

1912

Present: Lascelles C.J. and De Sampayo A.J.

JAYASHAMY *et. al.* v. ABEYSURIYA.

172—D. C. Tangalla, 1,178.

Gifts to adulterine bastards—Valid.

Adulterine bastards can now take under a gift or bequest from the father.

THE facts are set out in the judgment of De Sampayo A.J.

Bawa, K.C. (with him *Canagaratne*), for appellant.—Under the Roman-Dutch law a person cannot give a donation to the offspring of his adulterous intercourse. [De Sampayo A.J.—Adultery is not a crime under our law at present.] Our Statute law empowers a person to leave anything by will to any one. There is no such provision as to gifts.

H. A. Jayewardene (with him *Samarawickreme*), for respondents, 1912.
relied on *Wickremanayake et al. v. Perera*.¹

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Bawa, K.C., in reply.—That case only decides that a mother makes no bastard.

Cur. adv. vult.

August 9, 1912. LASCELLES C.J.—

I entirely concur in the judgment of my brother Sampayo, which I have had the opportunity of reading. The present case is in principle covered by authority. In *Wickremanayake et al. v. Perera*,¹ this Court held that the rule of Roman-Dutch law, which prohibited adulterine bastards from inheriting from their mother, was the logical result of the fact that under Roman-Dutch law the union between their parents was prohibited and was a punishable offence. Now that such unions are no longer prohibited or punishable, the Court held that the incapacity to inherit no longer attaches to the offspring. The principle of this decision is applicable to the present case, for it is inconceivable that the status of adulterine bastards should be such that they can lawfully succeed *ab intestato*, but that when it comes to taking by gift from a parent the incapacity imposed by the Roman-Dutch law is still in force. But I understand that in *Rabôt v. De Silva*² the Privy Council took the view that the Roman-Dutch law with regard to the consequences of adultery has in effect being repealed by the legislation which is now embodied in the Marriage Registration Ordinance, No. 19 of 1907.

I agree that the appeal should be dismissed with costs.

DE SAMPAYO A.J.—

The second, third, and fourth plaintiffs are the children of the first plaintiff, born to her out of an adulterous connection with one Suwaris de Silva now deceased. The defendant is the administrator of the estate of Suwaris de Silva, and this action is brought to recover a sum of Rs. 1,500 gifted by Suwaris de Silva to the second, third, and fourth plaintiffs to be paid out of his estate after his death. The defence is that as the children are adulterine bastards the gift is invalid under the Roman-Dutch law, which, it is argued, is still in operation in Ceylon on this point. The well-known decisions on the question of gifts to persons who have lived in adultery and the children of such unions were cited to us. The effect of these decisions is to set at rest the question as regards the validity if a marriage between persons who have lived in adultery and a gift between such persons under the law now prevailing in Ceylon. I need only refer to the Privy Council decision in *Rabôt v. De Silva*.² But it is argued that the children of such unions are

¹ (1908) 11 N. L. R. 171.

² (1909) 12 N. L. R. 81.

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still under the disability imposed by the Roman-Dutch law. This would be a curious result if well founded, because it would be to punish, as it were, the victims of persons whose misconduct the law condones. In my opinion the law is not so unreasonable. All the disabilities in question under the Roman-Dutch law, including those of adulterine bastards, are a consequence of the policy which regarded adultery as a crime, and marriage between adulterous persons as invalid; and as that policy is found no longer to exist in Ceylon, all the consequences thereof have also disappeared with it. This, I think, is the true significance of the decision of the Privy Council. This certainly was the view taken by this Court in *Wickremanayake et al. v. Perera*,¹ which, I think, covers the point now raised. But it is contended that that decision does not apply, because there the question was as to the right of the children to succeed to the mother by inheritance. The *ratio decidendi* of that case, however, is much wider than contended for, and the decision, in which I venture to say I entirely concur, is an authority for the proposition that adulterine bastards can now take under a gift or bequest from the father. I think the judgment of the District Judge in this case is quite right, and I would dismiss the appeal with costs.

Appeal dismissed.

