# THE TESTAMENTARY & SUCCESSION LAWS OF THE REPUBLIC OF CHILI

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WILLIAM GRAIN

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# Testamentary & Succession Laws

OF THE

# REPUBLIC OF CHILI.

Translated and Edited

BY

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TO

THE RIGHT HONOURABLE

# SIR JAMES HANNEN,

President of the Probate, Divorce, and Admiralty Division of the High Court of Justice of England,

THE FOLLOWING PAGES ARE

(WITH PERMISSION)

Respectfully inscribed

BY

HIS LORDSHIP'S OBLIGED AND OBEDIENT SERVANT,

*WILLIAM GRAIN.*

# INTRODUCTION.

THE Law of the Republic of Chili regulating successions and testamentary dispositions, although largely derived from that of Spain, has, nevertheless, introduced some very important modifications,—a remark which, it may be observed, will be found equally applicable to the Codes of most of the South American Republics.

Under the Law of Spain a man is free to dispose of property by a will made for him *after his death;* it allows him to appoint an attorney for such purpose, with authority to distribute his disposable property in conformity with instructions that may have been given to him, or, without such instructions, to revoke any previous wills which the testator may have made, and even to appoint his executors; but the Chilian Law, in this respect resembling the Laws of the Argentine, Mexican, Peruvian and Uruguayan Republics, declares that *the power of making a testamentary disposition cannot be delegated.*

Nor will the Chilian Law, although the Spanish Law permits it, allow the making of joint wills, that is, wills executed by two or more testators, either for their reciprocal benefit, or for the benefit of other parties, and it disallows

the incorporation by reference made in the will of memoranda or notes that may be found among the papers of the testator after his death, notwithstanding any provisions to the contrary contained in the will.

Both in Spain and Chili wills may be made under the form of *open* or *closed*. An *open* will is made and executed before a notary and witnesses, to whom its contents are communicated in the act of execution, and such original will at once passes to and remains among the archives of the notary, who after the death of the testator issues certified or official copies thereof either on the application of a party interested or by order of a Judge. On the other hand, a *closed* or *secret* will, the attestation of which is written on the cover or envelope containing the will, the testator signing such cover before a notary and witnesses, does not necessarily pass into the custody of the notary during the testator's lifetime. After his decease a sort of inquest is held upon the will before a local judge, and on the notary and witnesses who attested the act on the cover identifying the signature of the testator, acknowledging their own signatures, and giving satisfactory evidence that the cover or envelope has not been tampered with since the testator produced it to them and declared that it contained his will, the Judge directs the opening of the packet, the reading of the will, and the delivery thereof to a notary for the purpose of its being placed in the notarial register. The will so registered never leaves the notarial archives, and copies only are granted in the same way as in the case of *open* wills.

It may be desirable to here call attention to the circumstance that in the Spanish language several terms are employed which, though often rendered in English by the

word *copy*, nevertheless convey to a Spanish reader a distinct indication of the value of such copy, as being an ordinary copy only, or an official copy available in a greater or less degree as evidence according to the circumstances under which it has been obtained and the attestations which it bears.

It may also be useful to the English lawyer called on to deal with property in Chili, if his attention be particularly directed to the shares inherited as compulsory shares or shares by action of law, termed *legitimas*. Chili has attracted many European settlers, and where the relations in this country of a deceased emigrant have to send out evidence of their claims with powers of attorney to represent them, it should always be borne in mind that under Chilian Law the father and mother of an intestate bachelor or spinster have an equal interest in the estate of the deceased, and also that natural children have in some cases an absolute right to a share of the estate of a deceased parent—and, while speaking of natural children, it may be remarked, that under Chilian Law, an ordinary illegitimate child may, by means of a notarial act of acknowledgment, become a natural child of one parent only, and as such capable of succeeding to the property of such parent, and yet remain simply an illegitimate, and incapable of inheriting as regards the other parent, by reason of the latter not having executed a like act of acknowledgment.

In conclusion, a few words may not be out of place with reference to alterations in instruments. Much care is always exercised wherever Spanish Law prevails or has been to any extent adopted—every alteration, interlineation or erasure must be noticed by an addition made at the

end of the instrument before the signing thereof; such addition is usually in the handwriting of the notary himself, and vouched with the words *vale* (has force), or *no vale* (has no force). As a further precaution to assure the authenticity of any copy, each page generally bears the rubrica of the notary, and where a copy is in the handwriting of more than one person, the notary mentions the number of hands employed, and he also not unfrequently enumerates the number of sheets of paper used and the class of the stamp, with the number printed against it on each sheet of the paper.

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