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Equity

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In the *Millward*⁴⁷ case the Supreme Court held that an adopted child could not inherit from his natural parent, although the statute which cuts off the common law right of inheritance was enacted after the adoption.

Illegitimacy

The Supreme Court reiterated its prior holding that an illegitimate child cannot be a dependent under the workmen's compensation death benefit statute, even though the child is acknowledged as such by the father and is supported by him.⁴⁸

*Whitecotton v. Whitecotton*⁴⁹ raised the problem of the legitimacy of a child whose mother was married at his birth. The husband sued for divorce, alleging that there were no children of the marriage, which allegation was denied by the wife. The trial court held that the evidence failed to establish either that the child was legitimate, or that he was illegitimate, and therefore made no order relative to the parentage, custody or support of the child. This obvious error was firmly reversed by the court of appeals. If the trial court is unable to make up its mind on the issue of paternity, the presumption in favor of legitimacy comes into play and decides the case. Since the child is presumed legitimate, and the trial court did not affirmatively find illegitimacy, the court must enter a custody and support order.

Probably the most interesting case in this area is a decision of the Juvenile Court of Cuyahoga County on the conclusive effect of a blood test in a paternity action. The court held that the evidence of non-paternity produced by the court-appointed serologist outweighed all the other evidence and compelled a finding for the defendant. The court comes very close to taking judicial notice of the correctness of such a test, where the person making the test is both qualified and objective.⁵⁰

HUGH ALAN ROSS

EQUITY

In *Weiland v. Industrial Commission of Ohio*,¹ an attorney was notified that trial of the case would begin at 9:30 a. m. on a specified day. He left his home, some fifty miles distant, about two hours before that

⁴⁷ *In re Estate of Millward*, 166 Ohio St. 243, 141 N.E.2d 462 (1956).

⁴⁸ *Miller v. Ind. Com.*, 165 Ohio St. 584, 138 N.E.2d 672 (1956).

⁴⁹ 103 Ohio App. 149, 144 N.E.2d 678 (1955).

⁵⁰ *State ex rel. Steiger v. Gray*, 145 N.E.2d 162 (Ohio Juv. Ct. 1957). One of the best recent articles on this subject is Ross, *Value of Blood Tests as Evidence in Paternity Cases*, 71 HARV. L. REV. 466 (1958).

hour. En route he experienced automobile trouble and promptly instructed his office to inform the court of this fact and that he could not reach the court until ten o'clock. His office complied. The court waited until ten o'clock and then commenced trial. The attorney arrived about 10:10 a. m. After the case had been submitted to the jury, the judge called the attorney to the bench and following a discussion as to the cause of the tardiness found the attorney in contempt and imposed a fine of \$100. The court of appeals found no abuse of discretion and an appeal was taken to the Supreme Court. The latter court reversed and remanded on two grounds. First, the trial court had handled this as a direct contempt whereas "only a portion of the offense was direct and in the presence of the court, namely entering the court late and after the trial had started. However, part of the alleged misconduct was committed on the trip . . . and hence was not in or near the court itself." Consequently, this was in the nature of indirect contempt and the attorney should have been informed of the nature of the contempt when summoned before the judge. Also, he was entitled to proffer evidence to show any extenuating or exculpatory circumstances. Second, the Supreme Court held, that, if the guilt be assumed, the fine imposed was so disproportionate as to require reversal.

As a part of an earlier divorce proceeding, a father had been ordered to pay a specified amount for the support of his children. He fell behind in these payments and was adjudged in contempt. Subsequently, he lost his job. In *Stafford v. Stafford*,² he sought to have the amount of the payments reduced. The court held that while it was his duty to purge himself of this violation if possible, the violation and contempt adjudication did not prevent him from requesting the reduction in the payments under the doctrine of unclean hands.

In *Hahn v. Hahn*,³ as part of a divorce action, custody of children had been awarded to the wife. The husband had been ordered to pay support money. He had been continuously in default in such payment and for this had been found guilty of contempt. He filed a motion that exclusive care of the children be granted to him. The trial court dismissed the motion. The court of appeals held that such action was proper, saying, "Flagrant disregard by the defendant [husband] of the order of the court was the basis of the action taken dismissing his motion. We are of opinion that a court is within its discretionary right in denying the processes of the law to a party in a case who refuses to ob-

¹ 166 Ohio St. 62, 139 N.E.2d 36 (1956).

² 139 N.E.2d 347 (Ohio Ct. App. 1956).

³ 144 N.E.2d 499 (Ohio Ct. App. 1956).

serve the orders of the Court in that case."⁴ It should be noted in this case that the husband had failed to respond to a notice to show cause why his motion should not be dismissed.

The legislative branch of the government may provide for the use of the injunctive process without satisfaction of the conventional condition of lack of other adequate remedies. In *Johnson v. United Enterprises, Inc.*,⁵ an injunction was sought against an alleged violation of a zoning ordinance. Defendant demurred on the claim that, under Ohio Revised Code section 2505.03, the order of the Board of Zoning Appeals for issuance of a permit for the construction could be appealed and that since this provided for an adequate remedy no injunction was necessary. The Supreme Court of Ohio, however, held that Ohio Revised Code section 713.13 which provides for use of the injunctive process where an owner of contiguous property will be irreparably damaged by a violation of the building code was a special statute and prevailed over the above cited general statute. The court distinguishes *Eggers v. Morr*.⁶

The doctrine of laches was the subject of the court's inquiry in *McGrath v. Kneisley*.⁷ Defendant, in violation of a restrictive covenant, had constructed a house too near plaintiff's property line. Plaintiff's property was a vacant lot and he visited it infrequently. When plaintiff discovered the violation, construction was well advanced. He then promptly notified defendant of the violation and filed suit for an injunction. The lower court decided that the injunction would have been granted had it not been for the delay in plaintiff's objection, but refused the injunction on the basis of the doctrine of laches. The court of appeals held, however, that plaintiff was under no legal obligation to visit his lot and therefore could not be charged with imputed knowledge of the violation. Consequently, since objection was promptly made following actual discovery of the violation, the doctrine of laches did not apply and the injunction should have been granted.

In *Keyerleber v. Euclid Congregation of Jehovah's Witnesses*,⁸ the vendors were induced to sell certain vacant land adjacent to their home on the inducement that the person to whom they were selling wished to build a residence on it. Actually it was the plan and intent of the purchaser to immediately deed it to a religious congregation in order that they might build a church thereon. A deed was delivered to the purchaser who then deeded to the congregation. Immediately thereafter the

⁴ *Id.* at 501.

⁵ 166 Ohio St. 149, 140 N.E.2d 407 (1957).

⁶ 162 Ohio St. 521, 124 N.E.2d 115 (1955).

⁷ 142 N.E.2d 530 (Ohio Ct. App. 1956).

103 Ohio App. 423, 143 N.E.2d 313 (1957).