

Present: Lascelles C.J. and Wood Renton J.

1913.

MANAKULARATNA v. WICKRAMANAYAKE.

42—D. C. Colombo, 34,245.

*Husband and wife—Liability of husband for debts of wife—Ordinance No. 15 of 1876, s. 10.*

The husband is liable for the debts incurred by his wife trading with his consent.

Ordinance No. 15 of 1876 (section 10) has not altered the common law with regard to the husband's liability for debts incurred by his wife as *publica mercatrix*.

THE facts appear from the judgment.

*H. A. Jayewardene* (with him *Arulanandam*) for first defendant, appellant.—Section 10 of the Matrimonial Rights Ordinance has by implication repealed the Roman-Dutch law as to the liability of the husband for the wife's trade debts. Under the old law the husband got the benefit of the wife's earnings by trade; the earnings became part of the community. It was because of the community that the husband was liable for the debts. Under the present law there is no community; the reason for the husband's liability has therefore gone. [Wood Renton J.—Section 10 does not make any difference between those married in community and those married under the Ordinance of 1876.] It follows from the existence of separate property that the debts are also separate.

The following authorities were referred to: *Mannikan v. Peter*; <sup>1</sup> *Fernando v. Ammal*; <sup>2</sup> *Halsbury's Laws of England, vol. XVI., p. 352*; *In re Sheppard*.<sup>3</sup>

*A. St. V. Jayewardene*, for the plaintiff, respondent.—Section 10 should not be held to have introduced a radical change in the law in this indirect manner. The Ordinance of 1876 does not consolidate the law, but only amends the law in certain particulars.

The reason why the husband was liable under the Roman-Dutch law for the debts of his wife was because the husband was the curator of the wife, and as the wife when carrying on trade was deemed to be an agent of the husband. The liability was not an incident of community. See *Voet 23, 2, 41-44*. Counsel also cited *Halsbury's Laws of England, vol. XVI., sec. 842, p. 416*; *Abdul Cader v. Baba*.<sup>4</sup>

*Cur. adv. vult.*

<sup>1</sup> (1899) 4 N. L. R. 243, at page 247.

<sup>2</sup> (1879) 10 Ch. D. 573.

<sup>3</sup> (1909) 12 N. L. R. 200.

<sup>4</sup> (1859) 3 Lor. 207.

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March 15, 1913. LASCELLES C.J.—

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This case raises a point of some interest with regard to the liability of a husband for his wife's trade debts. The learned District Judge has found as a fact that the second defendant was trading in betel leaves independently of her husband, and has disbelieved the evidence that the betel leaves in respect of which the action is brought were supplied on the husband's orders. He has also found that the second defendant carried on the betel business with the knowledge and consent of her husband, and that the betel leaves were sold by the wife alone. On these facts it is contended that the husband is not liable for the wife's debts. The argument is that section 10 of the Matrimonial Rights and Inheritance Ordinance, 1876, has by implication repealed the common law with regard to the husband's liability for debts incurred by his wife as a *publica mercatrix*. It is said that the recognition of the separate property of a married woman in the profits of any business carried on by her separately from her husband is inconsistent with the husband's liability for debts incurred by his wife in such employment.

Before discussing this argument it should be noticed that, although the Ordinance has been in force for some twenty-six years, section 10 of the Ordinance has never been understood to have this far-reaching effect. It should further be noticed that if it was the intention of the Legislature to repeal an important branch of the common law, it is reasonable to expect that this intention would have been specifically expressed. It is difficult to believe that it was intended, by section 10, to deal at all with the question of the husband's liability for his wife's debts.

The argument addressed to us was to the effect that under the community of goods the husband got the benefit of his wife's earnings, which would go into the community and thus be under the husband's control; hence, it was argued, the husband was reasonably held responsible for his wife's debts. But as soon as the wife's separate property in the profits of her separate trading came to be recognized, the reason for the husband's liability came to an end.

This reason would not be without a certain plausibility, if the husband's liability under the Roman-Dutch law for his wife's trade debts were an incident of and derived from the community of goods. But this is not the case. The liability of the husband arises from a totally different source, namely, the marital power which the civil law attributed to the husband; a power which Voet (23, 2, 41) observes, "*jure vetere parum a patria potestate dietabat.*" The effect of marriage was to constitute the husband the curator of his wife (Voet 23, 2, 41). Hence, when the wife contracted with the consent, express or implied, of the husband, the latter was held responsible for her debts. And it was reasonably considered that the consent of the

husband must be implied when the wife was *publica meretrix* and the debt incurred *mercaturæ intuitu*. In such cases the wife was held to have contracted as the husband's agent and on his mandate.

On this view of the fundamental principles of the Roman-Dutch law with regard to the husband's responsibility for his wife's debts, it is clear that section 10 of the Matrimonial Rights and Inheritance Ordinance, 1876, cannot be construed to have repealed by implication the existing law on the subject.

The appeal, in my opinion, should be dismissed with costs.

WOOD RENTON J.—

This appeal raises, apparently for the first time, an interesting point in the law of husband and wife in Ceylon. A woman, married after the Matrimonial Rights and Inheritance Ordinance, 1876 (No. 15 of 1876), came into operation, trades independently of her husband, but with his knowledge and consent. She is admittedly herself liable for debts incurred by her in the course and for the purposes of this trade. But is her husband liable also? The learned District Judge has answered this question in the affirmative, and, in my opinion, he has done so rightly.

The case turns on the interpretation and scope of section 10 of the Ordinance of 1896. That section is in these terms:—

The wages and earnings of any married woman, whether married before or after the proclamation of this Ordinance, which may be acquired or gained by her after the proclamation of this Ordinance in any employment or trade in which she is engaged, or which she carries on separately from her husband, and also any money or property so acquired by her through the exercise of any literary, artistic, or scientific skill, shall be deemed and taken to be her separate property, independent of the debts, control, or engagements of her husband, and she shall have as full power of dealing with and disposing of the same or any investment thereof as if she were unmarried, and her receipts alone shall be a good discharge for such wages, earnings, money, and property, and the principal and interest of any investments thereof.

It is contended that when the Legislature in this enactment provided that the wife should have as full power of dealing with and disposing of the class of separate property which it created as if she were unmarried, it must have intended to free her husband from all her liabilities in regard to it. I do not think that decisions under the English Married Women's Property Acts give us much assistance in dealing with the point raised by this appeal. These decisions turn largely on considerations as to whether or not a married woman in contracting debts should be deemed to be her husband's agent, whereas Roman-Dutch law, on which the Ordinance of 1876 was grafted, subjected the wife's power of contracting to her husband's control, because it regarded her as being under his guardianship or curatory. It will be observed that section 10

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applies whether the marriage was contracted before or after the commencement of the Ordinance. Under the Roman-Dutch law; apart from the Ordinance, where a wife with the consent of her husband publicly carried on a trade, her debts incurred in the course of such trade became debts of the community (see *Burge*, 2nd ed., vol. III., p. 400). Section 8 of the Ordinance of 1876 abolishes for the future the community of goods as a consequence *ipso jure* of marriage, and section 10 relaxes, in the case of women married in community before the Ordinance came into operation, the old law of community to this extent, that it makes the class of property with which it deals the exclusive property of the wife. But section 10 does not provide that in such cases debts incurred by the wife in regard to her separate property shall be her debts alone, nor does it contain any language that would justify us in laying down such a rule even in regard to marriages contracted after the Ordinance came into operation and, therefore, not subject to the law of community. Section 10 confers upon the wife express rights, and, I have no doubt, also implied liabilities, in regard to her separate property. But it contains nothing that would warrant us in holding that it releases a husband from his common law obligations as to debts incurred by his wife while trading with his consent as a public merchant. I would dismiss this appeal with costs.

*Appeal dismissed.*

