IN THE PRIVY COUNCIL.

1909.
February 10.

On Appeal from the Supreme Court of Ceylon.

Present : Lord Robertson, Lord Atkinson, Lord Collins. and Sir Arthur Wilson.

RABOT *et al. v.* DE SILVA *et al.*

D. C., Colombo, 14,923.

Adultery—Marriage of persons who have lived in adultery—Validity—Bequests—Legitimacy of children—Non-access—Presumption—Ordinance No. 6 of 1847, s. 31.

According to the law of Ceylon parties who have lived in adultery are not incapacitated from marrying one another or of taking testamentary gifts from one another.

APPEAL from the judgments of the Supreme Court reported in *8 N. L. R. 82* and *10 N. L. R. 140.*

February 10, 1909. LORD ATKINSON—

In this appeal the appellants challenge the validity of bequests by one Vincent Pereira to his widow and to two of her daughters. The widow, Justina, had first been married to Salman Appu, who died in April, 1889, and in July of the same year, 1889, she was married to Vincent Pereira. Pereira executed the disputed will in November, 1899, and he died in 1900.

Justina had for some years lived as Pereira's mistress during the life of her first husband, and the two daughters, whose legacies are in dispute, were born during this period. The bequests are challenged on the ground that the daughters were the fruits of adulterous intercourse, and that this invalidates the gifts. The question of fact has first to be considered; and it is clear that, while Justina lived in Pereira's house, the husband lived in the neighbourhood, and was not disabled from visiting her, nor was she disabled from visiting him, and Justina, who was examined as a witness at the trial, swears to connection with her husband at the periods in

1909. February 10.

LORD ATKINSON.

question, and asserts her inability to determine the paternity of the children.

The broader facts of the case make it impossible to declare the children to be proved to be the children of Pereira; and, in their Lordship's judgment, the decision of the Supreme Court of Ceylon, who reversed the trial Judge, was clearly right. Accordingly, the question of law does not arise as to the validity of the bequests to the two children, the fifth and sixth respondents.

The remaining question is of the validity of the bequests to the widow. In considering this question, it is to be remembered that, by the time the will was executed, the first husband was dead, and Justina had been made an honest woman of, so far as marriage could do it.

The appellants, indeed, dispute the validity of the marriage owing to the previous adultery. Obviously, however, as the bequest is to Justina by name, the primary dispute is on the appellant's argument that, wife or no wife, Justina was disabled by her former adultery from taking under the will of her paramour. Not the less, the validity of the marriage is a topic of crucial importance in the discussion of the general doctrine invoked by the appellants. That general doctrine which is strongly supported in Roman and Roman-Dutch text law, is represented as opposing to adultery so strong a reprobation that, once adultery has been committed, there results to the guilty parties an incapacity ever to marry one another or to take testamentary gifts from one another.

The interesting discussion thus raised as to the doctrine of the Roman-Dutch Law on the article of adultery must not distract attention from the immediate and practical question, what is the living law of Ceylon on the matter in hand? Does the existing law of Ceylon support the contention that past adultery affixes indelibly the disabilities asserted? To their Lordships it appears clear that the appellants are logically right in maintaining the invalidity of Justina's marriage, for no system of law has been put forward which permits a woman to marry her paramour and at the same time disables her from receiving a bequest. If there had been authoritative decisions on specific questions on this subject, the debate would be different. But that is not the case, and the appeal of the appellants is made to doctrine and principle.

Now, that the existing marriage law of Ceylon does not adopt, but on the contrary repudiates, the doctrine and principle invoked is, in their Lordships' opinion, demonstrated by Ordinance No. 6 of 1847, which recognizes the marriage of adulterers as valid. Section 31 provides: "And it is further enacted that from and after the notification in the *Gazette* of the confirmation of this Ordinance by Her Majesty, a legal marriage between any parties shall have the effect of rendering legitimate the birth of any children who may have been procreated between the same parties before marriage, unless such children shall have been procreated in adultery."

1909.
February 10.
LORD ATKINSON.

The case here contemplated is that of the marriage of adulterers; and, on very intelligible grounds, children procreated in adultery are expressly denied legitimation. The necessary contemplation of the Ordinance is that adulterers may lawfully marry, and the fact that this is assumed, and not enacted, gives to the Ordinance authority as an exposition of the law.

A modern and specific authority, such as this, dispenses from historical inquiry about Roman-Dutch Law generally, and dislodges the Roman-Dutch Law about the effects of adultery from the governing authority claimed for it by the appellants. That being so, the respondents are entitled to prevail, and their Lordships will humbly advise His Majesty accordingly.

The appellants will pay the costs of the appeal.

Appeal dismissed.