

1898.

September 7.

SINNO APPU v. ABEYWICKREME *et al.*

D. C., Galle, 4,349.

Devolution of property of bastard, dying intestate—Heirs of bastard—Right of mother.

A bastard died intestate before the passing of the Ordinance No. 15 of 1876, leaving him surviving his mother and a brother and sister. The Crown waived all claim to the property left by the intestate.

Held that, in the circumstances, whether the devolution was governed by the North or the South Holland Law of Inheritance, the mother must be held entitled to such property, to the exclusion of the illegitimate brother and sister.

THE facts of the case sufficiently appear in the judgment of
BONSER, C.J.

Dornhorst and Wendt, for appellant.

Sampayo, for respondent.

Rámanáthan, S.-G., for the Crown.

BONSER, C.J.—

In this case an interesting question arises as to the succession to property of a bastard, who died intestate leaving him surviving his mother and a brother and sister.

The District Judge held that the property of the intestate was divisible into two parts, that the mother took one-half and the intestate's illegitimate brother and sister took between them the other half. The mother has appealed.

The intestate died in 1876 before the passing of the Ordinance No. 15 of 1876, which provides that, in all cases of succession which are not specially provided for by that Ordinance, the law of North Holland is to prevail. Before the passing of that Ordinance there seems to have been considerable doubt as to what was the law in such matters, whether it was the law of North Holland or the law of South Holland.

Sir Hardinge Giffard, in 1822, held that in effect the law of North Holland must govern; but some doubt was thrown on that decision in a more recent case in 1871 at the time when Chief Justice Creasy presided over this Court. If the law of North Holland is to apply, there is no doubt that the mother is entitled to the whole. If the law of South Holland applies, it may be urged that the Crown is entitled. That seems to have been the opinion of Grotius. But it is clear that whatever law prevails, the illegitimate brother and sister cannot be entitled to any share.

The Crown has appeared by the Solicitor-General, who attended in person to waive, in this particular case, all claim on the part of the Crown.

Under these circumstances, it being admitted that the children could not under any state of the law be entitled, we decide that the mother is entitled to the whole. It would seem that that is the view taken of the right of a mother of an illegitimate child in the Cape, where the law is the same as the law here, the Cape and this Island being both under the jurisdiction of the Dutch East India Company, and both governed by the Charter of 1661.

I would wish to add that there is in respect to this the authority of a Dutch Jurist, Van der Vorm, that even under the South Holland Law the mother would be entitled to the whole of the inheritance.

WITHERS, J.—I agree.

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