PHILIPPINE LAW JOURNAL

Vol. IV | APRIL, 1918 | No. 9

A COMPARATIVE STUDY OF THE ADOPTION LAW UNDER THE SPANISH CIVIL CODE AND THE CODE OF CIVIL PROCEDURE

By Prof. Serafin P. Hilado

INTRODUCTION

Historical.—While the practice of adopting children was well-known among the ancient Assyrians, Egyptians, Hebrews[1] and other peoples, it was among the Romans where it received a high degree of development and became the subject of complete legislation.[2] Borrowing the old Roman law of adoption Spain[3] and the continental countries embodied it in their statute laws. Upon the discovery and colonization of the Western World it was naturally transplanted to the Spanish and French colonies who preserved and modified the same, and from whom the other States of the Union recently copied.[4] By the promulgation of Spanish laws in the Philippines, the adoption law was extended to these Islands and its benefits made available to the inhabitants. Because of the change of sovereignty from Spain to the United States, American laws were gradually introduced into this Archipelago, among the first of which was the law of adoption. Thus, originating from a common source, flourishing in different countries, among different peoples, amidst diverse institutions, surroundings, and conditions, the two streams have met in these Islands, and made a comparative study of both interesting and instructive.

To compare the Spanish adoption law as laid down in the Civil Code,[5] and as construed by Spanish commentators, and the American law as it appears in the Code of Civil Procedure,[6] and as interpreted by American courts, is the object of the present treatise.

General Nature.—The American and Spanish laws on adoption differ radically. The former provides for a complete change in the domestic relations of the child, making him "to all intents and purposes the child and legal heir" of the adopting

1 In the Matter of Upton, 16 La. An. 175.
2 II Manresa, 69.
3 II Manresa, 70; I Falcon, 199.
4 Notes in 29 Am. St. Rep., 210.
5 Arts. 173-180.
6 Secs. 765-772.

parent,[1] while the latter permits only a change in the person who is to exercise the parental authority, preserving all the other relations of the adopted with his natural family.[2] In fact the adopting parent, under the Spanish law, resembles a guardian over the person of a ward more than the parent of a child.[3] Unlike the natural father,*[4] he has nothing but a mere naked patria potestas, without a usufruct in the property of the child, and without a right to administer the same unless he gives a sufficient bond to the satisfaction of the court or of the person who must give consent to the adoption.[5]

WELFARE OF CHILD.—It is very pleasing to note, however, that, contrary to the old Roman law,[6] both laws make the welfare of the child the paramount consideration. Thus, a guardian is forbidden to adopt his ward[7] in order to prevent adoptions inspired by selfish interests. The consent of the person to be adopted, if of a certain age,[8] and that of his parents or persons standing in loco parentis, if a minor,[9] are required in order that his interests may be adequately safeguarded. Proceedings must be made in court so that the State, through its judicial representatives, may determine for and by itself "the fitness and propriety of such adoption."[10]

WHO MAY ADOPT

IN GENERAL; ESSENTIAL QUALIFICATIONS; RESIDENCE; COMPLETE CIVIL CAPACITY.—Adoption may be made only by residents of the Philippine Islands possessed of complete civil capacity.[11] Hence, idiots, insanes, deaf and dumbs, prodigals, minors, those civilly interdicted, and every one laboring under any of the causes, which restrict civil capacity may not do so.[12]

---

1 Code of Civil Procedure, Sec. 768.
2 Civil Code, Art. 177.
3 V. Sanchez Roman, 1085.
4 Civil Code, Art. 159, et seq.
5 Civil Code, Art. 166.
6 I Falcon, 200.
7 Civil Code, Art. 174 (3); Code of Civil Procedure, Sec. 765.
8 23 Under Civil Code; Arts. 178, 320; 14 under Code of Civil Procedure, Sec. 765.
9 Civil Code, Art. 178; Code of Civil Procedure, Sec. 765.
10 Code of Civil Procedure, Secs. 765, 767; Civil Code, Art. 178.
11 Civil Code, Art. 173.

"El Código emplea en este Artículo 173 la formula de que 'pueden adoptar los que hallen en el pleno uso de sus derechos civiles,' sin que en este texto, ni en ningún otro, haya usado ese tecnicismo ni explicado su alcance, por cuyo motivo hay que referir la frase; no solo á la aptitud de derecho (capacidad jurídica) sino á la libertad y posibilidad de su ejercicio (capacidad de obrar ó civil perfecta); de donde resulta que cualquiera limitación en la capacidad de obrar ó civil que priva de esa condición de plenitud de uso de derechos civiles, inabilita para la adopción." V. Sanchez Roman, 1073.

The Code of Civil Procedure reads:

"An inhabitant of the Philippine Islands, not married, or a husband and wife jointly, may petition the Court of First Instance of the province in which they reside for leave to adopt a minor child * * * * * *." Sec. 765.

Nothing is said of complete civil capacity as an essential qualification, but as adoption is a contract (Merritt v. Morton, 143 Ky., 133) resulting into a status, it is safe to hold that the legislators intended to permit its exercise only by those who may legally contract: those possessed of complete civil capacity.

12 Civil Code, Art. 32.

* The terms "natural father," "natural parent," etc., are used throughout in contradistinction to "adopting father," "adopting parent," etc., and not in the sense that he is the father or parent of a child conceived at a time when the parents could have legally married.

ID.; ID.; AGE.—Unlike the Code of Civil Procedure, however, the Civil Code demands further an age qualification. It requires the adopting to be at least fifteen years older than the adopted, so that the ages of the two may be such that one could have been the natural parent of the other,[1] and to be at least forty-five years old.[2] A learned commentator says that this latter age qualification (of 45 yrs.) is demanded in order that "only he who has no children, and has no more hopes of having them, may be permitted to adopt."[3]

The full force of this reasoning is not clearly conceived. By what authority may we say that a man of forty-five years has no more hopes of having children? The laws do not prohibit any one over forty-five from marrying. Nay, thousands marry over fifty, and experience has demonstrated that those marriages have been almost invariably fruitful of children.

WOMEN.—Women may adopt if they possess the necessary qualifications. Sex is of no importance. There is nowhere an express inhibition as to them; and the language of both statutes is broad enough to include them.[4]

FOREIGNERS.—Foreigners residing in the Philippines may adopt.[5]

MARRIED PERSONS: JOINTLY.—The husband and wife may jointly adopt.[6]

IDEM: SEPARATELY.—Either spouse may, under the Civil Code, adopt with the consent of the other.[7] Under the Code of Civil Procedure it cannot be done except in the case of a stepfather adopting his stepchild.[8]

STEPFATHERS.—Stepfathers may adopt their stepchildren if it is consented to by the mother, or, upon her incapacity, by the guardian.[9] The Code of Civil Procedure also requires the consent of the stepchild if fourteen years or more of age.[10]

WHO MAY NOT ADOPT

UNDER BOTH LAWS: GUARDIANS.—Both the Civil Code and the Code of Civil Procedure absolutely forbid guardians to adopt their wards. From a reading of the provisions of law[11] it may seem that guardians may adopt after the final settlement and approval of their accounts, but this is nothing more than a play of words. From the moment that their accounts are finally settled and approved they are no longer guardians, and they adopt, if they do so, just the same as any other stranger.

---

1 Civil Code, Art. 173; II Manresa, 71.
2 Art. 173.
3 I Falcon, 200.
4 Civil Code, Art. 173; Code of Civil Procedure, Sec. 765.
5 Civil Code, Art. 27; Code of Civil Procedure, Sec. 765.
6 Civil Code, Art. 174 (4); Code of Civil Procedure, Sec. 765.
7 Civil Code, Art. 174 (4).
8 Code of Civil Procedure, Secs. 765, 766.
9 Civil Code, Art. 174 (4); Code of Civil Procedure, Sec. 766.
10 Sec. 766.
11 Civil Code, Art. 174 (3); Code of Civil Procedure, Sec. 765.

IDEM: HUSBAND AND WIFE.—The Spanish law prohibits either spouse from adopting without the consent of the other;[1] the American law does not permit other than a joint adoption by the two, except in the case of a stepfather adopting his stepchild.[2]

UNDER THE SPANISH LAW.—One of the most striking features of the Civil Code which is absent from the Code of Civil Procedure is the absolute prohibition on certain persons to adopt: the clergy, and those with legitimate or legitimated children.[3]

IDEM: THE CLERGY.—The inhibition on the clergy to adopt extends only to those who profess the Catholic religion. The Spanish commentators are in accord with this inhibition. Falcon says:

> "With reason does it (the Civil Code) prohibit from adopting those who * * * like the clergy, have previously renounced the pleasures of paternity."[4]

To those who have been trained in the modern idea that laws should not preclude certain classes of persons from the enjoyment of privileges opened to others, simply because of their religious vocation and affiliation, this provision may seem absurd; but, howsoever we may differ from it, the reason on which it is based is clear: the Union of the Church and State sanctioned by the Spanish Crown and people[5]. In a country, where, like Spain, the Cross and the Sword have for centuries marched together in search for territories and power for the same Monarch; and where the clergy have always shared in the deliberations of the Assemblies, counselled public officials, advised the King, and in a thousand other ways participated in the conduct of the Government, it is not at all strange to find the civil laws seeking to be in harmony with the cannons of the Church.

PERSONS WITH LEGITIMATE OR LEGITIMATED CHILDREN.—The existence or non-existence of other children is not taken into consideration by the American law in determining who may adopt; but the Spanish law permits adoption only in the absence of legitimate or legitimated children.[6]

The wisdom of the Spanish law in this regard cannot be spoken of too highly. It tends to avoid the lamentable dissensions which may naturally follow the introduction into the family of strangers entitled to share with the other children the care and affection of the parents. Especially great is the danger of internal friction where, as in the Code of Civil Procedure, the adopted is placed in an equal footing with those begotten by the parents themselves, and invested with the same rights to support, care, inheritance, and so on.

---

[1] Civil Code, Art. 174 (4).

[2] Code of Civil Procedure, Secs. 765, 766.

[3] Civil Code, Art. 174 (1 ,2).

[4] I Falcon, 200.

[5] As Manresa says:

> "The clergy are not permitted to adopt out of respect to the celibacy which the religion imposes." II, 73. See also V. Sanchez Roman, 1077, 1078.

[6] Civil Code, Art. 174 (2).

WHO MAY BE ADOPTED

GENERALLY.—While the Code of Civil Procedure permits only minors to be adopted,[1] the Civil Code allows the adoption of those who have already attained majority as well as of minors.[2]

However, as every one is released from parental authority from the moment he arrives at majority,[3] it would seem that the adoption of those of age would pass no patria potestas to the adopting parent, and its whole effect would be limited to the use by the adopted of the name of the adopter together with that of his natural parent's if it suits him to do so.[4]

ILLEGITIMATE CHILDREN.—Can one adopt his own illegitimate children? Neither Code expressly prohibits it, and the Spanish writers say that the omission has probably been made intentionally in order that the father may be given an opportunity to fulfill the duties he owes to his child, and the latter may find in his parental home the protection and care which is his due.[5] But while it is true that to permit it would lead to such good results, still it is believed that it cannot be legally done. The underlying principle of adoption is the creation of an artificial relationship of paternity and filiation between persons who are not so by nature. The person to be adopted must be the child of another.

The authorities uphold this statement. They unanimously emphasize the absence of a natural relationship. Thus the Civil Code of Guatemala says: "La adopción ó prohijamiento es el acto de tomar por hijo al que no lo es del adoptante."[6]

PROCEDURE

The procedure for adoption is practically the same in the Spanish and American laws. A petition has to be presented in a Court of First Instance; notice given; hearing had; the consent of the person to be adopted, if of a certain age,[7] and that of his parents, or guardian, if a minor, given;[8] a formal decree rendered by the Court, and made a matter of record.[9]

EFFECTS OF ADOPTION

PARENTAL AUTHORITY.—Both the Code of Civil Procedure and the Civil Code provide for a transfer of parental authority from the natural to the adopting parent.[10]

---

[1] Sec. 765.

[2] Art. 178; II Manresa, 72.

[3] Civil Code, Art. 167 (2); 314 (2).

[4] I Falcon, 201, 204 (note 1).

[5] "El Código no habrá creido conveniente establecer sobre este punto prohibición ni declaración alguna, en consideración sin duda á que con la adopción podrá llenarse un deber moral y de conciencia." II Manresa, 72; V. Sanches Roman, 1077.

[6] II Manresa, 71; I Bouvier's Law Dictionary, 104.

[7] 23 under the Civil Code, Art. 320; 14 under Code of Civil Procedure, Sec. 765.

[8] Civil Code, Art. 178; Code of Civil Procedure, Sec. 765.

[9] Civil Code, Art. 179; Code of Civil Procedure, Sec. 767.

[10] Civil Code, Art. 177; Code of Civil Procedure, Sec. 768.

However, while under the former it is permanent, under the latter it is temporary, lasting only during the life of the adopting parent, and reverting to the natural parent upon the death of the adopter.[1]

NAME.—Consistently with its theory that the adopted becomes "to all legal intents and purposes" the child of the adopter, the Code of Civil Procedure requires a change in his name;[2] while the Civil Code, adhering to its policy of preserving the natural ties of kinship as much as possible, permits, at the most, the use of the adopting parent's name together with that of the natural father's, and this only when it is expressly stated in the deed of adoption.[3]

SUPPORT.—Mutual support between the adopter and the adopted is due.[4] Unlike the Code of Civil Procedure, however, the Civil Code makes this mutual obligation without prejudice to the preferred rights of the following persons:

1. The spouse.[5]
2. The legitimate and legitimated children.[6]
3. The acknowledged natural children[7] and their legitimate descendants.[8]
4. The legitimate and illegitimate ascendants.[9]
5. The legitimate brothers and sisters.[10]

RIGHT TO SUCCEED MORTIS CAUSA: BY WILL.—There is no doubt that both the adopter and the adopted may inherit from one another by will.

IDEM: BY INTESTATE SUCCESSION: UNDER THE SPANISH LAW: BETWEEN THE ADOPTER AND THE ADOPTED.—Under the Spanish law neither the adopter nor the adopted inherits ab intestato from the other "unless the adopter in the deed of adoption has bound himself or herself to make such child his or her legal heir. This shall produce no effect when the adopted dies before the adopter."[11]

Now, supposing that the deed of adoption contains a provision that the adopted shall be made heir of the adopting parent, what would be his share in the absence of express stipulation therein as to its exact amount or proportion? Should he participate share and share alike with the other legitimate or legitimated children, if there are any born or legitimated subsequent to the adoption? And in the absence of such legitimate or legitimated children, should he inherit the whole of the estate to the

---

[1] V Sanches Roman, 1075; II Manresa, 77.
[2] Sec. 767.
[3] Art. 175.
[4] Civil Code, Art. 176; Code of Civil Procedure, Sec. 768; 29 Cyc., 1605, 1620.
[5] Civil Code, Art. 143 (1).
[6] Civil Code, Arts. 122, 143 (2, 3).
[7] Civil Code, Arts. 176, 143 (4).
[8] Civil Code, Art. 143 (4).
[9] Civil Code, Arts. 176, 143 (2, and next to last paragraph).
[10] Civil Code, Art. 143 (last paragraph).
[11] Civil Code, Art. 177.

exclusion of the ascendants and other relatives of the intestate? The law does not pass upon these perplexing points. To answer the questions in the affirmative would lead to the anomalous situation of making the adopted heir preferred over the ascendants of the adopting parent,[1] while his right to be supported by the latter is subordinate to that of the latter's ascendants.[2] But, in spite of this, it is believed that since by virtue of the agreement embodied in the deed of adoption he acquires an indefeasible right to inherit,[3] the intention of the law makers could not have been other than to permit him to share equally with the first heir of the adopter: his legitimate and legitimated children.[4] For the purposes of intestate succession he is nothing less than a legitimate child. This being so, in the absence of other legitimate children, the whole estate will vest in him to the exclusion of the other relatives of the intestate.[5] True that in naming the order of intestate succession the adopted children are not mentioned, but our construction of the statute does not by any means attempt to violate the laws of descent, but simply to point out who are considered "legitimate children."

Right to Succeed Mortis Causa: By Intestate Succession: Under the Spanish Law: Between the Child and his Natural Parents.—The mutual right of the parent and child to succeed one another is not affected by the adoption of the latter.[6]

Right to Succeed Mortis Causa: By Intestate Succession: Under the American Law: Right of Child: From Natural Parent.—We have seen throughout our study that the Code of Civil Procedure has consistently emphasized its policy of making the adopted the "child and legal heir" of his adopting parents. In one respect, however, it preserves the natural relation: in the matter of intestate succession. The right of the child to inherit from his natural father and mother is guaranteed in express terms.[7]

Right to Succeed Mortis Causa: By Intestate Succession: Under the American Law: Right of Child: From his Adopting Parent.—The adopted child is the "legal heir" of his adopting parent. He may inherit ab intestato, share and share alike with the other legitimate children, both the real and personal property of their parent. The location of said property will generally not affect his right to succeed because from the moment of adoption he becomes the "legal heir" of the adopting parent, and will be so recognized abroad as well as in his domicile, unless

---

1 Article 935 of the Civil Code.
2 Civil Code, Art. 176.
3 Civil Code, Art. 177.
4 Civil Code, Art. 930.
5 Civil Code, Art. 935.
6 "The adopter does not acquire any right whatsoever to inherit from the adopted. * * * The adopted retains all the rights belonging to him in his or her natural family." Civil Code, Art. 177.
7 Code of Civil Procedure, Sec. 768.

such recognition would be inconsistent with the laws or policy of the particular State. As Justice Gray has said:

> "It is a general principle that the status or condition of a person, the relation in which he stands to another person, and by which he is qualified or made capable to take certain rights in the other's property, is fixed by the law of the domicile; and that status and capacity are to be recognized and upheld in every other State, so far as they are not inconsistent with its own laws and policy."[1]

This right of the adopted to inherit cannot be divested by will and any attempt to do so "must necessarily prove of no effect beyond the disposable portion."[2] However, like the right of any other child, it is subject to the testamentary power of the adopting parent,[3] and the adopted may be disinherited for the same causes as other children.[4]

RIGHT TO SUCCEED MORTIS CAUSA: BY INTESTATE SUCCESSION: UNDER THE AMERICAN LAW: RIGHT OF CHILD: FROM THE RELATIVES OF HIS ADOPTING PARENTS. —As the right of the child to inherit from his adopting parent grows out of the contract of adoption, it is apparent that it has no binding force on persons who are not parties to the contract, and that he cannot inherit from the lineal and collateral relatives of the adopter. As to them he remains a stranger just the same as before the adoption. Such has been the unanimous holding of the Supreme Court of the various States whose laws are in substance exactly the same as ours. Thus, where an infant was adopted by Mr. and Mrs. Merritt and soon after the death of Mrs. Merritt her mother died intestate, it was held that the adopted could not inherit, the Supreme Court of Kentucky saying:

> "The act of the foster parents in adopting the child is a contract into which they entered with those having the lawful custody of the child, an agreement personal to themselves, and, while they have a perfect right to bind or obligate themselves to make the child their heir they are powerless to extend this right on his part to inherit from others. All inheritance laws are based or built upon natural ties of blood relationship, whereas an adopted child's right to inherit rests upon a contract, and hence only those parties to the contract are bound by it."[5]

Again, the Supreme Court of Tennessee said:

> "The adopted child becomes entitled to the same protection and support as if born the child of the adopting parent, and is given the capacity of inheriting or succeeding to the estate of the adopting parent as heir or next of kin.

---

[1] Ross v. Ross, 129 Mass., 243; 37 Am. Rep., 321.
[2] Code of Civil Procedure, Sec. 614; Succession of Hosser, 37 La. An., 839.
[3] Austin v. Davis, 128 Ind., 472; 25 Am. St. Rep., 456.
[4] In re Wright's Estate, 11 Pa. Co., Ct. Rep., 492.
[5] Merritt v. Morton, 143 Ky., 133; 33 L. R. A. (N. S.) 139.

The adopting parent assumes the same parental obligations to the adopted child as if such child were born to such parent, and the adopted child is clothed with the same rights in the estate of the adopting parent as an heir or next of kin. This is the full measure of the benefits conferred upon the adopted child. No claims are given upon any one except the adopting parent. * * * By the adoption, Andrew Lewis, the adopted son, became invested with all the rights of heir and next of kin to Lowie Lewis, the adopting father, but he was not thereby made the heir or next of kin of the children born to Lowie Lewis. As to them he occupied the same relationship in law after the adoption as before—that of a stranger in blood."[1]

RIGHT TO SUCCEED MORTIS CAUSA: BY INTESTATE SUCCESSION: UNDER THE AMERICAN LAW: RIGHT OF DESCENDANTS OF ADOPTED.—Like their father the descendants of an adopted person inherit both from their natural and adopting grandparents,[2] but not from the lineal and collateral relatives of the latter. The reason for this is obvious. The fountain cannot rise higher than the stream; neither can grandchildren acquire greater rights than those of the parents.

RIGHT TO SUCCEED MORTIS CAUSA: BY INTESTATE SUCCESSION: UNDER THE AMERICAN LAW: RIGHT TO SUCCEED CHILD.—The right to succeed the intestate child is reserved for the natural parents. But if the intestate leaves property which he had inherited from one of his adopting parents, the surviving adopting parent and not the natural kindred should inherit the same. In the case of Humphries v. Davis[3] Mr. and Mrs. Davis adopted the daughter of another. Upon the death of Mrs. Davis the girl inherited certain property. The girl died, and both her natural mother and Mr. Davis claimed the property she inherited from Mrs. Davis. The Court decided in favor of Mr. Davis, saying:

"We deem it one of the important factors in this legal problem, that the land vested in the child solely by virtue of its legal relationship to Mrs. Davis and not by virtue of its natural relationship to any other. The title vested in the adopted child by force of law, and not because of any inheritable right springing from a natural kinship. * * * The equity of the case is with the surviving husband and against the natural mother who gave up her child, sundering all maternal ties, and suffering a stranger to take a mother's place. The husband who enabled his wife to acquire or preserve her property, has infinitely stronger claims than the natural mother who cast aside her child. Rules of law are intended to secure justice, and justice requires that the husband who has maintained the wife should be preferred to the mother of a child which was the child of his wife only by adoption."

[1] Helms v. Elliott, 89 Tenn., 446; 10 L. R. A., 535.

[2] Gray v. Holmes, 57 Kan., 217; 33 L. R. A., 207. Also Moore v. Moore, 35 Vt., 89.

[3] 100 Ind., 274; 50 Am. Rep., 789. See also Davis v. Krug, 95 Ind., 1, where the same principle was enunciated.

REVOCATION OF GIFTS INTER VIVOS: UNDER THE CIVIL CODE.—As the adopted child does not, under the Civil Code, acquire any right to inherit from the adopter unless the latter has agreed in the deed of adoption to make him his or her heir,[1] it follows that in the absence of such a provision, his adoption has no effect on gifts inter vivos. If, however, there is a provision that he be instituted heir, will the mere fact of his adoption ipso facto cause the revocation of gifts inter vivos? This is a difficult question to answer. Article 644 does not name the adoption of children as one of the causes of immediate revocation by operation of law, and hence, under the principle of expressio unios est exclusio alterius it may be very plausibly maintained that it would not. But if we go beyond the letter to the spirit of the law, and look for the reason on which Article 644 is based, we would find it to be no other than the desire of the legislators to preserve for the rightful heirs the things which were given away before their birth or legitimation, or under the belief that they did not exist. As this is the case, why should it not be revoked by the adoption of a child when in the eyes of the law he is the legal heir of the adopted, clothed with full power to succeed him ab intestato, and placed, so far as succession is concerned, exactly in the level of legitimate and legitimated children? Why should the benefits which the law intended to secure be limited to those literally included in its provision, when it is apparent that to do so would contravene the spirit of the law? Why should we restrict the number of classes of persons who are entitled to the protection which the law makes of their rights to those who are literally included in its provision when it is clear that the legislative intent was not so? We have no doubt but that just as the term "legitimate" children could be taken to include "adopted" children in dealing with intestate succession, it may also be taken to include the same in dealing with the revocation of gifts inter vivos.

REVOCATION OF GIFTS INTER VIVOS: UNDER THE CODE OF CIVIL PROCEDURE.—The Code of Civil Procedure is silent as to the effect of adoption on gifts inter vivos. If, however, we should construe it in connection with the existing law on gifts, it will be apparent that it would be a sufficient cause inasmuch as the adopted is "to all intents and purposes the child" of the adopter.[2]

REVOCATION OR SETTING ASIDE OF THE ADOPTION

The Spanish Civil Code authorizes the minor or incapacitated person who is adopted to impugn the adoption within four years after arrival at majority or after his incapacity is removed.[3] The grounds on which this may be done are not expressly stated, and the court would have to determine each particular case which may come up for decision on its own merits. Probably the lack of consent of the proper parties, deceit, violence and similar causes would be sufficient.

---

[1] Art. 177.
[2] Sec. 768.
[3] Art. 180.

The Code of Civil Procedure does not in express terms authorize the revocation or annullment of adoption, but there can be no doubt that it may be done by a Court of First Instance for material causes such as fraud,[1] want of consent,[2] and the like.

CONCLUSION

Such in brief are the most salient points of the Spanish and American adoption laws. Naturally there are similarities and differences, most of which is due to the entirely different conception of the nature and effect of adoption. As is to be expected there are many points on which the law does not lay down clear and explicit rules; these have been supplemented by deductions drawn from a study of the various parts, and by the doctrines laid down in decided cases. Each, of course, has its advantages over the other, but taking as a whole, it may perhaps be said that the Spanish law is better because, by restricting the persons who may adopt, and by confining in very narrow limits the effects of adoption, it tends to preserve, as all laws should, the inherent and paramount rights of the legitimate descendants and other blood relatives of the adopter to the latter's affection and succession. Again, if adoptions are to be encouraged in order to benefit those whose natural parents are not in a position to give them the proper education, and other opportunities to rise in the world, and prove useful to their country and fellowmen, then poorly indeed does the American law serve the purpose, because it discourages adoptions by imposing on the adopter the burdensome duty of placing the adopted on an equality with his own children, and in a higher level than his own parents and kinsmen.

[1] Tucker v. Fisk, 154 Mass., 574; 28 N. E., 1051.
[2] 1 Cyc., 929.