[In Review.]

1907.
March 18.

Present: Sir Joseph T. Hutchinson, Chief Justice, Mr. Justice Wendt, and Mr. Justice Middleton.

Re Estate of SUNDARA, deceased.

RANKIRI *v.* UKKU.

D. C., Kandy, 2,061.

Kandyan Law—Acquired property of intestate—Rights of illegitimate children—Rights of widow and sister of deceased.

Where a Kandyan died leaving acquired property and leaving him surviving his widow Ukku, a sister Rankiri, and illegitimate children by a woman with whom he lived during the subsistence of his marriage with Ukku,—

Held (by HUTCHINSON C.J. and WENDT J., *dissentiente* MIDDLETON J.) that the illegitimate children were entitled to the said property in preference to the deceased's sister, subject to the life interest of the widow.

HUTCHINSON C.J.—By the Kandyan Law an illegitimate child is entitled to inherit the acquired lands of its father, who dies intestate, subject to the widow's life interest.

MIDDLETON J.—The right of illegitimate children to succeed to their father's acquired property depends (1) on the caste of their mother, and (2) on the circumstances attendant on the relationship between the mother and the father.

Judgment of the Supreme Court in appeal reversed in review.

HEARING in review of the judgment of the Supreme Court reported in 8 *N. L. R.* 82 preparatory to an appeal to His Majesty in Council.

Van Langenberg (*F. J. de Saram* with him), for the appellants.

Sampayo, K.C. (*Bawa* and *H. Jayewardene* with him), for the respondents.

Cur. adv. vult.

18th March, 1907. HUTCHINSON C.J.—

This is a hearing in review before appeal to His Majesty in Council. The appellants are the illegitimate children of Sundara. Sundara died in 1898 intestate, possessed of certain acquired lands in the Kandyan district; and the question is whether the appellants have under the Kandyan Law any right of inheritance to those lands.

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Sundara left surviving him his lawful widow Ukku and his sister. D. Rankiri, but no legitimate issue. The appellants are his children by a woman with when he lived during the subsistence of his marriage with Ukku. It is admitted that his sister is entitled to his inherited lands, and that his widow is entitled to a life interest in his acquired lands; and the contest is, whether his sister or his illegitimate children are entitled to succeed to his acquired lands, subject to the widow's life interest. The District Judge and the Supreme Court have held that the sister is entitled.

The authorities of *Armour*, *p.* 34, *Sawer*, *p.* 7, and the *Niti Nighanduwa*, *p.* 14, have been quoted at length in the judgments under review, and I need not quote them again. They are not very clear as to the rights of illegitimate children, and I must examine the reported cases on the points which have been decided in the Supreme Court.

In the case reported in *Austin*, *p.* 147, decided by the Collective Court in 1856, the plaintiffs claimed the acquired lands of the intestate as his sisters and sole heirs; the defendant claimed them as his widow for herself and for her son by him. It was proved that she was not his widow, and that the son was illegitimate. The Court below held that " although the defendant was not married to him, yet by Kandyan Law the issue of such a connection as subsisted between Perera and defendant would be entitled to inherit all his acquired property. " The judgment was affirmed. The reasons are not reported.

In *Mahatmaya v. Banda* (1) the plaintiffs sued in detinue for the movables (assumed to have been acquired) of the deceased, who died unmarried and intestate. The plaintiffs were his illegitimate children. The defendant was in possession, and merely denied the plaintiffs' right. The Supreme Court held the plaintiffs entitled to succeed. Lawrie A.C.J. said: " It is well-established Kandyan law that, provided that there are no legitimate children and no widow, illegitimate children succeed to the whole of the acquired property of their father. " Withers J. said: " The issue is, Are the plaintiffs, as illegitimate children of the intestate, entitled to have and keep those movables as their own? This is a pure question of Kandyan Law, which would be answered adversely to the plaintiffs if there was proof of a legitimate widow of Ukku Banda now being alive.....As it is, it must be answered in their favour. " And Withers J. agreed to the judgment for the plaintiffs. Here the expression of opinion as to what would have been the decision if there had been a widow is only an *obiter dictum*, perhaps only meaning that the plaintiffs could not have succeeded in that action, which was for detinue, if a widow had been living.

In *Kiri Menika v. Mutu Menika* (2) K B and M R were brothers; the plaintiffs were illegitimate children of K B and their mother;

(1) (1893) 2 *S. C. R.* 142.

(2) (1899) 3 *N. L R.* 376.

and they claimed to inherit his acquired property as against the lawful children of M R. The only question was whether the property was *paraveni* or acquired. It was agreed that if it was acquired, the plaintiffs were entitled to judgment; and the Court held that it was acquired, and gave judgment for the plaintiffs. It seemed that K B died intestate and unmarried.

In *Re Estate of Sundara* (1) (which is the case with which we are now dealing), the issue on which the Court decided was: "Are the illegitimate children entitled to any share in the acquired property of the intestate when his sister and widow have survived him?" The District Judge decided against the illegitimate children; the appeal came on for hearing before two Judges, and was ordered (presumably because the Judges differed) to be reserved for a Full Bench; and it was accordingly argued before Layard C.J. and Wendt and Middleton JJ. Wendt J. said: "The District Judge rightly held that the opinion of Lawrie J. in *Mahatmaya v. Banda* was sufficient authority for deciding against the appellants, inasmuch as the intestate left a widow; and I think his judgment ought to be affirmed." Layard C.J. and Middleton J. concurred for the same reason. They all agreed in disapproving of the opinion of the District Judge that an illegitimate child cannot now, under any circumstances, inherit any interest in its father's estate, referring to his opinion that, "even if the Kandyan Law conferred such a right, it was swept away by section 26 of the Kandyan Marriage Ordinance, No. 3 of 1870."

In *Appuhami v. Lapaya* (2) Babaya died intestate, leaving (apparently no widow but) one legitimate son, Horatala, and the illegitimate child of another son, who had predeceased him. Wendt J. held that Horatala was entitled to one-half of the intestate's acquired land, and the illegitimate grandchild to the other half. In his judgment he says that the often-quoted words from *Armour* "imply that a widow or legitimate issue would exclude the illegitimate children from inheriting the acquired lands. The old authority, *Sawer*, does not support this view;" and then he quotes *Sawer* and the *Niti Nighanduwa*, which, he says, "give no countenance to the statement that a widow or legitimate children would exclude the illegitimate children."

In my opinion these authorities decide that by Kandyan Law an illegitimate child is entitled to inherit the acquired lands of its father who dies intestate as to those lands, subject to the widow's life interest if any, and sharing with the legitimate children if any. By an illegitimate child I mean his child by a woman whom he kept or lived with as his wife without being lawfully married to her; and perhaps it should also be shown that he recognized the child as his, although that point has not been argued, and therefore I will not express an opinion on it.

(1) (1903) 7 *N. L. R.* 364. (2) (1905) 8 *N. L. R.* 328.

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I think, therefore, that this Court should set aside the judgment under review, and declare that the appellants, D. Horatala and D. Wemali, are entitled to the acquired lands of the intestate, subject to the life interest of his widow therein, and that the administratrix should be ordered to administer the estate in accordance with that declaration; and that D. Rankiri should be ordered to pay the costs of the appellants in the Courts below and of this hearing in review

WENDT J.—

The present is a hearing of this case in review, preparatory to an appeal to His Majesty in Council, against the judgment pronounced by the late Chief Justice Sir Charles Layard and my brother Middleton and myself on 1st October, 1903, where we decided that the appellants inherited no share in the acquired lands of the deceased Sundara, whose illegitimate children they were. That decision is reported in 7 *N. L. R.* 364.

The facts may shortly be stated thus. Sundara, a Kandyan Sinhalese man, died intestate possessed (among other property) of lands which were " acquired " within the meaning of the Kandyan Law, and he was survived by a widow Ukku (now administratrix of his estate), by his sister D. Rankiri, and by the two appellants, his illegitimate children, born him by a woman named H. Rankiri during the subsistence of his marriage with Ukku. The parties are agreed that the inherited ancestral lands of Sundara have devolved absolutely on his sister, and that the widow has a life interest in the acquired lands. The question is, whether, subject to that life interest, the *dominium* in those acquired lands has descended on the sister or on the appellants.

The District Judge, in the first instance, held that, assuming the illegitimate children might otherwise have succeeded to their father's acquired property, they were excluded by the existence of a lawful widow, as decided in *Mahatmaya v. Banda* (1). He also held that the children designated " illegitimate " by the writers on Kandyan Law, and given an interest in their father's estate, were the issue of a man's actual marriage (as marriages went in Kandyan times) with a woman of inferior caste; and that the appellants were not such issue, their mother not having even been treated as a wife, nor maintained in Sundara's own house.

In this Court the appeal of the present appellants was dismissed. We thought the District Judge was right in following *Mahatmaya v. Banda*, and holding that the existence of the widow excluded the illegitimate children, and considered it unnecessary to decide the further question whether appellants were such illegitimate children as

(1) (1893) 2 *S. C. R.* 142.

the law called to any share in the succession. We, however, expressed the view that the law giving that right to all illegitimate children without distinction was too well settled to be disturbed. At the present argument in review this further question was not again raised by the respondents, and we have only to decide whether this Court was right in upholding the District Judge's ruling that the existence of the widow excluded the illegitimate children.

Both Courts rested their decision on the case of *Mahatmaya v. Banda*, and that case has therefore been much discussed before us. It was a decision of the Full Court, which then consisted of three Judges. The action was in detinue, which meant that it related solely to movable property, and that the plaintiffs, in order to succeed, had to make out a right to present possession. The defendant, a stranger, did not claim the movables, nor did he set up a *jus tertii*. The Court found the facts to be that plaintiffs were the illegitimate children of one Ukku Banda, who had died intestate, leaving apparently no surviving relations, and that the movables were his acquired property. The District Court had held that Ukku Banda had left a widow Mutu Menika, whose right to the acquired property was superior to that of the illegitimate children. But this Court disagreed with the District Judge and held the marriage not proved. Having disposed of that point, Lawrie A.C.J., who delivered the principal judgment in the case, proceeded: "It is well-established Kandyan Law that, provided there be no legitimate children and no widow, illegitimate children succeed to the whole of the acquired property of the father. *Sawer*, *p.* 7 (quoted afterwards by *Marshall*, *p.* 338); *Niti Nighanduwa*, *p.* 14; *Pereira's Armour*, *pp.* 8 and 34; 1 *Lorenz*, *p.* 189." Withers J. said: "The simple issue on the pleadings is, Are the plaintiffs, as illegitimate children of Ukku Banda, entitled to have and keep those movables as their own? This is a pure question of Kandyan Law, which would be answered adversely to the plaintiffs if there was proof of a legitimate widow of Ukku Banda now being alive; but the existence of such a person has not been proved and cannot be assured. As it is, it must be answered in their favour, these being articles acquired by their father." Browne A.J., the third member of the Court, did not deal with the law. Examining the passages cited by Lawrie A.C.J., *Sawer*, *p.* 7 (cited, I take it, from the edition published by Cambpell in 1860), does not say or imply that a widow would exclude the illegitimate issue. "The above rules of inheritance," he says, "must be understood to apply only in cases where the caste of the parents has been equal, for the children of a wife of inferior caste to the husband cannot inherit any part of the *paraveni* or hereditary property of the father, that is to say, the property which has descended to him from his ancestors, while a descendant or one of the pure blood of these ancestors, however remote, remains to inherit. But the issue of the low caste wife can inherit the lands acquired by their father,

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whether by purchase or by gift from strangers, but should no provision of this kind exist for the children of the low caste wife, they will in that case be entitled to temporary support from their father's hereditary property." It will be observed that nothing whatever is said as to what I may, for brevity's sake, call a "legitimate widow," one (that is) of the husband's own caste; perhaps it would be fair to assume that the author contemplates her non-existence, although polygamy was recognized without limit (page 37). "The above rules of the law of inheritance," laid down by *Sawer*, however, never give the widow anything more than a life interest in her husband's acquired lands, whether there be issue or not (pages 1 and 2). Marshall merely reprints the passage from *Sawer* under inverted commas, and does not (so far as I am aware) suggest in any other place that the widow would exclude the illegitimate children. The *Niti Nighanduwa*, *p.* 14 (Le Mesurier and Panabokke's translation), proceeds on the same lines as *Sawer*: "If a man marries a woman of lower caste than himself, or a woman within the prohibited degrees of relationship, or a woman of equal rank, without the consent of the parents, the marriage is contrary to custom and the ties of relationship, the children born of it are illegitimate, and their title to the paternal right of inheritance is very unstable. A man therefore who cohabits with a woman of his own caste, but of lower rank, against the will of his parents, merely keeps her as a concubine, and his children by her will not, after his death, be entitled to maintenance from his ancestral estate, though in some instances his acquired property, movables and immovables, will become their property; for instance, if the parents, though opposed to such union, allow their son to conduct and to live with the woman on their land, though she is of the same caste but of lower rank, his children by her will have a right to their father's acquired property; and if after the death of his parents a man marries a woman of lower caste than his own, and has children by her, provided he has no legitimate children, all his acquired property, including lands and all movables, will at his death devolve on them. His ancestral lands, however, will revert to his family relations." No other passage of this work has been cited to us as countenancing the exclusion of parties in the position of the appellant. *Pereira's Armour*, at page 8, says a man's marriage with a woman, who on account of inferiority of birth or of bad repute was unworthy of the alliance, would not be recognized as lawful wedlock, and if he predeceased his parents, his issue, being illegitimate, would have no right to his parents' estate, "but will be entitled to inherit only such property as their father had himself acquired by purchase or other means of acquest." At page 34, however, comes the passage by which the widow's preferent right has been most strongly supported. In Pereira's edition it is headed "Duty of Parents towards Illegitimate Children." "The father is bound to provide for the support of his illegitimate

children. In some cases illegitimate children are even competent to inherit their father's purchased lands as well as goods and chattels; thus, if a man of high caste cohabited with a woman of inferior caste or inferior family rank, and maintained that woman in his own house, and was attended and assisted by her until his demise, in case that man died intestate, and left not a widow who had been lawfully wedded to him and left not legitimate issue, his landed property, which he had acquired by purchase, will devolve to his illegitimate issue, the child or children of the said woman of low caste or inferior family rank; but his *paraveni* or ancestral lands will remain to his next of kin amongst his blood relations. "

It is apparently this passage that Lawrie A.C.J. had under his eye when writing his judgment in *Mahatmaya v. Banda*, only he substitutes the sentence " illegitimate children succeed to the whole of the acquired property " for *Armour's* words " landed property, which he had acquired by purchase will devolve to his illegitimate issue." In my opinion, formed after a very careful examination of all the authorities, the meaning which the author intended to convey by " devolve to " was " become immediately and absolutely the property of. " and the absence of a widow was premised because, if she existed, she would enjoy a life interest in the acquired estate, and therefore the illegitimate children, while they were vested with the *dominium*, would not have possession until after her death.

Section 26 of *Armour* (page 22), entitled " Widow remaining at Husband's death Single, without issue, " opens with the quotation of page 15 of *Sawer* (which he put under the head " Succession to Movable Proverty ") to the effect that " in the event of there being no children, the widow inherits the whole of the household goods, grain in store, also the cattle which have been acquired, together with the increase in the husband's stock of cattle, subsequent to the marriage." The following paragraphs of *Armour* deal with the right to *paraveni* property. There the widow succeeds, by *lat-himi* right, only if there be no issue, no adopted child, parent, or near relation. " Issue " there means " legitimate issue, " because there is nothing which countenances the succession of illegitimate children in respect of ancestral lands. In the later paragraph, however (page 23), laying down that " if the deceased left no issue and had survived his parents and his full brothers and sisters and their children, then his widow will have an absolute *lat-himi* right to such lands as belonged to the deceased by right of acquest, to the exclusion of deceased's more distant relatives (paternal aunt's children, for instance). " No issue " must, I think, be read as " no children, whether legitimate or illegitimate. " That reading brings *Armour* into harmony with the law as declared in *Sawer* and the *Niti Nighanduwa*.

It appears to be well settled that where a man leaves both legitimate and illegitimate children, his acquired property is shared

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between them, each branch taking a moiety. The *Niti Nighanduwa*, *pp.* 14 and 71, recognize their right to some share in such property, and very long ago, in D. C., Kandy (North), No. 721 (1), they were held entitled to a moiety. I have sent for and examined the record of that case. The widow was first plaintiff, suing on behalf of her son, the second plaintiff, and the third plaintiff was her present husband. The defendants were the illegitimate children. Pending action the son died. It was admitted in the Court below that the son was preferred to the defendants in the succession to the *paraveni* estate, but the latter argued that they had originally succeeded *pari passu* with the son to the acquired lands, and now were entitled to his moiety as well, as his sole next of kin, his mother having only a right to maintenance. The case having been tried, the District Judge held (1) that each bed took a moiety of the acquired estate, with which the assessors agreed; and (2) that the defendants, as half-brothers, were heirs to the son's moiety, subject to the widow's right to maintenance. With this, however, the assessors disagreed, being of opinion that the mother was sole heiress of her son. The plaintiffs having appealed, the Supreme Court decreed " the defendants to be entitled to one-half of the acquired property of their deceased father Waratenne Loku Nilleme, and that the plaintiff is entitled to inherit the estate of her own son, who had a right to the whole *paraveni* and half of the acquired property of his late father. By the Kandyan Law the mother is the sole heiress to her only son by her first marriage, upon such fatherless son dying without issue, although she may have subsequently married another husband in *diga*, and such son have brothers or sisters of the half blood by the second marriage of his father. "

Sir Archibald Lawrie was therefore right in saying that the absence of legitimate children was a condition precedent to the illegitimate children taking the whole of the acquired property of the father; and if it be borne in mind that he was dealing with a case in which, to entitle them to judgment, the illegitimate children had to show a right to present possession, he was also right in making the absence of a widow a similar condition. It appears now to me that, in applying his dicta to the present case, I erred in not appreciating the difference of the circumstances under which they were pronounced, and in supposing that they warranted a denial to the illegitimate children of any interest at all in the acquired property if a widow or legitimate issue existed. I greatly regret the inconvenience to the parties which that error has occasioned; and am glad that the opportunity has been afforded me of acknowledging and correcting it in the very suit in which it was committed.

As to the sister of the deceased Sundra, she cannot exclude the illegitimate issue from the acquired property. The Supreme Court

(1) *Civ. Min. 24th August*, 1842. (2) *Austin* 147; (1856) 1 *Lor.* 189.

so decided in *Silva v. Carolinahamy* (1), as to which I need add nothing to what I said in the judgment under review. There was no legitimate issue there, and no widow, and so the entirety of the acquired property was adjudged absolutely to the illegitimate children.

Counsel for the respondents contended that we ought implicitly to follow the law laid down by *Armour* at page 34, and not seek for some principle to justify his dictum. That, however, is not only at all times a dangerous mode of interpretation, but would lead to legitimate children altogether excluding the illegitimate—a result which this Court repudiated sixty years ago. No case has been brought to our notice in which in a contest between widow and illegitimate children the former has been held to exclude the latter from any interest in the acquired property.

In the result I think we ought to set aside our judgment under review, and declare that the acquired lands of the intestate devolved exclusively upon his illegitimate children, the appellants, subject to a life interest in his widow, the administratrix. The respondents must pay the appellants their costs in both Courts, and if the appellants have paid them the costs of the original appeal, they must be repaid. The order for costs against the administratrix is, of course, as between her and the appellants, and order against her personally.

MIDDLETON J.—

We are asked to review our judgment in this case, and to hold that illegitimate children, pure and simple, are entitled under Kandyan Law to inherit their father's acquired property as against their father's sister.

The argument, as I understand it, is that inasmuch as it has been decided by this Court in cases reported in 1 *Lorenz*, *p.* 189, *Austin*, *p.* 147, and 3 *N. L. R.* *p.* 376, that the illegitimate children of an intestate succeed to the acquired property of their father as against his sister, we are bound to hold the same here. It is further suggested that we have wrongly interpreted the judgment of Lawrie J. in *Mahatmaya v. Banda* (2), where that learned Judge says " It is well-established Kandyan Law that, provided there be no legitimate children and no widow, illegitimate children succeed to the whole of the acquired property of the father, " and that the meaning of the learned Judge was that after the life interest of the widow had expired, there being no legitimate children, the illegitimate children would and must succeed. It is further submitted that I have construed the words " without issue " in the third paragraph of page 22 and " no issue " in the second paragraph of page 23 of *Armour* as

(1) *Austin* 147; (1856) 1 *Lor.* 189. (2) (1893) 2 *S. C. R.* 143.

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meaning merely legitimate issue, when in fact the author intended to include illegitimate children within the meaning of those words. It appeared to be assumed by both sides during the argument that it was too late now to make any distinction in the character of different kinds of illegitimate children, and that the law and the decisions of this Court recognized none. *Armour*, however, at page 34, and the *Niti Nighanduwa*, *p.* 14, both say that it is only in some cases that the so-called illegitimate children are competent to inherit their father's purchased lands, while *Sawer* (*p.* 7) specifies the issue of the low caste wife as inheriting only the acquired property, and if there be none there, that they are entitled to temporary support from the *paraveni* property.

So far as I have been able to gather from the reported cases, this Court has apparently never expressly acknowledged any distinction between what I have called purely illegitimate children, such as the children of fornication or the children of casual cohabitation, said by *Armour* at section 5, page 7, to be no wedlock, and the recognized illegitimate children referred to at section 2, page 34, the issue of a *quasi* marriage or concubinage. But if we examine the facts in 3 *N. L. R. p.* 376 and *Austin*, *p.* 147, there would appear to be evidence of such open cohabitation and equality of caste that an attempt was made in each case, but unsuccessfully, to establish a marriage with the mother of the illegitimate children. It is not unreasonable to infer that the Court looked on these cases as falling within the privilege owing to their proximity in resemblance to a real marriage amongst a people still clinging to ancient habits and customs.

In the present case the plaintiffs are, I take it, in the category of unrecognized purely illegitimate children, and their mother could not be acknowledged as the widow of the intestate.

The Kandyan Law apparently recognized polyandry, polygamy, concubinage, and unlawful marriages (*Armour*, *ss.* 6, 7, and 10), but not more irregular relations. Under the old Kandyan Law, considering the loose way connubial relations might be formed, there was every reason why the offspring of so-called unlawful marriage should share by inheritance under certain circumstances in some portion of the parental property. The father is bound to provide for the support of his illegitimate children (*Armour*, *p.* 34, *s.* 5), and the deceased in the present case had made a substantial gift of lands to the plaintiffs and their mother, as the learned District Judge says in paragraph 3 of his judgment.

I have very carefully considered the law as laid down in *Armour*, and, in my opinion, taking into consideration *Kiri Menika v. Mutu Menika* (1) and *Silva v. Carlinahamy* (2), it is not too late even now to hold that the right of illegitimate children to succeed to their

(1) (1899) 3 *N. L. R.* 376. (2) *Austin* 147; (1856) 1 *Lor.* 189.

father's acquired property depends (1) on the caste of their mother and (2) on the circumstances attendant on the relationship between the mother and the father. If the mother, acknowledged and maintained as a concubine, was of equal caste (*Perera's Armour*, *s.* 6, *p.* 8), such concubinage was taken to be a marriage, and the offspring had the privilege of legitimate children, if not stigmatized by some decisive act on the part of the man's family or by the man himself. If the woman, though of inferior caste, was taken into the man's house and treated like and acted as a wife (page 34, section 2), then, if there were no widow and no legitimate children, her children succeeded to the acquired landed property of the man; a portion if she was of equal caste. A legal widow would in either case bar the vesting of the *dominium* until her death. But where a cooly woman of inferior caste was not taken into the man's house nor acknowledged, but simply visited elsewhere as a mistress, I can find no authority in the Kandyan Law for saying that her offspring were to succeed as of right to any of the property of their deceased father. In my opinion they would not be " issue " either in the sense contemplated in section 26, page 22, paragraph 3, or page 23, paragraph 2, of *Armour*.

I have had the advantage of reading my brother Wendt's judgment, and I agree with him as to his view of the meaning of the word " issue " at page 22 and to the extent that I have indicated. I agree with his view of its meaning at page 23, that is to say, it includes recognized illegitimate issue, but excludes the purely illegitimate issue such as exist in this case.

If the reasoning I applied in my former judgment from section 26 of *Armour* be brought into force, the sister here would exclude the appellants; and if she died then the widow.

It is with considerable hesitation that I enunciate my views of the law as affecting this case in the face of the judgments of my Lord and my brother Wendt, but I cannot help thinking that the apparent status of the illegitimate children in the cases of *Silva v. Carlinahamy* and *Kiri Menika v. Mutu Menika* must have weighed with the Judges who decided those cases. I think that the meaning of the dictum of Lawrie J. in *Mahatmaya v. Banda* is as the learned counsel for the appellants put it, *i.e.*, that where there are no legitimate children and no widow the illegitimate children must succeed entirely to the acquired property. If there were a widow, she would take the life interest, and the *dominium* would devolve on the illegitimate heirs. The qualification is that those illegitimate children must be of such a status as to come within the definition of what I have termed recognized illegitimate children.

In my opinion, then, the appeal should be dismissed with costs and the judgment in appeal should stand.

Judgment in appeal reversed.