APPELLATE CIVIL.

Before Sir Arthur Page, Kt., Chief Justice, and Mr. Justice Mackney.

1933

Feb. 2.

U SEIN *v.* MA BOK AND OTHERS.*

Burmese Customary Law—Dog-child—Rule of inheritance—Applicability to grandchild—Orasa's *death in lifetime of parent—Inheritance by deceased* orasa's *child.*

The rule in Burmese customary law relating to the disinheritance of a dog-child does not apply to grandchildren.

Where an *orasa* dies during the lifetime of the parent the child of the *orasa* does not acquire the interest of an *orasa*, but acquires an independent right to a share in the estate of the grandparent which is equal to that of the parent's brothers and sisters. A daughter on the death of her mother cannot be treated as a child of her grandparents.

Kyaw Zan for the appellant.

Thein Maung for the 1st respondent.

Eunoose for the 2nd respondent.

PAGE, C.J.—This appeal must be dismissed.

Two points are taken on behalf of the appellant. The first is that the plaintiff is not entitled to share in the inheritance of her grandfather U Kay Lay, who died in 1928 and whose estate is in course of administration, because under the rule in Burmese customary law relating to dog-children she has lost the right to share in his estate. It is urged that her conduct has been such that she has acted towards her grandfather not as a friend but as an enemy, and that she has brought herself within the rule under which a dog-child loses his right of inheritance. As has often been pointed out conduct sufficiently serious to deprive an heir of his inheritance must be strictly proved, and the Courts will not hold that by reason of filial misconduct an heir has lost the share in his parents' estate to which

* Civil First Appeal No. 64 of 1931 from the judgment of the District Court of Tharrawaddy in Civil Regular No. 26 of 1930.

otherwise he would have succeeded unless the circumstances are such that a decision in that sense is inevitable.

Now, it is contended on behalf of the appellant that the rule relating to the disinheritance of a dog-child applies not only to children, but also to grandchildren who have behaved in such a disrespectful or disobedient manner towards their grandparents that they ought not to be allowed to participate in the property left by their grandparents at their death.

U Kyaw Zan, who appeared for the appellant, in the circumstances of the present case, claimed that the plaintiff, Ma Bok, whose conduct is under consideration, stood "in the shoes of her mother Ma Hme who died in 1916, and that for the purpose of the rule relating to a dog-child she must be treated as the child of her grandfather, U Kay Lay." In my opinion this contention cannot be sustained, because the interest in the property of U Kay Lay which fell to Ma Bok on the death of her mother who was entitled to an *orasa's* share therein, was not the interest of an *orasa*, but the independent right of inheritance which she claimed as the daughter of an *orasa*. It is common ground that when an *orasa* dies during the lifetime of the parent the child of the *orasa* acquires the right to a share in the estate of the grandparent which is equal to that of the parent's brothers and sisters. That interest, however, is not the interest of an *orasa*. It follows, therefore, that it would not be correct to hold that on the death of her mother Ma Bok must be treated as though she were the child of her grandparents. It was conceded by the learned advocate for the appellant that in none of the *Dhammathats* is there any passage in which it is laid down that the rule with

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respect to a dog-child is applicable to grandchildren and, in my opinion, it would not be reasonable that this rule should be held to apply to grandchildren. The basis of the rule is the obligation of filial obedience which is laid upon a child. I asked the learned advocate for the appellant whether, in a case such as the present case in which the grandchild's parent is alive, it was the duty of the grandchild to obey her father or her grandfather. U Kyaw Zan unhesitatingly replied she must obey her grandfather. With the greatest respect I cannot persuade myself that the answer given by the learned advocate for the appellant is in accordance either with law or good sense. It is easy to imagine such a contention, if accepted, leading to grave domestic trouble. Suppose a child was directed by her grandfather to go to the pagoda, and was told by her father that she was not to go. It seems to me that if the child was compelled to obey her grandfather rather than her father there would be little hope of peace in Burmese homes. Yet it is the persistent failure to perform the duty to obey that is the basis of the rule relating to the disinheritance of a dog-child. In this connection I would refer to the case of *Maung Nyi Maung and* 2 v. *Ma Nu* (1) in which MacColl J.C., observed

"the texts which debar an incorrigibly disobedient child from inheriting seem to refer to a child living with his parents and still subject to their authority, not to an adult child like the plaintiff-respondent who had been married and had children of her own. She was not subject to her mother's authority, and, though in marrying Maung Min Gaung she defied her mother's wishes, her marriage cannot be regarded as an act of disobedience, as she was under no obligation to obey."

(1) (1921-22) 4 U.B.R. 104 at p. 109.

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It is unnecessary for the purpose of deciding this appeal to consider whether those observations correctly lay down the law or not, and I refrain from expressing an opinion one way or the other. But these observations are of value as illustrating that the duty to obey is the foundation of the rule under consideration. In my opinion the rule relating to the disinheritance of a dog-child does not apply to grandchildren.

It is further urged on behalf of the appellant that the learned District Judge erred in holding that the agreement of compromise entered into between the first defendant and certain of the heirs of U Kay Lay was not binding in the administration of the estate of U Kay Lay. In my opinion that contention also must be rejected. The 1st defendant, U Sein, is the husband of the youngest daughter of U Kay Lay, and he has been in possession of U Kay Lay's estate since his death. U Sein has entered into registered agreements with certain of the heirs under which both in money and in kind there has been a transfer, purporting to be by way of partition, of the shares of the heirs who are parties to those agreements. It appears, however, that the plaintiff and certain other heirs of U Kay Lay were not parties to these agreements. The learned District Judge has held that when the estate of U Kay Lay is administered the whole of the property left by U Kay Lay must be brought into the administration, and distributed according to law. In my opinion, the decision of the learned District Judge was correct. U Sein had no right whatever, apart from a consensus among the heirs, to dole out or apportion any part of U Kay Lay's estate to any of the heirs or to anybody else. Of course, if all the heirs had assented to the transfers in question,

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such transfers might in the administration have been held to be binding upon the heirs as a family arrangement; but in the events that have happened and in the absence of a consensus among the heirs in respect of these agreements the learned District Judge, in my opinion, quite rightly held that the whole estate must be administered, notwithstanding the existence of these registered agreements.

The result is that the appeal fails, and must be dismissed. As to costs the proper order to make is that the two contesting respondents should have their costs out of the estate, and that no order should be made as to the costs of the appellant.

MACKNEY, J.—I agree.

APPELLATE CRIMINAL.

Before Sir Arthur Page, Kt., Chief Justice, and Mr. Justice Mya Bu.

1933

Feb. 6.

THE RANGOON ELECTRIC TRAMWAY & SUPPLY CO., LTD.

v.

KING-EMPEROR.*

Electricity—Licensee's responsibility—Meter outside consumer's premises—Supply line constructed by consumer—Dangerous condition created by leakage—Control of line—Licensee's liability—Company's liability for an offence—Electricity Act (IX of 1910), Rules 37, 107.

Under the provisions of the Indian Electricity Act and the Rules made thereunder the licensee is under an obligation to see that the electric supply lines, until they reach the consumer's premises and also after they have been carried into the consumer's premises so long as the licensee retains control of the current thereby transmitted, are maintained in a safe condition. The licensee is not at liberty to release himself from this obligation by agreement with a consumer.

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* Criminal Appeal No. 2803 of 1932 from the order of the Western Subdivisional Magistrate of Rangoon in Criminal Trial No. 208 of 1932.