

HETUWA v. GOTIA.

C. R., Kegalla, 3,287.

1900.
July 23.

Kandyan marriage—Ordinance No. 3 of 1870, s. 25—Validity of associated marriages contracted after 1859 and before 1870.

The effect of section 25 of the Ordinance No. 3 of 1870 is not to validate all associated marriages which had taken place since the passing of the Ordinance No. 13 of 1859 and before the passing of the Ordinance No. 3 of 1870.

By section 25 of this Ordinance only marriages which are void for want of registration or by reason of invalid registration are validated, and not marriages which were void as being against the policy of the law and which had been expressly forbidden by the law.

ACTION for a declaration of title to an undivided half share of a certain land and for quiet possession.

Plaintiffs averred that the land belonged to two brothers, Kiri Bilinda and Pina, who, as associated husbands of one Punchu, had two children, viz., the defendant and another person; that after the death of Punchu about the year 1867 Kiri Bilinda and Pina took another wife, Ukku, by whom they had children, viz., the two plaintiffs; and that plaintiffs, while in possession of an undivided half of the land in question, were wrongfully ousted.

The defendant denied the second marriage, and pleaded that plaintiffs were the illegitimate children of Pina only.

The Commissioner, after evidence heard, found that the plaintiffs were not the issue of a "joint marriage of Kiri Bilinda and Pina," and dismissed plaintiffs' case.

Bawa, for appellant.—Associated marriages contracted after the passing of the Ordinance No. 13 of 1859 and before the passing of Ordinance No. 3 of 1870 are valid. The validity of Punchu's marriage in point of law was not contested, but the parties confined themselves to the issue whether or not plaintiffs were born during the cohabitation of Kiri Bilinda and Pina with Punchu. Section 25 of Ordinance No. 3 of 1870 provides that in all cases where a marriage has been contracted since the Ordinance No. 13 of 1859 came into force according to Kandyan custom, and which is void in consequence of the want of registration, such marriage shall be deemed to be a good and valid marriage. Even if plaintiffs were illegitimate children, they could inherit the acquired property of the parents (*Perera's Armour*, 34).

In the Court below the parties were content to confine the inquiry to the issue whether plaintiffs were the children or not

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of a joint marriage of Kiri Bilinda and Pina. There is evidence to support the affirmative of this issue.

Schneider, for respondent.

BONSER, C.J.—

I do not quite agree with all the reasons given by the Commissioner for dismissing the plaintiffs' action, but in the result I think his decision was right.

It appears that two men, Kiri Bilinda and Pina, were the joint husbands of one wife at a time when associated marriages were lawful, that is, some time before 1859. In that year an Ordinance was passed which declared that such unions were contrary to public policy and could no longer be tolerated, and at the same time, as the proof of Kandyan marriages was very difficult to establish, it provided that all future marriages should be celebrated before a registrar, and should be registered as provided for by that Ordinance, otherwise they were to be invalid. In 1870 that Ordinance was amended; but as it was found that many marriages had taken place according to Kandyan custom, which were either not registered or imperfectly registered, it was provided that such marriages should be held to be good marriages; but registration was made necessary for all subsequent marriages.

In the present case the associated wife died many years ago leaving one son, the present defendant. The plaintiffs allege that at some time between 1859 and 1870 these two husbands took unto themselves another joint wife, Ukku, and that they are the offspring of this second marriage. The defendant denied this. He said that the plaintiffs were Ukku's children by Pina alone, and one of the issues between the parties was whether the plaintiffs were the issue of an associated marriage. The Commissioner found this issue in the negative, and held that the plaintiffs were the children of Pina only. But, however this may be, it seems impossible to hold that the marriage between Kiri Bilinda and Ukku could have had any legal existence. It was stated that this Court had decided that the effect of section 25 of Ordinance No. 3 of 1870, to which I have referred, was to validate all associated marriages which had taken place since the passing of the Ordinance of 1859 and before the passing of the Ordinance of 1870. I adjourned the case to give Mr. Bawa the opportunity to make search for any such case. He has been unable to find any decision to that effect, and I must say that I should be much surprised if he had. That section enacts that "in all cases where a marriage has been contracted since Ordinance No. 13 of 1859 came into

“ force according to the laws, institutions, and customs in force in Kandy shall be valid.” That would include this alleged marriage to Ukku; but then the section goes on to say “ and which is void in consequence either of the want of registration or of invalid registration such marriage shall be taken to have been a good and valid marriage.”

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It will be observed that the only marriages that are validated by that section are marriages which are void for want of registration or by reason of invalid registration—not marriages which were void as being against the policy of the law and which had been expressly forbidden by law. Therefore, I am of opinion that, even if it could have been shown that Kiri Bilinda and Pina had contracted a union with Ukku, which if contracted before 1859 would have been legal as being in accordance with Kandyan customs, that union being contracted after the passing of the Ordinance of 1859, was void by the force of that Ordinance, and was not validated by section 25 of the Ordinance of 1870. But, if the plaintiffs are, as the Commissioner found, the offspring of Pina and Ukku, they would be entitled on Pina's death to a share in his estate, and therefore the finding that they are not the children of a joint marriage does not dispose of the case.

Then, there was another issue raised by the defendant, that he had had, for more than ten years before action brought, sole and undisturbed possession of this land within the meaning of the Prescriptive Ordinance. The Commissioner has found that issue in favour of the defendant. It appears that Pina died about four years ago. Fifteen years ago, Kiri Bilinda being then dead, a sort of family arrangement appears to have been made, in consequence of which Pina and Ukku and their children, the plaintiffs, left the family house and went to reside on another land belonging to Pina. Pina also transferred, in pursuance of this arrangement, his half share of certain five lands to Ukku and her children. When Pina and his wife and family left the family house, the defendant was left in occupation of it, and also of the land which is the subject of the present action.

I do not think it would be right to disturb this arrangement, and I think the Commissioner was justified in finding that the defendant had acquired a title by possession to this land. That being so, the appeal will be dismissed.

