

**DOES THE TERM "RELATIVES" IN
ARTICLE 992 OF THE CIVIL CODE INCLUDE
THE LEGITIMATE PARENTS OF THE FATHER
OR MOTHER OF THE ILLEGITIMATE
CHILDREN?***

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AMICUS CURIAE'S OPINION

The undersigned respectfully submits the following opinion in compliance with the Resolution of this Honorable Court, dated 27 October 1988, appointing him as an *amicus curiae* in the case of ANSELMA DIAZ, ET. AL. V. INTERMEDIATE APPELLATE COURT, ET. AL. (G.R. No. 66574).¹ The Resolution stated, in part:

"The principal purpose of the hearing is to answer the question: does the term "relatives" in Article 992 of the Civil Code which reads:

"An illegitimate child has no right to inherit *ab intestato* from the legitimate children and relatives of his father or mother; nor shall such children or relatives inherit in the same manner from the illegitimate child."

include the *legitimate parents* of the father or mother of the illegitimate children?"

THE PROBLEM

It is clear from the quoted portion of the Resolution that the controversy revolves around the meaning and scope of the term "relatives" in Article 992. This article is an amended version of Article 943 of the Spanish Code, which reads:

"El hijo natural y el legitimado no tienen derecho a suceder abintestato a los hijos y *parientes legítimos* del padre o madre que lo haya reconocido, ni ellos al hijo natural ni al legitimado." (emphasis supplied)

It should first of all be pointed out that although the Code, in the Title on Succession as well as in other parts, uses the word "relatives", nowhere in the Code is the word defined.

* This Note was originally submitted as an *amicus curiae's* brief in the hearing on a motion for reconsideration of the Supreme Court decision in *Diaz v. Intermediate Appellate Court*, 150 SCRA 645 (1987).

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¹ 150 SCRA 645 (1987).

Jurisprudence and opinions on the matter are, however, not wanting.

Before citing these relevant authorities, it would be helpful to frame the issue in the following form:

Can an illegitimate child inherit by representation from the legitimate parent or ascendant of his illegitimate parent?

Supposing, therefore, that X has a *legitimate* child Y, and Y has an *illegitimate* child Z, and Y predeceases X or is disinherited by him, or is incapacitated to succeed him, may Z inherit by intestacy from X in representation of Y?

The undersigned is of the opinion that the prohibition in Article 992 includes the legitimate parents and ascendants of the father or mother of the illegitimate children.

In support of this position, the following grounds may be cited:

1. This Honorable Court in a number of decisions has consistently adhered to this view;
2. The term "relatives" is sufficiently general to include not only collaterals but also ascendants;
3. The rationale behind the prohibition is to create an absolute barrier between the legitimate and illegitimate families.

I

THE CONSISTENT DOCTRINE OF THIS COURT

As early as 1908, this Honorable Court had already ruled squarely on this issue. In the case of *Llorente v. Rodriguez*², this Court ruled that a natural child was barred from inheriting by intestate succession from her grandmother, who was the legitimate mother of the natural child's predeceased mother. Speaking through Mr. Chief Justice Cayetano Arellano, this Court held:

"This doctrine has been affirmed by the supreme court of Spain in its decision of the 13th of February, 1903, and in said decision it was held that a natural child whose deceased father was a legitimate son, has no right whatever in the inheritance of his grandfather, even if the latter died without legitimate descendants surviving him, which appears plainly evident, not only because article 943 of the Civil Code denies the natural child the right to succeed *ab intestato* the legitimate children and relatives of the father or mother acknowledging the said child, included in which was the grandfather,

² 10 Phil. 585 (1908).

nor because within the order of succession established for natural children and their descendants by article (*sic*) 939 to 944, the natural grandchild, whose father was legitimate, has no place; but more especially (considering the direct application of said doctrine to the case) because, as children inherit by right from their father, and grandchildren from their grandfather by representation according to articles 932 and 933, this right is only granted to the legitimate grandchildren and descendants when the head of the descending direct line is a legitimate child, in conformity with the secular doctrine admitted by our code as the basis of the order of succession which the same establishes and particularly sanctions by article 931, where it is assumed that the descendants called upon to succeed by such line shall be the issue of a lawful marriage."

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"The decision of the supreme court of Spain, cited in the judgment appealed from, is decisive on this matter; according to the same a natural child has not the right to represent his natural father or mother in the succession to the legitimate ascendants of the latter.

From the fact that a natural son has the right to inherit from the father or mother who acknowledged him, conjointly with the other legitimate children of either of them, it does not follow that he has the right to represent either of them in the succession to their legitimate ascendants; his right is direct and immediate in relation to the father or mother who acknowledged him, but it can not be indirect by representing them in the succession to their ascendants to whom he is not related in any manner, because he does not appear among the legitimate family of which said ascendants are the head."³

This doctrine was reiterated in *Centeno v. Centeno*⁴ and *Allarde v. Abaya*⁵, in both of which cases an acknowledged natural child was declared barred from inheriting by representation from the legitimate parent of the illegitimate father.

Again in *Oyao v. Oyao*⁶, decided in 1953, where the natural children of two legitimate children claimed hereditary rights in the intestate estate of their grandfather (the legitimate father of their mothers) by representation of their respective mothers, this Court denied the claim, citing the earlier case of *Llorente*⁷.

Through Mr. Justice Alex Reyes, this Court held:

"There can be no question on the proposition that natural children have not the right to represent their natural father or mother in the succession of the

³ *Id.* at 588-590.

⁴ 52 Phil. 322 (1928) per Mr. Justice Antonio Villa-real.

⁵ 57 Phil. 909 (1933) also per Mr. Justice Antonio Villa-real.

⁶ 94 Phil. 204 (1953).

⁷ *Supra*, at 206-207.

legitimate ascendants of the latter. This has been made clear in the case of *Llorente vs. Rodriguez, et. al.*, 10 Phil. 585, where this Court said:

'This doctrine has been affirmed by the supreme court of Spain in its decision of the 13th of February, 1903, and in said decision it was held that a natural child whose deceased father was a legitimate son, has no right whatever in the inheritance of his grandfather, even if the latter died without legitimate descendants surviving him, which appears plainly evident, not only because article 943 of the Civil Code denies the natural child the right to succeed *ab intestato* the legitimate children and relatives of the father or mother acknowledging the said child, included in which was the grandfather, nor because within the order of succession established for natural children and their descendants by article (*sic*) 939 to 944, the natural grandchild, whose father was legitimate, has no place; but more especially (considering the direct application of said doctrine to the case) because, as children inherit by right from their father, and grandchildren from the grandfather by representation according to articles 932 and 933, this right is only granted to the legitimate grandchildren and descendants when the head of the descending direct line is a legitimate child, in conformity with the secular doctrine admitted by our code as the basis of the order of succession which the same establishes and particularly sanctions by article 931, where it is assumed that the descendants called upon to succeed by such line shall be the issue of a lawful marriage. As a consequence of the law, the court below held that Rosa Llorente had no right whatever to the inheritance of the late Martina Avalor, and denied her all right to intervene in the said proceedings regarding the estate of the said deceased.'

"In that case Rosa Llorente, a natural daughter of one of the legitimate children of the deceased Martina Avalor, tried to intervene in the settlement of the estate of the said deceased in representation of her father, a legitimate son of said Martina Avalor, who had predeceased the latter. But Rosa Llorente was not allowed to intervene because, as a natural child of Martina Avalor's legitimate children, she had no right to the inheritance. Plaintiffs in the present case are in that same position. Their claim to their grandfather's inheritance is, therefore, without legal basis."

In subsequent *obiter dicta* this Court adhered to its previous rulings. In *Corpus v. Corpus*⁸, this Honorable Court, speaking through Mr. Justice Ramon Aquino, noted:

Article 943 of the old Civil Code provides that "el hijo natural y el legitimado no tienen derecho a suceder abintestato a los hijos y parientes legítimos del padre o madre que lo haya reconocido, ni ellos al hijo natural ni al legitimado". Article 943 "prohibits all successory reciprocity *mortis causa* between legitimate and illegitimate relatives" (6 Sanchez Roman, Civil Code, pp. 996-997 cited in *Director of Lands vs. Aguas*, 63 Phil. 279, 287. See 16 Scaevola, Código Civil, 4th Ed., 455-6).

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"The rule in Article 943 is now found in Article 992 of the Civil Code which provides that 'an illegitimate child has no right to inherit *ab intestato* from the legitimate children and relatives of his father or mother' nor shall such children or relatives inherit in the same manner from the illegitimate child".

⁸ 85 SCRA 567 (1978).

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"By reason of that same rule, the natural child cannot represent his natural father in the succession to the estate of the legitimate grandparent (*Llorente vs. Rodriguez*, 10 Phil. 585; *Centeno vs. Centeno*, 52 Phil. 322; *Allarde vs. Abaya*, 57 Phil. 909)."

In *Landayan v. Bacani*⁹, this Court, through Mr. Justice Conrado Vasquez, stated that if it were to be proven that the private respondent was a natural child of a legitimate daughter of the decedent, then that private respondent would be barred from inheriting by intestacy from the descendant, because of Article 992:

"As stated above, petitioners contend that Severino Abenojar is not a legal heir of Teodoro Abenojar, he being only an acknowledged natural child of Guillerma Abenojar, the mother of petitioners, whom they claim to be the sole legitimate daughter in first marriage of Teodoro Abenojar. If this claim is correct, Severino Abenojar has no rights of legal succession from Teodoro Abenojar in view of the express provision of Article 992 of the Civil Code, which reads as follows:

"Art. 992. An illegitimate child has no right to inherit *ab intestato* from the legitimate children and relatives of his father or mother; nor shall such children or relatives inherit in the same manner from the illegitimate child."¹⁰

To the same effect was the statement in *Leonardo v. Court of Appeals*¹¹, by this Court, through Mr. Justice Pacifico de Castro:

"xxx even if it is true that petitioner is the child of Sotero Leonardo, still he cannot, by right of representation, claim a share of the estate left by the deceased Francisca Reyes (i.e., the petitioner's putative great-grandmother) considering that, as found again by the Court of Appeals, he was born outside wedlock as shown by the fact that when he was born on September 13, 1938, his alleged putative father and mother were not yet married, and what is more, his alleged father's first marriage was still subsisting. At most, petitioner would be an illegitimate child who has no right to inherit *ab intestato* from the legitimate children and relatives of his father, like the deceased Francisca Reyes (Article 992, Civil Code of the Philippines)."¹²

The latest reiteration of this doctrine by this Honorable Court was, of course, in the Decision in the very case referred to in the above-mentioned Resolution of 27 October 1988, (*Anselma Diaz, et. al. vs. Intermediate Appellate Court, et. al.* [GR No. 66574, 17 June 1987; 150 SCRA 645]) penned by Mr. Justice Edgardo Paras.

Manresa's opinion conforms to the above-cited rulings of this Honorable Court: that the prohibition in Article 992 (943 of the Spanish

⁹ 117 SCRA 117 (1982).

¹⁰ *Supra*, at 120.

¹¹ 120 SCRA 890 (1983).

¹² *Supra*, at 896.

Code) applies to an illegitimate child in relation to the estate of the legitimate parents and ascendants of his illegitimate mother or father.

"Los hijos y los parientes legitimos del padre o madre que reconocio un hijo natural, son todos los parientes en linea recta descendente or ascendente, o en linea colateral. La familia legitima queda separada por completo de la natural; ni los individuos de esta heredan a los de que aquella, ni los individuos de aquella pueden heredar a los de esta."

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"Los padres legitimos del padre natural son naturalmente abuelos del hijo natural. xxx Sin embargo, ese abuelo no hereda al nieto natural ni este a aquel."¹³

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Manresa then cites a Spanish Supreme Court Decision of 13 February 1903 to support his position:

"Con relacion a la herencia del abuelo, el Tribunal Supremo ha confirmado expresamente la natural interpretacion que hemos dado al art. 943, en su importante sentencia de 13 de Febrero de 1903.

"El hijo natural, dice el segundo considerando de dicha sentencia, cuyo difunto padre fuera hijo legitimo, no tiene derecho alguno a la herencia de su abuelo, aunque este muera sin descendientes legitimos que le sobrevivan; lo cual aparece con plena evidencia, no tan solo porque el art. 943 delCodigo civil niega al hijo natural derecho a suceder abintestato a los hijos y parientes legitimos del padre o madre que le haya reconocido, y *por lo mismo al abuelo*, y porque dentro del orden de suceder establecido para los hijos naturales y sus descendientes en los articulos 939 al 944, no tiene lugar el nieto natural cuyo padre fuese legitimo, sino muy especialmente, atendida su directa aplicacion al caso, porque heredando los hijos al padre por derecho propio, y por el de representacion los nietos a su abuelo, segun los arts. 932 y 933, este derecho tan solo esta concedido a los nietos y descendientes legitimos, cuando el cabeza de la linea recta descendente sea un hijo legitimo, conforme a una doctrina secular admitida en nuestroCodigo como base del orden de suceder que el mismo establece, y especialmente sancionada por el art. 931, donde se da por supuesto que los descendientes llamados a suceder por tal linea, han de ser hijos de legitimo

¹³ "The legitimate children and relatives of the father or mother who recognized a natural child include all the relatives in the direct descending or ascending line or in the collateral line. The legitimate family is completely separated from the illegitimate family; the members of one cannot succeed anyone in the other and vice-versa."

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"The legitimate parents of the natural father are by nature the grandparents of the illegitimate child. x x x However, the grandparent cannot succeed the illegitimate grandchild, nor may the latter succeed the former."

matrimonio." (Comentarios al Código Civil Español, 5th ed., 1924, Tomo VII, p. 127-128) (Emphasis supplied.)¹⁴

Sanchez Roman shares the same view:

"x x x se deduce que, *en ningún caso*, el hijo natural o el legitimado por concesión Real, tienen derecho alguno a la sucesión *ab intestato*:

1. De los hijos legítimos de su padre natural, que son sus hermanos naturales, ni de ningún otro de los descendientes legítimos del mismo.

2. De los ascendientes legítimos de su padre natural que son los ascendientes naturales.

3. De los colaterales legítimos del padre natural, en todos sus grados, que son sus colaterales naturales." (Estudios de Derecho Civil, 2nd ed., 1910, Tomo Sexto, Volumen 3, p. 1660) (Emphasis supplied.)¹⁵

Worth noting, however, is the contrary opinion of Scaevola, who believes that the term *parientes* in the article refers only to collateral relatives:

"Habría podido observarse que dentro de la terminología de que se ha valido el Código para particularizar el llamamiento en la sucesión intestada, ha denominado hijos a los inmediatos derivados del centro de radiación, descendientes a los que subsiguen a aquellos, nietos, biznietos, etc.; ascendientes a todos los que por línea recta suben desde el centro, y

¹⁴ "With respect to the succession of grandparents, the Supreme Court, in its important decision of February 13, 1903, has expressly affirmed the natural interpretation that we have given to Art. 943.

"According to the second premise of the said judgment, the illegitimate child whose deceased father was a legitimate child has no right to the succession of his grandfather, even if the latter should die without legitimate descendants. This seems plainly evident not only because Art. 943 of the Civil Code denies the illegitimate child any right to succeed *ab intestato* the legitimate children and relatives of the father or mother who acknowledged such illegitimate child, and for the same reason, his grandparents, and also because the illegitimate grandchild whose father was legitimate has no place in the order of succession established for illegitimate children and their descendants in Arts. 939 to 944, but most especially because, taking into consideration its direct application to the case, the succession of children to their parents in their own right, or the succession of grandchildren to their grandparents by representation, according to Arts. 932 and 933, pertains only to the legitimate children and descendants when the head of the direct descending line is a legitimate child. This conforms with the secular doctrine admitted in our Code as basis of the order of succession therein established, and is particularly sanctioned by Art. 931, where it is impliedly provided that the descendants named to succeed to such line must be children of the legitimate marriage."

¹⁵ "x x x it may be concluded that in no case may the illegitimate child or the child legitimated by Royal Concession have any right to succeed *ab intestato*:

1. the legitimate children of the illegitimate father, who are his illegitimate brothers; nor any of the legitimate descendants of the latter.

2. the legitimate ascendants of his illegitimate father, who are his illegitimate ascendants.

3. the legitimate collateral relatives of the illegitimate father, in all degrees, who are his illegitimate collateral relatives."

parientes colaterales a los de la linea de travieso. Dando, pues, a la voz parientes el sentido colateral en que sin duda la emplea elCodigo, los unicos no comprendidos en el art. 943 son los ascendientes. x x x" (Codigo Civil, 4th ed., 1945, Tomo XVI, p. 457)¹⁶

II

SCOPE OF THE TERM "RELATIVES"

As mentioned earlier, the term *relatives*, although used many times in the Code, is not defined by it. In accordance therefore with the canons of statutory interpretation, it should be understood to have a general and inclusive scope, inasmuch as the term is a general one. *Generalia verba sunt generaliter intelligenda*. That the law does not make a distinction prevents us from making one: *Ubi lex non distinguit, nec nos distinguere debemus*. Escriche, in his *Diccionario de Legislacion y Jurisprudencia*, defines *parientes* as "los que estan relacionados por los vinculos de la sangre, ya sea por proceder unos de otros, como los descendientes y ascendientes, ya sea por proceder de una misma raiz o tronco, como los colaterales." (cited in Scaevola, *op. cit.*, p. 457).¹⁷

There is more. Other articles in the Code which use the word *relatives* may shed light on the meaning and scope of the word.

Article 961 reads:

"Art. 961. In default of testamentary heirs, the law vests the inheritance, in accordance with the rules hereinafter set forth, in the legitimate and illegitimate relatives of the deceased, in the surviving spouse, and in the State."

It is clear that the word *relatives* is intended by this article to include *descendants, ascendants, and collaterals*, in view of the fact that all these three classes of relatives are intestate heirs (Arts. 978-1010). To restrict the scope of the term to collateral relatives here would obviously do violence to the sense of the article.

In the same all-inclusive sense is the word *relatives* employed in Article 962, which provides:

¹⁶ "It may be observed that included within the terminology which the Code uses to particularize those who are called to the intestate succession are (1) the children, referring to those immediately descended from the head of the line; (2) descendants, referring to grandchildren, great-grandchildren, etc.; (3) ascendants, referring to all those who, by direct line, ascend from the point of reference; and (4) collateral relatives, referring to the collateral line. The word 'relative', therefore, means collateral relatives; and in this sense which the Code employs. The only relatives not included in Art. 943 are the ascendants."

¹⁷ "Those who are related by blood, whether proceeding one from the other, such as descendants and ascendants, or proceeding from the same root or branch, such as collateral relatives."

"Art. 962. In every inheritance, the relatives nearest in degree exclude the more distant ones, saving the right of representation when it properly takes place.

Relatives in the same degree shall inherit in equal shares, subject to the provisions of Article 1006 with respect to relatives of the full and half blood and of article 987, paragraph 2, concerning division between the paternal and maternal lines."

So also is the term in Articles 968 and 969 to be understood:

"Art. 968. If there are several relatives of the same degree, and one or some of them are unwilling or incapacitated to succeed, his portion shall accrue to the others of the same degree, save the right of representation when it should take place."

"Art. 969. If the inheritance should be repudiated by the nearest relative, should there be one only, or by all the nearest relatives called by law to succeed, should there be several, those of the following degree shall inherit in their own right and cannot represent the person or persons repudiating the inheritance."

To interpret the term *relatives* in Article 992 in a more restrictive sense than it is used and intended in the above-cited articles is, it is submitted, not warranted by any rule of interpretation.

To be noted further is the fact that when the law intends to use the terms in a restrictive sense, it qualifies the terms with the word *collateral*, as in Articles 1003 and 1009:

"Art. 1003. If there are no descendants, ascendants, illegitimate children, or a surviving spouse, the collateral relatives shall succeed to the entire estate of the deceased in accordance with the following articles."

"Art. 1009. Should there be neither brothers nor sisters nor children of brothers or sisters, the other collateral relatives shall succeed to the estate.

The latter shall succeed without distinction of lines of preference among them by reason of relationship by the whole blood."

III

THE ABSOLUTE BARRIER

The rationale underlying the prohibition in Article 992 is that a successional barrier should be established between the legitimate and illegitimate families in recognition of the traditional ill will and resentment that usually exists between them.

Manresa's comments, cited in *Llorente v. Rodriguez*¹⁸, *Grey v. Fabie*,¹⁹ and *Corpus v. Administrator*,²⁰ are apropos:

"Entre el hijo natural y los parientes legitimos del padre o madre que les reconocio, niega elCodigo toda relacion sucesoria. No pueden decirse parientes y no tienen derecho a heredar. Existe desde luego un vinculo de sangre; pero este vinculo no le reconoce la ley. En esto, el art. 943 se funda en la realidad de los hechos y en la presunta voluntad de los interesados; el hijo natural es mirado con desprecio por la familia legitima; la familia legitima es, en cambio, odiada por el hijo natural; este considera la situacion privilegiada de aquella y los recursos de que por ella se ve privado; aquella, en cambio, solo ve en el hijo natural el producto del vicio, la prueba viva de un borron para la familia. Toda relacion esta rota ordinariamente en la vida; la ley no hace mas que reconocer esta verdad, evitando nuevos motivos de que resentimiento." (*op. cit.*, p.127)²¹

Sanchez Roman is of the same mind:

"El fundamento de este articulo, no puede ser otro que el del comun antagonismo e incompatibilidad absoluta entre la familia natural y la legitima, hecha la debida excepcion de padres e hijos naturales o legitimados." (*op. cit.*, p. 1660)²²

That this rationale exists is admitted even by Scaevola:

"La doctrina generalmente profesada por las legislaciones civiles es la de impedir toda comunicacion hereditaria entre el parentesco legitimo y el ilegitimo.

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"x x x De este modo, decia Garcia Goyena, se tira una linea divisoria e insuperable entre parientes legitimos y naturales, se consulta el decoro y sosiego de la familia, y al mismo tiempo se respetan la equidad y la justicia, negando a los parientes legitimos en la sucesion de los naturales los

¹⁸ *Supra*.

¹⁹ 28 Phil. 128 (1939).

²⁰ *Supra*.

²¹ "The Code denies all successional rights between the illegitimate child and the legitimate parents of the father or mother who recognized the former. They cannot be considered as relatives, nor do they have the right to inherit. It is true that there exists a blood relationship between them, but this tie is not recognized by the law. Art. 943 is founded on reality and in the presumed will of those who have an interest in the succession in question. The illegitimate child is looked upon with disfavor by the legitimate family. The latter is, in turn, hated by the illegitimate child, because of their privileged position and the rights to which he is not entitled. The legitimate family, on the other hand, sees the illegitimate child as the product of vice and living proof of a stain in their reputation. All relations are ordinarily rooted in life; and the law does no more than acknowledge this truth, avoiding new motives for resentment."

²² "The basis of this article is nothing more than the common antagonism and absolute incompatibility between the illegitimate family and the legitimate family, with the sole exception of parents with respect to illegitimate or legitimated children."

derechos de que estos se ven privados en la de aquellos." (Codigo Civil, 4th ed., 1945, Tomo XVI, p. 456)²³

As a final point, proponents of the contrary view may claim apparent support for their position by citing the following articles of the Civil Code:

"Succession pertains, in the first place, to the descending direct line."²⁴

"Legitimate children and their descendants succeed the parents and other ascendants, without distinction as to sex or age, and even if they should come from different marriages."²⁵

"Should children of the deceased and descendants of other children who are dead, survive, the former shall inherit in their own right and the latter by right of representation."²⁶

"The grandchildren and other descendants shall inherit by right of representation, and if any of them should have died, leaving several heirs, the portion pertaining to him shall be divided among the latter in equal portions."²⁷

From these articles, some may argue that, inasmuch as no distinction is made in the terms "direct descending line", "descendants", and "children", they should be understood to refer both to legitimates and illegitimates, such that an illegitimate child of a legitimate child should be entitled to succeed from his grandfather's estate.

The problem with this position is that it again disregards past pronouncements of this Tribunal.

Speaking for this Court in *Director of Lands v. Aguas*,²⁸ Mr Justice Recto wrote:

" x x x in said Code, the legitimate relationship forms the general rule and the natural relationship the exception; which is the reason why, as may be easily seen, the law in many articles speaks only of children or parents, of

²³ "The principle generally followed by the civil law is that of obstructing all successional relations between the legitimate relatives and illegitimates.

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" x x x By this system, according to Garcia Goyena, a divisive and insuperable line is drawn between the legitimate relatives and illegitimates, preserving peace in the family and, at the same time, respecting equity and justice. It denies the legitimate relatives the rights of succession of which the illegitimate relatives have themselves been deprived."

²⁴ CIVIL CODE, art. 978.

²⁵ CIVIL CODE, art. 979.

²⁶ CIVIL CODE, art. 981.

²⁷ CIVIL CODE, art. 982.

²⁸ 63 Phil. 279 (1936).

ascendants or descendants, and in them reference is of course made to those who are legitimate; and when it desires to make a provision applicable only to natural relationship, it does not say father or mother, but natural father or natural mother; it does not say child, but natural child, it does not speak of ascendants, brothers or parents in the abstract, but of natural ascendants, natural brothers or natural parents." (citing Manresa, *Codigo Civil*, vol. 6, 3rd ed., p. 249, 250)

Although the issue in that case was the application of the *reserva troncal* to illegitimate relations, the reasoning is applicable here.

The lines of this distinction between legitimates and illegitimates, which goes back very far in legal history, have been softened but not erased by present law. Our legislation has not gone so far as to place legitimate and illegitimate children on exactly the same footing. Even the Family Code of 1987²⁹ has not abolished the gradation between legitimate and illegitimate children (although it has done away with the sub-classification of illegitimates into natural and "spurious"). It would thus be correct to say that illegitimate children have only those rights which are expressly or clearly granted to them by law.³⁰

This gradation of kinds of filiation was adverted to by this Court in *Conde v. Abaya*³¹ and *Clemeña v. Clemeña*,³² the latter inviting attention to what it called "the carefully categorized scheme of rights ordained by the Civil Code for various classes of children."³³

Parenthetically, it may be noted that Article 943 of the Spanish Code was repealed by the amendment of 13 May 1981,³⁴ in conformity with the basic changes introduced by that law which abolished the distinction between the effects of legitimate and illegitimate filiation (incidentally also changing the terminology *legitimo/ilegitimo* to *matrimonial/no matrimonial*).

Article 108 of the amended Spanish Code now reads:

"Art. 108. La filiacion puede tener lugar por naturaleza y por adopcion. La filiacion por naturaleza puede ser matrimonial y no matrimonial. Es matrimonial cuando el padre y la madre estan casados entre si.

La filiacion matrimonial y la no matrimonial, asi como la adoptiva plena, surten los mismos efectos, conforme a las disposiciones de este Codigo."

²⁹ EXEC. ORDER No. 209 (1987), 83 O.G. 5131 (Oct. 1987).

³⁰ *Vide* 3 A.TOLENTINO, CIVIL CODE OF THE PHILIPPINES 291 (1973).

³¹ 13 Phil. 249 (1909) per Mr. Chief Justice Cayetano Arellano.

³² 24 SCRA 720 (1968) per Mr. Justice J.B.L. Reyes.

³³ *Supra*, at 726-727.

³⁴ Ley 11/1981.

RECAPITULATION

It is, therefore, submitted that an illegitimate child may not inherit by representation *ab intestato* from the legitimate parents or ascendants of his mother or father because of the prohibition laid down in Article 992 of the Civil Code. The word "relatives" in that article covers both collaterals and those in the direct line.

This interpretation is supported by three considerations:

1. The term "relatives" is general;
2. Jurisprudence has been consistent in this interpretation;
3. The underlying philosophy of the law is to create a barrier between the legitimate and the illegitimate family.

Of these three considerations, the second is the most compelling. Precedent is necessary for predictability; unless the most persuasive reasons can be cited for change, precedent should not be lightly set aside. The undersigned sees no persuasive reason for setting aside settled jurisprudence in this case.

Respectfully submitted:

RUBEN F. BALANE
Amicus Curiae