

1923
 KING-
 EMPEROR
 v.
 NGA
 KYAUNG.
 MAY OUNG,
 J.

the information received about him were of the description mentioned in section 110, Code of Criminal Procedure ; in other words, such a person may be required by a Magistrate, under the provisions of section 110, to show cause why he should not be ordered to execute a bond for his good behaviour. In effect, therefore, the Legislature added another ground to the six set out in section 110.

Section 3 of the Habitual Offenders' Restriction Act lays down that, whenever the provisions of section 110 can be applied, the Magistrate may proceed under the Act.

Holding as I do that the effect of section 3, Opium Law Amendment Act, is to introduce an additional ground on which section 110 of the Code can be applied, it follows that the order in the case under consideration was perfectly legal. It is therefore confirmed.

APPELLATE CIVIL.

Before Mr. Justice Heald and Mr. Justice May Oung.

MA THEIN YIN

v.

MAUNG THA DUN AND TEN.*

Burmese Buddhist Law—Superior and inferior wives—Right of inferior wives to inherit in the estate of the husband—Inferior wife higher than a mistress.

In Buddhist Law, a man might marry two or more women at the same time who might all have the status of a wife. Such wives, whether they live together with the husband or not, inherit his estate on an equal footing.

The Buddhist Law also contemplates the existence of other women of humbler standing who are differentiated from wives proper or "superior wives" who inherit on an equal footing, by being described as "inferior" or "lesser wives." Such an "inferior" or "lesser wife," if living together with the husband, is entitled to two-fifths and the "superior wife" to three-fifths of the

* Civil Miscellaneous Application No. 63 of 1923 for review of the judgment passed in Civil First Appeal No. 276 of 1922 of the High Court.

husband's estate ; but where such inferior wife is living apart from the husband and is only occasionally visited by him, she is entitled to nothing more than the property which had passed to her possession during the life-time of the husband.

Mi Kin Gale v. Mi Kin Gyi, U.B.R. (1910-1913), 42—*referred to*.

Ma Gywe v. Ma Thi Da, U.B.R. (1892-96), II, 194 ; *Ma Hmon v. Maung Paw Dun*, U.B.R. (1897-1901), II, 138 ; *Ma U Byu v. Ma Hnyin*, U.B.R. (1897-1901), II, 160 ; *Mi Shte Ma v. Mi Me*, U.B.R. (1910-1913), 114—*followed*.

Kinwun Mingyi's Digest, Vol. I—*referred to*.

1923

MA THEIN
YINv.
MAUNG THA
DUN.MAY OUNG,
J.

Sir Robert Giles—for the Applicant.

Higinbotham and *Tun Byu*—for the Respondents.

MAY OUNG, J.—This is an application for review of the decision in *Maung Tha Dun v. Ma Thein Yin* (1).

The application is grounded on an assumption that our decision in the appeal was that Ma Thein Yin was an "inferior wife" of U Po Tok. It is urged that we "did not purport to discuss the law as to the right of inheritance of an inferior wife and went upon the mistaken footing that no question of law remained to be decided", that through such error we did not attempt to decide the question of law as to what share Ma Thein Yin would be entitled as an inferior wife, and that there is therefore, a mistake or error apparent on the face of the record.

The actual decision was expressed in the following words "Having considered all the the circumstances in favour of the plaintiff's case, I hold that the plaintiff was, *at best* no more than an "inferior" wife of U Po Tok, *living separately from him and only receiving his visits*, and that, therefore, she is not entitled to any portion of U Po Tok's estate."

Learned Counsel who appeared for Ma Thein Yin at the hearing of the appeal did not attempt to argue that an inferior wife living separately from the husband is entitled to inheritance. That she is not so entitled has been laid down in several cases:

1923

MA THEIN
YIN
21.
MAUNG THA
DUN.
MAY OUNG,
J.

Ma Gywe v. Ma Thi Da (2), *Ma Hmon v Maung Paw Dun* (3), *Ma U Byu v. Ma Hmyin* (4), *Mi Shwe Ma v. Mi Me* (5). It is open to the claimant to rebut the presumption, arising from separate residence, that she is not entitled to inherit, by proving a superior status, and this is all that learned Counsel endeavoured to do.

In view, however, of the confusion which not infrequently arises from the use of the word "wife" in Burmese Law, the matter has been re-heard, and Counsel for both parties have dealt fully with the rules applicable in such cases. These rules were discussed in *Mi Kin Gale v. Mi Kin Gyi* (6), wherein it was laid down that a Buddhist might marry two or more women at the same time, and that they might all have the status of a wife and not that of a concubine. Such wives, whether they live together with the husband or not, inherit on an equal footing. The Buddhist Law, however, clearly contemplates the existence of other women, who are sometimes referred to as "wives" but who are given a distinctly inferior status. The terms "lesser wife" and "concubine" have more or less indiscriminately been applied to such persons, but there are manifest objections to the continued employment of these names. The position is cleared by the use of the expression "superior wife" for all who inherit on an equal footing, and the expression "inferior wife" for those of humbler standing. In this way, effect is given to the wording employed in most of the Dhammathats; and in addition, the peculiar status of one who is not a wife in the strict sense of the English word and yet is not a mere mistress is recognised. Such a person

(2) U.B.R. (1892-96), II, 194.

(3) U.B.R. (1897-1908), II, 138.

(4) *Ibid.*, 160.

(5) U.B.R. (1910-1913), 114.

(6) *Ibid.*, 42.

is accorded certain rights under the Dhammathats cited in section 276 of the Kinwun Mingyi's Digest, Volume 1, and it is on the extract from the *Manugye* in that section that the applicant now relies. According to this authority, a wife of inferior status or "ordinary concubine" is entitled to three shares out of seven shares and a half, that is, to two-fifths of the husband's estate. This applies, however, to the case of "wives" living together with the husband. In the period during which the Dhammathats were written it was not unusual for a man to maintain several "wives" in one household. Ordinarily there was one chief wife, one or more "ordinary" or "recognised" concubines, and one or more slave concubines. It was to meet such a case that the *Manugye* text cited was laid down. Where the wife of inferior status lived apart, she was allowed to retain only such property as was in her actual possession; cf. the *Manu Vannana* and *Dhammasara* in section 280. The *Manugye* in section 277 classes this "inferior wife" among the six kinds of concubines, describing her as a free-born woman who is not purchased and with whom the husband does not "eat out of the same dish". On the death of the husband, each of the six "shall retain the property which has passed into her possession during his life-time."

It is thus clear that a wife of inferior status who did not live together with the husband has no rights of inheritance.

Ma Thein Yin was such a wife; she was not taken to live in U Po Tok's house either at Tharrawaddy or at Letpadan, but was kept apart and occasionally visited by him. She was therefore not entitled to inherit.

I would accordingly dismiss the application for review with costs.

HEALD, J.—I concur.

1923
 MA THEIN
 YIN.
 v.
 MAUNG TRA
 DUN.
 MAY OUNG
 J.