

1940

*Present : Soertsz and Keuneman JJ.**In re DE SILVA.*

161—D. C. (Inty.) Kalutara, 299.

Births and Deaths Registration Ordinance, s. 20 (Cap. 94)—Application to rectify error in entry regarding birth—Entry wrong as at date of application.

An order under section 20 of the Births and Deaths Registration Ordinance for the rectification of an entry may be made where it is shown that the entry is wrong in relation to the facts existing at the date of the application.

A PPEAL from an order of the District Judge of Kalutara.

J. L. M. Fernando (with him C. C. Rasa Ratnam), for the petitioner, appellant.

Basnayake, C.C., on behalf of the Attorney-General noticed by the District Judge.

Cur. adv. vult.

June 26, 1940. SOERTSZ J.

The petitioner applied to the District Judge of Kalutara under section 20 of the Births and Deaths Registration Ordinance, to have the entry relating to her birth altered, by the name Engo Nona being struck out, and the name Lucy substituted in its place. Her case is that although her name was given as Engo Nona to the Registrar on the occasion of the registration of her birth, she was never called by that name, but was always known as Lucy, both at home and at school. The petitioner is a school teacher, and it is obvious that she may be gravely prejudiced by this conflict in names. Her case is not disputed, and the District Judge has found that the petitioner "has been always called Lucy by the members of her family and that by that name she was known in school".

In this state of things one feels naturally disposed to allow an application such as this, if the law permits it. But the learned District Judge was of opinion that "for an entry to be struck off it must be

proved that such entry *was* wrong. It is only when an entry is wrong that a Court can rectify the Register There is no evidence at all to show *that a wrong name was given* by the informant who was the father of the petitioner". Crown Counsel adopted this position at the argument of this appeal. This point of view appears to be based on the assumption that rectification can be made under section 20 only in respect of some entry that was wrong at the time it was made.

In my opinion, this assumption is unsound. The words of the section are "any person who shall feel aggrieved by any such entry as in the preceding sections prescribed, shall be entitled to apply to the District Court to cause such entry to be rectified, and the said Court shall make such order as the justice of the case may require"

It is clear that the name of the child is entered on the Register in accordance with section 10 of the Ordinance, and it is in respect of that entry that the petitioner says she is aggrieved. Up to this point, then her application is within the words of the section. The only question that remains is whether the rectification available under this section is one that is permissible only in respect of some entry that is shown to be wrong in relation to the point of time at which it was made. I see no reason for taking so narrow a view. To rectify means "to correct from a wrong, erroneous or false state", and "this state" may be wrong, erroneous or false in relation to the time at which it came into being and/or in relation to the time at which the correction is sought. "Right" and "wrong" in cases of this kind are relative terms and the quality of "rightness" or "wrongness" must be determined with reference to the relevant facts. A thing that is right in one state of facts may become wrong in another state of facts. In this instance, at the time the correction is sought, the entry in question is not in correspondence with reality, for at that time the person dealt with in this entry on the Register is a person who, so far as she and others concerned know, is Lucy. The result is that although the name Engo Nona cannot be said to have been wrongly entered at the time of the registration, it is not in accordance with the actual state of things at the date of the application. And this is the cause of the petitioner's grievance.

The section gives a wide discretion to the District Judge who is empowered to make "such order as the justice of the case may require", and in view of the finding of the District Judge, the proper order to make is, in my opinion, to direct the Registrar to enter on the Register in respect of this particular entry a note to the effect that, upon an inquiry held under section 20 of the Ordinance, it has been found that the person whose name is given as Engo Nona, has ever since the date of the registration, been known as Lucy and is the petitioner on this application, I make order accordingly and direct the District Judge to take action as he is required to do by section 20.

KEUNEMAN J.—I agree.

Appeal allowed.