

1898.
March 10.

IBRAHIM SAYIBU v. MUHAMADU.

D. C., Kandy, 10,615.

Mohammedan Law—Law to be resorted to where the Code of Mohammedan Law is silent—Right of Mohammedan widow having children by her deceased husband to sell his property for the payment of debts incurred by him—Common Law of Ceylon.

Actions between Moormen should *prima facie* be governed by the Code of Mohammedan Law adopted in 1806 for Moors living in the Province of Colombo, and extended by Ordinance No. 5 of 1852 to Moors residing within the Kandyan Provinces ; but when the Code is silent on any point, resort should be had to the Common Law of Ceylon.

Where a Mohammedan widow having children by her deceased husband sold his property for the payment of debts due by the husband—*Held*, following the decisions reported 5 S. C. C. 70, 8 S. C. C. 205, 2 N. L. R. 26, that the widow was justified in selling the property.

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A MOORMAN named Adam Pulle, who died some time before 1872, was possessed, among other lands, of a small piece of land the subject of the present action. He died intestate, leaving him surviving a widow, named Suma Amma, and two infant children, Segu and Abubakker. The intestate's landed property had been hypothecated, and the debt was subsisting at the time of his death. On the 19th January, 1872, the widow sold and conveyed to one Isa Lebbe the land now in dispute, for the purpose of paying his mortgage debt. There was no suggestion that the sale was an improper one, or was anything but a proper exercise of the duties of an administrator. Isa Lebbe held possession of the land without any dispute until 1895, when by deed dated 28th December, 1895, he sold and transferred the land to the plaintiff. The children, Segu and Abubakker, who were by that time of full age, would seem to have been advised that there was some infirmity in plaintiff's title, for immediately after the sale to him they purported to sell and convey the same land to the defendant by deed dated the 2nd January, 1896. When the plaintiff went to take possession of his recent purchase, he found himself obstructed by the defendant, and therefore he brought the present action.

The District Judge found as a fact that Isa, the predecessor in title of the plaintiff, had had prescriptive possession of the land for a period sufficient to bar the claim of Segu. He however thought that under the circumstances the transaction must stand. The defendant has appealed.

Van Langenberg, for appellant.

Dornhorst, for respondent.

10th March, 1898. BONSER, C.J.—

This is an action between two Moormen, and would *primâ facie* be governed by the Code of Mohammedan Law which was adopted in 1806 for Moors living in the Province of Colombo, and extended by Ordinance No. 5 of 1852 to Moors residing within the Kandyan Provinces. [After stating the facts of the case, his Lordship continued—]

The Code of Mohammedan Law to which I have referred is silent as to the power of a widow to administer the deceased husband's estate, and, that being so, I think we must resort to the law of the Island. It was laid down so long ago as the time of Chief Justice Sir Edward Creasy, that a surviving spouse can alienate the property of the estate to pay debts, and this decision has been followed in the case of *Wijeratna v. Abeyweera* (5 S. C. C. 70), in the case of *Pasupathy Chettiar v. Cantar Pandary* (8 S. C. C.

1898. 205), and in case of *Hadjar v. Hendrick Appu et al* (2 N. L. R. 26),
March 10. in which last case the right of the surviving widow to mortgage the
BONSER, C.J. estate of a deceased husband for the purpose of paying his debts was
upheld.

The present case is one in which the Court will be anxious to uphold the *bonâ fide* sale which took place more than five and twenty years ago, if it can possibly do so, consistently with sound legal principles.

I think, therefore, that in this case the widow was justified in selling the property. The appeal is dismissed with costs.

