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William Thornton Whitsett

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ously.¹³ due to its defeat of the evident intention of the insured, and at least one state has refused to override this intention.¹⁴ In order to get a result in the principal case similar to the result reached above one assumption must be made; namely, that where a creditor takes out insurance on the debtor's life as security for his obligation, with the debtor paying the premiums, having in fact been under a liability to so do, the debtor's estate should be in substantially the same position as the beneficiary where a debtor takes out a policy of insurance, naming a beneficiary, and later assigns such policy to the creditor as collateral security for his obligation.

From the practical aspect of the principal case there seems to be no great dissimilarity between the two arrangements. The court had before it a very "close case," but subrogation "was invented to do substantial justice between the parties."¹⁵ Therefore, since the deceased in effect has paid the premiums, and the creditor has been satisfied, the deceased's estate should receive the product of the insurance, namely, the satisfied mortgage.

J. WILLIAM COPELAND.

Parent and Child—Child's Right to Sue Parent for Support.

An infant of six years, by a next friend, instituted an action against her father for support and maintenance.¹ The parents of this minor child had been divorced and the custody awarded to the mother. The court held for the plaintiff.

The usual means of enforcing the obligation of a parent to support the child is an action by a third party against the parent for the value of necessaries furnished the child, or a decree for support of the child in a divorce suit, or criminal proceedings.² In allowing the child to sue its parent directly, the usual form of action being otherwise, the North Carolina court has shown itself most liberal in the treatment of the parent and child relationship.

At common law in England the duty of a parent to support his child was considered merely moral, and neither a suit by the child for support nor an action by a third party for necessaries was allowed.³ In a great many of our jurisdictions the duty has been

¹³ (1933) 11 N. C. L. Rev. 169.

¹⁴ *Kash Ex'r v. Kash*, 260 Ky. 508, 86 S. W. (2d) 273 (1935); *Berger v. Berger*, 264 Ky. 225, 94 S. W. (2d) 618 (1936).

¹⁵ (1936) 14 N. C. L. Rev. 295, 296.

¹ *Green v. Green*, 210 N. C. 147, 185 S. E. 651 (1936).

² *Note* (1920) 7 A. L. R. 1277.

³ *Mortimore v. Wright*, 6 M. & W. 481 (1840); *Shelton v. Springett*, 11 C. B. 452 (1851); *Bazeley v. Forder*, L. R. 3 Q. B. 559 (1868).

called legal,⁴ but in spite of this language of the courts, a direct action by the child has commonly been denied.⁵ Special circumstances have given rise to attempted actions which may be grouped under four headings: (1) actions brought under statutory provisions; (2) actions by illegitimate children; (3) actions on contracts providing for the child's support; (4) actions after a divorce or separation of the child's parents.

(1) Under the statutory provisions, many states provide for criminal prosecution for non-support and abandonment,⁶ but in such cases the proceeding is instituted by the state and not by the child. The most that the child can do is to complain to the proper authorities and hope that the parent will be coerced into providing for it. It is only under the so-called "poor laws" that the indigent child has been allowed to sue in its own name.⁷

(2) While at common law the putative father was under no legal obligation to support his illegitimate child,⁸ the North Carolina court in *Sanders v. Sanders*⁹ said, "There is a natural obligation to support even illegitimate children which the law not only recognizes, but enforces." Cases are found in the reports that bear out this dictum, and there is no doubt that in North Carolina since the decision in the principal case an illegitimate child may sue for support.¹⁰ Nebraska and

⁴ *Dunbar v. Dunbar*, 190 U. S. 340, 23 Sup. Ct. 757, 47 L. ed. 1084 (1902); *Worthingham v. Worthingham*, 212 Mo. App. 216, 253 S. W. 443 (1923); SCHOULER, *DOMESTIC RELATIONS* (6th ed. 1921) §781.

⁵ *Huke v. Huke*, 44 Mo. App. 308 (1891). A seventeen year old daughter's petition in equity against her father for support was dismissed because by the common law of England this obligation was without legal sanction, and there was no Missouri statute to compel the father to support her. A later Missouri case, *Glaze v. Hart*, 225 Mo. App. 1205, 36 S. W. (2d) 684 (1931), held that although the father might be criminally liable for failure to perform his duty and civilly liable to one who furnishes necessities to his child, still the child himself would not be permitted to sue. *Matter of Ryder*, 11 Paige 185 (N. Y. 1844); *Allings v. Allings*, 52 N. J. Eq. 92, 27 Atl. 655 (1893); *In re Ganey* 93 N. J. Eq. 389, 116 Atl. 19 (1922).

⁶ N. C. CODE ANN. (Michie, 1935) §§4448, 4449, 4450, 4450(a).

⁷ CAL. CIV. CODE (Deering, 1923) §206 (provides that it is the duty of the father, the mother, and the children of any poor person who is unable to maintain himself by work to maintain such person to the extent of their ability); *Paxton v. Paxton*, 150 Cal. 667, 89 Pac. 1083 (1907) (§206 imposes a legal obligation on parents to support an invalid adult child enforceable by the child in a suit in equity); *Tuller v. Superior Court*, 122 Cal. 242, 10 P. (2d) 43 (1932) (complaint by a child as a "poor person" against her father for non-support held not demurrable for failure to join the mother). *Contra*: *Rawlings v. Rawlings*, 121 Miss. 140, 83 So. 1259 (1919) (bill filed by an abandoned child to require sufficient support could not be entertained, notwithstanding a statute requiring certain relatives to support pauper members of the family).

⁸ *Cameron v. Baker*, 1 C. & P. 268, 12 Ecl. 161 (1824); *Furillio v. Crowther*, 7 D. & R. 612, 16 Ecl. 302 (1826); *Hard's Case*, 2 Salk. 427 (1795).

⁹ 167 N. C. 316, 319, 83 S. E. 490, 491 (1924).

¹⁰ See *Burton v. Belvin*, 142 N. C. 151, 153, 55 S. E. 71, 72 (1926); *Kimborough v. Davis*, 16 N. C. 71, 75 (1827); *Hyatt v. McCoy*, 195 N. C. 762, 143 S. E. 518 (1928).

Kansas have also ruled on this question and allow these unfortunates to sue directly.¹¹

(3) Pending divorce or separation, contracts are sometimes made between the parents for the support and education of the children that will be affected by their parting. These contracts are often made a part of the final decree of divorce or separation, but in no case have the children been allowed to sue the parent on the contract. The courts have ruled that the other parent is the proper party or must be joined in the bringing of the action.¹²

(4) After a divorce or a deed of separation, a majority of the states hold that a father remains liable for the support of his children on the ground that he owes both the children and society an obligation that even loss of custody and right to the child's services do not dissolve. In the following four situations he has been held liable: (a) where the divorce decree makes no provision for the child's custody or support;¹³ (b) where the custody of the child is awarded to the mother, but no provision is made for its support;¹⁴ (c) where the decree awards the custody of the child to the mother with sums to be paid by the father for support, but the provision for the child becomes insufficient. In such a case, upon the opening of the former decree, further compensation may be allowed;¹⁵ (d) where there is neither a decree of divorce nor a deed of separation, but the parents are living separate and apart.¹⁶

Admitting that the father is under a duty to support the child in the above four instances, will the child be allowed to enforce directly the obligation? The courts in the past have answered in the negative.¹⁷

¹¹ *Craig v. Shea*, 102 Neb. 575, 168 N. W. 135 (1918) (there being no provision allowing bastardy proceeding to be brought by a married woman, and no other remedy being afforded except criminal prosecution, the illegitimate child, by its next friend, might maintain an action in equity against its putative father to declare its status and recover support and maintenance); *Doughty v. Engler*, 112 Kan. 583, 211 Pac. 619 (1923).

¹² *Kendall v. Kendall*, 200 App. Div. 702, 193 N. Y. Supp. 658 (1922); *Cawthon v. Jones*, 240 Ky. 380, 42 S. W. (2d) 498 (1931).

¹³ *Gilley v. Gilley*, 79 Me. 292, 9 Atl. 623 (1887).

¹⁴ *Spencer v. Spencer*, 97 Minn. 56, 105 N. W. 483 (1906); *Evans v. Evans*, 125 Tenn. 112, 140 S. W. 745 (1911).

¹⁵ *Graham v. Graham*, 38 Colo. 453, 88 Pac. 852 (1906).

¹⁶ *Jacobs v. Jacobs*, 136 Minn. 190, 161 N. W. 525 (1917).

¹⁷ *Sikes v. Sikes*, 158 Ga. 406, 123 S. E. 694 (1924); *Hooten v. Hooten*, 168 Ga. 86, 147 S. E. 373 (1929); *Cunningham v. Cunningham*, 120 Tex. 491, 40 S. W. (2d) 46 (1927). In *Yarborough v. Yarborough*, 290 U. S. 202, 54 Sup. Ct. 181, 78 L. ed. 269 (1933) the parents were divorced in Georgia and in the same proceedings a lump sum for the child's maintenance and education was awarded. This sum was paid by the father. About a year later the child, residing in South Carolina, attached some of her father's property in that state and sued for additional money to enable her to educate herself. It was held by the United States Supreme Court that the Georgia decree fixing permanent alimony was binding on the child though it was not a party to the suit and was not repre-

These courts have held that such a proceeding would be contrary to public policy in that it would be detrimental to the integrity of the home, break the home ties, open the doors of the courts for actions by intractable children. Therefore, the recent North Carolina decision in allowing the child of divorced parents to sue for support sets a new landmark.¹⁸ Would not public policy be best subserved by following this decision and awarding relief to the child? This is the most direct means of enforcing the parent's obligation. Such an action would not be detrimental to the integrity of the home as the home has already been disrupted by divorce, separation or abandonment.

WILLIAM THORNTON WHITSETT.

Public Utilities—Public Service Commissions—Power to Require Extensions—Dedication of Property by Public Utilities.

Pursuant to a joint resolution of the Senate and House,¹ the Georgia Public Service Commission ordered the Georgia Power Co. to supply the town of Andersonville with electricity. The Power Co. obtained an injunction against the enforcement of the order, and the Commission appealed to the Georgia Supreme Court. Judgment was reversed and the injunction dissolved. It appears from the facts that the Power Co., operating under a general charter right to supply electricity to cities and towns throughout the state, had obtained franchises to serve several cities around Andersonville, the nearest being about ten miles away, and that its transmission lines ran within

sented by a guardian *ad litem*. The Court, speaking through Mr. Justice Brandeis, held that the appearance of both parents in the Georgia divorce action gave that court complete jurisdiction over the marriage status and, as an incident, power to determine the extent of the father's obligation to support the child, though the child was residing in another state when the divorce judgment was entered. The Court held the Georgia decree binding on other states because of the full faith and credit clause. U. S. CONST. ART. IV, §1. Mr. Justice Stone, dissenting, contended that it should be no answer to this suit by the child that at some earlier time some provision for it had been made which was no longer available or adequate. He believed that the Georgia court had tied its own hands and its own policy, but should not at the same time be permitted to prescribe that policy for other states in which the child might happen to live. *Hansberger v. Hansberger*, 185 S. E. 810 (Ga. 1936); *Bedrick v. Bedrick*, 151 Misc. 4, 270 N. Y. Supp. 566 (1933) (parents separated but not by legal decree); *Baker v. Baker*, 169 Tenn. 589, 89 S. W. (2d) 763 (1935).

¹⁸ *Singleton v. Singleton*, 217 Ky. 38, 288 S. W. 1029 (1926) (demurrer to divorced mother's plea for additional allowance for children sustained. Children intervened and their plea for additional allowance granted); *Barrett v. Barrett*, 39 P. (2d) 621 (Ariz. 1934) (knowledge of child that divorce decree had awarded custody of children to mother and imposed the duty of support upon her held not to deprive child of right to maintain his action against the father for reimbursement for necessities furnished by him when the mother was incapable of supporting the children).

¹ Georgia Acts of 1935, p. 1248. It was not contended that this resolution enlarged in any way the powers of the Commission.