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DESCENT AND DISTRIBUTION - INHERITANCE THROUGH ILLEGITIMATE CHILD - IOWA STATUTE

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DESCENT AND DISTRIBUTION — INHERITANCE THROUGH ILLEGITIMATE CHILD — IOWA STATUTE — This action involved a determination of the heirs of *A*, a widow, whose deceased husband, *B*, was an illegitimate child. Three sets of claimants asked for her estate: the legitimate descendants of *B*'s mother, the legitimate descendants of *B*'s father, and the state of Iowa, the domicile of the deceased. The district court awarded the property to the state, as uninhaired property, on the ground that the other claimants could not take through an illegitimate. On appeal, reversed. An Iowa statute¹ provided that an illegitimate child could inherit from his mother, and from his father, when recognized in a certain manner, and also provided that his mother, and his father, if recognized, could inherit from such illegitimate. The conclusion of the court was that this statute should be construed to provide for more than mutual inheritance between illegitimates and their parents; it means that an illegitimate's blood is inheritable and next of kin can claim through him. Therefore, the descendants of *B*'s mother were awarded one-half the estate, and, since the court found the proper recognition between *B* and his father, the descendants of *B*'s father took the other half. *In re Clark's Estate*, (Iowa, 1940) 290 N. W. 13.

Two aspects of this case are worth noting: (1) the broad construction of the Iowa statute governing inheritance by and from illegitimate persons, and (2) the manner in which the statutory recognition of the father was satisfied. The Iowa statute abolished the common-law rule that illegitimate offspring could inherit from nobody and could have neither collateral heirs nor lineal ascendants capable of taking by inheritance.² The statute adopts what is said to be the civil-law rule that an illegitimate child can inherit from his mother and she from him.³ Prior to the principal case this statute had been extended by judicial construction to permit the child of an illegitimate parent to inherit through the illegitimate parent from the ancestor of the parent in cases in which the child could represent its illegitimate parent.⁴ But the question had been left

¹ "Illegitimate children inherit from their mother, and she from them. They shall inherit from the father when the paternity is proven during his life, or they have been recognized by him as his children; but such recognition must have been general and notorious, or else in writing. Under such circumstances, if the recognition has been mutual, the father may inherit from his illegitimate children." Iowa Code (1939), §§ 12030, 12031.

² 1 BLACKSTONE, COMMENTARIES 459 (first pub. 1756); ROLLISON, WILLS 64-68 (1939).

³ MACKELDEY, ROMAN LAW, Dropsie trans., 502 (1883).

⁴ *McGuire v. Brown*, 41 Iowa 650 (1875); *McKellar v. Harkins*, 183 Iowa 1030, 166 N. W. 1061 (1918); *Johnson v. Bodine*, 108 Iowa 594, 79 N. W. 348 (1899). In these cases the child was able to take from its illegitimate mother's ancestors as her representative. That representation was the basis of the decisions is shown by the fact that in *McKellar v. Harkins* it was expressly left open whether the ancestor could have inherited from the child through the child's illegitimate mother. In *Johnson v. Bodine* the court expressed doubt as to the soundness of *McGuire v. Brown*, but adhered to it because it was a rule of property. In the principal case, *In re Clark's Estate*, the court referred to these cases, and then said that if the child could inherit from the ancestor through the illegitimate parent there was no reason why the ancestor could not inherit from the child through its illegitimate parent. But the opposite inter-

open whether the child could inherit in all cases through an illegitimate parent, or whether the ancestor could inherit through illegitimate offspring. The decision abrogates the common-law rule to the effect that illegitimate persons have no inheritable blood. Under this construction any person can take through an illegitimate person in the same manner as if he had been legitimate. In spite of the fact that the statute is in derogation of the common law, the Iowa courts justify a broad construction because the statute is remedial in its nature.⁵ There is one qualification in the statute as to inheritance by and from the putative father. For the illegitimate child to take, paternity must be proved during the life of the father, or the father must have recognized his child either in writing or in some other general or notorious manner. Further, the recognition must have been mutual in order for the father to take by inheritance from illegitimate offspring. Therefore, in order for those claiming through *B*'s father to take, they had to prove mutual recognition. There was not much doubt that the father had recognized the son generally and notoriously, since the evidence showed that he had revealed the child's paternity to his wife and to others, and had tried unsuccessfully to bring the child, as a very small infant, into his home. The chief question was whether the recognition had been mutual, inasmuch as the father had died when the son was only eleven years of age and up to that time the son had never been told anything concerning his father. However, it was held that recognition of the father even after his death was satisfaction of the statute.⁶

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pretation was given in *Estate of Sunderland*, 60 Iowa 732, 13 N. W. 655 (1882), to a foreign statute regarding the rights of inheritance of an adopted child. The statute permitted the child to inherit from its parents, and the court refused to extend this to permit the child to take through its adopted parent from an ancestor of the parent.

⁵ Another case giving remedial construction is *James v. James*, (Tex. Civ. App. 1923) 253 S. W. 1112. Cases construing narrowly are: *Hicks v. Smith*, 94 Ga. 809, 22 S. E. 153 (1895); *In re Estate of Wallace*, 197 N. C. 334, 148 S. E. 456 (1929). The policy behind remedial construction was stated in the principal case, 290 N. W. at 31: "Just why a person, begotten and born out of lawful wedlock, an innocent victim of the indiscretion of his parents, should have received the odium of the church, state, and all society, and have been denied the right to inherit property from any ancestor, not even excepting his father and mother, is a matter which is difficult to understand, and unnecessary to discuss. This court has characterized it as 'one of the reproaches of the common law which has shocked the legislative and judicial conscience of the civilized world.'" Again in *McKellar v. Harkins*, 183 Iowa 1030 at 1043, 166 N. W. 1061 (1918), the court said: "The illegitimate child is as innocent as the babe of Bethlehem. Yet the common law held its fiction as a shield over the guilty parent, and frowned upon the guiltless child with the disdain of a Pharisee."

⁶ There was abundant evidence that later in life *B* had recognized that his father was as alleged. *B* treated the legitimate children of his father as brothers, always introduced them as such, gave them jobs, sent them Christmas presents, and paid for their funerals. He planned to be buried in the family lot. He often said that he must have inherited his father's shrewd sense of trading. The Iowa rule is that the nature of the recognition required under the statute depends upon the circumstances and conditions of each case. *Trier v. Singmaster*, 184 Iowa 307, 167 N. W. 538 (1918); *Blair v. Howell*, 68 Iowa 619, 28 N. W. 199 (1886); *Morgan v. Strand*, 133 Iowa 299, 110 N. W. 596 (1907); *In re Estate of Wise*, 206 Iowa 939, 221 N. W. 567 (1928).