OPINION
52-167

June 25, 1952 (OPINION)

SUCCESSION AND WILLS

RE: Stepchild as Heir

In your letter of the 23rd you ask our opinion as to whether a stepchild who was not adopted by her mother's second husband is his heir and entitled to share in his estate, he having died intestate.

It is our opinion that section 56-0112 N.D.R.C. 1943 does not apply, since it only applies when the surviving child is of the blood of the decedent. It applies, for instance, where two children of the same father, but of different mothers are his heirs. Each takes an equal share, and they are kindred of the half-blood.

It is further our opinion that an unadopted stepchild is not an heir of the decedent, the second husband of the mother of the stepchild. Such a child would inherit from her mother, as she is of her blood, but would not inherit from her stepfather, unless he died testate and gave her a bequest.

In the case of Warner v. Huey, (Texas) 29 .S.W. 2d 452, 453, the court held that a stepdaughter not being of blood relationship was not an "heir" of the stepfather and was not therefore entitled to a homestead estate in deceased stepfather's estate. This holding is in line with the following cases:

> Thompson v. Kay, 124 Texas, 252, 77 S.W. 2d 201, 208; Houston v. McKinney, 54 Fla. 600, 45 So. 480, 481; Nice v. Nice, 275 Ill. 397, 114 N.E. 140, 142.

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