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North Carolina Bastardy Statute -- Support of Illegitimate Children -- Statute of Limitations

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Any rules and regulations by the Board which are regular on their face will be held valid in the absence of proof to the contrary.\textsuperscript{22}

A statute or a regulation of a Board of Education governing secret societies is not unconstitutional as class legislation;\textsuperscript{23} it does not abridge special privileges under the Fourteenth Amendment, since it is not a privilege arising out of United States Citizenship.\textsuperscript{24} Neither do such rules deny the student equal protection of the laws,\textsuperscript{25} or deprive him of property without due process of law.\textsuperscript{26} Even statutes or School Board regulations which permit certain secret societies as exceptions to a general prohibition have been upheld.\textsuperscript{27}

Thus it appears that the holding in North Carolina is in accord with the principal cases dealing with secret societies in public schools.

\textbf{CECIL J. HILL.}

\textbf{North Carolina Bastardy Statute—Support of Illegitimate Children—Statute of Limitations}

A proceeding upon indictment for willful refusal and neglect to support one's illegitimate child must be brought within three years from the date of the child's birth, or within three years since the reputed father acknowledged paternity of the child by support made within the three years since its birth. This is the decision reached in the recent case of \textit{State v. Dill}, where the court in a five to two decision held that both the criminal and the civil proceedings created by Ch. 228 of Public

\textsuperscript{22}See \textit{Everts v. Rose Grove}, 77 Iowa 37, 41 N. W. 478, 14 Am. St. Rep. 264 (1889).

\textsuperscript{23}Lee v. Hoffman, 182 Iowa 1216, 166 N. W. 565, L. R. A. 1918C, 933 (1918).

\textsuperscript{24}Bradford v. Board of Education, 18 Cal. App. 19, 121 Pac. 929 (1912).

\textsuperscript{25}Bryant v. Zimmerman, 278 U. S. 63, 49 Sup. Ct. 61, 73 L. ed. 184, 62 A. L. R. 785 (1928) (Such regulations do not violate the equality clause of the Fourteenth Amendment when applied to one class of oath-bound associations and not to another class, if the class so regulated has a tendency to make the secrecy of its purposes and membership a cloak for conduct inimical to the personal rights of others and to the public welfare, while the other class is free from that tendency.) \textit{Ex parte King}, 157 Cal. 150, 154, 106 Pac. 578, 579 (1910) ("A law is general and constitutional when it applies equally to all persons, embraced in a class founded on some natural distinction. . . . The question whether the individuals affected by a law do not constitute such a class is primarily one for the legislative department of the state. . . . To warrant a court in adjudging the act void on this ground, it must clearly appear that there was no reason sufficient to warrant the legislative department in finding a difference and making the discrimination.").

\textsuperscript{26}Steele v. Sexton, 253 Mich. 32, 234 N. W. 436 (1931) (Neither does loss of right to school credit and a graduate's diploma, based on a willful violation of the statute, by any stretch of the imagination, constitute cruel and inhuman punishment.).

\textsuperscript{27}Bradford v. Board of Education, 18 Cal. App. 19, 121 Pac. 929 (1912) (Statute made it unlawful for a student to join any secret society except the orders of the Native Sons of the Golden West, Native Daughters of the Golden West, Foresters of America, and other kindred associations.).
Laws of 1933 are limited by Section 3 of the Act as amended by Section 3 of Ch. 227 of Pub. Laws of 1939.\(^1\)

The Act, passed in 1933 and entitled "An act concerning the support of children of parents not married to each other," was intended to cover the entire subject dealing with bastardy and repealed the old act in toto.\(^2\) Section 3 of the Act before its amendment in 1939 read: "Proceedings under this act may be instituted at any time within three years after the birth of the child and not thereafter." The question whether the proceedings referred to included both the civil one to establish the paternity of the child and the criminal one for the willful neglect and refusal to support one's illegitimate child was settled by the case of *State v. Bradshaw* in 1938. In that case the defendant was charged with the willful neglect and non-support of his illegitimate child born in 1933. During that year he had been charged with bastardy by the mother, had plead guilty, and had been fined $200 which he had paid. In 1937 this action was brought and defendant pleaded that the action was barred as brought more than three years after the birth of the child. The State contended that the three-year limitation applied only to the civil proceeding and not to the criminal one but the court held that the proceedings referred to included both.\(^3\)

It had previously been held that Section 1 of the Act making it a misdemeanor to willfully refuse and neglect to support one's illegitimate child under the age of fourteen years created a continuing offense\(^4\) but under the decision in the *Bradshaw* Case it was indictable only if the action was brought within three years from the birth of the child or an action had been brought within this period and the court had retained the case. The latter practice is the one that has been followed by the courts in the state with the suit to establish the paternity being brought, that issue determined and if defendant found guilty a sum being fixed by the court for maintenance and the case left open for modification in the future. However, in making the offense of willful neglect and refusal to support one's illegitimate child a misdemeanor and a continuing offense,\(^5\) and to protect the county from the expense of maintenance,\(^6\) it would seem that it was the legislative intent to limit the three-year limitation to the civil proceedings to establish paternity.

This assumption is strengthened by the fact that immediately following this decision the legislature amended Section 3 of the Act as

\(^{1}\) State v. Dill, 224 N. C. 57, 29 S. E. (2d) 145 (1944).
\(^{3}\) State v. Bradshaw, 214 N. C. 5, 197 S. E. 564 (1938).
\(^{5}\) State v. Roberts, 32 N. C. 350 (1849).
\(^{6}\) State v. Brown, 46 N. C. 129 (1853); State v. Robeson, 24 N. C. 46 (1841).
follows: "Proceedings under this Act to establish the paternity of such child may be instituted at any time within three years next after the birth of the child, and not thereafter: Provided, however, that where the reputed father has acknowledged the paternity of the child by payments for the support of such child within three years from the date of birth thereof, and not later, then, in such case, prosecution may be brought under the provisions of said sections within three years from the date of such acknowledgment of the paternity of such child by the reputed father thereof." In the first case calling for a construction of the amendment the defendant was charged with willful neglect and refusal to support his illegitimate child who had been born in 1930. Although the defendant had supported his child until one year before the action, no proceedings had ever been instituted to establish the paternity of the child. It was held that the action was barred as not brought within three years from the date of birth of the child or within three years since the reputed father had acknowledged the paternity of the child by support given within the three-year period. However, in referring to the amended section the court made this statement: "This Section, however, was definitely changed by Section 3 of Ch. 217, Pub. Laws of 1939, which limited the application thereof to proceedings 'to establish the paternity of such child' and added the proviso thereto." From this statement it would appear that as a result of the amendment, only the civil proceedings were thought by the court to be under the three-year limitation, and that the criminal action could now be brought at any time until the child was fourteen years old if proceedings to establish the paternity of the child had been instituted within the periods provided in this section of the Act.

The decision in State v. Dill dispelled this idea so the only effect of the amendment was to add an extra three years on to the time permissible for bringing the action, and only then if paternity was acknowledged at the end of three years next after birth of the child.

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Bailments—Negligence—Burden of Proof in Case of Loss or Damage

The plaintiff's car was destroyed by fire while in the possession of the defendant bailee for repairs. The fire originated in a bowling alley on the floor above the defendant's garage and spread to the defendant's premises despite the efforts of the city fire department. The plaintiff brought this suit for damages based on the defendant's failure to return the automobile. The record showed that the defendant had not employed a night watchman, and the court assumed that the defendant