Present : Wood Renton J. *May 30, 1911*

In the Matter of an Application for a Writ of *Habeas Corpus* by WAPPU MARIKAR and his Wife UMMANIUMMA.

Petition No. 138.

Habeas corpus—Custody of Muhammadan child—Mother and maternal relatives preferred to father.

The *cursus curiæ* in Ceylon has been in favour of giving the custody of infant children of Muhammadan parents to the mother and the maternal relatives in preference to the father.

According to the Shafei law the custody of a girl remains with the mother, not merely until puberty, but till she is actually married ; in the case of a boy, till completion of his seventh year at all events, and from thence until puberty he may place himself under either parent whom he chooses.

THIS was an application for a writ of *habeas corpus*. The petitioners averred that their daughter died at their family residence, leaving her surviving a son and a daughter of the ages of ten months and three years respectively ; that their two grandchildren were under their guardianship and protection after the death of their daughter ; that after two months from the date of their daughter's death their son-in-law (Cassim) removed their granddaughter with their permission, " for the purpose of paying a visit to his elder sister " ; that Cassim did not bring back the child ; that one of the petitioners (the grandfather) was appointed by Court curator over the property and guardian of the said two minors.

Savundranayagam, for the petitioners.—The petitioners are entitled to the custody of the children under the Muhammadan law. The Moors of Ceylon belong to the Shafei sect of Sunnis (see *Preface to Nell's Muhammadan Law*). Under the law governing that sect the father's right to the custody of the children is postponed to that of the maternal relatives. See *Ameer Ali. vol.* 2, *p.* 15 ; *Hadaya* (*Hamilton*), *vol. I., p.* 385 ; *Ramanathan*, 1860–62, *p.* 144.

Allan Drieberg, for the respondent, relied on *In re Sego Meera Marikar* [1].

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On the evidence in this case, I have no doubt but that the petitioners are fit and proper persons to have charge of the infant daughter of the respondent. In spite of the decision of Clarence

[1] *(1889–90) 9 S. C. C. 42.*

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and Dias JJ. *In re Sego Meera Marikar*,[1] a decision in which I cannot see that Burnside C.J. took part, although he no doubt expressed his own view of the case in referring it from chambers, the *cursus curiae* in Ceylon has, I think, been in favour of giving the custody of infant children of Muhammadan parents to the mother and the maternal relatives in preference to the father. See on this point 2 *Thom.* 545 and case there referred to. *In re Aiza Natchia*,[2] and the Full Court decision in *Hadja Marikar v. Ahamado Lebbe*,[3] are express authorities to the same effect. It appears that the Moors in Ceylon belong to the Shafei sect of Sunnis. According to the Shafei law, the custody of a girl remains with the mother, not merely until puberty, but till she is actually married ; and the case of a boy, till completion of his seventh year at all events, and from thence until puberty he may place himself under either parent whom he chooses. Moreover, apart from the strict law, I think that considerations of expediency are in favour of the petitioners' claim.

The child must be delivered up to the petitioners whenever it has recovered from the attack of fever, of which it was said to have been suffering at the date of the argument.

Application allowed.