IN THE COURT OF APPEAL OF THE CAYMAN ISLANDS
HOLDEN AT GEORGE TOWN, GRAND CAYMAN
C.I.C.A. NO. 26 OF 1989

BETWEEN:	GARSTON TODD GRANT	RESPONDENT/PLAINTIFF
AND:	HEDY NADINE GRANT	RESPONDENT/PLAINTIFF
AND:	GARSTON GILBERT GRANT	RESPONDENT/PLAINTIFF
AND:	ANN ELAINE WATSON-MORGAN	APPELLANT/DEFENDANT

BEFORE: THE HON. THE PRESIDENT, MR. JUSTICE E. ZACCA
THE HON. MR. JUSTICE P. TELFORD GEORGES, JA
THE HON. MR. JUSTICE K. C. HENRY, JA

APPEARANCES:
Mr. N. Hill, QC and Mrs. E. Maierhofer for the Appellant
Mrs. Cherry Bridges for the Respondents

DATES: MARCH 30, 31, JUNE 1, & AUGUST 1,1990

REASONS FOR DECISION

ZACCA, P

On June 1, 1990, this appeal was allowed, the order of Harre, J. set aside and costs awarded to the appellant to be agreed or taxed.

On March 30 and 31, 1990, the Court heard submissions with respect to the merit of the appeal and reserved judgment. The Court recalled the parties on June 1, 1990, when it required the parties to make submissions on the question as to whether the Trial Judge had jurisdiction to grant custody to the father of an illegitimate child.

An application was made before Harre,J. by the father Garston Todd Grant and his parents Garston Gilbert Grant and Hedy Nadine Grant for the custody of Monique Watson.

Monique Watson was born on 29th October, 1985. She is the daughter of Ann Elaine Watson-Morgan. With some reluctance Garston Todd Grant acknowledged that he was the father.

Harre,J. made an Order granting custody to the father and grand-parents. At the hearing on June 1, 1990, it was conceded that custody of Monique could not be granted to the grand-parents.

The facts of the case are set out in the Judgment of Georges,J.A. and it is unnecessary to repeat them.

The questions for determination in this appeal are:
(a) whether, upon the application of the father, an Order for the custody of an illegitimate child may be made under subsection (1) of section 7 of the Guardianship and Custody of Children Law (Revised), and, (b) if so, whether the Order of Harre, J. granting custody to the father was properly made.

Section 7(1) provides as follows:

> "(1) The Court may, upon the application of the father or mother of a child, make such order as it may think fit regarding the custody of such child and the right of access thereto of either parent, having regard to the welfare of the child, and to the conduct of the parents, and to the wishes as well of the mother as of the father, and may alter, vary, or discharge such order on the application of either parent, or, after the death of either parent, of any guardian under this law; and in every case may make such order respecting costs as it may think just."

Section 7(3) makes provision for the maintenance of the child by the father where the mother has been granted custody of the child.

Subsection (3) provides as follows:

> (3) Where the Court under subsection (1) makes an order giving the custody of the child to the mother, then, whether or not the mother is then residing with the father, the Court may further order that the father shall pay to the mother towards the maintenance of the child such weekly or other periodical sum as the court, having regard to the means of the father, may think reasonable."

Section 7(4) states what is the effect of an order under subsections 1 and 3, if the mother resides with the father. The subsection provides as follows:

> "(4) No such order, whether for custody or maintenance, shall be enforceable, and no liability thereunder shall accrue while the mother resides with the father and any such order shall cease to have effect if for a period of three months after it is made the mother of the child continues to reside with the father."

This Section would seem to contemplate a husband and wife situation.

Does the word "father" in section 7 include the natural father of an illegitimate child or must it be construed as meaning legitimate father.

Sections 12 - 15 of the Guardianship and Custody of Children Law makes certain provisions with respect to the "parent" of a child.

Section 16 defines "parent" of a child in this way:

> "16. For the purposes of section 12 to 15 (inclusive) the expression - "parent" of child includes any person at law liable to maintain such child or entitled to its custody."

It appears therefore that a man who has been adjudged to the be the putative father of an illegitimate child under section 5(1) of the Affiliation Law, 1973, would be a person at law liable to maintain such a child and would be regarded as a "parent" under section 16 of the Guardianship and Custody of Children Law. Section 12 -15 would therefore include the father of an illegitimate child as a parent if he has been adjudged by the Court to be the putative father.

The question to be asked, therefore, is whether the definition of parent in section 16 would have been necessary if "father" in section 7 included the father or parent of an illegitimate child.

Under the Guardianship and Custody of Children Law the Court is empowered under section 7(3) to make an order for maintenance of the child.

The Affiliation Law also makes provision under section 5(2) for the Court to make an order for maintenance of an illegitimate child against the man adjudged to be the putative father.

It is interesting to note that under section 2 of the Adoption of Children Law "relative" includes the father of an illegitimate child. The section also provides that "father" in relation to an illegitimate child means the natural father.

The Maintenance Law (Revised) also makes reference to legitimate and illegitimate children.

The Caymanian Protection Law 1984 in section 14(2)(b) refers to a "child". The Caymanian Protection (Amendment) Law 1987 amended section 142(b) by including the word "legitimate" before "child". Section 18 of the Law was also amended by the provision of a new subsection 6(a) making provision for an illegitimate child to apply to the Board for the grant of Caymanian status.

Again the Maintenance Law (Revised) in section 3 makes reference to legitimate and illegitimate children.

The Cayman Legislature therefore makes a distinction between legitimate and illegitimate children.

The Guardianship of Minors Act 1971 makes provision for the Court to make an order for custody and maintenance of a minor on the application of a father or mother (see section 9(1)).

The Act specifically makes provision in section 14(1) that section 9(1) of the Act shall apply to a minor who is illegitimate.

Under the Child Care Act 1980, the following definitions appear in section 87(i):

> "'child' means a person under the age of eighteen years and any person who has attained that age and is the subject of a care order."
>
> "'parent'' in relation to a child who is illegitimate, means his mother, to the exclusion of his father."
>
> "'relative' in relation to a child means a grandparent, brother, sister, uncle or aunt, whether of the full blood, of the half blood, or by affinity, and includes, where the child is illegitimate, the father of the child....."

Ms. Cherry Bridges for the Respondent makes the point that under the Juvenile Law no distinction is made between legitimate and illegitimate children. In this Law the definition of a "child' means a "juvenile" under the age of fourteen years. Therefore every

juvenile is subject to the provisions of this Law.

In Finlayson v Matthews 1971 12 J.L.R. 401 an application was made by the mother of an illegitimate child for the custody and maintenance of the child. The application was made under section 7(1) and (3) of the Guardianship and Custody of Children Law 1956.

It was held that the term "father" does not include a putative father.

The wording of section 7(1) and (3) of the Cayman Guardianship and Custody of Children Law (Revised) is in the exact terms of the Jamaican Law. Section 7 also follows in terms the language of section 5 of the Guardianship of Infants Act 1886 of the United Kingdom.

In his judgment Henriques, P. at p. 404 states:

> " I am fortified in the view I have formed from a close reading and consideration of the provisions of the section in question itself, section 7(1) of the Guardianship and Custody of Children Law 1956. I am fully satisfied from such a study that its whole purpose and intent was to deal with legitimate children. I am therefore of the view that the learned master came to a correct conclusion when he dismissed the summons for want of jurisdiction and I would accordingly dismiss this appeal with costs to the Respondent."

Fox, J.A. at p. 405 said:

> " The answer to the problem in this appeal lies therefore not in the definition of the word child, but in the substantive provisions of the law itself. In every relevant respect, the provisions of our law are essentially the same as those in the English legislation. The English decisions are therefore in point. In Re CI (an infant) (1) Roxburgh, J., held that the court had no jurisdiction, under provisions in the English Acts which are similar to those in s. 7(1) of our law, to entertain an application by a putative father for custody of his two illegitimate children, because the term "father" within the meaning of the English provisions meant a de jure father and did not include a putative father. The case did not actually decide that the mother of an illegitimate child was not entitled to apply for custody of or maintenance for the child under the English Acts, but that aspect of the matter was considered and the difficulties which the learned judge felt in this regard were indicated. The restrictions imposed in proceedings under the Bastardy Law for an affiliation

order which a single woman who has a bastard child was entitled to take, were examined in detail, and the circumstance that none of these restrictions applied in proceedings under the Guardianship of Infants Act was observed. The difficulties were summarised as follows (1) [1956] 8 All E.R. at p.507):

> " Under the Bastardy Acts only a single woman, as defined either by the Acts or by judicial interpretation, can obtain an order for maintenance in respect of an illegitimate child - there is no limitation at all of that sort in the Guardianship of Infants Acts. Secondly, the application for an affiliation order and consequential maintenance has to be made during a period which is limited - there is no limitation in the Guardianship of Infants Acts. Thirdly, the evidence of paternity has to be corroborated even in the face of admission - there is nothing of that sort in the Guardianship of Infants Acts. Lastly (and this, perhaps, is the least important) an appeal lies, not to the High Court as under the Guardianship of Infants Acts, but to the quarter sessions. It is, therefore, almost impossible to believe that the Guardianship of Infants Acts were intended to embrace illegitimate children."

The last difficulty stated by Roxburgh, J., does not occur in Jamaica where appeals from orders made under both laws lie to the Court of Appeal, but this does not affect the relevance and weight of the other difficulties, and cannot detract from the validity of the conclusion stated at the end of the passage cited above. In the light of this statement of the position, I feel obliged to hold that the word "father" in section 7(3) of our law must be construed as meaning legitimate father. The word does not extend to a putative father and proceedings under the law to compel such a father to maintain a child are therefore not competent."

Smith,J.A. at p. 407 states:

> " In <u>Re C.T. (an infant)(1),</u> the admitted natural father of two illegitimate children applied under s. 5 of the Guardianship of Infants Act 1886, as amended, for an order granting him custody of the children. On appeal from a dismissal of the application by justices, Roxburgh, J. held that the word "father" in s. 5, as amended by s. 16 of the Administration of Justice Act, 1928, must be construed as meaning legitimate father and did not extend to the natural father of an illegitimate child; and that neither the justices nor himself had jurisdiction to make the order sought. Roxburgh,J., followed the reasoning of Viscount Simonds in <u>Galloway v Galloway (2)</u> in holding that, prima facie, the words "father" and "mother" in s. 5 as amended, mean lawful father and lawful mother respectively.
>
> In <u>Galloway v Galloway (2)</u> Viscount Simonds said ([1956] A.C. at pp.310,311):
>
> "First, as to the prevailing law. It was in 1857 (as it is today) a cardinal rule applicable to all written instruments, wills, deeds, or Acts of Parliament that 'child' prima facie means lawful child and 'parent', lawful parent. The common Law of England did not contemplate illegitimacy and, shutting its eyes to the facts of life,

> described an illegitimate child as 'filius nullius'. This prima facie meaning may in certain circumstances be displaced and a wider meaning given to the words...."

Again at p. 408, Smith, J.A. states:

> " The cardinal rule referred to Viscount Simmonds in the passage in Galloway v Galloway (2) quoted above applies equally in Jamaica as it is a rule of the common law. "Child" in our statutes prima facie means lawful child. This may be demonstrated by reference to two statutes in which that word appears. In the Fatal Accidents Law, Cap. 125 [J.], which came into force in 1845, it was enacted in s. 4 that every action brought by virtue of s. 3 "shall be for the benefit of the wife, husband, parent and child of the person whose death shall have been so caused." The Legislature, obviously recognising the limited meaning of "child" in this section, in 1947 amended the law by adding a provision (see s. 2(2)) that for the purpose of the law "a person shall be deemed to be the parent or child of the deceased person notwithstanding that he was only related to him illegitimately". Similarly, in the Intestates' Estates and Property Charges Law, Cap. 166 [J.], the word "child" appears in Part I of the law which deals with the distribution of the estates of intestates (see s. 5). "Child" there clearly does not include an illegitimate child, as Part II of the Law is entitled "Illegitimacy and Succession" and enables an illegitimate child to succeed to his mother's estate and a mother to succeed to her illegitimate child's estate.
>
> In the construction of statutes, there is a presumption against changes in the common law. "It is presumed that the Legislature does not intend to make any change in the existing law beyond that which is expressly stated in or follows by necessary implication from, the language of the statute in question" (see Maxwell, Interpretation of Statutes (12th Edn.), p. 116).

Finally at p. 409, Smith,J.A. said:

> "Roxburgh, J. gave cogent reasons in Re C.T. (an infant) for holding that the prima facie meaning of "father" in the Act of 1886 and in the Guardianship of Infants Act 1925, had not been displaced. The same reasoning may be applied to "father" in law No. 69 of 1956. There is certainly nothing in that Law to show an intention to extend the meaning to include the father of an illegitimate child. I am prepared to follow Roxburgh, J., and to hold that "father" in Law 69 of 1956 means the father of a legitimate child"

In Stanley Clarke v Madge Carey 1971 12 J.L.R. 637, the Court of Appeal in the course of the arguments stated that it was bound by the decision in Finlayson v Matthews.

Following these decisions the Status of Children Act 1976 came into operation in Jamaica in November 1976.

Section 2(1) defines "child" as including a child born out of wedlock.

In Re Lewis 1970 15 W.I.R. 520, the High Court of Barbados, on an application by the putative father for custody of a child under sections 7 and 10 (7) of the Infants Act 1958, held that the Court had no jurisdiction to make an order for custody of an illegitimate child under the Infants Act 1958.

Douglas, J., at p. 521 said:

> " Under the Common Law of England, and at common law in Barbados, the father of an illegitimate child, so long as the child remains illegitimate, is not generally recognised for civil purposes. Whether this accords with the facts of life in the context of Barbados is not for me to decide. The law is that the father of an illegitimate child is under no obligation to provide for the child in the absence of an affiliation order, unless he has adopted the child de facto or obtained an adoption order, and an illegitimate child described as filius nullius.
>
> Under the provisions of the Legitimacy Act 1959 of the United Kingdom the right is given by s. 3 to the putative father to apply for the custody of the child under the United Kingdom Guardianship of Infants Act. Section 8(1) of the 1959 Act reads:
>
> > ' Subject to the provisions of this section, the following enactments relating to the custody of infants, that is to say -
> >
> > (a) section five of the Guardianship of Infants Act 1886 (which enables the court to make, on the application of the mother of an infant, orders regarding the custody of the infant and the right of access thereto of either parent); and
> >
> > (b) section sixteen of the Administration of Justice Act 1928 (which enables the court to make orders under the said section five on the application of the father of an infant),
> >
> > shall apply in relation to an infant who is illegitimate as they apply in relation to an infant who is legitimate, and reference in those enactments, and in any other enactment so far as it relates to proceedings under the said section five, to the father or mother or parent of an infant shall be construed accordingly.'
>
> There is no similar legislation in Barbados extending the ambit of the Infants Act 1958, No. 19 [B.]. This is all the more regrettable because the Affiliation Proceedings Act 1963, No. 29 [B.], at section 7, conferred on magistrates power to make orders for the legal custody of illegitimate children

> and went on to provide that when the magistrate is satisfied that the mother is not a fit and proper person to have custody of the child, he can by order appoint some person other than the mother - including the putative father - to have legal custody. It strikes me that if it is the intention of Parliament to invest the putative father with powers based on his recognition as a parent by blood of his child, then the Infants Act 1958, No. 19 [B.], should be extended to cover all children, once it is felt that in the case of illegitimate children, as in the case of legitimate children, the welfare of the child should be the first and paramount consideration.
>
> For the reasons I have given I have come to the conclusion that I have no jurisdiction to make an order for the custody of an illegitimate child under the Infants Act 1958."

In Re C.T. (an infant) 1956 3 All E.R. 500 an application was made to a court of summary jurisdiction by the putative father of two illegitimate children for custody of the children under the Guardianship of Infants Act, 1886 and 1925 (as amended by the Administration of Justice Act 1928). On appeal it was held by a Judge of the Chancery Division that there was no jurisdiction to entertain such an application because the term "father" within the meaning of the Acts, meant a de jure father and did not include a putative father.

In his judgment Roxburgh, J., at p. 507 states:

> " Therefore, to summarise the difficulties, they are, briefly, as follows. Under the Bastardy Acts only a single woman, as defined either by the Acts or by judicial interpretation, can obtain an order for maintenance in respect of an illegitimate child - there is no limitation at all of that sort in the Guardianship of Infants Acts. Secondly, the application for an affiliation order and consequential maintenance has to be made during a period which is limited - there is no limitation in the Guardianship of Infants Acts. Thirdly, evidence of paternity has to be corroborated even in the face of admission - there is nothing of that sort in the Guardianship of Infants Acts. Lastly (and this, perhaps, is the least important) an appeal lies, not the High Courts as under the Guardianship of Infants Acts, but to quarter sessions. It is, therefore, almost impossible to believe that the Guardianship of Infants Acts were intended to embrace illegitimate children."

Counsel for the Respondent relied on the case of Minister of Home Affairs and another v Collins Macdonald Fisher and another 1980 A.C. 319 for the proposition that "child" should be interpreted to include an illegitimate child.

The facts of that case were that the Jamaican mother of four illegitimate children, all born in Jamaica, married a Bermudian in 1972. The mother and the children took up residence with the husband in Bermuda in 1975. The children were under 18. The Minister of Labour and Immigration ordered the children to leave Bermuda. An application to the Supreme Court to quash the order and to declare that the children were deemed to belong to Bermuda was refused on the ground that the children were illegitimate.

On appeal the Court of Appeal by a majority held that the children were to be deemed to belong to Bermuda by virtue of section 11(5)(d) of the Constitution.

On appeal by the Minister of Home Affairs, the Privy Council held that the mother and father were entitled to a declaration that the children were deemed to belong to Bermuda.

It was also held that a Constitutional instrument should not necessarily be construed in the manner and according to the rules which applied to Acts of Parliament and, therefore, the presumption, applicable to statutes concerning property succession and citizenship, that "child" meant legitimate child did not apply.

Section 11(5) of the Constitution of Bermuda provides:

> "(5) For the purposes of this section, a person shall be deemed to belong to Bermuda if that person (a) possesses Bermudian status ....(c) is the wife of a person to whom either of the foregoing paragraphs of this subsection applies not living apart from such person ....; or (d) is under the age of 18 years and is the child, stepchild or child adopted in a manner recognised by law of a person to whom any of the foregoing paragraphs of this subsection applies."

Lord Wilberforce delivering the Judgment of the Law Lords at p. 326 states:

> " Thus fundamental rights and freedoms are stated as the right of every individual, and section 11 is a provision intended to afford protection to these rights and freedoms, subject to proper limitations.

Section 11 states the general rule of freedom of movement, which is to include the right to enter and to reside in any part of Bermuda, but it allows, as a permissible derogation from this right, restrictions in the case of any person who does not "belong to Bermuda." Section 11(5) then defines the classes of persons who "belong to Bermuda." Among these is "the child ... of a person to whom any of the foregoing paragraphs of the subsection applies." One such person is the wife of a person who possesses Bermudian status. What is meant, in this context, by the word "child"?

The meaning to be given to the word "child" in Acts of Parliament has been the subject of consideration in many reported cases. One finds in them a number of general statements:

> " The law does not contemplate illegitimacy. The proper description of a legitimate child is 'child'" Reg.v Inhabitants of Totley (1845) 7 Q.B. 596, 600 per Lord Denman C.J.
>
> " ....the word 'child' in the Act means legitimate child." Dickinson v North-Eastern Railway Co. (1863) 33 L.J. Ex. 91 per Pollock C.B. similarly in 2 H. & C. 735).
>
> " Then, as society and social legislation became more varied, qualifications come to be made:
>
> ' It is of course true that that is only prima facie the meaning to be given to the word, and that a wider meaning may, in the case of some statutes, be given to it, so as to include an illegitimate child or illegitimate children, where that meaning is more consonant with the object of the statute.' Woolwich Union v Fulham Union [1906] 2 K.B. 240, 246-247, per Vaughan Williams L.J.
>
> '....I do not think it necessary to refer to the authorities which establish beyond question that prima facie the words 'child' or 'children' in an Act of Parliament mean a legitimate child or legitimate children, and that illegitimate children can only be included by express words or necessary implication from the context.' Galloway v Galloway [1956] A.C. 299, 323 per Lord Tucker."

Again at p. 329 Lord Wilberforce said:

> " When therefore it becomes necessary to interpret 'the subsequent provisions of' Chapter I - in this case section 11 - the question must inevitably be asked whether the appellants' premise, fundamental to their argument, that these provisions are to be construed in the manner and according to the rules which apply to Acts of Parliament, is sound. In their Lordships' view there are two possible answers to this. The first would be to say that, recognising the status of the Constitution as, in effect, an Act of Parliament there is room for interpreting it with less rigidity, and greater generosity, than other Acts, such as those which are concerned with property, or succession, or citizenship. On the particular question this would require the court to accept as a starting point the general presumption that 'child' means 'legitimate child' but to recognise that this presumption may be more easily displaced. The second would be more radical: it would be to treat a constitutional instrument such as this as sui generis, calling for principles of interpretation of its own,

suitable to its character as already described, without necessary acceptance of all the presumptions that are relevant to legislation of private law.

It is possible that, as regards the question now for decision, either method would lead to the same result. But their Lordships prefer the second. This is in no way to say that there are no rules of law which should apply to the interpretation of a Constitution. A Constitution is a legal instrument giving rise, amongst other things, to individual rights capable of enforcement in a court of law. Respect must be paid to the language which has been used and to the traditions and usages which have given meaning to that language. It is quite consistent with this, and with the recognition that rules of interpretation may apply, to take as a point of departure for the process of interpretation a recognition of the character and origin of the instrument, and to be guided by the principle of giving full recognition and effect to those fundamental rights and freedoms with a statement of which the Constitution commences. In their Lordships' opinion this must mean approaching the question what is meant by 'child' with an open mind. Prima facie, the stated rights and freedoms are those of 'every person in Bermuda.' This generality underlies the whole of Chapter I which, by contrast with the Bermuda Immigration and Protection Act 1956, contains no reference to legitimacy or illegitimacy, anywhere in its provisions. When one is considering the permissible limitations upon those rights in the public interest, the right question to ask is whether there is any reason to suppose that in this context, exceptionally, matters of birth, in the particular society of which Bermuda consists, are regarded as relevant.

Section 11 opens with a general declaration of the right of freedom of movement, including that of residence, entry, and immunity from expulsion. These rights may be limited [section 11(2)(d)] in the case of persons 'not [belonging] to Bermuda' - a test not identical with that of citizenship, but a social test. Then, among those deemed to belong to Bermuda are (section 11(5)) a person who

> '(a) possesses Bermudian status;...
> (c) is the wife of [such a person]; or
> (d) is under the age of 18 years and is the child, stepchild or child adopted in a manner recognised by law of person to whom any of the foregoing paragraphs of this subsection applies.'

In their Lordships' opinion, paragraph (d) in its context amounts to clear recognition of the unity of the family as a group and acceptance of the principle that young children should not be separated from a group which as a whole belongs to Bermuda. This would be fully in line with article 8 of the European Convention on Human Rights and Fundamental Freedoms (respect for family life, decisions on which have recognised the family unit and the right to protection of illegitimate children. Moreover the draftsman of the Constitution must have had in mind (a) the United Nations' Declaration of the Rights of the Child adopted by resolution (1386 (xiv)) on November 29, 1959, which contains the words in principle 6:

> '[the child] shall, wherever possible, grow up in the care and under the responsibility of his parents ... a child of tender years shall not, save in exceptional circumstances, be separated from his mother.'

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> and (b) article 24 of the International Covenant on
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> protection to every child without any discrimination
> as to birth." Though these instruments at the date of
> the Constitution had no legal force, they can
> certainly not be disregarded in legislative policy."

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> "Their Lordships consider that the force of these
> arguments, based purely upon the Constitution itself,
> is such as to compel the conclusion that 'child' bears
> an unrestricted meaning." In theory the Constitution
> could have intended a limitation of the word 'child'
> the possibility seems remote." But, in fact, their
> Constitutions of this style were enacted and adopted,
> conclusion, though given the manner in which
> might contain express words forcing a contrary
> unrestricted meaning. In theory the Constitution
> of the Bermuda Immigration and Protection Act 1956,
> being aware, as he must have been, of the provisions
> Lordships consider it most unlikely that the draftsman
> the possibility seems remote." But, in fact, their
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> widen class," yet if the appellants are right, those
> 'belonging' of itself suggests the inclusion of a
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> would plainly coincide with persons having, or deemed
> described under section 115(d) of the Constitution
> enjoy immunity from deportation until they were 21."
> It seems most unlikely that such children should not
> be treated as 'belonging to Bermuda' or that a
> stricter test - in respect of their right to freedom
> of movement - should be imposed on such children under
> section 11 of the Constitution than is imposed under
> the earlier Act."

This case can clearly be distinguished from the instant case.

> It involved the interpretation of a constitutional instrument. Lord
> Wilberforce pointed out that the section was one of the sections
> dealing with the fundamental rights and freedom of an individual."
> Reference was also made to the unity of the family". The mother of the
> children belonged to Bermuda by reason of her marriage to her
> Bermudian husband. It was recognised that the children should not be
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> of movement - should be imposed on such children under
> section 11 of the Constitution than is imposed under
> the earlier Act."

I agree.

HENRY, J.A.

I agree with his findings and decision on the merits of the case and I agree to strike out the appeal on the ground that the Court had no jurisdiction to entertain an application by the putative father for the custody of his illegitimate child.

The appeal should therefore be allowed on the ground that the assessment and conclusions on the facts of the case. I have had an opportunity of reading the draft judgment of Georges, J.A. on the facts.

Even assuming that the Court had jurisdiction, I would also allow the appeal for the reasons stated by Georges, J.A. in his judgment that section 7(1) of the Guardianship and Custody of Children Law (Revised) was not intended to embrace illegitimate children.

I would hold that section 7(1) of the Guardianship and child" were correctly decided.