

ROSA LLORENTE, PLAINTIFF AND APPELLANT, VS. CEFERINO RODRIGUEZ ET AL., DEFENDANTS AND APPELLEES.

G.R. No. 3339. March 26, 1908

Ponente: ARELLANO, C.J.

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ARELLANO, C.J.:

In consequence of the death of Martina Avalor, which occurred on the 6th day of June, 1902, her will was presented to the court for probate, and was allowed on the 10th of July, 1902.

Martina Avalor, widow of Llorente, had during her marriage four legitimate children named Jacinta, Julio, Martin, and Francisco, all with the surname of Llorente y Avalor. In the will executed by her on the 31st of December, 1900, she instituted as her sole and general heirs her three first-named children, Jacinta, Julio, and Martin, and the children of the late Francisco, named Soledad and Adela Llorente.

Jacinta died prior to the testatrix, on the 11th of August, 1901, leaving several legitimate children with the surname of Rodriguez y Llorente, and besides them, a natural daughter named Rosa Llorente.

The said Rosa Llorente, the natural daughter of Jacinta Llorente, wanted to become a party in the proceedings for the probate of the will of Martina Avalor, but the legitimate children of the said Jacinta Llorente objected thereto on the ground that they were the sole and exclusive heirs of their mother, the late Jacinta Llorente, and that the plaintiff, Rosa Llorente, absolutely can not be a party thereto.

The question that is set up is whether the hereditary portion which Martina Avalor left in her will to her legitimate daughter Jacinta Llorente, and which the latter had not been able to possess because of her death before that of the testatrix, should also pass to her natural daughter, Rosa Llorente, the same as to her legitimate children; and this question is now before this court upon appeal.

The Court of First Instance of Cebu, before which it was first presented, decided the question, setting forth the following findings of fact and of law:

- That the testatrix, Martina Avalor, having died after the enforcement of the Civil Code in the Philippines, the claimed rights of Rosa Llorente to her inheritance must be determined in accordance with said code, in conformity with what has been held by this court in its decision of the 15th of April, 1904 (*Llorente vs. Rodriguez*).^[1]
- That according to article 134 of the Civil Code, an acknowledged natural child is entitled, among other things, to receive, in a proper case, the hereditary portion fixed in said code, and in section 8, chapter 2, title 3, of book 3, the same said portion is determined according to the circumstances.
- That article 840 of said code states the portion of the inheritance pertaining to natural children in case the testator leaves legitimate children or descendants and natural children legally acknowledged; but neither this article nor any other determines what pertains to the natural children of a legitimate child; that is, while the law dwells on the question of legitimate descendants it makes no reference whatever to natural descendants, and

dwells only on the relation between the father and the natural child and the legitimate children of the latter, as appears in article 843.

- That article 841 provides for cases in which the testator does not leave legitimate children or descendants, but provides nothing for cases in which a legitimate son leaves natural children; that is, illegitimate descendants of said testator.

- That the Civil Code has granted to natural children many more rights than they were entitled to under former laws, but it has not given them the status of legitimate children, nor admitted them as members of the legitimate family of their natural parent.

- That the rights of the one and the other class of children have been carefully fixed by the code, and great differences exist between such as are granted to each class. For instance, while article 114 grants to a legitimate child the right to demand support from his parents, from his ascendants, and even from his brothers, article 134 cited before only recognizes the right of the natural child to demand such support from the person who acknowledges him. A natural child has no other rights than those which are expressly recognized by the Civil Code, and among them the right to succeed the legitimate father of his natural parent does not appear.

- That besides the above considerations which we might call negative, article 943 of the Civil Code positively denies to a natural or legitimized child the right to succeed ab intestato the legitimate children and relatives of the father or mother who have acknowledged said child, and in accordance with this article, Rosa Llorente, the natural daughter of Jacinta Llorente, has no right whatever to inherit from the latter's legitimate mother, Martina Avallé, the testatrix.

- That commenting on this article, Manresa says on pages 104 and 105 of Volume VII of his work *Comentarios al Código Civil Español*:

"Between a natural child and the legitimate children and relatives of the father or mother who acknowledged said child, the code denies all successory relation. They can not call themselves relatives, nor are they entitled to inherit.

"And further on:

"The legitimate children and relatives of the father or mother who acknowledged a natural child are the relatives in a direct line, descendant or ascendant, or in the collateral line. The legitimate family is entirely separated from the natural, and neither the members of the latter inherit from those of the former, nor the members of the former from those of the latter."

This doctrine has been affirmed by the supreme court of Spain in its decision of the 13th of February, 1903, and in said decision it was held that a natural child whose deceased father was a legitimate son, has no right whatever in the inheritance of his grandfather, even if the latter died without legitimate descendants surviving him, which appears plainly evident, not only because article 943 of the Civil Code denies the natural child the right to succeed ab intestato the legitimate children and relatives of the father or mother acknowledging the said child, included in which was the grandfather, nor because within the order of succession established for natural children and their descendants by article 939 to 944, the natural grandchild, whose father was legitimate, has no place; but more especially (considering the direct application of said doctrine to the case) because, as children inherit by right from their father, and grandchildren from their grandfather by representation according to articles 932 and 933, this right is only granted to the legitimate grand-children and descendants when the head of the descending direct line is a legitimate child, in conformity with the secular doctrine admitted by our code as the basis of the order of succession which the same establishes and particularly sanctions by article 931, where it is assumed that the

descendants called upon to succeed by such line shall be the issue of a lawful marriage. As a consequence of the law, the court below held that Rosa Llorente had no right whatever to the inheritance of the late Martina Avalor, and denied her all right to intervene in the proceedings regarding the estate of the said deceased.

Rosa Llorente appealed from the said judgment.

It is set forth in the appellant's brief on said appeal that the court below erred when deciding that Rosa Llorente, as the legally acknowledged natural daughter of Jacinta Llorente, was not entitled to inherit from the late Martina Avalor, the mother of the said Jacinta Llorente.

Said allegation is based on section 758 of the Code of Civil Procedure, which reads:

"When a devise or a legacy is made to a child or other relation to the testator, and the devisee or legatee dies before the testator, leaving issue, * * * such issue shall take the estate so given as the devisee or legatee would have done, if he had survived the testator, unless a different disposition is required by law."

From the foregoing legal text the following is deduced: Jacinta Llorente was appointed as the devisee or legatee of Martina Avalor; Jacinta Llorente died before the said Martina Avalor. Therefore, her descendant, Rosa Llorente, shall be the devisee or legatee to whom Martina Avalor leaves what she intended to leave or bequeath to Jacinta Llorente.

But Jacinta Llorente had not been named by her mother, Martina Avalor, as the legatee of any determined kind of property; she is therefore neither a devisee nor a legatee, within the meaning of section 758, nor a legatee under the Civil Code, but a general heir like her other legitimate children, and, following the principles of the Civil Code, there is an essential difference between instituting a legatee and instituting an heir, because the latter succeeds by general right and the former by special right. (Civil Code, art. 660.)

Assuming, however, that by section 758 it was the intent of the lawmaker to grant the right of representation in every hereditary succession to the issue of the heir or legatee instituted by an ascendant, there would still have to be decided to which class of issue the lawmaker referred, whether solely to the legitimate, or also to the illegitimate, or at least among the latter, to natural children, with regard to which the learned Justice Carson has submitted a dissenting opinion whereof the corollary seems to be that this is a question that has not yet been decided.

And taking it as a question already decided that the dispositive portion of section 758 grants to the illegitimate issue, or at least to the natural children, the right of representation, there still remains to be explained or construed the exception contained therein in the following words: "unless a different disposition is required by law." If the law in force in this country provides the contrary and denies to natural children the right to represent their mother in the succession of the latter's mother, or her who would be called their natural grandmother, it is not then proper to invoke in favor of such children the right of representation established in a restrictive manner by said section of the law of procedure; that is, unless a different disposition is required by the substantive law.

The decision of the supreme court of Spain, cited in the judgment appealed from, is decisive on this matter; according to the same a natural child has not the right to represent his natural father or mother in the succession to the legitimate ascendants of the latter.

From the fact that a natural son has the right to inherit from the father or mother who acknowledged him, conjointly with the other legitimate children of either of them, it does not follow that he has the right to represent either of them in the succession to their legitimate ascendants; his right is direct and immediate in relation to the father or mother who acknowledged him, but it can not be indirect by representing them in the succession to their ascendants to whom he is not related in any manner, because he does not appear among the legitimate family of

which said ascendants are the head.

If Jacinta Llorente had survived her mother, Martina Aralle, she would have inherited from her, and in what she inherited from her mother, her natural daughter, Rosa Llorente, would have participated, in conjunction with her legitimate children, from the day in which the succession became operative, because she would then appear by virtue of her own right to inherit from her mother the legal quota that pertained to her; but, not because she has said right, would she also be entitled to that of representation, inasmuch as there is no legal provision establishing such a doctrine; that Rosa Llorente might and should inherit from her natural mother is one thing, and that she should have the right to inherit from her who would be called her natural grandmother, representing her natural mother", is quite another thing. The latter right is not recognized by the law in force.

Therefore, the judgment appealed from is hereby affirmed with the costs of this instance against the appellant. So ordered.

Torres, Johnson, and Willard, JJ., concur.

Tracey, J., dissents.

DISSENTING

CARSON, J.,

I dissent. I agree with the statement of the doctrine of the Spanish law, as set out in the majority opinion, denying to a natural child the right to inherit through its mother, and limiting the right of inheritance of a natural child from the mother to the estate of the mother.

I think, however, that the facts in this case bring it within the provisions of section 758 of the new Code of Civil Procedure, which is as follows:

"When a devise or a legacy is made to a child or other relation to the testator, and the devisee or legatee dies before the testator, leaving issue surviving the testator, such issue shall take the estate so given as the devisee or legatee would have done if he had survived the testator unless a different disposition is required by law."

In this case a devise was made by the grandmother of the plaintiff to the mother of the plaintiff, who died before the testatrix, leaving the plaintiff surviving the testatrix. Under the provisions of said section 758 the "issue" of plaintiff's mother take the devise under the will, as the mother would have done if she had survived the testatrix.

The legitimate issue deny the right of the plaintiff, a natural child, to share in this estate, and it seems to me that the only question before us is the meaning of the word "issue" as used in the above-cited section of the new Code of Civil Procedure.

The new Code of Civil Procedure having been written in English and substantially adopted from similar codes in the United States, it should be construed more especially in the light of American and English precedent and authority.

The word "issue" is a strictly technical term in English and American jurisprudence and has frequently been construed in the decisions of the courts of last resort of the various States, where it has been held that in deeds, wills, and statutory provisions such as that under consideration, the word "issue" should be taken to mean "children," "heirs of the body," or "lineal descendants;" for the purposes of this opinion it is not necessary to examine the precise grounds upon which it has been given one or the other of these various significations, as in the case at bar it could only be taken to apply to the "children" of the plaintiff's mother, and it unquestionably does

apply to them.

The only question then is whether the word "issue," as used in the statute, includes "natural" as well as "legitimate" children. It must be admitted that the common law doctrine limited the word "issue" in such cases to "legitimate" descendants of the ancestor, and that this rule has been generally, and perhaps universally, followed in those States wherein the common-law doctrine, denying heritable blood to illegitimate children or descendants, has not been modified by statute. It is said in 2 Jarmen on Wills (2d Amer. edit, by J. C. Perkins, p. 34) to be an established rule that a gift to "children," "sons," "daughters," or "issue" imports prima facie legitimate children or issue, excluding those who are illegitimate, agreeable to the rule *qui ex damnato coitu nascuntur, inter liberos non computentur*.

The Latin maxim furnishes us with the ground on which rests the common-law rule for the construction of the word. The bastard under the common law was not computed among the children. "We term them all by the name of bastards that be born out of lawful marriage." (1 Thos.Coke, 115.) "A bastard is in law nullius filius, because he can not be heir to any." (Litt, § 188.) So if a bastard were possessed of personal estate, and he died intestate and without wife or children his estate belonged to the Crown; if of real estate it escheated. A bastard was supposed to have no relations except those arising from his own contract of marriage (his wife, children, and descendants). The status and rights of inheritance of bastards being thus fixed by law, the words "issue," "children," "descendants," and the like came to import only such "issue," "children," etc., as the law recognized as such, in other words, "legitimate" issue, children, or descendants; that is to say, issue or children born in lawful wedlock.

But it would appear that where the reason for giving these words such limited and restricted signification has disappeared, where the status of an illegitimate child has been changed or modified so as to cast upon such child the inheritance or a share of the inheritance of the intestate estate of one or both its parents, and where the law recognizes the existence of heritable blood, the legal import of these words must be taken to be changed or modified so as not to defeat the manifest purpose and intent of such legislation.

In Virginia where the legislature adopted the most liberal rule in respect to an inheritance in case of bastardy that was consistent with the certain ascertainment of the parents, a bastard might inherit on the part of his mother in like manner as if he were her legitimate son, and he was made as to her, no longer quasi filius nullius, but her child, inheriting from and through her, transmitting to and through her. Accordingly we find that in Virginia, by relation to the mother, the word "children" in a will was held to include both legitimate and illegitimate children, all the children being comprehended in the same class. (Bennett et al. vs. Toler et al., 15 Grat. Va., 588.)

In this case the English and American cases were learnedly and exhaustively reviewed, and the doctrine touching the effect of statutory modification of the common-law rule denying heritable blood to illegitimate "children," issue," or "descendants" was thoroughly and, as it seems to me, conclusively expounded. In Gibson vs. McNeely (11 Ohio, 131) the court adhered to the common-law doctrine, and held that a devise to "issue" meant prima facie legitimate issue; but while this ruling was followed thirty years afterwards by the same court in Hawkins et al. vs. Jones et al. (19 Ohio, 22), abiding by the judicial rule of stare decisis it clearly intimated its doubt as to its correctness; and the court in Flora vs. Anderson (67 Fed. Rep., 182, 187; Circuit Court S. D., Ohio W. D.), in commenting upon and "distinguishing" the leading cases in Ohio and Virginia, points to the fact that the statutory modification of the common law as found in Virginia, distinguished the Virginia case from the Ohio case.

I am convinced that the reasoning of the Virginia case leaves no room for doubt that to the extent that the law in a particular jurisdiction modifies the rigor of the common law, which treats illegitimate children as nullius filius, and without "heritable blood," to a like extent must the common-law definition of the words "issue," "children,"

"descendants," and the like be modified so as to recognize the right of inheritance conferred upon such children. (Drain vs. Violet, 2 Bush, Ky., 157; McGunnigle vs. McKee, 77 Pa., 81; Miller's Appeal, 52 Pa., 113.)

In the Philippine Islands, under the provisions of Spanish substantive law, the heritable blood of a natural child is expressly recognized, and its right to inherit from its father when the father has recognized his paternity, and its right to inherit from its mother in all cases is secured by the express provisions of the code. Had the mother of the plaintiff survived the testatrix and then died intestate, the plaintiff would have received by operation of law a share of the inheritance equal to one-half the share which would have been inherited by any of the legitimate children. I think, therefore, that, under the provisions of section 758 of the Code of Civil Procedure, she is entitled to take a like portion under and by virtue of the will.

[1] 3 Phil. Rep., 697.

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