LAW COMMISSIONS ACT 1965

SCOTTISH LAW COMMISSION

Reform of the Law Relating to Legitimation *per subsequens matrimonium*

Presented to Parliament
by the Secretary of State for Scotland and the Lord Advocate
by Command of Her Majesty
April, 1967

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The Scottish Law Commission was set up by section 2 of the Law Commissions Act 1965 for the purpose of promoting the reform of the law of Scotland. The Commissioners are —

The Hon. LORD KILBRANDON, LL.D., *Chairman*

Professor A. E. ANTON, M.A., LL.B.

Mr G. D. FAIRBAIRN, S.S.C.

Professor J. M. HALLIDAY, M.A., LL.B.

Professor T. B. SMITH, Q.C., D.C.L., LL.D.

The Secretary of the Commission is Mr A. G. Brand, M.B.E., M.A., LL.B. Its Offices are at the Old College, University of Edinburgh, South Bridge, Edinburgh, 8.

SCOTTISH LAW COMMISSION

TO: THE RIGHT HONOURABLE WILLIAM ROSS, M.B.E., M.P.,
Her Majesty's Secretary of State for Scotland, and

THE RIGHT HONOURABLE GORDON STOTT, Queen's Counsel,
Her Majesty's Advocate

In accordance with the provisions of section 3(1)(b) of the Law Commissions Act 1965, we submitted to you on 16th September, 1965 our First Programme for the examination of several branches of the law of Scotland with a view to reform. The Programme was approved by you on 21st October, 1965. In the Memorandum attached to the Programme we indicated in paragraph 5 that we would consider any anomalies or defects in the present law drawn to our attention and recommend reforms, if appropriate. In pursuance of this, we have the honour to submit, under section 3(1)(e) of the Act, the following advice concerning reform of the law relating to Legitimation *per subsequens matrimonium*.

C. J. D. SHAW
Chairman

16th February, 1967

Memorandum by The Scottish Law Commission on Legitimation *per subsequens matrimonium*

Introduction

1. At present, the law of Scotland accepts the principle that a child who was born before the marriage of its parents is legitimated when that marriage is celebrated (legitimation *per subsequens matrimonium*)[1], but to this principle the law admits a major exception. The subsequent marriage of its parents does not legitimate a child when at the date of the child's conception or birth those parents were not free to marry. The question arises whether this bar retains any legal or social justification and, if it does not, what amendments to the law are required.

2. We have come to the conclusion that the law of Scotland should be amended, to the effect that the bar to which we have referred be removed. This would involve some consequential alterations in the law, which we set out in detail in subsequent paragraphs.

The Fiction Theory

3. The bar mentioned in paragraph 1 above derives ultimately from the Canon law. The doctrine of legitimation by subsequent marriage was introduced into that system on equitable grounds, to prevent discrimination between children born respectively before and after the marriage. The canonists, however, offered a doctrinal justification of the rule, saying that the marriage took effect retroactively by a fiction of the law from the date of conception. This meant that the children were considered legitimate from their date of birth, but it also meant that where, owing to some impediment, the parents were not free to marry at that date, the children born before the marriage were not legitimated.

4. This fictional basis for the principle of legitimation by subsequent marriage was criticised in *Rose v. Ross*[2] and in *Kerr v. Martin*[3]. The latter was a case in which a child was born to unmarried parents; its mother then married a third party to whom she bore several children; her husband died and she then married the father of her illegitimate child. The court held that the child was legitimated by the subsequent marriage of its parents. This decision was obviously inconsistent with any theory giving retrospective effect to the parents' marriage. The court preferred to say that the principle of legitimation should be based simply on considerations of justice and expediency. We agree with this view and consider that the fiction theory has long outlived its usefulness. If this is accepted, there are, in our view, no considerations of legal policy which preclude the legitimation of children by the subsequent marriage of their parents despite the existence of impediments to their marriage at the date of conception or birth.

[1] For a list of references relating to the origins and development of this principle see Appendix I.
[2] (1826) 5 S. 605
[3] (1840) 2 D. 752

Social Considerations

5. Although our prime concern is with law rather than with social policy, we do not believe that the subsistence of this bar can be justified on social grounds. Its long continuation may have been motivated by the strength of the prejudice against adulterous intercourse, but it is fanciful to suppose that a bar of this kind operates to reduce the incidence of such conduct. It penalises children who themselves are innocent by discriminating between them and not only their brothers and sisters conceived in marriage but also those who can be legitimated under existing law. For this reason we advocate its removal. It is true that the parents of such children may remove some of their legal disadvantages by adopting them; but this procedure is burdensome and circuitous and points to the anomalous and ambivalent attitude of the present law. The scale of the problem is indicated by information we have received from the Registrar General for Scotland who estimates that there are about fifty illegitimate children whose births could be re-registered in legitimate form each year if this bar were removed. Among persons whose births were registered in Scotland as illegitimate in the past, the Registrar General estimates that there might be up to 3,000 potential applicants for re-registration if the law were amended as we suggest.

The position in other countries

6. In recommending that this bar to legitimation should be removed we are fortified by a consideration of the laws of other countries.

7. Legitimation *per subsequens matrimonium* has been part of the law of Scotland and of most European and South American countries for centuries. It was not unknown in England prior to 1926, but it could only be accomplished by Act of Parliament — subsequent marriage of the bastard's parents was not enough. Legitimation *per subsequens matrimonium* was introduced into English law by the Legitimacy Act 1926. This Act provided that where the parents of an illegitimate person married, that person became legitimate as from the date of the commencement of the Act or of the marriage, whichever was the later. Section 1(2) of the Act, however, prevented legitimation where either parent was married to a third person at the time of the birth of the illegitimate child. This subsection was repealed by section 1(1) of the Legitimacy Act 1959. Attached (Appendix II) is a summary of the arguments advanced for and against the repeal of the subsection during the Parliamentary proceedings in connection with the Bill which became the 1959 Act. Arguments on the point are also to be found in paragraphs 1173 to 1183 of the Report of the Royal Commission on Marriage and Divorce 1956 (Cmnd. 9678). The present position in England, therefore, is that a person may be legitimated by the subsequent marriage of his parents even although they were not free to marry at the time of his birth. It follows from this difference between English law and Scots law that in such circumstances a father domiciled in England may re-register the child as legitimate even in Scotland, whereas a father domiciled in Scotland may not do so.

8. The position in Northern Ireland is generally similar to that in England and Wales, the relevant statutes being the Legitimacy Act (Northern Ireland) 1928 and the Legitimacy Act (Northern Ireland) 1961. A summary of the arguments in the Northern Ireland Parliament in connection with the removal of the bar by the Bill which became the Legitimacy Act (Northern Ireland) 1961 is attached (Appendix III).

9. The doctrine of legitimation by subsequent marriage has also been adopted by statutory provision in most Commonwealth and European countries, and in the United States. In many countries such as Sweden, Denmark, Finland, France, West Germany, Australia, the provinces of Alberta and British Columbia in Canada and in many of the United States of America in which the doctrine applies, the bar to legitimation — the parents not being free to marry at the time of birth or conception of the bastard — does not exist. We are informed that in the Republic of Ireland, Belgium, Malaysia and Singapore the bar still subsists, while in South Africa the question has not been settled.

Consultation

10. We have consulted informally the Faculty of Advocates and the Law Society of Scotland on the question of the removal of the bar to legitimation and they have indicated that this would be likely to have the approval of a large majority, if not the unanimous approval, of their members. The Lord Lyon King of Arms has been consulted informally about our proposed recommendations and has intimated his approval generally, although he has expressed some reservations about the need for a restatement of the whole law of legitimation in statutory form.

11. The Law Commission have been consulted with particular reference to the adequacy in England of the provisions of the Legitimacy Acts of 1926 and 1959. They have, in turn, consulted the Russell Committee on the Law of Succession in relation to Illegitimate Persons. The Joint Secretary of that Committee informed us that evidence given to the Committee did not disclose any trouble over the operation of the two Acts.

12. The Director of Law Reform, Northern Ireland, has also been consulted and has in turn consulted the Ministry of Home Affairs in Northern Ireland and the Registrar General there. Again the information is that they know of no difficulty which has arisen in connection with their Acts dealing with legitimation. In the only case covering the Legitimacy Act (Northern Ireland) 1928 — *In re M.*[1] — the point raised was a constitutional one to determine whether "domiciled in Northern Ireland" should be interpreted as "domiciled in that part of Ireland which is now Northern Ireland".

What is required

13. If the law is to be changed to permit of the legitimation of children by the subsequent marriage of their parents notwithstanding impediments existing at the time of conception or birth, we consider that the opportunity should be taken to clarify other aspects of the law of legitimation and to restate the law in a comprehensive way. In this restatement of the law, apart from transitional provisions, the following principles should be adopted —

(*1*) A marriage should legitimate all the children hitherto born to the parties, whether or not the parties were free to marry at the date of conception or birth of the child.

(*2*) The legitimation should take place from the date of the marriage rather than retroactively from the child's date of birth.

[1] 1937 [N.I.] 151

(*3*) The legitimation of a child should not operate to the prejudice of the existing property rights of third parties.

(*4*) Where a legitimated child's right to property depends upon seniority, that child should rank as if born on the day of legitimation and, where children of different ages are legitimated on the same day, they should rank in order of seniority by reference to the dates of their respective births.

(*5*) Rights of representation in property should be given to the issue of illegitimate children who have died and who otherwise would have been legitimated by the subsequent marriage of their parents.

(*6*) In cases involving foreign law the domicile of the father at the time of the marriage should be decisive.

14. Our reasons for advocating the first of these principles have already been given. The justification for the others is given below.

Date of legitimation

15. We propose that legitimation should operate from the date of the marriage or, in transitional cases, from the passing of the Act, and not from the date of birth, as under the present law. We are entirely sympathetic to the view that the child's legitimation should operate from the earliest possible date, but the present rule is merely fiction without beneficial effects. Its existence is understandable in the light of the Canon law theory of the fictional retroactivity of the marriage, but the rule becomes clearly anomalous when that fiction is abandoned. For the law to say at the time of the marriage that the child has always been legitimate does not alter the fact that he was born out of wedlock nor alter the fact that until the marriage the stigma of illegitimacy attached to him. The important thing is to secure that for the future the child is regarded as legitimate. The present principle that a child is legitimated from the date of birth by the subsequent marriage of his parents cannot be applied in practice in every situation. It would be inequitable if property rights which have accrued to third parties were to be affected by retroactive legitimation and this has been recognised under the present law. If the present principle of legitimation from birth were to be retained then it would be necessary to have two rules, one that legitimation should take effect from the date of the marriage in property questions, and another that it should take effect from the date of birth in other matters. This inconsistency would be confusing and hard to justify. Finally, to adopt the principle that legitimation operates from the date of the marriage would bring Scots law into harmony with the laws of England, of Northern Ireland and of most other European countries.

Property rights of third parties

16. It would be inequitable if existing vested or contingent interests of third parties were affected by the subsequent legitimation of a child who was illegitimate when the interests arose. Accordingly, we suggest that the legitimation of a child by the subsequent marriage of its parents, whether under the law of Scotland or under the law of another country, should not affect the construction or operation of any deed governed by the law of Scotland which has come into effect before the time of such marriage, and should not affect the devolution under

the law of Scotland of the estate of any person who has died intestate before that time. It would be desirable also to state clearly that for this purpose (i) a testamentary or *mortis causa* disposition shall be deemed to take effect on the date of death of the grantor, (ii) a contract of marriage shall be deemed to take effect from the date of the dissolution of the marriage, and (iii) any other deed, unless a contrary intention is expressed therein or may be clearly implied from the circumstances, shall take effect from the date on which it was executed.[1]

Seniority

17. In relation to intestate succession there are now comparatively few circumstances in which primogeniture is of importance, but it will be necessary to provide a rule determining seniority among legitimate (including legitimated) children where it is. For the purpose of the interpretation of conventional provisions, moreover, it may be necessary to determine seniority within a family. We, therefore, suggest (i) that in matters of succession a legitimated person shall rank as if he had been born on the day on which he became legitimated, and (ii) that where two or more children are legitimated on the same day they will rank in order of seniority by reference to the dates of their respective births.

Rights of representation

18. It is still an open question in Scots law whether the issue of an illegitimate person who predeceased his parents' marriage take rights as if their parent had been legitimated by the marriage. An affirmative answer has been given to this question in England by section 5 of the Legitimacy Act 1926. We suggest, therefore, that, in such a case, the issue should be treated as if their parent, although deceased, had been legitimated from the date of the marriage.

The effect of the father's domicile

19. It is settled that the law applicable in a matter of legitimation of a bastard is the law of the country of the bastard's father's domicile.[2] There is also no doubt that, where the bastard's father was domiciled in Scotland both at the date of his marriage to the bastard's mother and at the date of the bastard's birth, the Scots law doctrine of legitimation *per subsequens matrimonium* applies.[3] What remains in doubt, however, is whether a bastard can be legitimated by the subsequent marriage of its parents notwithstanding that its father was not at the time of the bastard's conception or birth domiciled in a country in which legitimation by a subsequent marriage is permitted by law. We accordingly suggest that there should be a provision to the effect that the fact that, at the time of the birth of his child, the father was not domiciled in a country in which legitimation *per subsequens matrimonium* was permitted by law shall not prevent the legitimation of a child under the law of Scotland or the recognition in Scotland of its legitimation under the law of another country. Such a provision would differ slightly from that contained in section 8(1) of the Legitimacy Act 1926, in that it would deal with internal legitimations as well as with legitimations under foreign law, section 8(1) being concerned with the latter only. This would

[1] Cf. section 10(2) of the Legitimacy Act 1926.
[2] *Munro v. Munro* (1840) 1 Rob. App. 519
[3] *Munro, supra* and *Udny v. Udny* (1869) 7 M. (H.L.) 89

ensure that the law of the domicile of the bastard's father at the date of the marriage to the bastard's mother is decisive.

Transitional matters

20. In cases where, prior to the Act, the parents of an illegitimate child have married and the existing bar has prevented legitimation of the child, we suggest that the child should be deemed legitimate from the date of the passing of the Act.

21. In cases where, prior to the Act, the parents of an illegitimate child have married and because of the existing bar to legitimation have adopted the child, we suggest that provision should be made for the revocation of the Adoption Order on the passing of the Act.

Other Matters

22. There are two other matters which, although not directly connected with legitimation *per subsequens matrimonium*, have come to our notice during our examination of that subject.

Meaning of "Children" or "Issue"

23. The first is a point which was suggested to, and rejected by, the Russell Committee in their Report on the Law of Succession in relation to Illegitimate Persons.[1] The suggestion was that in the absence of express directions to the contrary by a testator or donor, or indirect evidence (afforded by the circumstances) of a contrary intention on his part, a bequest or gift to the children or issue of a woman shall be deemed to extend to her illegitimate children as well as to her legitimate children. The Russell Committee's reasons for rejecting this suggestion (para. 57 of their Report) appear to us to be unsatisfactory. The Committee do not refer to the moral claim of a bastard child living in family with a woman to be treated equally with her other children. They appear to us to lay too much stress upon a supposed dilemma of the donor "faced with the alternative of benefiting against his wishes bastards who might be born to his daughter, or of extending to her by the terms of his will the gratuitous insult of excluding the possible outcome of her possible immorality". In our view, the moral claims of the bastard are such that the testator or donor should be squarely faced with the need to exclude them expressly if he so wishes; and we think it desirable, to remove any doubts from the legal point of view, that he should be required to state clearly his intentions in the matter. The mere insertion of the expression 'legitimate children' or 'legitimate issue' would be sufficient and surely involves no gratuitous insult. By section 23 of the Succession (Scotland) Act 1964, a reference in a deed to a child or children of an adopter is to be construed, unless the contrary intention appears, as a reference to his or her adopted children. We see no good reason for keeping the illegitimate child in a less advantageous position than the adopted child. We also take the view that the Russell Committee's decision on this matter is inconsistent with their recommendations to extend the bastard's rights to share in its mother's intestate estate to cases where the mother leaves legitimate issue as well.

[1] Cmnd. 3051 (1966) H.M.S.O.

Recognition of Persons Legitimate by Foreign Law

24. On our second point, we think that notwithstanding that the marriage of a person's parents would not be recognised by the law of Scotland, that person should be recognised as legitimate for all purposes, including succession to heritage in Scotland, if he was legitimate under the law of the domicile of his father at the time of his birth, or, if his father died before the birth, the law of the domicile of his mother at the time of the birth. Our reasons for suggesting this are set out below.

25. The Scottish case law is in consonance with the view that legitimacy is a matter of status referable in principle to the law of the domicile of the child's parents at the date of birth.[1] A special exception, however, is admitted in the case of succession to immoveables. It has been held that a man's right to succeed to heritage in Scotland depends not only upon his legitimacy according to the law of the domicile of his parents at the date of birth but, additionally, on his being the product of a marriage lawful by the internal rules of Scots law. The origin of this special exception may be traced to the English case of *Birtwhistle (or Doe) v. Vardill*[2]. It was there held that a child legitimated in Scotland by the subsequent marriage of his parents could not succeed to land in Yorkshire in relation to which his father had died intestate, because he was not legitimate in the eyes of English law. The eyes of English law in this matter had been coloured by opposition to the Canon law doctrine of legitimation, an opposition formally expressed in the Statute of Merton. The justification for applying English law was that, in deciding upon the title to real estate, the *lex loci rei sitae* must always prevail. The rule in *Birtwhistle* was introduced into Scots law by the House of Lords in the case of *Fenton v. Livingstone*.[3]

26. In this case Alexander Livingstone claimed to succeed as heir of entail to an estate in Stirlingshire. This claim was disputed by Mrs Fenton on the ground that Alexander was the child of a marriage celebrated in England between his father Thurstanus Livingstone and the sister of Thurstanus's first and now deceased wife. At the relevant dates Thurstanus had been domiciled in England and the respondent claimed that, being legitimate by English law, he should succeed to his father's estate. In the Inner House, at the request of the court, the parties assumed that the marriage of Alexander's parents was incestuous according to Scots law. On the other hand, the court found on the evidence of English law that, although the father's second marriage might have been challenged in England during the lifetime of the parties to it, after the death of either this challenge was no longer competent if its object was merely to bastardise the child. Alexander, it was decided, was legitimate by English law. Mrs Fenton argued, however, that for the Scottish courts to recognise a child of such a marriage as legitimate, was to recognise a marriage which was condemned by Scots law as incestuous and such a heinous crime that the committers were punishable with death. The Inner House refused to accept this argument. A strong court consisting of Lord President McNeill and Lords Ivory, Curriehill and Deas pointed out that the only question was one of Alexander's personal status. Lord President McNeill said, "It does not follow that, because the offspring of such connection, if had in Scotland, would not have been legitimate, we are to deny to the defender Alexander the status of legitimacy which he, an

[1] *Beattie v. Beattie* (1866) 5 M. 181
[2] (1839) 7 Cl. & Fin. 395
[3] (1856) 18 D. 865; (1859) 3 Macq. 497 and 21 D. (H.L.) 10; (1861) 23 D. 366

Englishman, possesses in his own country, by virtue of the law which prevails in that part of the empire. The recognition of that status does not necessarily import an approval of the connection, or even a recognition of the marriage of which he was the offspring. The status of legitimacy is not by our law confined to the offspring of a lawful and valid marriage, even in the case of domiciled Scotsmen".[1]

27. On appeal, nevertheless, the House of Lords rejected the view that the issue was simply one of Alexander's status. In relation to the succession to real estate, "even supposing the law of the domicile is to govern, the question is not whether the claimant is legitimate in the country of his birth or his domicile, but whether he is legitimate by reason of his being the issue of a lawful marriage".[2] In fact, however, the Lords did not think that the law of the domicile alone governed the case, because in matters of real property "it is fully established that the law of the country in which the property is situated governs exclusively as to the tenure, title and descent of such property".[3] ". . . The law of Scotland must be taken as having positively prohibited Thurstanus from marrying Catherine Anne Dupuis (the second wife) and that prohibition, as I think, was fixed on him absolutely and indelibly so far as relates to Scotch descent wherever he might be domiciled . . . The Scotch law expressly enacts that no one shall marry his first wife's sister, and that if he does the marriage is void, and the children are bastards . . .; and I think that, reasoning by analogy from *Doe v. Vardill*, that is a law which must be taken to operate whatever may be the law of the country where the marriage is contracted or the parties are domiciled".[4] The case was remitted back to the Court of Session and, although the court gave effect to the sense of the opinions of the Lords and declared that Alexander could not succeed to his father, they did so with grave misgivings.[5]

28. The general assimilation of heritage to moveables for the purposes of succession under the Succession (Scotland) Act 1964 seems to require the reversal of the exception laid down by the House of Lords in *Fenton v. Livingstone*, which is in any case quite out of keeping with the general principles of Scots law. Section 37(2) of the 1964 Act expressly provides that the Act shall not affect pre-existing choice of law rules.

29. Our suggestion, however, would have effects wider than the reversal of *Fenton v. Livingstone*. It would provide a much needed clarification of the status under the law of Scotland of the children of polygamous marriages, legitimate under the law of their father's domicile.

[1] (1856) 18 D. 865 at p. 892
[2] (1859) 3 Macq. 497 per Lord Cranworth at p. 542
[3] (1859) 3 Macq. 497 per Lord Wensleydale at p. 549
[4] (1859) 3 Macq. 497 per Lord Cranworth at p. 544
[5] (1861) 23 D. 366 especially Lord Deas at p. 381; *Beattie v. Beattie* (1866) 5 M. 181 per Lord Deas at p. 190

APPENDIX I

List of references relating to the origins and development of the principle of legitimation *per subsequens matrimonium*

Stair Society Publications Volume 20, *An Introduction to Scottish Legal History*, page 117.
Smith, *A Short Commentary on the Law of Scotland*, page 357 *et seq.*
Walton, *Husband and Wife*, 3rd Edition, pages 375 to 377.
Cheshire, *Private International Law*, 6th Edition, pages 427 to 431.
Inglis, *Conflict of Laws*, page 170 *et seq.*
Graveson, *Conflict of Laws*, 5th Edition, page 314 *et seq.*
Johnson, *Family Law*, 2nd Edition, page 257.
Fraser, *Parent and Child*, 2nd Edition, pages 40 to 42.
Report of the Royal Commission on Marriage and Divorce 1956 (Cmnd. 9678) paragraphs 1172 to 1183.
Halsbury's Laws of England, 3rd Edition, Volume 3, page 95.
Encyclopaedia of the Laws of Scotland, Volume 9, paragraphs 313 to 330.
Mackenzie, *Studies in Roman Law*, 5th Edition, page 132, footnote 2.
Erskine's *Institutes* I, 6, 52.
Bankton I, V, 54.
Bell's *Principles*, 10th Edition, paragraphs 1627 and 1628.
Jolowicz, *Roman Foundations of Modern Law*, pages 198 to 200.
Munro v. Munro (1840) 1 Rob. App., 519; (1837) 16 S. 18.
Rose v. Ross (1826) 5 S. 605; 1830, IV W. & S. 388.
Kerr v. Martin (1840) 2 D. 752.
Udny v. Udny (1869) 7 M. (H.L.) 89.
McNeill v. McGregor (1901) 4 F. 123.
Mr and Mrs X, Petitioners 1966 S.L.T. (Sh.Ct.) 86.

APPENDIX II

Main arguments for and against the repeal of section 1(2) of the Legitimacy Act 1926 which excluded children from being legitimated if their parents had been married to a third party at the time of their birth.

For

1. Any marriage where a man begets a child by another woman is already "on the rocks" and the question of legitimation of a possible child does not influence adulterers in the least. In spite of the clause in the Act of 1926, divorce has greatly increased. (It is a fact that Judges are expediting divorces when a child is "on the way" so that the child may later be legitimated.)
2. It is a strange public morality which demands that innocent children should be branded with the stigma of illegitimacy and made to bear this stigma for the rest of their lives.
3. Adoption is, in this case, a legal fiction — it would be better if the child could be legitimated.
4. The man is begetting unlawful, not lawful, children during the subsistence of his marriage. It would only be after that marriage has been ended by divorce and he has re-married that his unlawful child would be made lawful.
5. The children are innocent — it is the parents who are guilty. The parents, however, can regularise their position by divorce and re-marriage. It is wrong that the position of the innocent children should not also be regularised following the divorce and re-marriage of the parents.
6. Hardship is caused by differentiation between children (illegitimate and legitimate) even in the same family. The attitude which permits a proportion of children conceived out of matrimony and indeed a proportion of children conceived in adulterous unions to be legitimated, while denying that possibility to a number of them, is incomprehensible.
7. It will provide a normal family life for a large number of children who otherwise would not obtain it.

Against

1. It would weaken the institution of marriage by encouraging adultery and divorce — a wife might also be subjected to undue pressure to agree to a divorce.
2. It would lower the standard of public morality.
3. Adoption supplies a practical solution to the problem without infringing the moral principles.
4. A man cannot during the lawful subsistence of his marriage, beget lawful children by another woman.

Debates

House of Commons

Second Reading (598) Cols. 1403-1472
Report (605) Cols. 760-777
Third Reading and passed (605) Cols. 778-781
Lords amendments (610) Cols. 457-476

House of Lords

Second Reading (216) Cols. 1179-1222
Committee (217) Cols. 684-714
Report (218) Cols. 301-309, 315-356

APPENDIX III

Main arguments for and against the repeal of section 1(2) of the Legitimation Act (Northern Ireland) 1928 which excluded children from being legitimated if their parents had been married to a third party at the time of their birth.

For

1. It will remove the stigma of being illegitimate from the children and relieve their feelings of being inferior and their mental suffering and hardship.
2. The children are innocent and should not suffer. It is the parents who are guilty and their sins should not be visited upon the children.
3. Illegitimacy mixed with marriage is bound to be a factor of instability in the home.
4. Legislation on this subject in Northern Ireland will become more consistent and will come into line with the law of England.

Against

1. It will considerably weaken the respect of the Christian institution of marriage by encouraging adultery and increasing immorality.
2. Anyone will be able, during the subsistence of marriage, to beget by some other person, children who may later be legitimised.
3. It is wrong that there should be no distinction between lawful children of marriage and children who are born of an adulterous union.
4. There is no public demand for this section to be repealed.

Debates

SENATE

Second Reading

21 February 1961 Cols. 107-116
7 March 1961 Cols. 130-162

Committee

14 March 1961 Cols. 187-188

COMMONS

Second Reading

31 May 1961 Cols. 2472-2475

Committee

13 June 1961 Col. 2744

Third Reading

20 June 1961 Cols. 2878-2886

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