

ROYAL COURT
(Samedi Division)

22nd September, 1988

Before: P.R. Le Cras, Esq., Commissioner and
Jurats Coutanche and Baker

BETWEEN

Mr T

REPRESENTOR

AND

Mrs O

FIRST DEFENDANT

Mr O

SECOND DEFENDANT

Application by Representor for access
to his illegitimate child.

Judgment on Representor's preliminary
submissions: (1) that the mother of an
illegitimate child has no rights which take
precedence over those of the putative father;
and (2) alternatively, that the Court is not
precluded from making such order as it thinks fit
in the interests of the child.

Advocate P.C. Sinel for the plaintiff
Advocate S.J. Habin for the defendants

JUDGMENT

COMMISSIONER LE CRAS: This is an application, in effect, for access by a putative father of an illegitimate child. It is an unusual case in that no application of a similar nature has been found by counsel. There is no dispute in this case as to the tie of blood, although no affiliation order has been made.

Two propositions were put to us by Mr Snel, counsel for the representor, the first that the mother of an illegitimate child had no rights in preference to those of the putative father. We should say at once that we do not accept this submission, which is based in our view, on the misreading of the authorities. The position, in our judgment, is that which was shown and clearly acknowledged by the parties in Boisan, femme etc. -v- Rowe (1944) 242, Ex. 94, 97, that is that the mother of an illegitimate child has the custody or guard of the infant and that on her marriage or remarriage, as the case may be, the custody passes to her husband, who assumes the responsibility for the maintenance and upbringing of the child. A position which, in our view, has been confirmed by Article 50 of the Children (Jersey) Law, 1969.

The second proposition is that the Court is not precluded from making such order as it thinks fit in the child's best interests. It is clear, in the words of Sir George Jessell, in R. -v- Nash (1891) 10 Q.B.D. 454, that in equity regard was always had to the mother, putative father and relations on the mother's side. Put another way, in the more recent case, Re Adoption Application No.41/61 Ch. p.315 1962 3 ER, the tie between the child and his natural father may properly be regarded.

Despite the careful and reasoned arguments from Advocate Habin, it appears to us that in a case such as this, this is the principle that the Court ought to follow and that we have the power and indeed the duty to do so. We therefore order that the hearing of the Representation should proceed and that the witnesses be heard.

Authorities: * referred to at the hearing
B referred to in the Judgment

- * Le Gros - Traite du Droit Coutumier de L'ile de Jersey - p.175-185.
- * Le Gros - Traite du Droit Coutumier de L'ile de Jersey - p.356-365.
- * Oeuvres de Basnage Tome 1 - p.480-484.
- * Loi (1862) sur les Tuteurs.
Le Geyt - Les Usages de Jersey - p.395-397.
- * Marriage of Infants Jersey Law 1969.
- * Adoption (Jersey) Law (1961) as amended.
- * Adoption (Jersey) Law Regulations.
- * Fatal Accidents (Jersey) Law 1962.
- * Legitimacy Jersey Law 1963.
- * Guardianship of Minors Act 1971.
- * B Re Adoption Application No. 41/61 Ch. p.315 1962 3ER.
- * Re Adoption Application No. 2 1964 Ch. p.48.
- * Re A (an infant) 1955, 2ER p.202 IWL R p.465.
- * Re O (an infant) 1965 Ch. p.23.
- * Re P (an infant) 1969 Ch. p.232 (1968) IWL R p.1913.
- * H -v- W - 1987 Unreported (23/6187).
- * Oeuvres de Pothier (Nouvelle Edition) M.D.C.XXIII, Tome Treizieme, pp.426-427; Traité des Personnes et des Choses; 1ère Partie; Titre IV.
- * Blackstone's Commentaries, 18th Edition, Vol. 1, pp.458-459.
- * Legitimacy (Jersey) Law, 1973, Article 11.
Halsbury's Laws of England, 3rd Edition, Vol. 3, pp.106-109.
Bromley, Family Law, 3rd Edition, pp.387-390.
- * Watson -v- Priddy (1977) JJ 145.
- * Barnado -v- McHugh (1891) A.C. 388, H.L.
- * B Boisan, femme etc. -v- Rowe (1944) 242, Ex. 94, 97.
- * In re. Carroll, an infant, (1930) 1 K.B. 317 C.A.
- * Ex parte Wimborne (1983) JJ 17.
- * B Children (Jersey) Law, 1969; Article 50.
- * B R. -v- Nash (1891) 10 Q.B.D. 454.

