1896.
February 11. and March 31.

KIRIWANTE *v.* GANETIRALA.

D. C., Kandy, 8,185.

Kandyan Law—Diga *married woman—Her right to share, equally with her brothers, in her mother's estate.*

Plaintiff, a Kandyan woman married in *diga*, claimed a share, equally with her brothers, in certain lands which belonged to her mother's estate. Plaintiff's parents had each a separate estate, and only a third share of the lands claimed had come to her mother, from her paternal ancestors—

Held that, in the uncertainty of the law on the subject and the conflicting state of the authorities, plaintiff should not be deprived of the share she claimed of her inheritance.

THE facts of the case sufficiently appear in the judgment.

Van Langenberg, for appellant.

Dornhorst, for respondent.

31st March, 1896. LAWRIE, J.—

The authorities are conflicting as to the right of a woman married in *diga* to inherit equally with her brothers her mother's property.

The question arose in D. C., Kandy, 27,254. There, on 13th August, 1855 (*Austin, p. 194*), the District Judge, Mr. Power, held that a *diga* married daughter does not forfeit her right to her maternal inheritance, and gave judgment on the footing that certain lands had belonged to the mother; but in appeal the Supreme Court pointed out that there was nothing to show that the lands had belonged to the mother, and the case was sent back for further investigation. Eventually it was proved that the lands were the property of the father, and not of the mother.

Shortly afterwards, on 30th August, 1855, the same question arose in D. C., Kandy, 27,911, and the same District Judge, Mr. Power, gave a judgment opposed to his judgment in the former case pronounced a fortnight before.

His judgment was :—" In this case the point for consideration is, " whether plaintiff, by her admitted *diga* marriage, has or has not " forfeited her right to the lands in question, the lands being " admitted to have been the property of her mother's father. On " this point it is clearly laid down by Armour that if a woman left " a daughter married in *diga* and a son, the latter would inheirt " the lands derived from his mother's paternal ancestors to the

"exclusion of his *diga* married sister. This authority [continued "the District Judge] the Court considers conclusive, and plaintiff "by her *diga* marriage must be considered to have forfeited all "right to the lands in question, it not having been shown that the "parents had each an independent estate."

This was affirmed in appeal, without reasons, on the 5th December, 1856.

That judgment then seems to deny the right of a *diga* married daughter to succeed to her mother's lands—first, in cases where the lands were derived from the mother's paternal ancestors.

Does that condition exist here? The lands certainly belonged to the mother's paternal ancestors. She got only one-third by deed from her father; she succeeded to two-thirds by inheritance from her sisters. Two-thirds at least of these lands were not derived from the paternal ancestors in the meaning of the judgment in 27,911.

The second condition is that it must be shown that the parents had not each an independent estate.

In the present case, the parents had each an independent estate.

The District Judge, in the judgment before us, dealt separately with Kirala's lands and with Dingiri Menika's.

If the judgment in 27,911 does not apply, we are left to decide this case on Kandyan Law.

The authorities on this point are very conflicting. Armour himself gives different opinions, Sawyer gives another opinion. The matter is uncertain; but a daughter ought not to be deprived of a share of her inheritance. Unless the law be clear, and unless the forfeiture be certain, it should not be decreed.

I would affirm with costs.

WITHERS, J.—

I agree, in view of the uncertainty of the Kandyan Law on the subject.