THE LAW REFORM COMMISSION
OF WESTERN AUSTRALIA

Project No 3

Illegitimate Succession

REPORT

AUGUST 1970

ANALYSIS OF REPORT

REPORT ON
ILLEGITIMATE SUCCESSION

To: The HON. ARTHUR F. GRIFFITH, M.L.C.
MINISTER FOR JUSTICE

TERMS OF REFERENCE

1. As Project No.3 of its first programme the Committee was asked -

> "to consider whether any alterations are desirable in the law of succession in Western Australia in relation to illegitimate persons."

2. The position of illegitimate persons relative to the *Testator's Family Maintenance Act 1939-1962* is dealt with in the Committee's report to you on the project dealing with that Act. Briefly, the Committee's recommendation in that regard is that illegitimacy should not be a bar to the right to make application for provision out of the estate of a deceased person.

THE PRESENT LAW IN WESTERN AUSTRALIA

3. The law in this State is that neither an illegitimate nor any issue of an illegitimate has any right to participate on the intestacy of either parent of the illegitimate; nor has either parent any right to participate on the intestacy of his or her illegitimate child; furthermore, the illegitimate is also barred from participating on the intestacy of any other kin, either lineal or collateral, and vice versa.

4. So far as concerns the construction of terms of relationship such as 'children' and 'issue' in wills and other dispositions the present rule is that these terms apply only to those with a legitimate connection, unless a contrary intention appears from the particular language of the instrument or from the surrounding circumstances.

5. These are rules of the common law. In Western Australia their severity has to some extent been mitigated by statute, although the movement away from these rules has been less marked here than in a number of other common law jurisdictions. The statutory provisions

mainly in point are outlined in paragraphs 6, 7 and 8 following. Note also the provisions referred to in paragraph 26 below.

6. The *Adoption of Children Act 1896-1964* provides that a child once adopted has, in relation to the adopting parent(s), all the rights and privileges that would have been his if he had been born to the adopting parent(s) in lawful wedlock. These provisions of the Act are discussed in paragraph 38 to 41 below. There is no impediment to a child being adopted by his natural parent, so that he then becomes the legitimate child of that parent.

7. The *Legitimation Act 1909-1940* provides that an illegitimate child whose parents subsequently intermarry is deemed legitimate as from his birth.

Section 89 of the *Commonwealth Marriage Act 1961* covers the same ground but preserves the validity of legitimations which took place before the commencement of that Act and continues the operation of the Western Australian statute in relation to those legitimations. The Commonwealth Act also provides that the child of a void marriage is legitimate in certain circumstances.

8. Section 117 of the *Property Law Act 1969* [a re-enactment of s.21 of the *Law Reform (Property, Perpetuities and Succession) Act 1962*, which modified an earlier rule contained in s.33 of the *Wills Act 1837*] ensures that a gift to a child or other issue of a testator does not automatically lapse if the donee dies before the testator.* In such cases the gift goes, in substitution, to the children of such donee living at the testator's death. This statutory provision also improved the position of illegitimates in two respects. First, the rule of substitution was made to apply whether or not the donee was illegitimate. Secondly, where the donee was a woman, the right to succeed to the gift in substitution was extended also to her illegitimate children.

THE LAW IN OTHER PLACES

9. In 1969, both the United Kingdom and New Zealand made considerable changes in their laws concerning illegitimates.

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* This is now replaced by s.27 of the *Wills Act 1970* which came into force on 1 July 1970. The new provision omits reference to illegitimates and presumably does not apply to them.

United Kingdom:

10. Section 14 of the *Family Law Reform Act 1969* (U.K.) provides that, on an intestacy, an illegitimate child (and, if he is dead, his issue) takes the same interest in the estate of each of his natural parents as he would have taken had he been legitimate. If an illegitimate child dies intestate, each surviving parent is entitled to the same interest in the child's estate as he or she would have had, had the child been legitimate. These provisions are based on the recommendations of the Committee on the Law of Succession in Relation to Illegitimates, known as the Russell Committee - see that Committee's Report, Cmnd. 3051, 1966.

11. In one important respect, the United Kingdom legislation goes beyond the recommendations of the Russell Report. Section 15 of the Act provides that in any disposition (which includes a will) a reference to the child or children of a person shall, unless a contrary intention appears, be construed as including a reference to any illegitimate child of that person, and that references to other relationships are to be construed in a similar manner.

New Zealand:

12. In some respects New Zealand has gone furthest in the liberalisation of the law concerning illegitimates. The *Status of Children Act 1969* (N.Z.) abolishes the status of illegitimacy altogether by providing that for all the purposes of the law of New Zealand, the relationship between a person and his father and mother is to be determined irrespective of whether the father and mother are or have been married to each other; and that all other relationships are to be determined accordingly. The Act also provides that in any instrument words of relationship include an illegitimate relationship unless a contrary intention appears.

13. As far as the law of succession is concerned, there is no difference between persons born in or out of wedlock. However, paternity must have been admitted (expressly or by implication) by or established against the father in his lifetime and, where the father is to benefit, in the lifetime of both himself and the child.

New South Wales, Victoria and South Australia:

14. In New South Wales (the *Wills Probate and Administration Act 1898-1954*) and Victoria (the *Administration and Probate Act 1958*) legislation has been passed which substantially follows the United Kingdom *Legitimacy Act 1926*, giving limited rights of succession as between an illegitimate and his mother. This legislation provides that, in respect of deaths intestate, an illegitimate may succeed to his mother's estate as if he had been born legitimate, if no legitimate issue of the mother survive her. In the same circumstances, the legitimate issue of the illegitimate stand in his place if he dies before his mother. A reciprocal right is given to the mother to succeed on her illegitimate's intestacy if no legitimate issue of the illegitimate survive him and, if the illegitimate is a woman, no illegitimate children survive her. These rights are subject to the prior rights on intestacy of any widower of the mother or of any surviving spouse of the illegitimate, as the case may be.

15. In South Australia, the rights of succession as between an illegitimate child and his mother are not restricted. Under s.55 of its *Administration and Probate Act 1919-1960*, so far as regards succession to any estate under any will or intestacy of a woman, her illegitimate child has the same right and title as if he was legitimate. A similar right is given to the mother and her relatives to share in her illegitimate's intestacy. These rights exist whether or not there are legitimate issue, but subject to the rights of a widower or surviving spouse, as the case may be.

The Australian Capital Territory:

16. The jurisdiction in the Australian Capital Territory goes furthest in Australia and achieves substantially the same result as that achieved by the United Kingdom *Law Reform Act* of 1969, in so far as that Act relates to succession of illegitimates on intestacy. Section 49E of its *Administration and Probate Ordinance 1929-1967*, enacted in 1967, provides that where an intestate is survived by an illegitimate child, the child takes exactly as if he were legitimate; the legitimate issue of an illegitimate child who predeceases his parents take from their grandparents' estate as if the illegitimate child had been legitimate; the father and mother of an illegitimate child that dies intestate take as if the child had been legitimate. However, in contrast to the United Kingdom Act where no such requirements are made, paternity must have been acknowledged by the father in writing, or he must have been adjudged by a court to

be the father. Where the child dies before the father, the father must have so acknowledged or been so adjudged before the child's death.

Canada and the United States:

17. In Canada nearly all jurisdictions now permit the mother to inherit from the illegitimate child, and all but three permit the illegitimate child to inherit from his mother without restriction, and generally, not only from her but through her. The other children of the mother can inherit from the illegitimate where the mother is dead and the illegitimate leaves no wife or issue. However, only one Province gives the illegitimate child a right of inheritance from his father.

In the United States, about twenty States allow complete rights as between the maternal relatives and the illegitimate child and his relatives. As regards succession between the illegitimate child and his father, some provision exists in a majority of the States.

Europe:

18. In Denmark, the Netherlands, Norway, Portugal, Sweden and West Germany, the illegitimate has succession rights in the estates not only of his father and mother but also of all his relatives, as if he were legitimate. Belgium, France and Italy restrict these rights to the estate of the father and mother. All these countries, with the exception of Sweden, also give the ascendants and collaterals of the illegitimate rights of succession to his estate if he dies without leaving spouse or issue. In Sweden ascendants and collaterals on the mother's side only can succeed, but a commission has been set up to study the question of fully equating the status of illegitimates to that of legitimates.

WORKING PAPER

19. The Committee issued a working paper on 18 December 1968, a copy of which is forwarded herewith. Copies were sent to the Chief Justice, the Judges and the Master of the Supreme court, the Law Society, the Law School, the Public Trustee, two Western Australian private trustee companies and other Law Reform bodies. Comments were received from the

Law Society and these were generally favourable to the proposals mooted in the working paper.

DISCUSSION AND RECOMMENDATIONS

Arguments for and against according illegitimates rights of succession:

20. "At the root of any suggestion for the improvement of the lot of bastards in relation to the laws of succession to property is, of course, the fact that in one sense they start level with the legitimate children, in that no child is created of its own volition. Whatever may be said of the parents, the bastard is innocent of any wrongdoing. To allot to him an inferior, or indeed unrecognised, status in succession is to punish him for a wrong of which he was not guilty" (Russell Report, paragraph 19).

21. It may be said that to give illegitimates the rights they now lack would undermine the institution of marriage and through it the stability of the family, and that for this reason it would be undesirable. This argument has two aspects. Firstly, it may be argued that to confer property rights on persons born outside marriage, and thus outside the legitimate family, would make marriage less desirable. However, in the Committee's view it is unreal to suppose that persons are persuaded to marry by the thought that, if they do not, it will be necessary for them to make wills to ensure that their property is inherited by their children.

22. The second aspect of the argument against reform is that by giving the illegitimate the same rights as the legitimate his social acceptability is enhanced, with a corresponding loss of respect for legitimacy and marriage. The Committee has come across no evidence to support the view that the institution of marriage would suffer by the proposed reforms.

23. The present movement for reform in this State began with a minute dated 12 July 1966 and written by Mr. J. Lefroy, the Legal Officer for the Public Trust Office. Mr. Lefroy pointed out that the law in this State was leading to hardship and instanced cases of apparent injustice. One example was of a woman who died at the age of eighty-two years. She had had three sons, of whom one survived her. The other two left five grandchildren. It was only in the course of winding up her estate that the surviving son became aware that his mother had not married and that therefore he and the grandchildren had no right to the estate consisting of a

house which the family had occupied as a unit and on which the son had for years paid the rates. Mr. Lefroy also later instanced cases where the brothers and sisters of a male intestate took all or most of the estate to the exclusion of his illegitimate children. The Public Trustee agreed with Mr. Lefroy and added that the problem was common enough to warrant reform.

24. The type of hardship referred to in the previous paragraph would be alleviated, at least to some extent, by the reforms recommended by the Committee in paragraphs 33 and 36 of its report to you on Project No.2 (Testator's Family Maintenance). The Committee there recommended that the legislation apply to intestacies, and that illegitimacy be no longer a bar to an application under the Act. However, a right to apply to the court for adequate maintenance cannot overcome the fundamental injustice indicated by the Russell Committee in paragraph 20 above. It seems wrong that the law should in effect add the weight of its censure to the social burden already carried by the illegitimate child by refusing him equality of treatment in the law of succession.

25. The same broad considerations apply to the rule of construction imposed by the law, which prima facie limits the words "child", "children" or "issue" in instruments of disposition to cases where the relationship is legitimate. Miss O.M. Stone in the *Modern Law Review* (Vol.30, 1967, pp. 556-557) states that this rule has probably been more potent in depressing the economic and social status of illegitimate children than exclusion from intestate succession. The law's insistence that the illegitimate child is no-one's child marks him as a person of an inferior order.

Legislation presently according rights to illegitimates:

26. In several respects the law of this State already recognises that the legal rights which arise out of blood relationships should not be denied to the illegitimate. Apart from s.117 of the *Property Law Act 1969* (see paragraph 8 above), the Committee refers particularly to those provisions of the statute law which confer on the illegitimate child a right, equal to that of the legitimate child, to take action for and share in the damages payable where a parent is killed because of the wrongful act, neglect or default of some other person [*Fatal Accidents Act 1959*, s.3(2) , but see also s.6(3)] , and to those provisions which confer a similar equality on the illegitimate child when it comes to claiming and sharing in the workers compensation which is payable in the event of a parent suffering death as the result of an accident arising

out of or in the course of his employment (*Workers Compensation Act 1912-1967*, s.5 - definition of "Dependants" and "Member of a family") .

Illegitimates also have rights under the *Estate Duty Assessment Act 1914-1970* (s.18A) and under the *Repatriation Act 1920-1965*, both Commonwealth enactments.

With regard to some of these Acts it can be said that the rights have been extended only where financial dependency is involved - for example, the *Fatal Accidents Act* and the *Workers Compensation Act.*

Incidence of illegitimacy:

27. Legislation giving the illegitimate equality of status in relation to succession rights will benefit a significant number of persons in this State. Although the yearly number of births in Western Australia has been fairly steady over the past decade, except for gradual increases from 1967 consistent with normal population growth, illegitimate births have virtually doubled, the percentage of illegitimate births having risen from 5.5% in 1960 to 10.7% in 1969. In 1969 the total number of live births was 20,754, of which 2,231 were illegitimate. Of course, not all children born illegitimate remain so. For example, in 1969, 570 illegitimate children became legitimated by the subsequent inter-marriage of their parents, and a further 549 illegitimate children were adopted.

From figures supplied to the Committee by the Child Welfare Department it appears that, in any one year, the proportion of illegitimate children legitimated or adopted is roughly 50% of the total number of children born illegitimate in that same year. This proportion has been more or less constant for a number of years. Of course, it does not follow that the legitimations in anyone year involve only children born illegitimate in that year. However, assuming the proportion will remain fairly constant, about 50% of children born illegitimate will remain so and these may benefit from any reform according them equality.

Should the right of succession be limited to the illegitimates who had a familial relationship with the deceased?

28. The Committee considered the suggestion that the illegitimate should have rights of succession on intestacy only if he had some 'familial relationship' with the deceased. However, like the majority of the Russell Committee, the Committee considers that the infinite variations in circumstances make it very difficult to formulate any satisfactory test of 'familial relationship'. In any event there seems no reason why an illegitimate child, any more than a legitimate child, should be excluded from succession rights even though he had no familial relationship with the deceased. The Committee is of the view that no such restriction should be imposed.

Should the right of succession be limited to the estates of the illegitimates' parents?

29. Although it may generally be agreed that the illegitimate should be able to succeed on the intestacy of either parent or vice versa, agreement may not be so general that there should be succession rights between himself and more distant kin. The main argument for denying him those rights would seem to be that which found favour with the Russell Committee and which appears in paragraph 32 of its report -

> "We appreciate that there may well be cases in which it would be reasonable to suppose that a bastard would be intended by the deceased to share in the intestate estate of a grandparent, or of a brother or sister of a settled irregular establishment. But on the whole it seems to us that it would not be right to impose a system of intestate succession which could, for example, lead to participation of a daughter's bastard in the intestacy of that daughter's parent when such participation might be directly opposed to the wishes of the latter, who indeed, might know nothing of the bastard."

But see the criticism of this view in the comments by O.M. Stone in the *Modern Law Review* (Vol.30, 1967, pp. 554 and 555).

30. The Russell Committee's view, which is now reflected in the *Family Law Reform Act 1969* of the United Kingdom, appears to be based on the assumption that intestates are likely to have an antipathy to their illegitimate kindred. They cite no evidence to support this assumption. In any event legislative rules for distribution should not automatically exclude persons from benefit on any vague assumption of this sort. In fact, the argument of the Russell Committee could be used with equal force against the present rules of distribution on

intestacy, which, as Miss Stone says, afford many opportunities for kindred to succeed to the estates of those who know nothing of their existence or dislike them. The Committee, therefore does not recommend that the illegitimate's right to succession should be restricted in this way.

31. If the illegitimate is given succession rights on his relatives' intestacy, equally those relatives should be given succession rights on the intestacy of the illegitimate. The parents and remoter relatives would take no part of the estate if the illegitimate left a wife and children.

Basic recommendation:

32. The Committee therefore recommends that the relationship of the illegitimate child to its parents be deemed legitimate for all purposes relating to intestate succession, so as not only to give the illegitimate the right to succeed to the property of either parent and vice versa, but also to establish the usual and corresponding rights of succession between the child and all other lineal and collateral kindred.

Proof of paternity:

33. To give the illegitimate a right of succession to the estate of the father and his relatives raises squarely the problems of establishing paternity. The same problem does not, as a rule, arise in the case of a mother and her illegitimate child (see paragraph 36 of the working paper). In most jurisdictions where the illegitimate has rights of succession on the intestacy of the father or his relatives, that right is made conditional on the relationship having been acknowledged in some formal way by the father, or having been established by the finding of a court (see paragraph 37 of the working paper).

34 The Russell Report recommended that the illegitimate's right should not be limited in this way, and that the courts should be left to decide in any disputed claim, on all or any evidence available, whether the particular paternity has been established. This recommendation was adopted by the United Kingdom Government and, as a consequence, no such limitation was imposed in the *Family Law Reform Act 1969*. The Committee agrees with the English view and recommends that no restriction be imposed on the illegitimate's right to claim.

As a reminder of what is the proper standard of proof, in regard to claims based on illegitimate relationships (which would include claims under a will or other disposition - see below, paragraph 35), the Committee recommends that the legislation provide that in any dispute, the proof of an illegitimate relationship is to be established to the 'reasonable satisfaction' of the court. See paragraph 34 of the report on Project No. 4 (Testator's Family Maintenance), for discussion of this standard.

Meaning of 'child' etc. in wills and other dispositions:

35. Although the Russell Committee had recommended no change in the meaning of 'child' and 'issue' in wills and other dispositions, this was not accepted in the United Kingdom and the *Family Law Reform Act 1969* reverses the rule which is mentioned in paragraph 4 above. The New Zealand legislation also reverses it - see s.3 of the *Status of Children Act 1969*. The Committee believes that the present rule may exclude persons whom the testator intended to include and recommends that the rule be reversed.

36. If the testator **does** wish to exclude an illegitimate he can do so by apt words, which need not disclose the existence of an illegitimate child. Thus, in the Committee's view, any argument that a reversal of the rule would cause embarrassment has little force. In any event the case in favour of giving the words 'child' and 'issue' their generally accepted meanings is strong.

37. For practical reasons, the Committee recommends that the new rule should apply only to dispositions made after the legislation comes into force.

The position of adopted illegitimates:

38. Section 8 of the *Adoption of Children Act 1896-1964* preserves the right of an adopted child to take property as heir or next of kin of his natural parents directly or by right of representation. Under the present law the illegitimate child has no right to succeed on his relatives' intestacy. If, as is recommended, he is given these rights it would appear to be unreasonable to allow him to succeed both on the intestacy of his natural kin and also on the

intestacy of his adoptive kin. However, this problem arises only if we assume that ss.7 and 8 of the *Adoption of Children Act* operate to place that adopted child, in so far as concerns his right to take on the intestacy of the lineal or collateral kindred of the adopting parent(s), in the same position as the child born in lawful wedlock to the adopting parent(s). Contrary to its first thoughts as expressed in the working paper (see paragraph 31(4)), the Committee now feels that such assumption is not warranted, or. at least that it cannot be made with any confidence. The words of s.7 are of uncertain import; they do not specifically confer the aforesaid right on the adopted child, although they can be construed as implying such a right.

39. The proviso to the section does not really help to resolve this doubt. Whilst it does touch the matter of the intestacy of some kindred (children) of the adopting parents (paragraph 3), and thus might be taken to imply that the right of the adopted child to take on the intestacy of kin generally is otherwise unqualified, it is essentially concerned with qualifying the position of the child as a member of the adoptive **family** (i.e. preserving the pre-adoption position of the other children) ; this could be an indication that s.7 is meant to confer rights **only** as between the child and the adopting parent(s). If the adopted child was meant to have the larger right, the qualifications in the last part of paragraph (2) and in paragraph (3) of the proviso would be quite incongruous, if not contradictory.

40. In view of these doubts the Committee has departed from its earlier intention of recommending that the adopted child (whether illegitimate or otherwise) should be deprived of any right which he might have (whether by reason of the adoption of the Committee's present recommendations or otherwise) with regard to the estate of his natural parents. However, if and when the *Adoption of Children Act* is amended to clearly give the adopted child full rights of succession in relation to the kin of his adopting parent(s), then the Committee recommends that this change should be made.

41. Sections 7 and 8 of the *Adoption of Children Act* are most unsatisfactory in their present form (compare sub-ss. (1) and (2) of s.16 of the *Adoption Act 1958* of the United Kingdom). Apart from the doubts mentioned above, there is the question of what application, if any, s.7 would have where there is only one adopting parent. These uncertainties must be resolved as soon as possible. Following conferences of the Australian Attorneys-General in 1963, all Australian States, including Western Australia, revised their adoption legislation. The other States, following the United Kingdom and New Zealand, completely assimilated the

succession rights of the adopted child to those of a child born in lawful wedlock of the adopting parent(s). Western Australia left the old provisions untouched.

Protection of personal representatives and trustees:

42. It would be unfair not to give special protection to personal representatives and trustees against claims by those persons who base their entitlement on an illegitimate relationship. Such persons may not be known to the personal representatives or trustees who may innocently have distributed their share to others. Following England and New Zealand, therefore, the Committee recommends that special legislative protection be accorded these persons.

Form of proposed legislation:

43. The Committee has drafted provisions to give effect to the changes recommended. These are set out in the Appendix hereto. If the recommendations are accepted the draft should be considered as no more than a basis for instructions to the Parliamentary Draftsman and should not be submitted to Parliament as a Bill.

44. The recommendations are drafted as a Family Law Reform Bill. Another possibility is to provide for illegitimates' rights of succession by an amendment to the *Administration Act*, and the reversal of the rule of construction of 'child', 'issue', etc. in dispositions by an amendment to the *Property Law Act* and the *Wills Act*. If this were done the amendments to both Acts should include a provision giving special protection to the personal representative or trustee. If the substantive provisions are to be contained in a Family Law Reform Act, it will be most desirable to amend the *Administration Act* by providing a reference to the new legislation.

SUMMARY OF RECOMMENDATIONS

45. The following is a summary of the Committee's recommendations -

(a) The relationship of the illegitimate child to its parents to be deemed legitimate for all purposes relating to intestate succession, so as not only to give the

illegitimate the right to succeed to the property of either parent and vice versa, but also to establish the usual and corresponding rights of succession between the child and all other lineal and collateral kindred;

(b) The terms 'children', 'issue' and other words of relationship, where used in a will or other disposition, to be deemed to include illegitimates and persons claiming through illegitimates, unless a contrary intention appears;

(c) Special protection to be given personal representatives and trustees in the case of claims based on illegitimate relationships;

(d) Section 27 of the *Wills Act 1970* to be extended to give to illegitimates the benefit of the provision - see the note to paragraph 8 above. This recommendation is a corollary of the recommendation in (a) above.

The views of the Council of the Law Society:

46. The Council of the Law Society agreed with the recommendations in paragraphs (a) and (b) above when these were expressed as tentative proposals in the working paper, except that the Council considered that an illegitimate's right to claim under (a) should be dependent on paternity being acknowledged by or established against the father in his lifetime. The Council made no comments on (c). The Committee's recommendation in (d) was not part of the working paper.

CHAIRMAN: B.W. Rowland

MEMBER: E.J. Edwards

MEMBER: C. le B. Langoulant

11th August 1970.

APPENDIX

FAMILY LAW REFORM ACT 1970

Illegitimate relationships under intestacies.

1.(1) For the purpose of determining who is entitled to participate in the distribution of an estate with regard to which there is a total or partial intestacy the relationship between every person and his father and mother shall be determined irrespective of whether the father and mother are or have been married to each other, and all other relationships, whether lineal or collateral, shall be determined accordingly.

(2) This section shall apply only to estates of persons who die after the commencement of this Act.

References to children and other relatives to include references to illegimates.

2.(1) In any disposition made after the commencement of this Act

(a) any reference (whether express of implied) to the child or children of any person shall, unless the contrary intention appears, be construed as, or as including, a reference to any illegitimate child of that person; and

(b) any reference (whether express or implied) to a person or persons related in some other manner to any person shall, unless the contrary intention appears, be construed as, or as including, a reference to anyone who would be so related if he, or some other person through whom the relationship is derived, had been born legitimate.

(2) In this section "disposition" includes an oral disposition of real or personal property whether inter vivos or by will or codicil.

Protection of personal representatives and trustee.

3. For the purposes of the administration or distribution of any estate or of any property held upon trust or for any other purposes, no executor, administrator or trustee shall be under any obligation to

inquire as to the existence of any person who could claim an interest in the estate or property by reason only of the provisions of sections one or two of this Act; and no action shall lie against any executor or administrator or trustee by any person who could claim an interest in the estate or property by reason only of the provisions of sections one or two of this Act, to enforce any claim arising by reason of the executor or administrator or trustee having made any distribution of the estate or of the property held upon trust or otherwise acted in the administration of the estate or of property held upon trust disregarding the claims of that person if at the time of making the distribution or otherwise so acting the executor, administrator, or trustee had no notice of the relationship on which the claim is based.

Standard of proof.

4. In any proceedings where a claimant relies on a matter of fact made relevant by the provisions of sections one or two of this Act, that fact shall be taken to be proved if it is established to the reasonable satisfaction of the Court.