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Present : Hutchinson C.J. and Wood Renton J.

Nov. 2, 1910

BACHO APPU v. RAMBLAN.

249, D. C., Badulla, 2,399

*Prescription—Part payment by widow after husband's death does not keep husband's debt alive.*

A, who had dealings with the plaintiff till December 14, 1908, died in January, 1909. On January 21, 1909, one R, who claimed to be A's widow, paid plaintiff Rs. 118 on account of A's debt.

Plaintiff instituted this action on January 12, 1910, against the administrator of A's estate for the value of goods sold and delivered; the defendant pleaded prescription.

*Held*, that whether R was a mistress or lawful wife of A, she had no power to bind the estate by any acknowledgment of the debt or by any promise to pay it.

Part payment by a stranger does not have the effect of an acknowledgment of the balance of the debt and a promise to pay it.

THE facts are set out in the judgment of the Chief Justice.

*Bartholomeusz*, for the defendant, appellant.—Part payment upon a simple contract debt saves the debt only when it is such that a promise to pay the debt can be implied. (*Lightwood on the Time Limit of Actions*, p. 335.) This principle has been followed by the Supreme Court in *Murugupillai v. Muttalingam*.<sup>1</sup> In the present case the action is brought against the administrator of the deceased debtor. The plaintiff seeks to stop the statute by proving a payment by the wife of the deceased debtor made after the latter's death. A promise to pay by the estate, cannot

<sup>1</sup> (1894) 3 C. L. R. 92.

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be implied from such a payment. It is only a duly appointed legal representative who could bind the estate of the deceased. (2 B and C 23 ; 1 *Barnewall and Adolphus* 396 ; 17 *Equity Cases* 71.) If payment by an heir could stop the statute as against the estate of an intestate, the position of administrators would be most difficult. An administrator after the lapse of many years may be called upon to pay debts which he was perfectly justified in considering as prescribed.

*H. A. Jayewardene* (with him *J. W. de Silva*), for the respondent.—The wife in this case is in the position of a Muhammadan widow. The Supreme Court has held that a Muhammadan widow, who has not taken out administration, can alienate lands in order to pay off a debt due by her husband. (*Ibrahim Sayibu v. Mohamadu*.<sup>1</sup> See also *Wijewardene v. Aponso*.<sup>2</sup>) These decisions clearly contemplate the right of the widow to make payments on account of a debt due by the husband.

*Cur. adv. vult.*

November 2, 1910. HUTCHINSON C.J.—

The plaintiff sues for a debt of Rs. 669·25 due to him from the late Abubakkar for goods sold and delivered. The defendant is sued as the administrator of Abubakkar's estate. He disputed the amount of the debt, and also pleaded that it was prescribed ; but the only question argued before us is that of prescription.

The plaintiff says that the last day that he had dealings with Abubakkar was on December 14, 1908. This action was brought on January 12, 1910. He says, however, that when he heard of Abubakkar's death, which took place in January, 1909, he went to his house, and that Abubakkar's wife paid him Rs. 118 on account of the debt, which then stood at Rs. 787·25. Rasammah, who says that she was Abubakkar's lawful wife, confirms this, and says that she paid the plaintiff Rs. 118 two or three days after her husband's death in reduction of the debt. She admits that the defendant disputed the validity of her marriage, and that she knew when she paid the Rs. 118 that the defendant was proposing to take out administration to her husband's estate, and she says that she consented to his doing so. She did not produce any marriage certificate. The defendant obtained a grant of administration on August 26, 1909 ; he says that his daughter, now dead, had been Abubakkar's wife, and that Rasammah was his mistress.

The District Judge, without expressing any opinion as to whether Rasammah was the lawful wife of Abubakkar, held that the payment of Rs. 118 by her, which he says was made on January 20, 1909,

<sup>1</sup> (1898) 3 N. L. R. 116.

<sup>2</sup> (1903) 7 N. L. R. 198.

and so within a year before the commencement of this action prevented the debt being barred. He referred to the proviso in section 13 of Ordinance No. 22 of 1871 that "nothing herein contained shall alter or take away or lessen the effect of any payment of any principal or interest by any person whatsoever," and says, "therefore, whether the payment was made by the woman irregularly or not, whether as legal heir or not, is of no effect to lessen the effect of the acknowledgment of the continuing contract." The effect of part payment by the debtor is that it implies the acknowledgment of the existence of the balance of the debt, and therefore a promise to pay it. But a stranger cannot bind the debtor by such an acknowledgment or promise, and therefore part payment by a stranger has no such effect. The Court would hardly have been able to find on the evidence that Rasammah was the lawful wife of Abubakkar. But even if she were, she would have had no power to bind the estate by any acknowledgment of the debt or any promise to pay it. I think the appeal should be allowed, and the action dismissed with costs in both Courts.

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WOOD RENTON J.—I agree.

*Appeal allowed.*

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