

*Re Application of T. GUNERISHAMI and CORNELIS DE SILVA.*  
Under Section 23 of Ordinance No. 2 of 1895.

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GUNERISHAMI v. GUNATILAKA.

*D.C., Galle, 166.*

*Marriage Registration Ordinance, 1895, s. 23—Application for Court's consent to marriage on refusal of father's consent—Reasonable refusal.*

Where a girl, being a minor, was seduced by a married man, and his brother, desiring to screen him by marrying her, failed to obtain the consent of her father to the marriage,—

*Held*, that the refusal of the father to consent to such a marriage was not unreasonable, and that his consent could not be dispensed with by order of Court, under section 23 of the Ordinance No. 2 of 1895.

THIS was an application under section 23 of the Ordinance No. 2 of 1895 to the District Court of Galle by one Gunerishami and Cornelis de Silva for sanction to marry each other

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on the ground that the respondent, the father of Gunerishami, unreasonably refuses to consent to the said marriage, Gunerishami being a minor.

The District Judge (Mr. G. A. Baumgartner) inquired into the matter and refused his sanction, holding that Gunerishami had been seduced by a brother of the applicant Cornelis; that she was with child, not by Cornelis as alleged by the applicants, but by Cornelis's brother; that the present application was made to screen Cornelis's brother from the charge of seduction preferred against him by the respondent; that the consent to the proposed marriage was never asked of the respondent; and that the Court should not interfere with the respondent's refusal to sanction the proposed marriage.

The applicants appealed.

The case came on for argument on the 23rd March, 1904.

*Dornhorst, K.O.* (with him *Samarawickrama*), for appellants.

*H. J. C. Pereira*, for respondent.

27th April, 1904. WENDT, J.—

This is an application under section 23 of the Marriage Registration Ordinance, 1895, asking for the Court's consent to the marriage of the female applicant (a Sinhalese woman in her nineteenth year) to the male applicant, on the ground that the woman's father unreasonably refuses his consent. The woman Gunerishami left her parents' house on the night of 16th November, 1903, and has since been living in the house of Elaris, uncle of the male applicant Cornelis, where Cornelis also has been living since 18th November. Gunerishami is with child to Cornelis, the applicants say. On the other hand, the father alleges that his daughter was seduced, not by Cornelis, but by his brother Lawaneris, a married man, and the Police Officer of the village; that she eloped with Lawaneris, who has since been suspended from office upon the father's complaint and that Cornelis has been induced to consent to marry the woman in order to save his brother. Cornelis in his evidence states that some two years ago his father Udaris formally arranged with Gunerishami's father Nicholas that 'the marriage should take place; that he thereafter visited Gunerishami as her husband; that after she conceived her father asked him to marry her, but he demanded a similar dowry to that which had been bestowed upon her elder sisters, and that Nicholas had taken offence at that. Nicholas, on the other hand, denied the whole of their story. He said he neither

knew nor suspected anything of his daughter's misconduct until her elopement; that he now knew her seducer was Lawaneri and not Cornelis; and that he refused his consent because the latter had no affection for or desire to marry the woman on his own part, but merely wished to screen his brother from the threatened consequences of his act.

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The District Judge, who patiently heard both sides of the matter, had found entirely for the respondent. He believes that the applicant Cornelis is merely seeking to shield his brother, who alone was responsible for the seduction and elopement. A consideration of the evidence impresses me with the conviction that the District Judge was quite right.

It was, however, argued that, assuming the facts to be as found by him, it was unreasonable to withhold consent and so prevent the applicant "being made an honest woman". I cannot accede to that argument. I think it would have been an immoral thing on the father's part to have consented to a hollow pretence of marriage between the applicants who did not care for each other, and whose only motive was to screen the misconduct of a third person, and, being of that opinion, I consider that his consent was not unreasonably refused, and cannot be dispensed with by order of Court under section 23. The District Judge very pertinently points out that to sanction the marriage would be to make it appear that it legitimized the issue about to be born to Gunerishami, when by the terms of section 22 the marriage would not legally have that effect, the child not having been "procreated between the parties".

I think the appeal should be dismissed.  
MIDDLETON, J.—

The question here was whether the father of the female applicant was unreasonably withholding his consent to the applicant's marriage, so as to empower the District Judge to give consent to it under section 23 of Ordinance No. 2 of 1895.

In my opinion the evidence led before the Judge raises the very strong suspicion, which the father might deem a certainty, that the male applicant is not the father of the child of which the female applicant is pregnant, and the circumstances strongly point to the conclusion arrived at by the learned District Judge that the marriage is designed to screen the real seducer, which is the basis of the father's objection. To consent to a marriage, having reasonable ground to believe these circumstances to be true, would be both wrong and unreasonable on the part of the father. It would not purge the female applicant of the imputation on her

1904. character, which, if the father believes, is no doubt generally  
*April 27.* believed amongst those who know the family; and the marriage  
**MIDDLETON,** would have the effect pointed out by the District Judge under  
**J.** section 22 if the facts are as believed by the father. I agree that  
the District Judge was right in refusing to override the father's  
objection, and that this appeal should be dismissed with costs.

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