

*Present : Lascelles A.C.J. and Van Langenberg, A.J.*

*Mar. 21, 1911*

**PINTO et al. v. MARIA et al.**

**33—D. C. Chilaw, 3,768.**

*Death-bed marriage—Effect of—Ordinance No. 8 of 1865, s. 4—Presumption of marriage—Cohabitation and repute.*

A death-bed marriage under section 4 of Ordinance No. 8 of 1865 has no legal effect, except that of preventing the re-marriage of either of the parties until the same be acknowledged by the parties before the registrar in the manner described in the Ordinance. Until the marriage has been so acknowledged it remains a purely religious ceremony, which may relieve the consciences of the parties and entitle them to the rites of their church. Beyond preventing the re-marriage of either of the parties it has no effect on the civil status of the parties or of their children.

**I**N this case the plaintiffs sued for partition of a land. They averred in their plaint that one of their brothers, Juan Deogo, died unmarried and intestate.

The added defendants intervened after interlocutory decree, and asserted their claim to a share of the land as the widow and children of Juan Deogo. At the first trial the District Judge held in favour of a death-bed marriage. The plaintiffs appealed, and the Supreme Court remitted the case to the District Court to ascertain whether the provisions of section 4 (2) of Ordinance No. 8 of 1865 had been complied with. The District Judge upheld the claim of the intervenients.

The plaintiffs appealed.

**H. A. Jayewardene**, for the appellants.—A death-bed marriage by a minister under section 4 of Ordinance No. 8 of 1865 does not confer any civil rights, unless the provisions of section 4 (2) have been complied with. The learned District Judge holds that the provisions of section 4 (2) were not complied with. The intervenients cannot rely on the death-bed marriage. The evidence

*Mar. 21, 1911* would not justify a finding in favour of marriage by cohabitation and repute. Counsel cited *Sastry Valaiden Aronegary v. Sembecutty Vaigalai*;<sup>1</sup> *Valliammai v. Annamalai*;<sup>2</sup> D. C. Colombo 59,572;<sup>3</sup> D. C. Colombo, 38 Special;<sup>4</sup> 35 Cal. 232.

*Bawa*, for the respondents, argued that there was sufficient evidence to establish marriage by cohabitation and repute.

*Jayewardene*, in reply.

*Cur. adv. vult.*

**March 21, 1911. LASCELLES A.C.J.—**

In this case the decree of April 15, 1910, was set aside, and the case was remitted to the District Judge to adjudicate on the validity of the alleged marriage between Anna Maria and Deogo Pinto.

The District Judge has pronounced in favour of the death-bed marriage under section 4 of Ordinance No. 8 of 1865, and also on the ground of the legal presumption in favour of marriage as opposed to concubinage. Mr. Bawa, for the appellants, found himself unable to contend that a valid civil marriage had been contracted under section 4 of Ordinance No. 8 of 1865, and I only refer to this section on account of the difficulty which the learned District Judge experienced in construing it. The section allows any minister to solemnize a death-bed marriage without the usual preliminaries, subject to certain conditions. Sub-section (2) declares that such marriage "shall have no legal effect except that of preventing the re-marriage of either of the said parties until the same be acknowledged by the parties before the registrar in the manner herein described."

Until the marriage has been so acknowledged it remains a purely religious ceremony, which may relieve the consciences of the parties and entitle them to the rites of their church. Beyond preventing the re-marriage of either of the parties, it has no effect on the civil status of the parties or of their children. But what is the meaning of the words "acknowledged by the parties before the registrar in the manner herein described," which have given the District Judge so much trouble? The language is certainly obscure, but I think that the acknowledgment referred to must be the acknowledgment which is in effect made by the parties when they appear before the registrar under section 15 of the principal Ordinance, and each calls upon those present to witness that he or she takes the other to be his or her lawful wife or husband. But however that may be, Deogo and Anna Maria did not comply with sub-section (2) of section 4. In point of fact Deogo died before it would have been possible for him to do so. The death-bed marriage was therefore not a valid civil marriage.

<sup>1</sup> (1881) 2 N. L. R. 322.  
<sup>2</sup> (1900) 4 N. L. R. 8.

<sup>3</sup> (1872) 1 Br. Appendix A., I.  
<sup>4</sup> (1883) 1 Br. Appendix A., XV.

With regard to the finding of the District Judge in favour of the marriage on the ground of the presumption in favour of marriage as opposed to concubinage, it is true that cohabitation with habit and repute gives rise to a presumption in favour of marriage. But what are the facts of the case ? Anna Maria was herself called as a witness, and admitted in the most explicit manner that she had lived with Deogo as his mistress until the death-bed marriage ; there is no suggestion that before the death-bed ceremony the parties went through any ceremony which would be considered to be a binding marriage by persons of their class. I can find no evidence whatever of habit and repute, for I cannot regard the fact that Anna Maria managed to recover on notes payable to Deogo as relevant evidence for this purpose.

In the circumstances there is no room for the presumption in favour of marriage. To infer marriage from the bare fact of cohabitation in a case like this would be to obliterate the distinction between lawful marriage and concubinage.

I am of opinion that no valid civil marriage was ever contracted between Deogo and Anna Maria. I set aside the decree of the District Judge, and remit the case to the District Judge to enter up a decree on the footing that a lawful civil marriage was not contracted between Deogo and Anna Maria. The appellant is entitled to his costs of the appeal.

VAN LANGENBERG A.J.—

I agree with my Lord that the death-bed ceremony did not confer on Anna Maria the full status of a wife. I am also of opinion that the evidence of Anna Maria does not justify the presumption that she and Deogo Pinto were living together in consequence of a valid marriage. I agree to the order proposed by my Lord.

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*Set aside.*

