

Bastardy Proceedings--Testimony Must Be "Entirely Satisfactory"-- Does Not Have To Be Beyond a Reasonable Doubt (Commissioner of Public Welfare v. Ryan, 238 App. Div. 607 (1st Dept. 1933))

St. John's Law Review

Follow this and additional works at: <https://scholarship.law.stjohns.edu/lawreview>

This Recent Development in New York Law is brought to you for free and open access by the Journals at St. John's Law Scholarship Repository. It has been accepted for inclusion in St. John's Law Review by an authorized editor of St. John's Law Scholarship Repository. For more information, please contact selbyc@stjohns.edu.

puts an end to the marriage relation for all time, the right of the divorced wife to have the payment of alimony continued to her, will depend upon the nature and terms of the decree allowing alimony.⁸ It is well settled that the amount of alimony which the husband is to pay and the length of time during which payment is to continue may be arranged between them by consent.⁹ Where husband and wife agree upon alimony, the courts will embody their agreement upon that subject in the decree.¹⁰ After the death of the husband the recovery of alimony is allowed by force of the decree alone and not because of any previous agreement between them.¹¹ It not appearing by statute or judicial decision of the state of Pennsylvania whether the provision for alimony abated upon the husband's death, the decree will be construed according to the law prevailing in this state.¹²

The liability of the estate having been determined, the Surrogate's Court will then have the power to enforce payment of such claim.¹³ Although the court is without power to establish a debt against the estate,¹⁴ it has the power to direct that funds be set aside to pay contingent and unliquidated claims.¹⁵

I. L. K.

BASTARDY PROCEEDINGS—TESTIMONY MUST BE "ENTIRELY SATISFACTORY"—DOES NOT HAVE TO BE BEYOND A REASONABLE DOUBT.—The interpretation of the rule in New York in bastardy proceedings which requires proof to be "entirely satisfactory"¹ was recently under discussion in the Appellate Division. *Held*, that the evidence should be sufficient to create a genuine belief that the defendant is the father of the child. *Commissioner of Public Welfare v. Ryan*, 238 App. Div. 607, 265 N. Y. Supp. 286 (1st Dept. 1933).

⁸ *Story v. Story*, 125 Ill. 608, 18 N. E. 329 (1899); *Pryor v. Pryor*, 18 Ark. 302, 114 S. W. 700 (1927); *Stratton v. Stratton*, 77 Me. 373, 52 Am. St. Rep. 779 (1885).

⁹ *Carpenter v. Carpenter*, 130 Misc. 698, 225 N. Y. Supp. 431 (1927).

¹⁰ *Wilson v. Hinman*, 182 N. Y. 408, 75 N. E. 236 (1905).

¹¹ *Sleicher v. Sleicher*, 251 N. Y. 370, 167 N. E. 501 (1929).

¹² *Murrin v. Archibald Consolidated Coal Co.*, 232 N. Y. 541, 134 N. E. 563 (1922).

¹³ SURROGATE'S COURT ACT (1922) §§207, 244.

¹⁴ *In re Thomas's Estate*, 235 App. Div. 450, 257 N. Y. Supp. 330 (1st Dept. 1932); *McLean v. Hart*, 228 App. Div. 379, 239 N. Y. Supp. 1 (1st Dept. 1930).

¹⁵ *Supra* note 13.

¹ *People v. McKay*, 72 App. Div. 527, 76 N. Y. Supp. 600 (2d Dept. 1902); *Drummond v. Dolan*, 155 App. Div. 449, 140 N. Y. Supp. 307 (2d Dept. 1913); *Webb v. Hill*, 115 N. Y. Supp. 267 (1909).

The necessity of proof beyond a reasonable doubt lies only in purely criminal actions.² Filiation proceedings are merely quasi-criminal³ and, hence, the rule does not apply. Generally, in civil actions a preponderance of proof is adequate.⁴ In certain types of civil proceedings, such as cases involving fraud, undue influence, or to establish lost deeds or wills, it has been a long-established rule, in other jurisdictions, that "clear and convincing proof" is required.⁵ However, the courts in New York have not gone so far; a fair preponderance of the evidence is all that is necessary even in such cases.⁶ The phrase "entirely satisfactory," in the instant case, should be construed to mean a genuine belief as to the truth of the allegation. The necessity for more than the mere preponderance of evidence arises from the nature of the case. The charge is easily made but difficult to refute, and the verdict against the defendant carries serious consequences in its wake.

Bastardy proceedings are neither civil nor criminal suits but partake of both. The amount of proof necessary lies similarly between the requirements of these actions. The Court has indicated where this middle ground lies.⁷

J. D. G.

CORPORATIONS—RIGHT OF A STOCKHOLDER TO PURCHASE TREASURY STOCK.—Plaintiff had owned 636 shares in a corporation of which defendants were officers and directors. Subsequently, said company purchased from various stockholders 2,130 shares of its outstanding stock, such as plaintiff was holding, which were "turned into the treasury." Of this block, 445 shares were offered and sold to stockholders in ratable proportions, the balance, the defendants secretly turned over to themselves at an inadequate price to control the voting rights in the election of directors. Afterwards, the entire stock of the company was purchased by another corporation. Plaintiff contends that he has been deprived by the defendants of a portion of the purchase price under circumstances constituting a breach of the fiduciary relationship owing to him as stockholder. The lower court dismissed his complaint. On appeal, *held reversed*, that defen-

² *Kurz v. Doerr*, 180 N. Y. 88, 72 N. E. 926 (1904); 5 WIGMORE, EVIDENCE (2d ed. 1923) 472.

³ *People, ex rel. Mendelovich v. Abrahams*, 96 App. Div. 27, 88 N. Y. Supp. 924 (1st Dept. 1904).

⁴ *Stearns v. Fields*, 90 N. Y. 640 (1882); *Seybolt v. N. Y., L. E. & W. Ry. Co.*, 95 N. Y. 562 (1884); 5 WIGMORE, EVIDENCE (2d ed. 1923) 470.

⁵ 5 WIGMORE, EVIDENCE (2d ed. 1923) 473, 474.

⁶ *Roberge v. Bonner*, 185 N. Y. 265, 77 N. E. 1023 (1906).

⁷ Instant case.