1916.

Present: Wood Renton C.J. and De Sampayo J.

BANDA *v.* BANDA.

187—D. C. Kurunegala, 5,756.

Kandyan law—Is father heir to his illegitimate child?—Acquired property.

Under Kandyan law a father is not an heir to his illegitimate child in respect of the acquired property.

THE facts are set out in the judgment.

A. St. V. Jayewardene, for defendant, appellant.—It is a well-recognized principle of the Kandyan law that the illegitimate child succeeds to the acquired property of the father along with the legitimate children. See *8 N. L. R. 328*, *10 N. L. R. 129*, *10 N. L. R. 153*. It is a necessary corollary that the father succeeds to the property of the illegitimate child in the same manner as he succeeds to the property of the legitimate child. There is no authority to the contrary.

E. T. de Silva, for the plaintiff, respondent.—The father cannot inherit property from illegitimate children. See *Niti Nighanduwa*, pages 12 and 15. Moreover, while it is the duty of a father to provide for his illegitimate children, there is no reason why a father should take any benefit from an illegitimate child.

Cur. adv. vult.

June 16, 1916. DE SAMPAYO J.—

The point of Kandyan law which the appeal mainly raises is whether the father is heir to his illegitimate child in respect of the acquired property. There is no direct statement on this specific question, either in the text books (with, perhaps, one exception, which will be presently noticed) or in the reports of judicial decisions.

There is good authority for the proposition that an illegitimate child succeeds to the acquired property of the father along with the legitimate children. *Appuhami v. Lapaya*,[1] *Re Sundara, Ranhami v. Menik Etana*.[2] The exception among the text books I referred to is the passage at page 13 of the *Niti Nighanduwa*, on which counsel for the plaintiff-respondent in this case entirely relies. It is there said: " Procreate right gives a title to a legitimate child from the father and to the father from a legitimate child, but it does not give a title to an illegitimate child. " I was at first inclined to think that as the first branch of this proposition is shown by the decisions above cited to require modification so far as acquired property is concerned, a similar modification might be necessary in the second branch of it also, especially as there appeared no logical reason why, if the child succeeded to the father's property, the father should not succeed to the child's. But the *Niti Nighanduwa* (at page 15) repeats the previous statement as regards the father in still more emphatic language, thus: " On the death of legitimate children their father may inherit their property by blood-right, but he can never, as their father, do this in the case of illegitimate children. " I am able to find no sure ground on which we may confidently refuse to give effect to the rule so laid down. I think we also have to take account of the fact that it is not always possible to extract a logical principle from the rules of inheritance in the local customary systems of law. In the present instance the reason for the difference between the cases for the father and child may, perhaps, be found in the suggestion of counsel for the plaintiffs, that the Kandyan law recognizes an obligation on the part of a man to provide for a child for whose birth he is responsible, and so allows the child to succeed to the father's acquired property, while no such obligation attaches to the child. In the Kandyan law the right by which the father succeeds to the child's property, whenever he does so, is described as *jataka urume*, and it is undoubtedly the case that in the treatment of the subject the reference is to the property of a legitimate child. In the absence of a positive or direct authority to the contrary, I am not prepared to dissent from the opinion of the District Judge that the father of an illegitimate child does not inherit his property by *jataka urume*. In this state of the law I think we must decide the question involved in this case in the negative.

The dispute in this case is to certain property which the defendant had transferred to his illegitimate son Kirimudianse, who died unmarried and issueless. Kirimudianse's mother appears to have predeceased him, and administration having been taken to his estate, the property was sold to the plaintiffs by three other children

[1] *(1905) 8 N. L. R. 328.* [2] *(1907) 10 N. L. R. 129.*

[3] *(1907) 10 N. L. R. 153.*

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of his mother by a different father. It was argued that the defendant's deed was not operative, as it was without consideration and had not been delivered, and that in any event the vendors to the plaintiffs were not the heirs of Kirimudianse. The original deed has not been produced by the defendant, and I cannot well say on the evidence in the case that it was not delivered after execution, and the District Judge held against the defendant on the issue as to consideration. As regards the second point, Kirimudianse's mother, if alive, would of course have been his heir, and in her default I think his half-sisters were his heirs.

I would dismiss the appeal, with costs.

WOOD RENTON C.J.—I agree.

Affirmed.