

** Present : Bertram C.J. and Garvin J.*

IN THE MATTER OF AN APPLICATION BY CAROLINE NONA UNDER
ORDINANCE No. 15 OF 1876.

Weerasooria (with Hulugalle), for appellant.

Canjimanathan, as amicus curiae.

November 20, 1924. BERTRAM C.J.—

This question we have to consider is a very simple one, and the parties are not in any disagreement. An order has been made by the District Judge, which he appears subsequently to have seen occasion to review in another case. The question which we have to consider is this. When a married woman, married before the Amending Ordinance No. 18 of 1923, desires to alienate property acquired before the commencement of that Ordinance, is it necessary for her to obtain the consent of her husband in pursuance of section 9 of the Matrimonial Rights and Inheritance Ordinance of 1876, and if her husband refuses his consent is she entitled to obtain from the District Court an order authorizing her to dispose of the property without her husband's consent? It seems to me that both these questions must be answered in the affirmative. By section 4 of the Amending Ordinance No. 18 of 1923, sections 5 to 19 of the principal Ordinance are repealed. The repealed sections thus include both section 9 and section 12; but it is provided that this repeal shall not affect any right acquired while such sections are in force. By their marriage while those sections were in force, the husband and wife in this case

¹ 13 N. L. R. 201.

acquired certain mutual rights. The husband under section 9, acquired a right to restrain his wife from disposing of her immovable property without his own consent. The wife acquired a corresponding right, in the event of her husband refusing his consent, to apply to the District Court for an order dispensing with that consent; the conditions under which the Court could dispense with that consent being defined in the section. Both these rights are consequently unaffected by the repeal of sections 9 and 12, and in so far as the District Court requires any authority for exercising the jurisdiction to give that consent—a point which seems to have occasioned some difficulty in the learned Judge in the subsequent case referred to—it seems to me that jurisdiction is impliedly given by preservation in favour of the wife of her right to apply to the District Court for the purpose. I may point out at the same time that section 10 (2) of the Ordinance clearly implies the view of the law which I have just expressed. It implies that any woman married before the commencement of the Ordinance would require the written consent of her husband in order to dispose by sale of any immovable property to which she had become entitled before the commencement of the Ordinance.

The situation, therefore, appears to be this; the learned District Judge in this case now before us expressed the opinion, of her immovable property acquired before the Amending Ordinance, that the wife in this case should obtain the consent of her husband. He also expressed the opinion that the District Court has no longer any jurisdiction to make the order applied for. The views on further consideration the learned Judge has seen fit to abandon for those which I have already expressed.

The case must go back to the District Court with a view to the District Judge's considering whether the conditions under which the District Court may make an order dispensing with the husband's consent have been satisfied; in particular, as to whether the husband's consent, in the circumstances, has been unreasonably withheld. The appeal, therefore, should be allowed, but there shall be no order as to costs.

GARVIN J.—I agree.
