

PINTO v. FERNANDO.

D.C., Chilaw, 99.

1901.  
July 3.

*Curator—Civil Procedure Code, s. 585—Application of mother to be appointed curatrix over property of her minor children by her first husband.*

Under section 585 of the Civil Procedure Code, a mother who has married a second time may be appointed curatrix over the property of her minor children of the first bed.

**T**HIS was an appeal from an order of the District Judge of Chilaw disallowing the application of the appellant to be appointed curatrix over the property of her minor children. He held that, as she had married a second time, her status as a married woman debarred her from entering upon the duties of a curatrix.

*Van Langenberg*, for appellant.—The Court below relies upon *2 Thomson's Institutes*, p. 53, where it is stated on the authority of *Vanderlinden* that all women are disqualified, except the mother and grandmother, so long as they do not marry again. This disqualification does not exist now. A married woman can have separate property, and it can be seized in execution. Section 475 of the Civil Procedure Code shows that she can become executrix or administratrix, and section 582 does not state any disqualifications at all as regards curatorship.

3rd July, 1901. MONCREIFF, J.—

In this case the District Judge considered that he was unable to appoint the mother to be the curatrix of her minor children, on the ground that, her husband having died, she married a second time. The authority upon which he went is a passage in *2 Thomson's Institutes*, p. 53, which cites another passage in *Vanderlinden's Institutes*, p. 33 of the third edition. These passages are to the effect that the mother is only eligible for appointment as curatrix so long as she does not contract a second marriage. Such may have been the Common Law of Ceylon; but we now have to do with section 585 of the Civil Procedure Code, which provides that, when no person claims a right to have charge of a minor's property by virtue of a will or deed, the Court may appoint any near relative of the minor who is willing to undertake the trust, and is a fit person for that purpose.

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In my opinion that provision gives the District Judge the power to appoint the appellant in this case in his discretion as curatrix of the minors. There may be circumstances in which the fact that the mother has married a second time ought to be taken into consideration in making the appointment; but apart from that, the exercise of the judge's discretion is unfettered.

LAWRIE, A.C.J.—I quite agree, and would direct the District Judge to reconsider the case on its merits and deal with it according to law.

