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THE VIRGINIA BASTARDY ACT OF 1952

The 1952 session of the Virginia General Assembly passed Bill 20-88.32 which became Section 20-61.1 of the Code of Virginia. It is provided therein that "whenever in proceedings hereafter under this chapter the court finds that the parents of a child are not married but that the father admits before the court that he is the father of the child, the court may then enter and enforce judgment for the support, maintenance and education of such child as if the child were born in lawful wedlock." Thus the Virginia Legislature has again attempted to establish a "Bastardy Act."¹

The General Assembly passed in 1792 a "Bastardy Act" as part of the poor law. This act provided in part that ". . . if upon the circumstances of the case, the court shall adjudge the person so charged to be the father of such bastard child, and that such child is likely to become chargeable to the county, they shall and may in their discretion take order for keeping such bastard child, by charging the father with the payment of money for the maintenance of such child in such manner, and in such proportions as they shall think meet and convenient, and for such time as such child is likely to become chargeable to the county, and no longer."² It then seemed only just that the man responsible for the existence of the illegitimate child should be held accountable for its welfare and not devolve his responsibility on the state. This provision remained substantially unchanged until repealed shortly after the War Between The States.

The Virginia Courts have not as yet had an opportunity to pass upon the application of the present statute; however, it appears to cover only those cases in which the putative father admits his relationship to the child. Thus literally interpreted, it would seem to be a very slight move away from the common law rule followed in Virginia since 1874 which does not require the father to contribute to the support of his illegitimate children.³

The objectives which have caused many states to discard the common law rule in favor of the more reasonable statutory liability include (1) insuring the illegitimate child of a proper upbringing

1. Va. Code Ann. § 20-61.1 (Cum. Supp. 1952).

2. Acts of Assemble 1792, c. 40, § 23, 1 Va. Rev. Code 257 (1814).

3. *Brown v. Brown*, 183 Va. 353, 32 S.E.2d 79 (1944).

and education, (2) preventing illegitimate children from becoming a burden on the state, and, (3) acting as a deterrent to the promiscuity which leads to such births. In a democratic state all children deserve at least a basic minimum start in life. If we really believe in equality of opportunity then we should give that opportunity to all children regardless of the circumstances of their birth.

The Uniform Illegitimacy Act which has been adopted in seven states deals with the above objectives in an effective way. It provides that both the mother and father are liable to the child for maintenance, education, support and funeral expenses. The father is liable for the expenses of the mother's pregnancy and confinement.⁴

This Virginia statute, however, is so limited in scope that none of these objectives can effectively be achieved. From the wording of the act only the "honest fool" who admits in court his parenthood can be held responsible. Thus the statute requires contribution from only two classes. First, the man who is admittedly and actually the father and who is willing to support the child. Second, the man who mistakenly believes himself to be the father and admits it. The statute would therefore appear to be not only ineffective but dangerous.

It is clear that the legislature was acting in response to the case of *Brown v Brown*⁵ in order to modify the harsh common law rule. In *Brown v Brown* the court states, "No distinction is made between a reputed father and an admitted father. Accordingly, the courts in States which have adopted the common law have held in almost every case in which the question has been raised, that without legislation, the father of an illegitimate child cannot be required to provide for its support."⁶ The statute appears to have been passed in direct response to the specific issue raised in this case without reference to the general problem involved.

It is probable that the legislature's cautious policy of passing such a specific statute that makes so slight a change in the common law, is due to a fear that to institute a cause of action to compel support might create more inequities than it would resolve. In a period that is marked by so little caution in legislation, the General Assembly is to be admired for its stand. We might ask,

4. 4 Vernier, *American Family Laws* § 250, p. 260 n. 10 (1936).

5. 183 Va. 353, 32 S.R.2d 79 (1944).

6. *Id.* at 255, 32 S.R.2d at 80.

however, cannot caution be carried to an extreme? The statute as it stands will accomplish no more than if a divorced husband were required to support his wife only if he admitted to be the party in the wrong.

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