

Opinion No. 14-1377

October 30, 1914

BY: FRANK W. CLANCY, Attorney General

TO: Honorable E. B. Meritt, Assistant Commissioner of Indian Affairs, Washington, D.C.

INHERITANCE.

When ascendants inherit.

OPINION

{*238} I have just received your letter of the 26th instant asking information as to the inheritance laws of New Mexico. You call attention to Sections 2031 and 2033 of the Compiled Laws of New Mexico, and to Section 9 of Chapter 62 of the Session Laws of 1901, which enacts a substitute for Sections 2030 and 2031 of said Compiled Laws.

Without attempting to state the matter in detail, it appears that your question really is as to whether Section 2033 of the Compiled Laws qualifies and limits the operation of the provisions of Section 2031 and of Section 9 of Chapter 62 of the Laws of 1901. As to Section 2031, that is now out of existence by the enactment of the provision contained in the Act of 1901, but it still might be of importance as to matters of inheritance prior to 1901.

I have no doubt that these statutes do not provide for any inheritance by the ascendants of the intestate, except when he leaves no wife, nor any descendants. This has been the uniform opinion of the bar, although I am not aware that our Supreme Court has ever passed upon this question. It has been so firmly established, however, that it would be surprising to find any case litigated in the courts upon that point. Our statutory provisions on this subject are to be traced historically back to the Spanish laws of inheritance and succession, and it was clearly and undoubtedly the Spanish law that the ascendants could inherit only when there were no descendants. Reference to the first volume of the Diccionario of Escriche, edition of 1847, at page 317, and to the second volume at page 15, will show the correctness of this, and our statutes have added the wife as an heir to the exclusion of the ascendants of the intestate. When read in the light of the history of the past law of this country under the former governments, there seems but little room for doubt as to the meaning of our statutes.

In this connection I call your attention to the fact that Sections 1 to 9, inclusive, of Chapter 62 of the Session Laws of 1901, have been repealed by Section 34 of Chapter 37 of the Laws of 1907, of which Sections 26, 27 and 28 make some further provisions as to distribution of the property of an intestate, but they do not cover {*239} the case of any inheritance by ascendants and do not appear to make any change in the law on that subject.