1900.
December 6 and 7.

GUNATILAKE *v.* SILVA.

D. C., Chilaw, 1,767.

Alleged heirs in possession—Action for declaration of title—Want of administration to the estate of the intestate—Civil Procedure Code, s. 547—Ordinance No. 15 of 1876.

An intestate having died before the passing of the Civil Procedure Code, his estate remained unadministered for several years, being in the hands of a lessee under a lease granted by the intestate shortly before his death. On the expiry of the lease a dispute arose between the brothers and sisters of the intestate, on the one hand, and the vendees of certain of his illegitimate children, on the other hand.

Held, that, as the estate was of greater value than Rs. 1,000, no action was maintainable for the recovery of the property without letters of administration being taken out to the estate of the intestate.

Per LAWRIE, J.—At the date of the institution of this action, the land was still *in bonis defuncti*. It did not pass into the peaceful possession of the heirs. Section 547 of the Civil Procedure Code applies to such a case.

I reserve my opinion on the question whether this section applies to a case where the heirs designated by the Ordinance No. 15 of 1876 have entered into possession. In such a case I am inclined to hold that the property has ceased to be part of the intestate's estate, and that the heirs, as minors, may sue for its recovery.

BONSER, C.J.—It was urged that as the alleged heirs, the plaintiffs had been once in possession, they were entitled to maintain an action not as possessors, because they did not come in time, but for a declaration of their title, and that the fact of their having been in possession took the case out of section 547. I cannot follow that argument or accede to it.

AN action for declaration of title and ejectment by certain brothers and sisters of one Ratnapala Unnanse, a Buddhist monk, against three defendants who filed different answers. The first defendant, claiming to be owner of a share of the land, admitted having sold it to second defendant in 1897; the second defendant claimed a share by purchase and prescriptive possession; and the third defendant pleaded that his interests as lessee under the first and second defendants ceased in 1894.

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It appeared at the trial that Ratnapala Unnanse and one Jayawardane bought each an allotment of land from the Crown in 1869; that they exchanged the lands in 1871, but passed no deed of transfer to each other; that from 1871 to 1887 the monk continued in peaceful possession, and leased it to one Eseris Appu in September, 1887, for a period of seven years; that the monk died in 1888, leaving several children by different mothers; that the title of the defendants was also derived from certain illegitimate children of the monk; that in 1893 the defendants ousted the lessee and held forcible possession up to the day of plaintiff's action, which was raised in April, 1898.

Defendants called no evidence, and the District Judge, after hearing the witnesses for plaintiffs, granted judgment for them.

Defendants appealed.

Wendt, for appellant.

Sampayo (with *H. Jayawardena*), for respondent.

Cur. adv. vult.

7th December, 1900. BONSER, C.J.—

The action in this case is brought by certain persons who allege that they are the heirs of one Ratnapala Unnanse, who died in the year 1888, possessed of a piece of land, the subject of this action, and stated to be of the value of Rs. 2,000. The defendants are said to be the illegitimate children of the reverend gentleman by several mothers. It appears that they set up a claim to succeed to his property and took possession of this piece of land. The plaintiffs, who allege that they were in possession and were dispossessed, did not bring a possessory suit to be restored to possession, but after the lapse of some years have brought the present action to have it declared that they are entitled to this land, and they claim that the defendants be ejected therefrom and plaintiffs put in possession. Ratnapala Unnanse died intestate, and no letters of administration have been taken out to his estate. The District Judge held under these circumstances that the action was not maintainable, and that the case was governed by section 547 of the Civil Procedure Code, which provides that no action shall be maintainable for the recovery of any property, movable or immovable, in Ceylon belonging to the estate or effects of any person dying testate or intestate in or out of Ceylon, where such estate and effects amounts to or exceeds in value the sum of Rs. 1,000, unless probate or letters of administration duly stamped shall first have been issued.

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The plaintiffs have appealed, and I have had some difficulty in understanding the ground on which the appeal is based. It was urged that, because they had once been in possession they were in some way or another entitled to maintain an action, not as possessors, because they did not come in time, but an action for declaration of their title, and that the fact of their having been in possession somehow took the case out of section 547. Now I must say that I cannot follow that argument or accede to it. It seems to me that where it is necessary to allege and prove, as part of the plaintiff's case, that the property claimed was the property of a deceased person, and that the plaintiff is entitled to that property as his heir, it must be shown that probate or letters of administration have been taken to the estate of the deceased and the duty paid. I do not understand how it was that, when the attention of the District Court was called by the previous litigation to the fact that no administration had been taken out, it refrained from setting the law in motion by requiring that some person should be appointed to represent the estate. Both under the old Rules and Orders and the Civil Procedure Code the duty is cast on the District Court of seeing that administration is taken out to the estate of persons who die intestate possessed of property.

LAWRIE, J.—

I am of opinion that section 547 applies, and that this action is not maintainable. It is true that the intestate died before the passing of the Civil Procedure Code, but for several years after his death his estate remained unadministered, being in the hands of a lessee under a lease granted by the intestate shortly before his death. On the expiry of the lease a dispute arose between plaintiff and the vendors to the defendants. Each denied that the other was the heir of the deceased. At the date of the institution of this action the land was still *in bonis defuncti*. It did not pass into the peaceful possession of the heirs. It seems to me that this action by the plaintiffs, who allege that they are the next of kin, against defendants who purchased from others whom they allege to be the real next of kin, is an action for the recovery of property belonging to the estate of a person who died intestate in Ceylon. The estate is of greater value than Rs. 1,000. If this is so, section 547 is imperative, and this action is not maintainable because administration was not taken out.

I reserve my opinion on the question whether this section applies to a case where the heirs designated by the Ordinance

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No. 15 of 1876 have entered into possession, and have been for some time in quiet enjoyment of the inheritance. In such circumstances I am inclined to hold that the property has ceased to be part of the estate of the intestate, and the heirs, as owners, are entitled to bring an action to recover their own property.