

MAINE STATE LEGISLATURE

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STATE OF MAINE

Inter-Departmental Memorandum Date April 1, 1964

To Paul D. McGlay, Director,

Dept. Div. of General Assistance - H & W

From George C. West, Deputy

Dept. Attorney General

Subject Robert B. Studley

I have your memo of March 23d with attached papers. I am returning the attached material herewith. I believe that Robert B. Studley could be considered as having been born the illegitimate child of Adelaide Studley but now the legitimate child of Edward and Adelaide Studley Connolly. This result is the opposite of that which I would have reached prior to May 28, 1963, when the Supreme Judicial Court decided the case of Ventresco v. Bushey, 159 Me. 241.

Prior to that decision the case of Hubert v. Cloutier, 135 Me. 230 was the authority for the proposition that a child conceived or born during wedlock was presumed legitimate. The parents could not bastardize the child until non-access by the husband was proved by outside evidence. Neither the mother nor her husband could testify to his non-access.

In the Ventresco case, *supra*, the court said:

"We now hold that both husband and wife may testify both as to his non-access to her and as to facts which tend to prove that access was impossible."

It should be noted that the question of non-access is the key part of this holding. It is necessary to obtain information as to access to the wife by the husband.

I would refer you to the copy of my letter of June 27, 1963, to Charles L. Frost, Director, Welfare Department, Auburn; particularly to the fifth paragraph. That is the crux of this type of case.

The next problem is the amount of proof. In the Ventresco case the court stated that the amount of proof necessary to prove illegitimacy should be "beyond a reasonable doubt."

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Now, applying the foregoing principles to the Studley case, I would conclude that more investigation is necessary. At the moment, all you have are the statements of three persons that Ray B. Studley is not the father of Robert. There is no evidence of the access or non-access of Ray B. Studley to his wife Adelaide during the period when Robert would have been conceived.

It is necessary to have evidence on this point and you must be convinced "beyond a reasonable doubt" that Ray did not have access to Adelaide during that period. If Ray did have access to Adelaide then his claim of non-paternity, even though supported by Adelaide and Edward Connolly, would have no legal significance. Both Adelaide and Ray may give testimony as to non-access. Other evidence, if available, should be secured to corroborate their testimony.

George C. West
Deputy Attorney General

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