MARTHA E. PROUT, Appellant, *v.* JESSE R. COOPER, Appellee.

APPEAL FROM THE CIRCUIT COURT OF THE FIRST JUDICIAL CIRCUIT, MONTSERRADO COUNTY.

Decided February 12, 1937.

1. One born of an illicit union or before the lawful marriage of its parents is a bastard.
2. A bastard may however be legitimized by judgment of a court of this Republic, upon petition properly filed in accordance with statutes in vogue.
3. According to the practice of the courts administering the law aforesaid, upon the filing by the putative father of the petition for legitimation the mother had to acknowledge on record that petitioner was the father of her child; and she had also to consent to his petition for legitimation.
4. A law is a rule of action prescribed, i. e., written beforehand.
5. The enactment of the Legislature passed at its session of 1935–36 was not intended to be retrospective so as to divest persons of their rights long since vested, as that would be unconstitutional.
6. A homestead exemption cannot be created by last will and testament, but only in the manner prescribed by statute.

Appellant objected to the probate of a lease of property in which she alleged she had a joint interest with appellee. On appeal from judgment for appellee, *judgment affirmed.*

P. Gbe Wolo for appellant. *Anthony Barclay* for appellee.

MR. JUSTICE DIXON delivered the opinion of the Court.

These proceedings were instituted in the Probate Division of the Circuit Court of the First Judicial Circuit, Montserrado County.

We have carefully and patiently scanned the records and have seriously considered the issues raised in the objections to the probation of a revised agreement for the lease of the house on lot No. 518, of the estate of the late Samuel T. Prout, Sr., to Messrs. A. Woermann by Jesse R. Cooper. The objections contain three counts, all of

which have been herein inserted for the information of all whom it may concern, as well as to better clarify these proceedings. The objections read thus:

"1. Because objector says that she and respondent are by descent the two surviving heirs of the late Samuel T. Prout, Sr., and Gertrude Louise Prout, their grandfather and grandmother, objector being the daughter of the son and respondent the son of the daughter of said Samuel T. Prout, Sr., and Gertrude Louise Prout his wife. Objector submits that respondent without legal rights and without reference to objector entered into said lease agreement with said firm of Messrs. A. Woermann, Monrovia, notwithstanding the fact that objector and respondent hold the premises by moieties and respondent has no authority to lease the whole in his own name as sole heir. All of which objector is ready to prove.

"2. And also because objector says that the grandfather, Samuel T. Prout, Sr., constituted and declared in his Last Will and Testament as homestead the lot No. 518 and created by said demise (sic) an estate in joint tenancy between his wife Gertrude Louise Prout, (objector's grandmother) and his daughter Gertrude, the former of whom survived the latter; notwithstanding which fact respondent has undertaken to lease said premises to said firm of Messrs. A. Woermann, Monrovia, as his property in fee simple and as sole heir of the said Samuel T. Prout, Sr. and Gertrude Louise Prout without reference to objector. All of which objector is ready to prove.

"3. And also because objector says that respondent had undertaken without legal right and without the consent or knowledge of objector to alter the terms and conditions of the former lease agreement entered into between the said firm of Messrs.

A. Woermann, Monrovia, and the late grandmother of objector and respondent, with the apparent purpose and intent of depriving objector of her share of the rent which rightly and legally accrues to her. All of which the objector is ready to prove.

"Wherefore, because of the premises above laid, and in order that justice might be done, objector prays this Honourable Court to refuse probation of said lease agreement between respondent and said firm of Messrs. A. Woermann, Monrovia, and to grant unto objector such other and further relief as to the discretion of the court the circumstances suggest and demand. And this as in duty bound objector will ever pray, and is ready to prove.

"Respectfully submitted,
MARTHA E. PROUT, *Objector.*
"By and through her attorneys,
"[Sgd.] P. GBE WOLO,
" H. LAF. HARMON,
Attorneys and Counsellors-at-Law."

The respondent accordingly filed an answer containing sixteen counts only eleven of which are, in our opinion, worthy of being inserted here as the others can have no effect on the merits of the case pro or con.

The relevant portions of the answer read thus:

"Jesse R. Cooper, respondent in the above entitled cause, respectfully denies that the objections of objector are sufficient to prevent the probation of the agreement of lease between himself and Messrs. A. Woermann for the following legal reasons, to wit:

"1. Because respondent says that Martha E. Prout, objector, as she is called, is no heir of Samuel T. Prout, Sr. or Samuel T. Prout, Jr., in that the said Martha E. Prout was born out of wedlock and consequently the child of nobody since indeed she was never legally legitimized by anybody,

and has therefore no heritable blood. Wherefore, respondent prays the objections be dismissed objector ruled to costs and the deed of lease the subject of these proceedings be allowed probated. And this the respondent is ready to prove.

"2. And also because respondent says that the so called Martha E. Prout, objector, does not even have a putative father in Samuel T. Prout, Jr., as said Samuel T. Prout, Jr. never admitted or recognized said Martha E. Prout as his offspring. She therefore could not by descent be a surviving heir of the late Samuel T. Prout, Sr., and Gertrude Louise Prout, his wife, since she was never really their granddaughter. Respondent therefore prays the dismissal of the said objections with costs against objector. And this the respondent is ready to prove.

"3. And also because the respondent says that before a child can be legally legitimized, the putative father having first acknowledged said bastard as his child must make a petition in judicial proceedings, praying the legitimation of said child. Respondent says that this legal requirement has never been met by any of the Prouts under whom she, objector, claims. She therefore should be regarded as an intruder into the Prouts' family and estate and respondent so prays. And this the respondent is ready to prove.

"4. And also because respondent says that he is the only surviving heir of the late Samuel T. Prout, Sr., and Gertrude Louise Prout his wife, being the only son of Gertrude L. Prout-Johnson, their daughter, and as such he has a legal right without reference to objector who is unto this day a bastard without heritable blood, to enter into an Agreement of lease with Messrs. A. Woer-

mann for lot No. 518 in the City of Monrovia, he being the sole owner of said premises in fee-simple. And this the respondent is ready to prove.

. . . . . .

"6. And also because respondent says that said objections are still further defective, bad, uncertain and unintelligible in that objector fails to make profert of the purported Last Will and Testament of the late Samuel T. Prout, Sr. referred to by her in the second count of the objections as creating a Homestead Exemption and Joint Tenancy. Wherefore, respondent prays the dismissal of said objections with costs against objector. And this the respondent is ready to prove.

. . . . . .

"12. And also because respondent says that Samuel T. Prout, Jr., the son of Samuel T. Prout, Sr., and alleged by objector as her father always declared in his life time that the said objector was not his daughter and hence never recognized nor legitimized her. And this respondent is ready to prove.

"13. And also because respondent denies that he and objector hold the premises leased, the subject of these proceedings, by moieties, for respondent says that Martha E. Prout, objector, is not the granddaughter of Samuel T. Prout, Sr., and his wife Gertrude Louise Prout, nor is she the daughter of Samuel T. Prout, Jr., and this the respondent is ready to prove.

"14. And also because as to count 2 of objector's objections respondent says that the Statutory law provides how Homestead Exemption can be created. Samuel T. Prout, Sr., not having complied with said provision, did not create any

Homestead Exemption as alleged by objector. And this the respondent is ready to prove.

"15. And also because respondent says that Samuel T. Prout, Sr., creating in his Last Will and Testament an Estate in joint tenancy between his wife Gertrude Louise Prout and his daughter Gertrude as alleged by objector, said creation does not ipso facto make Martha E. Prout, objector, who is an intruder, illegitimate and without heritable blood, surviving heir of Samuel T. Prout, Sr., and his wife Gertrude Louise Prout; nor does it make her an heir of Gertrude Louise Prout-Johnson the daughter of Samuel T. Prout, Sr., especially when, objector without raising any protest or objection silently acquiesced in the revocation by this court of the Last Will and Testament of Gertrude Louise Prout, the daughter of Samuel T. Prout, Sr., referred to by objector in the 2nd count of her objections, said revocation being applied for by Gertrude Louise Prout the wife of Samuel T. Prout, Sr., as the records of the court will verify. And this the respondent is ready to prove.

"16. And also because respondent denies that objector has any legal right or share of rent in the property or estate of his grandfather and grandmother Samuel T. Prout, Sr., and Gertrude Louise Prout, and not having any legal rights or share there can be no intent on his part to deprive objector of what she does not possess and never possessed. And this the respondent is ready to prove.

"JESSE R. COOPER, *respondent,*
"By his attorneys,
"[Sgd.] ABAYOMI KARNGA,
" ANTHONY BARCLAY,
" BENJ. O. FREEMAN,
Attorneys & Counsellors-at-law."

It will be observed that the objector claims heirship to the Prouts' family because she was reared in their family, as Counsellor Wolo contended during the argument here, and has been allowed to use the name of Prout, and that the Prouts actually recognized her as possessing blood of the Prouts. Her further contention is, that her supposed grandfather at his demise executed a Last Will and Testament in which he acknowledged her as his granddaughter, and that he thereby legitimized her and made her one of his heirs. She also pleaded that her grandfather in executing said will had inserted a clause therein declaring lot No. 518 a homestead for his family, and thereby gave her an interest in said piece of property.

The respondent contended in his answer to the objections, that the objector could not claim any share in the property of the Prouts as he maintained that she was a bastard, and had never been either legitimized, nor legally adopted by any member of the family. He set out further that the said objector had never been acknowledged by Samuel T. Prout, Jr., his mother's husband, whom she claimed was her putative father.

Judge Bouvier defines a bastard to be

"one born of an illicit union. . . .

"A child is a bastard if born before the marriage of his parents, but he is not a bastard if born after marriage, although begotten before; . . . By the civil law and by the statute law of many of the states, a subsequent marriage of the parents legitimates children born prior thereto. The rule prevails substantially in Arkansas, Alabama, Georgia, etc. . . . with somewhat varying provisions in the different states; . . . but under the common law this is not so; . . ." B.L.D., "Bastard."

The statute providing for the maintenance of bastard children reads as follows:

"If any woman, who is delivered of a bastard child, which shall be, or is likely to be, charged upon the

public, shall, upon examination to be taken in writing under oath before any Justice of the Peace in the place where she gives birth to such child, charge any person with being the father of the child, any Justice of the Peace in the place where the person charged with the paternity of the child is a resident or inhabitant, on application of any citizen of the place where such child shall be born, may issue a warrant to apprehend and bring the person so charged before him, or any Justice; and such Justice shall commit the person so charged to jail, unless he shall enter into bonds with sufficient surety in a sum of not less than fifty dollars for his appearance at the Court of Quarter Sessions, to abide the order thereof.

"If any woman, after having been summoned before any Justice of the Peace, shall refuse to swear to the parentage of her bastard child, and the child is likely to become a charge on the public, the Justice may order the said woman to be hired out from time to time as long as said child is likely to become a charge on the public; nevertheless, the mother of said child may give bond with surety to be approved by the Court of Quarter Sessions, or a Judge thereof, for the maintenance of the child." 1 Rev. Stat. §§ 667, 668.

Under the Act of 1888–89, a provision is made for the legitimizing of a child born out of wedlock, which reads:

"Whereas the practice heretofore obtained in legitimizing illegitimate children, that is children born out of lawful wedlock, by means of special Acts of the Legislature does not appear consistent in view that the Act of legitimation may be effected before Courts of Record. And whereas the Statute of Liberia does not make provisions for any definite court of this Republic to exercise Jurisdiction in such cases.

"Therefore it is enacted by the Senate and House of Representatives of the Republic of Liberia in Legislature assembled.

"Sec. 1. That from and immediately after the passage of this Act, the Monthly Court commonly called the Monthly and Probate Courts of this Republic be, and all of the same are empowered and authorized to receive and record the petition of any applicant or applicants to have his or their child or children legitimitized.

"Sec. 2. Said Monthly and Probate Courts are empowered to exercise original Jurisdiction in all cases of legitimizing illegitimate children as referred to in section first; And it shall be the duty of any applicant to legitimize any child or children before any of the Monthly and Probate Courts of this Republic to file said petitions under the rules and regulations governing the filing of Civil cases in said courts.

"Any law or parts of law to the contrary hereof be and the same are hereby abrogated.

"Approved December 31, 1888." Acts of the Legislature, 1888–89, 5 (1st).

Said petition according to the practice in vogue in the courts of this Republic has been supported by an affidavit from the mother of the illegitimate child, declaring that said child is the child of the petitioner, and that she the mother, agreed to the said legitimation, which sworn certificate should always be filed with the petition.

As the pleadings developed, objector apparently not being satisfied to test her contention on what had been previously pled, sought to bolster up her case by pleading in the eighth plea of her rejoinder an act passed by the Legislature of Liberia at its session of 1935–6, which reads as follows:

"An Act relating to Children Born out of Wedlock where the Parents Subsequently Marry.

"Section 1. That should the natural father and mother of a child born out of wedlock, afterwards contract a marriage and take the child to live with them as a member of the family, such act on their part shall

be construed a legitimation of said child. . . ." L. 1935–36, ch. XXII.

This Court commenting on said recent enactment has to point out that laws are prospective rather than retrospective, that law is a rule of action prescribed, i.e., written beforehand, for the guidance and control of the people. To permit said law to be retrospective would have the effect of disorganizing several families and of unsettling innumerable vested rights. Insofar then as the law may be applied to any couple having a child born out of wedlock, after the passage of said Act of February 24, 1936, who may claim to be legitimized by the subsequent marriage of the parents, the enactment can be invoked; but as to any such child born before said enactment we have to declare that it cannot be construed to apply to it without violating our Constitution, and the genius and spirit of our laws in vogue at the time of the birth of appellant or the marriage of her parents.

Nor can appellant claim that she had any right to the property by virtue of the reference in the will of the late Samuel T. Prout, Sr., to the property being used as a homestead, as a homestead cannot legally be created in that manner.

The statute provides:

"Sec. 1. That from and after the passage of this Act, all Householders and heads of families owning real estates, shall have so much of that real estate, exempt from the writs of their Creditors; that is to say, One Town lot or one acre of farm land upon which the House is situated with all the appurtenances and outdwellings of the same, which exemption shall mean, the Homestead of the family; and this exemption shall last as long as any of the heirs of the family so occupying it shall live.

"Sec. 2. To entitle any property to this exemption a notice by the Holder to the Register of lands where the property is located, must be formally executed and

acknowledged that such property is designated and intended by the owner thereof to be so held.

"Sec. 3. It is further enacted that so much of the personal Property belonging or appertaining to the piece or parcel of land so registered to be designated by the Householder, and appraised by the proper officer to the amount of Two Hundred Dollars, shall in like manner be free from Execution." Acts of Legislature, 1888–89, 10.

In view of the foregoing we are of the opinion that the enactment upon which appellant claims to have been legitimized cannot inure to her benefit, as it is unconstitutional for it to operate retrospectively; hence as a bastard child she is not an heir of Samuel T. Prout, Sr., nor Samuel T. Prout, Jr., and hence that the judgment of the court below should be affirmed, and appellant ruled to pay all costs; and it is hereby so ordered.

Affirmed.