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Affirming An Illegitimate Statute

by Ron Byrd

On December 11, 1978, the Supreme Court in a 5-4 decision, upheld the constitutionality of a statute allowing an illegitimate child to inherit from his intestate father only if a court of competent jurisdiction has, during the father's lifetime, entered an order declaring paternity. In *Lalli v. Lalli*, 99 S.Ct. 518 (1978) the Court stated that the proof requirement imposed by the New York statute on illegitimate children who would inherit from their father, was not in violation of the Equal Protection Clause of the 14th amendment.

The facts of the case are relatively simple, Robert Lalli, claiming to be the illegitimate son of the decedent, filed a petition in Surrogate Court for a compulsory accounting from the administratrix of the estate claiming that he and his sister (Maureen Lalli) were entitled to inherit from the elder Lalli, as his children. Evidence substantiating the claim included affidavits from persons who stated that Mario Lalli had openly acknowledged that Maureen and Robert were his children. The administratrix, in opposing the claim, argued that regardless of the veracity of the blood relationship, the petitioners were not lawful distributees of the estate because they had failed to comply with §4-1.2 of New York's Estates, Powers and Trusts Law which in part states:

An illegitimate child is the legitimate child of his father so that he and his issue inherit from his father if a court of competent jurisdiction has during the lifetime of the father, made an order of filiation declaring paternity in a proceeding instituted during the pregnancy of the mother or within two years from the birth of the child.¹

Petitioners' argument that §4-1.2 was unconstitutional under the Equal Protection Clause was not persuasive to the Surrogate Court. Noting that recent New York decisions had affirmed the constitutionality of the statute,² the court ruled that the petitioners were properly excluded "as [distributees] of Lalli's estate and therefore lacked status to petition for a compulsory accounting," 99 S.Ct. 518, 522 (1978). On direct appeal, the New York Court of Appeals affirmed, *In re Lalli*, 38 N.Y.2d 77, 378 N.Y.S.2d 351, 340 N.E.2d 721 (1975). On remand from the Supreme Court, *Lalli v. Lalli*, 431 U.S. 911 (1977), the New York Court of Appeals affirmed its previous decision, 43 N.Y.2d 65, 400 N.Y.S.2d 761, 371 N.E.2d 481 (1977). Lalli again brought his case before the Supreme Court, seeking review, 435 U.S. 921 (1978).

¹ *New York Estates, Powers and Trusts Law §4-1.2(a) (2)* (1966).

² E.g., *In re Belton*, 70 Misc.2d 814, 335 N.Y.S.2d 177 (Sur. Ct. 1972); *In re Hendrix*, 68 Misc.2d 439, 444, 326 N.Y.S.2d 646, 652 (Sur. Ct. 1971).

Mr. Justice Powell announced the principal opinion of the Court and was joined by Mr. Chief Justice Burger and Mr. Justice Stewart. Justice Powell noted at the outset that while "classifications based on illegitimacy are not subject to strict scrutiny, they nevertheless are invalid under the 14th amendment if they are not substantially related to permissible state interests." 99 S.Ct. at 523.

The Court readily accepted the contention that the just and orderly disposition of property at death was an area of activity in which the state had a justifiable and legitimate interest. The issue thus centered upon whether §4-1.2 of the New York's Estates, Powers and Trust Law bore a substantial relation to the promotion of accuracy and efficiency in estate distribution. Justice Powell, in confronting the question, looked to the problems and recommendations proffered by the Bennet Commission,³ a state commission investigating the descent and distribution of property under New York law. Their findings listed two major problems with regard to illegitimate heirs: (1) How to reduce the number of fraudulent claims of heirship and harassing litigation by those claiming to be illegitimate offspring and (2) How to achieve any finality of decree when there always exists a possibility that a secret illegitimate heir will appear claiming lack of due notice in the estate distribution. 99 S.Ct. at 526.

The Court's opinion vigorously articulated that §4-1.2 would help alleviate the problems set forth by the commission. "Fraudulent assertions of paternity," Justice Powell noted, "will be much less likely to succeed, or even to arise, where the proof is put before a court of law at a time when the putative father is available to respond. . ." 99 S.Ct. at 526. Secondly, "the administration of an estate will be facilitated and the possibility of delay and uncertainty minimized, where the entitlement of an illegitimate child to notice and participation is a matter of judicial record before the administration commences." *Id.*

In opposing the statute, appellant cited a recent case wherein the Supreme Court had struck down an Illinois statute precluding illegitimate heirs from inheriting unless the father "acknowledged" the child and the parents intermarried. *Trimble v. Gordon*, 430 U.S. 762 (1977). In *Trimble*, the Court stated that the statute was too broad to satisfy equal protection requirements because it excluded significant categories of illegitimate children who could be allowed to inherit without jeopardizing the orderly settlement of estates. *Trimble, supra*, at 771. Accordingly, petitioner in *Lalli* argued that the New York statute also excluded a broad category of illegitimate children who can demonstrate convincing proof of paternity despite lack of court adjudication. Jus-

³ Officially labeled the Temporary State Commission on the Modernization, Revision and Simplification of the Law of Estates. 1961 N.Y. Laws, ch. 731 §1.

tice Powell distinguished *Trimble* and *Lalli* by declaring that whereas the statute in the former case involved the burdensome requirement of marriage, thus making the reach of the Illinois law "far in excess of its justifiable purposes," (99 S.Ct. at 527), the latter statute involved simply an evidentiary requirement. In admitting that some illegitimate children would be hurt by the statute, the Court remarked that "few statutory classifications are entirely free from the criticism that they sometimes produce inequitable results." 99 S.Ct. at 526.

The Court upheld the constitutionality of the statute requiring that a judicial decree be issued during the lifetime of the father before an illegitimate child can assert a claim against his intestate father's estate. In sum, §4-1.2 is substantially related to the primary state interests involved. While Mr. Justice Rehnquist and Mr. Justice Blackmun concurred in the judgment, Justice Blackmun's opinion advocated the overruling of *Trimble*.

Mr. Justice Brennan, with whom Mr. Justice White, Mr. Justice Marshall and Mr. Justice Stevens joined, filed a dissenting opinion. Practically speaking, Justice Brennan argued, illegitimate children who are presently acknowledged and supported by their fathers are not likely to bring suit against them for the required judicial filiation order. Illegitimate children will refrain from such adversary proceedings for fear of "provoking disharmony by suing their fathers. For the same reasons, mothers of such illegitimates are unlikely to bring proceedings against the father." 99 S.Ct. at 530. Lastly, "fathers who do not even bother to make out wills. . . are unlikely to take the time to bring formal filiation proceedings." *Id.* Concomitantly, Justice Brennan noted that there were less drastic means available for assuring accurate and efficient distribution of intestate property without eliminating many deserving claims to heirship such as publication notice or a short statute of limitation within which claims could be filed. *Id.*

The Court did not rule on that part of §4-1.2 requiring the paternity proceeding to be brought "during the pregnancy of the mother or within two years of the birth of the child."⁴ It remains to be seen whether that part of the statute can muster 14th amendment approval.

The New-Fangled Warrant

by Mark Henckel

Although the Supreme Court had applied the Fourth Amendment to state administrative searches¹ involving municipal fire, health and housing inspection programs, the Court's position as to the applicability of the Fourth Amendment to federal administrative codes and procedures was unclear. The Supreme Court settled that question in *Marshall v. Barlow's Inc.*, 436 U.S. 307 (1978).

In *Marshall*, an inspector from the Occupational Safety and Health Administration attempted to inspect an electrical and plumbing installation business without a search warrant pursuant to federal statute.² The owner refused to permit any search of the warehouse without a warrant. The inspector was limited to the public area of the premises. An injunction was obtained against the search, and the Secretary of Labor appealed.

On appeal, the Supreme Court, in a 5-3 decision, applied *Camara v. Municipal Court*, 387 U.S. 523 (1967) and *See v. City of Seattle*, 387 U.S. 541 (1967) and held that the Fourth Amendment mandated a warrant for OSHA inspections. Justice White, speaking for the majority, began by stating that the "Warrant clause of the Fourth Amendment protects commercial buildings as well as private homes." 436 U.S. at 311. After reaffirming the holdings in *Camara* and *See*, Justice White turned to the government's position that an exception from the search warrant requirement had been recognized for "pervasively regulated business[es]," *United States v. Biswell*, 406 U.S. 311, 316 (1972), and for "closely regulated" industries "long subject to close supervision and inspection." *Colonnade Catering Corp. v. United States*, 397 U.S. 72, 74, 77 (1970). The majority quickly distinguished these cases due to the types of industry involved (firearms and liquor, respectively). The Court stated that when an "entrepreneur embarks upon such a business, he has voluntarily chosen to subject himself to a full arsenal of governmental regulation. . . The clear import of our cases is that the closely regulated industry of the type involved in *Colonnade* and *Biswell* is the exception." 436 U.S. at 313. Nor did the mere fact that businesses in interstate commerce are closely regu-

⁴ See note 1 *supra*. Maryland law regarding illegitimate children inheriting from their fathers is as follows:

A child born to parents who have not participated in a marriage ceremony with each other shall be considered to be the child of his father only if the father (1) Has been judicially determined to be the father in an action brought under the statutes relating to paternity proceedings; or (2) Has acknowledged himself, in writing, to be the father, or (3) Has openly and notoriously recognized the child to be his child; or (4) Has subsequently married the mother and has acknowledged, orally or in writing, to be the father. MD. EST. & TRUST CODE ANN. §1-208(b) (1974).

¹ *Camara v. Municipal Court*, 387 U.S. 523 (1967); *See v. City of Seattle*, 387 U.S. 541 (1967).

² The statute authorized the Secretary of Labor to empower agents to enter and at reasonable times any "environment where work is performed by an employee of an employer"; it further permitted the agent to "inspect and investigate during regular working hours and at other reasonable times, and within reasonable limits and in a reasonable manner. . . all pertinent conditions, structures, machines, apparatus, devices, equipment, and materials. . . and to question privately any such employer, owner, operator, agent, or employee." 29 U.S.C. §657 (a) (1970).