 1907 did not aid the claimant in that case and by the same token the provisions of 14-4-12 of U.C.A. cannot aid plaintiff's claim in this case.

It may be noted that under our statutory law even if it be determined that Henry Charles Denhalter is the natural father of claimant's father, he could not under any circumstances inherit from him. U.C.A. 1943 101-41-11 provides that:

“If an illegitimate child dies intestate, without leaving husband or wife or lawful issue, his estate goes to his Mother or, in case of her decease, to her heirs at law.”

Another fact in this case which under many of the authorities constitutes an impediment to claimant being entitled to any of the estate of Mrs. Lewis is U.C.A. 1943 14-4-6, which provides that:

“A child when adopted may take the family name of the person adopting. After adoption, the two shall sustain the legal relation of parent and child, and have all the rights and be subject to all the duties of that relation.”

U.C.A. 1943 14-4-11 provides :

“The natural parents of an adopted child are from the time of the adoption relieved of all paternal duties towards and all responsibility for the child so adopted, and have no further rights over it.”

In this case the father of the claimant was taken by the Johnstons immediately after its birth and thereafter adopted. Under such a state of facts, we find the law thus stated in 10 C.J.S. 111 :

“In some jurisdictions the adoption of an illegitimate child does not deprive such child of the right conferred by statute to inherit from her natural parents. It has been held, however, that while the adoption of an illegitimate child pursuant to the applicable statute does not deprive him of the right to inherit from his natural parent where such adoption occurs after the death of the parent, the rule is otherwise as to the right of an illegitimate child to inherit from the kindred of the deceased parent where the adoption is by strangers and occurs before the death of such kindred.”

Under such doctrine the claimant must fail in this case because both he and his father were adopted by strangers before the death of Mrs. Lewis.

Moreover, the following cases support the view that an adopted child may not inherit from its natural parents. *In re Hunsicker-Halterman et al v. Fillencer et al*, 65 Cal. App. 114; 223 Pac. 411; *In re Darling* 173 Cal. 221; 159 Pac. 606; *Stamford Trust Co. v. Lokwood*, 93 Conn. 337; 119 Atl. 218.

In light of the fact that our statutes relating to adoption are taken from California, the cases above cited from that state should be entitled to great weight in this state.

By way of summary, the appellants contend:

1. That the trial court erred in admitting the hearsay testimony of claimant's witnesses, Mr. Clark and Mrs. Loveless.

2. That there is not sufficient competent evidence to support the finding that the claimant is the natural grandson of Henry Charles Denhalter.

3. That even if it be concluded that Henry Charles Denhalter was the grandfather of the claimant, such fact does not entitle the claimant to participate in the estate of Mignon D. Lewis, deceased, because the only two statutes in Utah that legitimates an illegitimate child are:

U.C.A. 1943 12-2-14 and U.C.A. 1943 14-4-12 and that the claimant does not bring himself within the provisions of either of those statutes.

4. That U.C.A. 1943 101-4-10 is calculated to grant to an illegitimate child the right to inherit from the parents but not from collateral blood relatives.

5. That the father of the claimant having been adopted by the Johnstons and the claimant by English, he is precluded from participating in the estate of Mrs. Lewis, even though he be held to be a blood relative.

It is submitted that the Decree and Judgment appealed from should be reversed and that it be determined that the claimant is not entitled to participate in the distribution of the estate of Mignon D. Lewis, deceased, and that appellants be awarded their costs.

Respectfully submitted,

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