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Equity

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faced with the problem of support of the illegitimate child of a married woman.²⁹ In the early case of *Miller v. Anderson*,³⁰ the husband married the woman knowing that she was pregnant by another. The court held that the mother could not maintain a paternity action against the natural father, at least not solely on her uncorroborated testimony. The court stated in dictum that for purposes other than heirship, the child would be deemed to be the legitimate child of the husband, who, by his marriage with notice of the pregnancy, was estopped to deny paternity. In *Gustin v. Gustin*,³¹ involving a similar set of facts, the court of appeals applied the dictum of the *Miller* case and held the husband liable for support of the child.

HUGH ALAN ROSS

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EQUITY

Ohio Revised Code section 2915.02 declares a house used as a place for gambling to be a common nuisance, and authorizes a court having equitable jurisdiction to grant an injunction against the owner thereof. A temporary injunction is authorized to restrain the use of the property for gambling. A permanent injunction, granted upon final hearing, is authorized to enjoin the use of the house for any purpose. In *State ex rel. Beil v. Dota*,¹ the common pleas court enjoined (by temporary injunction) the use of the property for any purpose. The defendant was later cited for criminal contempt. The defense raised was that because of the scope of the temporary injunction it was void, with the result that the defendant was not required to obey it and that a collateral attack was permissible. The majority of the court disagreed. It was held that since the common pleas court could have issued a permanent injunction to the effect of the temporary one it had issued, it had jurisdiction over the subject matter even though "such power was imprudently or prematurely exercised in a temporary injunction. Although an erroneous exercise of judicial power is a proper ground for a motion to modify or dissolve an injunction, it does not constitute a valid defense to an action in criminal contempt for the disobedience of such injunction."² The court distinguished *In re Cattell*,³ in which an injunction was held to be void when the plaintiff had not been required, as a condition precedent to its issuance, to post a bond as required by statute. Mr. Justice Taft, dissenting in the principal case,⁴ pointed out that the statute in question provides an exception to the usual requirement of a bond as a condition to the issuance of a temporary injunction. The exception

29. *Gustin v. Gustin*, 108 Ohio App. 171, 161 N.E.2d 68 (1958).

30. 43 Ohio St. 473, 3 N.E. 605 (1885).

31. 108 Ohio App. 171, 161 N.E.2d 68 (1958).

only extended to temporarily enjoining the use of the property for gambling; consequently, the court was without jurisdiction to temporarily enjoin for a broader purpose when no bond was required.

In *Krzewinski v. Eaton Homes, Incorporated*,⁵ a purchaser from the subdivider bought a lot in a subdivision by reference to a recorded plat only. The plat delineated streets and highways as means of ingress and egress for the purchaser. The deed described the lot by reference to the plat. The court held that the purchaser could maintain an action in specific performance to compel the vendor-subdivider to open the street on which the lot abutted. The court, while recognizing that the more usual remedy was the use of a mandatory injunction, said, "we do not believe that a mandatory injunction is an exclusive remedy."⁶

Under the general doctrine that equity will not lend its aid in the enforcement of an agreement which is illegal or against public policy, the court in *Hunt v. Hunt*⁷ granted a divorced husband an order cancelling his obligation to pay "permanent" alimony, since the agreement upon which the original order to pay alimony was based did not constitute a property settlement nor relate to the support of children, and since the wife had remarried. "Where . . . a former wife remarries a man capable of supporting her, the theory of the obligation of the former husband to continue her support is not tenable since the wife has a new husband charged by law with that duty. In fact, it seems rather obnoxious to a sense of decency to require that a wife be supported by both her present husband and former husband or husbands."⁸

In 1936, an order granting a wife a divorce fixed weekly support payments by the husband during a child's minority. In 1942, the obligation to make these payments ceased. Substantially no payments were ever made. In 1956, the wife filed a motion to reduce the unpaid delinquent installments to a lump-sum judgment. Among other defenses, the husband pleaded the doctrine of laches. The court recognized that laches was historically an equitable doctrine and that the matter in litigation was strictly statutory, but held that ". . . by refusing to deprive the Court of Common Pleas of its full equity powers and jurisdiction in any matter concerning domestic relations, the Gen-

1. 168 Ohio St. 315, 154 N.E.2d 634 (1958). See also discussion in *Civil Procedure* section, p. 346 *supra*.

2. *Id.* at 321-22, 154 N.E.2d at 639.

3. 146 Ohio St. 112, 64 N.E.2d 416 (1945).

4. *State ex rel. Beil v. Dota*, 168 Ohio St. 315, 323, 154 N.E.2d 634, 640 (1958) (dissenting opinion).

5. 108 Ohio App. 175, 161 N.E.2d 88 (1958).

6. *Id.* at 181, 161 N.E.2d at 92.

7. 169 Ohio St. 276, 159 N.E.2d 430 (1959). See also discussion in *Domestic Relations* section, p. 374 *supra*.

8. *Id.* at 282, 159 N.E.2d at 434.