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Article 16

Descent - Right of Illegitimates to Inherit

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that he did not make the contract.[25] On our particular issue, he states that, "Successful fraud can indeed be consummated by employing a third party to sign as agent and then to testify that he was authorized; but there is more danger in attempting to induce a third party to commit forgery and perjury than in perpetrating those crimes oneself."[26]

Thus *Wallis v. Bosler*,[27] by a broad interpretation where a narrower one would not only have reached a more just result but would still have maintained the essential guarantees against fraud, is one more case added to the multitude where the Statute of Frauds has been converted into a "sword" rather than the "shield" for which it was designed.[28]

DESCENT–RIGHT OF ILLEGITIMATES TO INHERIT

The deceased Bertha Spencer's illegitimate half brother and the lawful grandchildren of her illegitimate half sister intervened in an effort to recover from Bertha's estate. Their claim was asserted under the Illinois statute which allows illegitimate children to inherit from their mother and all maternal ancestors. The Illinois Supreme Court held that the term "maternal ancestor" meant only lineal ascendants and therefore denied the intervenors' petition. *Spencer v. Burns*, 413 Ill. 240, 108 N.E. 2d 413 (1952).

At common law an illegitimate was without parents, kindred or family and thus did not inherit from anyone; not even his mother.[1]

This common law disability of illegitimates to inherit continued in Illinois until 1829, when, by section 47 of the act relative to wills and testaments,[2] it was provided that the illegitimate child, or children, of an unmarried woman should be deemed capable of inheriting from the estate of his deceased mother.

Then, in 1853, an act was passed which establshed the rules of descent of all property of any illegitimate person dying intestate by giving the illegitimate's heirs the same rights as those granted to the heirs of a legitimate person.[3]

[25] Code of Iowa (1924) c. 494, § 11288. "The oral evidence of the maker against whom the unwritten contract is sought to be enforced shall be competent to establish the same."

[26] 2 Corbin, Contracts § 525 (1950).

[27] 246 P. 2d 771 (Wyo., 1952).

[28] Lightman, Statute of Frauds, A Sword Instead of A Shield, 74 L.J. 182, 194–5, 205–6 (1932).

[1] People v. Moczek, 407 Ill. 373, 95 N.E. 2d 428 (1950); Murrell v. Industrial Commission, 291 Ill. 334, 126 N.E. 189 (1920); Gorden v. Gorden, 283 Ill. 182, 119 N.E. 312 (1918); Wallace v. Rappleye, 103 Ill. 229 (1882); In re Crapa's Estate, 344 Ill. App. 503, 101 N.E. 2d 611 (1951).

[2] Ill. Rev. Laws (1829) p. 207, § 47, repealed.

[3] Ill. Laws (1853) p. 255, § 1, repealed.

The laws remained in that state until the Descent Act of 1872[4] was passed. Section 2 of this act consolidated the two previous rules and extended the inheritance rights of illegitimates to any one from whom the mother might have inherited if living.

When the above mentioned section of the Descent Act was revised and consolidated into the Probate Act[5] in 1940, it produced the statute in controversy before the Illinois Supreme Court in the instant case.

The former Illinois Descent Act of 1872 provided that:

> An illegitimate child shall be the heir of its mother and any maternal ancestor, and of any person from whom its mother might have inherited if living.[6]

The revised section in the Probate Act reads:

> An illegitimate child shall be the heir of its mother and any maternal ancestor, and in all cases where representation is provided for by this act an illegitimate child represents its mother.[7]

The petitioners contend that a legitimate sister of their mother is a "maternal ancestor" and they are therefore entitled to inherit under the 1940 Probate Act.

The contentions of the petitioners, which were denied by the Illinois Supreme Court in the present case, have been sustained by the Illinois courts in similar factual situations.[8] However, all such decisions are based upon the former statute, and give no consideration to the clause referring to "maternal ancestors." They rely upon the phrase "and of any person from whom its mother might have inherited if living" which is omitted in the new act.

The *Spencer* case is the first to come before the Illinois Supreme Court in which this revised section was in issue. On one prior occasion, however, an Illinois Appellate Court was called upon to interpret the same provision. In the case of *Calamia v. Dempsey*,[9] the court first reasoned that statutes are to be construed according to their intent and meaning, and that therefore a situation which is within the object, spirit and meaning of a statute is regarded within the statute even though not within the letter.[10] The court held that the term "maternal ancestor" could be construed to mean correlative heirs, or any one from whom the mother might have inherited if living. It has been stated that this interpretation was adopted so as to conform with the intention of the drafters of the Probate Act merely to change the statute in form and not in substance.[11]

[4] Ill. Rev. Stat. (1939) c. 39, § 2.
[5] Ill. Rev. Stat. (1951) c. 3, § 163.
[6] Ill. Rev. Stat. (1939) c. 39, § 2.
[7] Ill. Rev. Stat. (1951) c. 3, § 163.
[8] Morrow v. Morrow, 289 Ill. 135, 124 N.E. 386 (1919); Chambers v. Chambers, 249 Ill. 126, 94 N.E. 108 (1911); Bales v. Elder, 118 Ill. 436, 11 N.E. 421 (1887).
[9] 344 Ill. App. 503, 101 N.E. 2d 611 (1951).
[10] People v. Moczek, 407 Ill. 373, 95 N.E. 2d 428 (1950).
[11] James, Illinois Probate Law and Practice, § 12 (1951).

The Illinois Supreme Court, although never called upon to review the *Calamia* case,[12] specifically denied this interpretation in the instant case, and stated that, although the statutes regarding inheritance by illegitimates are not to be construed with the same strictness as others which are in derogation of the common law, there are substantial changes in the new act which prevent recovery on these facts. The court based its interpretation of the "maternal ancestor" phrase on a decision of the Supreme Judicial Court of Massachusetts[13] which, in a case similar to the instant case stated:

> The words "maternal ancestor" are manifestly limited to progenitors, or ancestors in the direct ascending line, according to their common meaning and the only sense in which the word "ancestor" is used throughout the statute of descents. . . .[14]

The Massachusetts statute so interpreted is very similar to the Illinois Act here in controversy.[15]

Since the courts, in the early decisions upholding the petitioner's contentions, did not rely upon the "maternal ancestor" clause of the 1872 Illinois Act, it is reasonable to assume that the courts did not believe it applicable. Further, if the term "maternal ancestor" is to be construed as meaning any person from whom the illegitimate's mother might have inherited if living, then the legislature in drafting the 1872 Descent Act[16] was clearly redundant which is a thing not lightly ascribed to a legislative body.[17] Hence it would seem reasonably necessary to construe the "maternal ancestor" clause to mean solely lineal ascendants of the illegitimate's mother and the now omitted clause to mean, lineal ascendants, lineal descendants, and collaterals of the illegitimate's mother, thus, causing the two clauses to overlap but not be redundant.

In the *Calamia* case the court made a statement to the effect that the trend of modern legislation and interpretation by courts of legislative enactments in relation to descent and illegitimacy has been toward liberal construction involving the rights of illegitimates.

Our present case recognizes this trend. However, this liberal rule of construction only requires that a statute be so enforced as to carry into effect the will of the legislature as expressed in the terms thereof. Also, since it is not within the province of an administrative agency or court to

[12] 344 Ill. App. 503, 101 N.E. 2d 611 (1951).

[13] Pratt v. Atwood, 108 Mass. 40 (1871). This case denied recovery to the legitimate children of an illegitimate of any share in the estate of a legitimate child of the illegitimate's mother.

[14] Ibid., at 42.

[15] Mass. Pub. Stat. (1882) c. 125, § 3. "An illegitimate child shall be heir of his mother and of any maternal ancestor. . . ."

[16] Ill. Rev. Stat. (1939) c. 39, § 2.

[17] 40 Ill. Bar Journal 289 (1951).

take from or enlarge the meaning of a statute by reading into it language which will, in the opinion of either, correct any supposed omission or defect,[18] and since the legislature in its new enactment departed substantially from the expression of policy as stated in the Descent Act[19] without any indication that this departure was unintentional, the court seems justified in assuming that the departure was intentional.

Thus it can be seen that Illinois has progressed from the strict rule of the common law which denied inheritance entirely, into a very liberal policy, and then seemingly, has dropped back one notch in the cycle. It will now be up to the legislature in the next session to determine whether or not Illinois will follow the law as interpreted by the Supreme Court or will follow the trend toward liberalization of the rules regarding illegitimates, by revising the Probate Act.

PUBLIC LAW–EFFECT OF ZONING ORDINANCE AMENDMENTS ON BUILDING PERMITS

The plaintiffs sought judicial declaration that the defendant company had no vested right by virtue of its building permit to construct a manufacturing building in an area zoned for family dwellings. The plaintiffs contended that the building permit had been subsequently revoked by an ordinance amendment. However, prior to the effective date of the amendatory ordinance, the defendant, relying upon a building permit issued in accordance with the zoning regulations then in force, had caused substantial work to be done on the premises. The Appellate Court of Illinois held that the defendant had acquired a vested right under the permit. The subsequent amendment could not effectively revoke the building permit. *Deer Park Civic Assoc. v. City of Chicago,* 347 Ill. App. 346, 106 N.E. 2d 823 (1952).

The problem here presented is a controversial one, and the courts are not in complete agreement as to how it should be resolved.[1] Although they agree that a person should be protected against an amendatory ordinance revoking his building permit where he, in reliance upon such permit, has caused substantial work to be done on his premises, there is a

[18] American Steel Foundries v. Gordon, 404 Ill. 174, 88 N.E. 2d 465 (1949).

[19] Ill. Rev. Stat. (1939) c. 39, § 2.

[1] Brett v. Building Commissioner of Brookline, 250 Mass. 73, 145 N.E. 269 (1924); Fitzgerald v. Merard Holding Co., 110 Conn. 130, 147 Atl. 513 (1929); Crow v. Board of Adjustment of Iowa City, 227 Iowa 324, 288 N.W. 145 (1939); City of Omaha v. Glissmann, 151 Neb. 895, 39 N.W. 2d 828 (1949); Howe Realty Co. v. Nashville, 176 Tenn. 405, 141 S.W. 2d 904 (1940); Fairchild Sons v. Rogers, 246 App. Div. 555, 282 N.Y. Supp. 916 (S. Ct., 1935); Southern Leasing Co. v. Ludwig, 168 App. Div. 233, 153 N.Y. Supp. 545 (S. Ct., 1915); Rice v. Van Vranken, 132 Misc. 82, 229 N.Y. Supp. 32 (S. Ct., 1928).