legislature broaden the scope of Sec. 13449-2 by an amendment worded similar to a Minnesota statute: "Any judgment obtained in a court of record by means of perjury * * * may be set aside by the aggrieved party in an action brought for that purpose within three years after discovery of such perjury * * *." Minnesota Gen. St. Sec. 9405.

H. A. HERBRUCK

EVIDENCE

ADMISSIBILITY IN EVIDENCE OF BLOOD GROUP TESTS — FIRST REPORTED CASE IN OHIO

The recent case in Bowling Green, Ohio, *State ex rel Van Camp* v. *Welling*, 6 Ohio OP. 371, 22 Ohio L. Abs. 448 (1936) is the first reported case in this state recognizing the admissibility in evidence of blood group tests to prove non-paternity in bastardy proceedings. This raises once more the issue which has been previously discussed in a note in 1 Ohio St. L.J. 47 (1935) and in an article by Harriet S. Hyman and Lawrence H. Snyder, "The Use of Blood Tests for Disputed Paternity in the Courts of Ohio," 2 Ohio St. L.J. 203 (1936). The authors point out that it is only in the past few years that American courts have begun to accept the admissibility in evidence of such tests. The states of New York and Wisconsin have taken the lead in this movement, having already passed legislation providing for the making of such tests in appropriate circumstances. The article referred to contains comment on ten unreported Ohio cases in which blood tests have been used. The authors conclude that the fact that so many cases have been referred to them is an indication of a progressive attitude towards blood group tests on the part of the courts of Ohio.

The Welling case was a bastardy proceeding instituted by Verda Van Camp. Defendant filed a motion for an order requiring the plaintiff and her child to submit to a blood test for the purpose of proving it impossible that he could have been the child's parent. The court granted the order as within the inherent power of the court in the exercise of its sound discretion and stated that where execution of the order is properly safeguarded it does not amount to an arbitrary or unreasonable exercise of power. The court pointed out that the absence of statutory authority is not conclusive of the question, and that the reliability of these tests is now adequately established by scientific data. As to the last point, he cited eminent authorities to the effect that such tests are conclusive as to

non-paternity and recommending their use in cases of disputed paternity. The court comments that "the truth thus revealed ought to be available to the courts," and suggests that the relatively recent development of such tests affords no sound reason for refusing to accept their evidentiary value, pointing out the desirability of "looking ahead" to the advantages of new means of ascertaining truth.

Since the writing of the articles referred to in the Ohio State Law Journal, there have appeared five additional unreported cases in which the admissibility of such evidence has been recognized. Two of these have come from Franklin county and the others from Wayne, Coshocton, and Scioto counties. In none of the five cases was the accused cleared. Thus there have now been a total of fifteen such unreported cases. These holdings plus that of the Welling case indicate that blood group tests are admissible in evidence today in the courts of Ohio.

The increased use of such tests in the future is indicated in *State* v. *Damm*, 266 N.W. 667 (South Dakota, 1936). In rehearing on refusal of trial court in prosecution for second degree rape to order a blood test to determine paternity of a child born to prosecutrix, 62 S.D. 123, 252 N.W. 7 (1933), the court held that such refusal was not such an abuse of the trial court's discretion as to constitute reversible error. But it was pointed out that the scientific reliability of the blood test was not judicially cognizable at that time. The court goes on to state that the reliability of the blood test for non-paternity is now universally conceded by competent scientific authority, and that an order requiring one other than the accused to submit to such a test does not infringe any constitutional right. The court further states that a trial court has inherent power, in its reviewable discretion, to order such a test, where the court believes that it is likely to be helpful in ascertaining truth, and that furthermore, the court may make such order of its own motion. The emphasis of the court upon the scientific reliability of these tests as today conclusively established indicates the great weight which may be accorded to such evidence.

The opportunity available by the use of blood group tests to enable a defendant accused of paternity to prove his innocence is one which should not be denied to him by the courts, when the conclusive character of such tests as to non-paternity has been so well established. A progressive attitude in the use of proved scientific data is highly desirable. These recent cases, *supra*, are significant indications that the use of such blood group tests in evidence will be universally adopted in the American courts in the near future.

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