

IN THE HIGH COURT OF JUSTICE IN EIRE.

MAGUIRE, P. October 23, 1944.

In re P.

Legitimacy—Legitimum per subsequens matrimonium—Parents married prior to establishment of the Irish Free State—Father domiciled in area which subsequently became the Irish Free State—Whether father “domiciled in Saorstát Eireann”—Legitimacy Act, 1931, s. 1.

Probate and administration—Intestacy—Grant of administration—Right of next-of-kin to apply for—Whether right enjoyed by a person legitimated under Legitimacy Act, 1931.

The Legitimacy Act, 1931, s. 1 provides for the legitimation, in certain circumstances, of a person whose father was at the date of his marriage “domiciled in Saorstát Eireann”.

Held, (1) That the term “domiciled in Saorstát Eireann” should be construed as comprehending inter alios a person who at the date of his marriage was domiciled in that part of Ireland which subsequently became known as the Irish Free State.

(2) That although the Legitimacy Act, 1931, does not expressly confer upon a legitimated person any specific right in respect of obtaining grants of probate and administration, such a person is entitled on the death intestate of his father to apply for and obtain a grant of letters of administration to the deceased in equal priority with the children of the deceased who were born during wedlock.

Reference was made to :

Interpretation Act, 1923 (No. 46 of 1923);

Legitimacy Act, 1931 (No. 13 of 1931);

In re M., [1937] N.I. 151, [Ch. Div., N.I.].

APPLICATION for liberty to apply for a grant of letters of administration intestate.

The deceased died in the year 1942, leaving a widow and six children, the two eldest of whom were born prior to the marriage of their parents but at a time when they were, and had been for some years previously, in a position to contract a lawful marriage had they so desired. The applicant, who was the eldest child, was born in 1894, and his parents married in 1898, his father being at that time domiciled in that part of Ireland which subsequently became the Irish Free State.

ROGER O'HANRAHAN, for the applicant: The circumstances of this case are within those contemplated by s. 1 of the Legitimacy Act, 1931, if one reads for “Saorstát Eireann” the expression “that part of Ireland which subsequently became Saorstát Eireann”. [He referred to *In re M.*, and to the Interpretation Act, 1923, s. 3.] The Legitimacy Act, 1931, s. 3, does not give express rights in respect of probate matters, but such should be implied in view of the fact that a person, on being legitimated under the Act, becomes in effect one of the next-of-kin of his parents. Personalty alone is involved in this case; the widow of the deceased consents to the present application, and over six months have elapsed since his death.

MAGUIRE, P. : On the whole, though I have some doubt in my mind, I must hold that "Saorstát Eireann" in s. 1 (1) of the Legitimacy Act, 1931, refers to that part of Ireland which subsequently came under the jurisdiction of the Government of the Irish Free State in 1922. It seems unlikely that the Legislature did not intend to include within the scope of the Act children born to a couple who married subsequently to their birth, but before the establishment of the Irish Free State, and, as pointed out in *In re M.*, to hold that such was the position would amount to holding that this type of case is a *casus omissus*. I am prepared to follow the line of reasoning adopted in *In re M.*, and to hold that the applicant here became legitimated on the date of the passing of the Act, having been born to parents who were in a position to be married at the time of the birth, and his father having been domiciled, at the time of his subsequent marriage, in that part of Ireland which subsequently became the Irish Free State. It follows that the applicant is entitled to apply for a grant as one of the next-of-kin of his deceased father. I shall allow the application.

Application allowed.

Solicitors : J. J. O'SHEE, MURPHY & Co., for the applicant.

[Reported by John R. Coghlan, Barrister-at-Law.]

IN THE CIRCUIT COURT OF JUSTICE IN EIRE.

JUDGE SHEEHY (a). June 21, 1944

O'CONNELL *v.* MINISTER FOR FINANCE and MULLAN

Master and servant—Negligence—Injury to third party—Scope of authority of servant—Action against Minister of State—Motor vehicle driven "for L.D.F. purposes"—Emergency legislation.

The plaintiff was injured through the negligence of the driver of a motor car driven under a permit which allowed him to use the car "for L.D.F. purposes". On the occasion of the negligence the plaintiff was a passenger in the car which was being driven from an entertainment to raise funds for the Local Defence Forces, in which entertainment the plaintiff took part. A circular forbidding the use of cars, the subject of such permits, for the carrying of passengers to or from entertainments had been sent to the driver's superior officer but it did not appear whether or not this document had come to the notice of the driver. The vehicle was the property of the State and the driver was a member of the Defence Forces. In an action for negligence against both the Minister for Finance and the driver;

Held, that the plaintiff was entitled to succeed against both defendants.

Reference was made to :
Road Traffic Act, 1933 (No. 11 of 1933);
Emergency Powers Order, 1939, (S.R. & O., 1939, No. 224), art. 70.

(a) Northern Circuit sitting at Castleblayney, Co. Monaghan.

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