

1922.

Present : Ennis J.

SILINDA v. PANNIE.

130—C. R. Kegalla, 17,791.

*Ordinance No. 3 of 1852, s. 2—Diga marriage—Does Ordinance enable daughter to inherit service paraveni lands from father, in spite of diga marriage.*

Section 2 of Ordinance No. 3 of 1852 merely restored to females the right to inherit service *paraveni* lands, which, before the Ordinance, on a failure of male heirs, had reverted to the Crown. The Ordinance does not enable *diga* married daughters to claim by inheritance such lands.

THE facts appear from the judgment.

*Tisseveresinghe* (with him *R. C. Fonseka*), for appellant.

*R. L. Pereira*, for respondent.

September 22, 1922. ENNIS J.

In this action the plaintiff claimed one-fourth share of a certain land. He claimed by right of succession to his father Appua. The defendant said that the plaintiff was not a son of Appua ; and, secondly, if he were a son of Appua, then she, the defendant, although she had married in *diga*, would be entitled to share with him in succession by virtue of the provisions of section 2 of Ordinance No. 3 of 1852.

On the question of the legitimacy of the plaintiff there is evidence that both plaintiff and the defendant were the children of Appua and Lapa. The defendant admits that her father and mother were legally married. Section 112 of the Evidence Ordinance raises a conclusive presumption with regard to the legitimacy of all the children of the marriage, a presumption which there is nothing whatever in the case to rebut. The learned Judge is, therefore right in holding that the plaintiff is the legitimate son of Appua.

On the second question it is to be observed that the Ordinance No. 3 of 1852 merely restored to females the right to inherit service *paraveni* lands, which, before the Ordinance, on a failure of male heirs, had reverted to the Crown. The defendant then acquired under this Ordinance the privilege of succeeding to her father's estate. She had that privilege, and on her marriage in *diga* forfeited her rights. The forfeiture has nothing to do with the establishment of the privilege. It is something which happens after the privilege has been acquired. The Ordinance, therefore, has no application to the present case, and the learned Judge is right in finding in favour of the plaintiff.

The appeal is dismissed with costs.

*Appeal dismissed.*