Illegitimate Dependents

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premises by the "nuisance." See, Harper, Law of Torts (1933) §93; at 220; Restatement, Torts (1934) §339.

Indiana courts have followed the stricter rule and have insisted that the plaintiff be in fact attracted on to the premises by the instrumentality. The "nuisance" is said to create "an implied invitation by leaving a thing exposed and unguarded which is of such a nature as to tempt and allure young children." Chicago and Erie R.R. v. Fox, 38 Ind. App. 268, 275, 70 N.E. 81, 84 (1906).

See also Drew v. Lett, 95 Ind. App. 89, 182 N.E. 547 (1932); Note (1933) 8 Ind. L. J. 508; (1925) 36 A.L.R. 28, at 77, 78.

The Indiana courts have found the doctrine inapplicable where the plaintiff was not in fact attracted by the injurious instrument; see Holstine v. Director General of R.R., 77 Ind. App. 582, 184 N.E. 303 (1922); (1925) 36 A.L.R. 28, at 78; as the injured "did not discover such place until after they had themselves become trespassers." Indianapolis Motor Speedway Co. v. Shoup, 88 Ind. App. 572, 578, 165 N.E. 246, 248 (1929).

However, Indiana by statute has excepted cases involving electricity from the general rule, and has stipulated "that in the transmission and use of electricity of a dangerous voltage, full and complete insulation shall be provided at all points where the public . . . are liable to come into contact with the wires." IND. STAT. ANN. (Burns, 1933) § 20-304. In these cases anticipation of the danger, rather than the fact of attraction seems to be the important element. Ft. Wayne and No. Ind. Traction Co. v. Stark, 74 Ind. App 669, 127 N.E. 460 (1920); Harris v. Indiana Gen'l Service, 206 Ind. 351, 189 N.E. 410 (1934) (but neither case mentioned the statute).

WORKMEN'S COMPENSATION
ILLEGITIMATE DEPENDENTS

The father of two minor children refused to support them or their mother. The mother went to live in adultery with the deceased, taking the children with her. During the five-year period of cohabitation, the deceased was their only means of support. Upon his death in an industrial accident, the mother and children applied to the Industrial Board for compensation. The board refused their application and the children appealed. Held, that the children are entitled to compensation even though they bore no legal relation to the deceased.1

At common law, illegitimate children were social outcasts; for all practical purposes the rights and duties of the parent-child relationship applied only when the relationship was legitimate.2 Even today, this dogma persists to some extent, as evidenced by statutes pertaining to deeds and wills.3

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3. Ind. Stat. Ann. (Burns, 1933) § 6-2309; Gavit, The Indiana Law of Future Interests, Descent, and Wills (1934) § 143 (f); Vernier and Churchill, Inheritance by and from Bastards (1935) 20 Iowa L. Rev. 216 (giving a table of statutes from the various states
In cases under workmen's compensation statutes, there is some divergence of opinion as to whether illegitimates can recover upon the death of one upon whom they depend for support. While some of the older cases looked with disfavor on recovery by illegitimates, the modern trend, and it is submitted, the better rule of statutory construction, is that they can recover.

Cases allowing recovery base it on a conclusive presumption of dependency for children and all others within the deceased's family circle or household. The statute governing the principal case makes such a provision for acknowledged illegitimate children. The general rule seems to be the same for adopted children, the only limitation being that they be legally adopted. Stepchildren also come within the meaning of the statute.

4. Note (1938) 33 Ill. L. Rev. 224 (gives a comprehensive analysis of cases and statutes relating to a bastard's rights under workman's compensation statutes); Note (1924) 24 Col. L. Rev. 808.

5. Murrell v. Industrial Comm., 291 Ill. 334, 126 N.E. 189 (1920); Scott v. Independent Ice Co., 135 Md. 343, 109 Atl. 117 (1920). "It would be giving the word 'child' or 'children' a much broader meaning than is usually given it at law to hold that it meant in this statute illegitimate child or children." Olson's Case, 247 Mass. 570, 142 N.E. 808 (1924); cf. Bell v. Terry & Tench Co., 177 App. Div. 123, 165 N.Y.S. 783 (1917). "It is a rule of construction that, prima facie, the word 'child' or 'children,' when used in a statute means legitimate child or children." However, this was followed by a statutory amendment admitting an acknowledged illegitimate child to be a dependent. Laws of N.Y., 1922, c. 615, § 2 (11).

6. See note 4 supra.


8. Ind. Stat. Ann. (Burns, 1933) § 40-1403; Ind. Adm. Code (Horack, 1941) § 40-1403. "The following persons shall be conclusively presumed to be wholly dependent for support upon a deceased employee: ... (c) A child under the age of eighteen (18) years upon the parent with whom he or she is living at the time of the death of such parent ... As used in this section, the term child shall include stepchildren, legally adopted children, posthumous children, and acknowledged illegitimate children ..."


Thus in all these instances of illegitimates, adopted children, and stepchildren, the basis upon which recovery is allowed seems to be dependency in its broadest sense rather than any technical legal relationship.11

Generally stated, a dependent under workmen's compensation statutes is one who depends upon the deceased for support or help, or for the reasonable necessities of life,12 and the cases indicate that the manner or the legality of the relationship out of which the dependency arose is disregarded.13

The theory of workmen's compensation is clearly a social one, embodying a social policy designed to distribute the burden of losses by industrial accidents among industries generally, rather than allowing the burden to fall on one person or small group of persons.14

This policy should not in any way be controverted by the fact that the claimants do not bear the proper legal or moral relationship to the one upon whom they depend for support.15 Particularly should this be true where the claimants are infants. Nothing in their conduct calls for punishment, nor will the cause of morality be advanced by denying them compensation.16

11. See Kinnard v. Tennessee Chemical Co., 157 Tenn. 206, 7 S.W. (2d) 807, 808 (1928). "It is apparent that if a stepchild or an illegitimate child is entitled to compensation under the act, the test of liability cannot be made to depend upon the relationship which the child bore to the deceased workman, but the test is whether such child was wholly dependent upon such workman for support." Cf. Jones v. Louisville Gas & Electric Co., 209 Ky. 642, 273 S.W. 494 (1925) (saying that one of the purposes of the statute is the protection of children); Memphis Fertilizer Co. v. Small, 160 Tenn. 235, 22 S.W. (2d) 1037 (1930) (extended the meaning of "child" to include any dependent child); McManus v. State Compensation Comm'r, 113 W. Va. 566, 169 S.E. 172 (1933). Contra: Moore's Case, 294 Mass. 557, 3 N.E. (2d) 5 (1936); Welsh v. Industrial Comm. of Ohio, 136 Ohio St. 387, 26 N.E. (2d) 198 (1940). Both cases refused recovery on the ground that the children were not members of the deceased's family, rather than on the fact that they were dependent in fact upon him for support.

12. In re Carroll, 65 Ind. App. 146, 116 N.E. 844 (1917); Alden Coal Co. v. Industrial Comm. 293 Ill. 597, 127 N.E. 641 (1920); Rockford Cabinet Co. v. Industrial Comm., 295 Ill. 322, 129 N.E. 142 (1920); Rock Island Bridge & Iron Works v. Industrial Comm., 287 Ill. 648, 122 N.E. 830 (1919). At least two cases hold that the test of dependency is whether or not contributions were made. Clover Fork Coal Co. v. Ayers, 219 Ky. 326, 292 S.W. 803 (1927); Sigalove v. Pensel, 218 App. Div. 306, 218 N.Y.S. 85 (1928).

13. See note 11 supra.


15. See note 11 supra.