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# Workmen's Compensation - Right of Unacknowledged Illegitimate Children to Benefit Payments

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encounter great difficulty in translating the son's technical wrong into a responsibility to be shouldered by the parent.<sup>10</sup>

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WORKMEN'S COMPENSATION—RIGHT OF UNACKNOWLEDGED ILLEGITIMATE CHILDREN TO BENEFIT PAYMENTS—The father of two illegitimate children was killed while in the defendant's employ. Plaintiff, mother and tutrix of the minor children of this union, sued for damages and in the alternative for compensation under the Workmen's Compensation Act. The supreme court on first hearing disallowed the claim for damages, ruling that Article 2315 of the Revised Civil Code applied only to legitimate children. The claim to compensation was not allowed as the children had not been formally acknowledged in accordance with the provisions of Article 203 of the Revised Civil Code as required by the Workmen's Compensation Act.<sup>1</sup> Upon rehearing the court reversed its previous stand and allowed compensation benefits to the children, though not formally acknowledged, because they were dependent upon the deceased for support. *Thompson v. Vestal Lumber & Manufacturing Company*, 22 So. (2d) 842 (La. 1945).

Obviously the decision in this case is not in accordance with a strict interpretation of the Workmen's Compensation Act. Section 8, Subsection 2(H), of the act specifically provides that the term "child" or "children" shall cover illegitimate children acknowledged under the provisions of Civil Code Articles 203, 204, and 205. Hitherto, the court has followed the strict letter of these provisions.<sup>2</sup> The provisions of Section 8, Subsection 2(D) do not seem to have been mentioned by the court or used in any way to justify the rights of illegitimate children. Hence the prior jurisprudence has steadfastly denied the right of illegitimates, unacknowledged according to the provisions of Article 203 of the

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10. Compare *Sullivan v. Creed* (1904) Ir. R. 1025 with *Swanson v. Crandall*, 2 Pa. Super. 85 (1896). Shearman and Redfield, A Treatise on the Law of Negligence (rev. ed. 1941) § 761.

1. La. Act 20 of 1914, § 8(2)(H), as amended by La. Act 242 of 1928 [Dart's Stats. (1939) § 4398].

2. *Perkins v. Brownell-Drews Lbr. Co., Ltd.*, 147 La. 337, 84 So. 894 (1920); *Lillian Gullung v. Dalgarn Const. Co.*, 1 La. App. 147 (1924); *Wells v. White-Grandin Lbr. Co., Inc.*, 13 La. App. 696, 129 So. 171 (1930); *Stewart v. Parish of Jefferson Davis*, 17 La. App. 626, 136 So. 659 (1931); *Barranco v. Davis*, 175 La. 35, 142 So. 844 (1932); *Beard v. Rickert Rice Mills, Inc.*, 185 La. 55, 163 So. 492 (1936).

Civil Code, to recover benefit payments under the act.<sup>3</sup> Neither the illegitimate child,<sup>4</sup> nor the parents of such a child have been allowed benefits.<sup>5</sup>

The decision is in keeping, however, with the liberal interpretation that in other respects has been given the act by the Louisiana courts. The decisions of the courts of this state as well as those of our sister states are replete with both direct holdings and dicta which give effect to the true purpose of statutes of this type. With respect to the right to workmen's compensation, the courts are very liberal in upholding the claim of a person who marries another who has a living and undivorced spouse.<sup>6</sup> "The right of a surviving dependent relation of a deceased workman to be compensated under the Employer's Liability Act, should not be construed strictly in favor of the employer, but rather liberally in favor of the employee and his dependent relations."<sup>7</sup> If the father is dependent to any extent upon his son's support, he may recover for his son's death.<sup>8</sup> The rights of the putative wife to compensation would give way only to a claim which might be asserted by an actual, dependent wife.<sup>9</sup> The courts of other states voice much the same idea and give effect to the same liberal interpretation of the act as have the Louisiana courts.<sup>10</sup>

The position adopted in the instant case comports with the liberal attitude taken in the state toward the rights of illegitimate children to inherit even though they have not been acknowledged in accordance with the provisions of Article 203 of the Civil Code. Certainly as early as 1921, in *Taylor v. Allen*,<sup>11</sup> it was recognized that an illegitimate child not formally acknowl-

3. *Ibid.*

4. *Wells v. White-Grandin Lbr. Co., Inc.*, 13 La. App. 696, 129 So. 171 (1930); *Barranco v. Davis*, 175 La. 35, 142 So. 844 (1932); *Beard v. Rickert Rice Mills, Inc.*, 185 La. 55, 168 So. 492 (1936).

5. *Perkins v. Brownell-Drews Lbr. Co., Ltd.*, 147 La. 337, 84 So. 894 (1920).

6. *Dillon v. Traders and General Ins. Co.*, 183 So. 553 (La. App. 1938).

7. *Jones v. Powell Lbr. Co.*, 156 La. 767, 769, 101 So. 135, 136 (1924).

8. *Cauthorn v. Cypress Tank Co.*, 1 La. App. 100 (1925).

9. *Jones v. Powell, Lbr. Co.*, 156 La. 767, 101 So. 135 (1924); *Rollins v. Foundation Co.*, 154 So. 674 (La. App. 1934); *Dillon v. Traders and General Ins. Co.*, 183 So. 553 (La. App. 1938). See also *Fulton Bag and Cotton Mills v. Fernandez*, 159 So. 339 (La. App. 1935), where the court "with regret" allowed the legal, dependent wife of the deceased to recover to the absolute exclusion of the putative wife in good faith.

10. *Andrea Gritta's Case*, 236 Mass. 204, 127 N.E. 889 (1920), where the court in effect said that considerations of public policy which prevent a wrongdoer from participating in the benefits of his act ought not to apply to innocent children born out of wedlock for they are not responsible for their status, they have committed no wrong, and they must be supported; *Portin v. Portin*, 149 Tenn. 530, 261 S.W. 362 (1924).

11. 151 La. 82, 91 So. 635 (1921).

edged by its parents could inherit. In this case a child was held able to establish that she was acknowledged by her mother and thereby entitled to inherit without proving acknowledgment in the manner prescribed in Article 203. It was clearly held on rehearing in *Minor v. Young*<sup>12</sup> that the mode prescribed in Article 203 was not exclusive and the jurisprudence to that effect was adhered to. Since these cases, only one distinction has been drawn with regard to this specific situation. Formal acknowledgment under the provisions of Article 203 is required where the parent is attempting to inherit from the illegitimate child, but the illegitimate child seeking to inherit from the parent may prove acknowledgment in some way other than by Article 203.<sup>13</sup> In view of this well established jurisprudence with regard to successions, it was a relatively easy step for the court to adopt a similar attitude toward the already liberally construed Employers' Liability Statute.

The rule of the present case has long been recognized in various other states. The courts of Michigan unqualifiedly made dependency the basis of recovery as early as 1916 in a case where the legal wife and legitimate daughter were denied recovery in favor of the adulterous children of the deceased worker.<sup>14</sup> At about the same time in Maine dependent illegitimate children were allowed to recover as members of the deceased's family.<sup>15</sup> The court of that state defined a family as a "collective body of persons who live in one house under a head or manager who has a legal or moral duty to support the members thereof."<sup>16</sup> The Massachusetts court in 1920 recognized the rights of an illegitimate child to benefit payments under the compensation statute,<sup>17</sup> while the doctrine was embraced in Connecticut a year earlier.<sup>18</sup> Other states have since taken a similar position.<sup>19</sup>

Louisiana's late entry into the "recovery allowed" column can perhaps be justified in the fact that our degree of industriali-

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12. 148 La. 610, 87 So. 472 (1920).

13. Succession of Lacost, 142 La. 673, 77 So. 497 (1917); *Ellis v. Union-Compress and Warehouse Co.*, 178 So. 726 (La. App. 1938). See also Comment (1945) 6 LOUISIANA LAW REVIEW 268.

14. *Roberts v. Whaley*, 192 Mich. 133, 158 N.W. 209 (1916).

15. *Scott's Case*, 117 Maine 436, 104 Atl. 794 (1918).

16. 117 Maine 436, 441, 104 Atl. 794, 796.

17. *Andrea Gritta's Case*, 236 Mass. 204, 127 N.E. 889 (1920).

18. *Piccinim v. The Connecticut Light & Power Co.*, 93 Conn. 423, 106 Atl. 330 (1919).

19. See, for example, California: *Moore Shipbuilding Corp. v. Industrial Accident Commission*, 185 Cal. 200, 196 Pac. 257 (1921); Kentucky: *L. E. Myers Co. v. Noland*, 222 Ky. 748, 2 S.W.(2d) 387 (1928); Tennessee: *Portin v. Portin*, 149 Tenn. 530, 261 S.W. 362 (1924).

zation, with its correspondingly large percentage of workers, has not been high; and the development of the law has been correspondingly more conservative. However, a definite trend toward giving full effect to the act can be noted in 1942 when the court allowed relations by affinity to recover benefit payments strictly on the basis of dependency and membership in the family of the deceased, even though these particular classes were not specifically enumerated in the act.<sup>20</sup> The court here recognized the primary purpose of legislation of this type to shift the burden of loss to the community in general and judicial cognizance was given to a liberal construction of the act with a view to carrying out its purpose.

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20. *Archibald v. Employer's Liability Assur. Corp., Ltd.*, 202 La. 89, 11 So.(2d) 492 (1942).