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**[ G.R. No. 2599. October 27, 1905 ]**

**CARMEN LINART Y PAVIA, PLAINTIFF AND APPELLEE, VS. MARIA JUAN A UGARTE E ITURRALDE, DEFENDANT AND APPELLANT.**

**D E C I S I O N**

**ARELLANO, C.J.:**

Ramon Iturralde y Gonzalez having died intestate on the 28th of December, 1900, Maria Juana Ugarte e Iturralde asked that she be judicially declared the legitimate heir of the deceased.

There being no legitimate heirs to the estate either in the direct ascendant or descendant line of succession, the petitioner presented herself as a collateral descendant—that is to say, as the legitimate niece of the deceased. Her mother, Maria Juana Iturralde y Gonzalez, as well as the deceased, Ramon Iturralde y Gonzalez, were children of Manuel Iturralde and Josefa Gonzalez.

The petition of Maria Juana Ugarte e Iturralde, then the only claimant to the estate, having been heard in accordance with the provisions of the Code of Civil Procedure in force at the time, intestate proceedings were instituted, and she was declared, in an order made on the 31st of January, 1901, without prejudice to third parties, to be the heir of the deceased, Ramon Iturralde y Gonzalez.

In the month of December, 1904, however, Carmen Linart, through her guardian, Rafaela Pavia, claimed one-half of all of the estate of the deceased, Ramon Iturralde y Gonzalez, and asked at the same time that Maria Juana Ugarte e Iturralde, who had been declared the lawful heir of the deceased—a fact which this new relative did not deny—be required to render an account of the property of the estate.

The father of the petitioner was in the same collateral degree of succession as Maria Juana Ugarte e Iturralde. Pablo Linart, the father of Carmen Linart, was the legitimate son of Maria Josefa Iturralde y Gonzalez, another sister of Ramon Iturralde y Gonzalez. They, and Maria Juana Iturralde y Gonzalez are the common trunk from which the three branches issue.

Carmen Linart does not claim that her father, Pablo, who was of the same degree as Maria Juana Ugarte e Iturralde, should have succeeded Ramon, for the reason that the latter died first. This, however, was not alleged, much less proved. What she claims is that, although she is one degree lower in the line of succession than her aunt, Maria Juana Iturralde y Gonzalez, yet she is entitled to a share of the estate of the deceased through her father, Pablo Linart, by representation—that is to say, that even though a grandniece, she is entitled to the same share in the estate as the direct niece, Maria Juana Ugarte e Iturralde.

The court below on the 24th of February, 1905, entered judgment declaring that the petitioner had the same right to participate in the inheritance as had Maria Juana Ugarte e Iturralde, and ordered the latter to render an account of the estate, enjoining her, at the same time, from disposing of any part thereof until such accounting had been made and the estate distributed. Maria Juana Ugarte excepted to the judgment and has brought the case to this court.

After a consideration of the case, this court finds: (1) That the relative nearest in degree excludes those more distant, with the exception of the right of representation in proper cases (art. 921, par. 1 of the Civil Code); and (2) that the right of representation in the collateral line shall take place only in favor of children of brothers or sisters whether they be of whole or half blood (art. 925, par, 2).

In the light of the foregoing, the error which the appellant claims was committed in the court below is very clearly shown. The court below held that the grandniece was entitled to the same share of the estate that the niece was entitled to, when, as a matter of law, the right of

representation in the collateral line can only take place in favor of the children of brothers or sisters of the intestate, and the plaintiff in this case is not a daughter of one of the sisters of the deceased, such as is the appellant, but the daughter of a son of a sister of the deceased. It would have been quite different had it been shown that her father, Pablo Linart, had survived the deceased. In that case he would have succeeded to the estate with his cousin, Maria Juana Ugarte, and then, by representation, she, the plaintiff, might have inherited the portion of the estate corresponding to her father's. It is not an error to consider that the word "children" in this connection does not include "grandchildren." There is no precedent in our jurisprudence to warrant such a conclusion.

The decisions of the supreme court of Spain of October 19, 1899, and December 31, 1895, relied upon, are not applicable to this case. Those decisions were rendered in cases relating to testate and not to intestate successions. In both cases, and in many others decided by the supreme court of Spain, prior to the operation of the Civil Code, where a testator had named certain persons as heirs and, they failing, that the property should pass to their children, it was held that "grandchildren" were necessarily included in the word "children," and that in such a case the grandchild does not, properly speaking, inherit by representation, "for the reason that he must in any event succeed the *child* in the natural and regular order," and pointed out in the last decision referred to. And, as is also pointed out in the first decision, "the fact that it was stated with more or less correctness in the prayer of the complaint that the action was based upon the right of representation, is not sufficient to deny to the appellant a right which he had under the terms of the will." The difference is this, that in the case of a testamentary succession, we must take into consideration and give force to the intention of the testator when he substitutes the children for the heirs first named by him. The descendants are ordinarily considered as included in the term "children," unless they are expressly excluded, whereas in intestate successions, reference should only be had to the provisions of the law under which it is evident that the rights of representation in the

collateral line do not obtain beyond the sons and daughters of brothers or sisters.

We, therefore, hold that in an intestate succession a grandniece of the deceased can not participate with a niece in the inheritance, because the latter, being a nearer relative, the more distant grandniece is excluded. In the collateral line the right of representation does not obtain beyond sons and daughters of the brothers and sisters, which would have been the case if Pablo Linart, the father of the plaintiff, had survived his deceased uncle.

For the reasons above stated, we hereby reverse the judgment of the court below, and declare that Carmen Linart has no right to succeed the deceased with said Maria Juana Ugarte e Iturralde, who was once declared to be the lawful heir, and who is now in possession of the estate, as to whom we hereby dissolve the injunction issued from the Court of First Instance.

After the expiration of twenty days let judgment be entered in accordance herewith, without special provisions as to the costs of this instance, and let the record be remanded to the Court of First Instance from whence it came for execution of the said judgment. So ordered.

*Torres, Mapa, Johnson, Carson,* and *Willard, JJ.,* concur.

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