Present: Ennis J. and Schneider A.J. 1916.

ABDUL RAHIMAN *et al. v.* USSAN UMMA *et al.*

48—D.C. (Inty.) Chilaw, 5,218.

Antenuptial contract among Muhammadans—Validity.

An antenuptial contract regulating succession to property entered into between Muhammadans in Ceylon is not invalid.

THE facts are set out in the judgment.

The agreement was as follows:—

On the 9th day of December, 1886, at Chilaw.

Know all men by these presents that I, Lena Meeyana Meera Saibo Lebbe, of Chilaw, in Anaivilundan pattu, on the first part, and I, Habibu Mohammado Beebi, the daughter of Seyado Mohammado Mawlana, of the same village, on the second part, do hereby bind ourselves and declare as follows:—

1. As I the said Lena Meeyana Meera Saibo Lebbe am about to marry the said Habibu Mohammado Beebi according to our Muhammadan religion, the properties I would transfer to the said Habibu Mohammado Beebi after my marrying her, and those she would get from her parents, shall be possessed by her all her life, and after her demise they shall devolve on the child or children born to her by me. In the event of there being no issue to her by me by no children being born, or by the demise of the children born, the properties I transfer to her shall devolve on my heirs, and those she inherits from her parents shall devolve on her heirs.

2. After my marrying the said girl, if she were to predecease me, either leaving or without leaving children born to us, or in the event of her getting herself divorced from me according to our religion as her desire, or in the event of her marriage with another husband as she may desire, she shall hold and possess only those properties which she gets from her parents, and she shall have neither shares nor rights whatsoever in and to the properties I shall transfer to her and other properties I hold in my name.

3. I, the aforesaid Habibu Mohammado Beebi, of the second part, am being about to marry the said Lena Meeyana Meera Saibo Lebbe according to our religion, in the event of children being born to me by him after my marriage with him, the properties he is now possessed of in this Island of Ceylon, and those he and I may acquire thereafter, shall be held and possessed by him all his life, and after his demise my children by him on their attaining majority shall hold and possess in shares they are entitled to according to the religious law.

4. After my marrying the said Meera Saibo Lebbe, if he were to predecease me, with or without issue by me, or in the event of his divorcing me according to our religious law, he shall hold and possess

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all the properties of every sort in his name and those which he transfers to me of his own accord, and the properties I inherit from my parents shall be held and possessed by me all my life, and that he shall have neither shares nor title whatsoever in and to the same.

We both parties having agreed to the several foregoing conditions this was executed, and have bound ourselves, our heirs, and legal representatives to treat this as a valid agreement. In witness whereof we have set our signatures to three copies of the same tenor as this, witnessed by W. Anthony Juan Fernando of Chilaw, Slema Lebbe Sinnetamby of the same village, and Juan Kitchell Haniffa of the same village.

Attested by JOSEPH FERNANDO,
Notary Public.

December 9, 1886.

Bawa, K.C. (with him *A. St. V. Jayewardene*), for appellants.—The Roman-Dutch law has no application. Muhammadan law is a personal law, and if it can be shown that such contracts are invalid under Muhammadan law, it should not be upheld. Among a polygamous people, such a contract is contrary to natural justice. The passage from *Badd-al-Muktar*, quoted by the witness Abdul Kudus, shows that such contracts are invalid under Muhammadan law. Counsel cited *36 Cal. 23;* section 67 of the Ceylon Muhammadan Code; *Munhaj et Talibin, bk. 34, s. 1; Ameer Ali's Muhammadan Law (3rd ed.) 42; Abdur Rahaman's Muhammadan Law 284, 286* and *299; 17 Bom. 1; 9 W. R. 257; 7 Bom. 170: Madras W. R. (1913) 371; 16 N. L. R. 71; 16 N. L. R. 425; 17 N. L. R. 338.*

Aralanandan (with him *Drieberg*), for respondents.—The authorities cited do not establish the fact that the whole body of Muhammadan law as prevalent in India was imported into and observed in Ceylon. The sources of Muhammadan law in Ceylon are the Code of 1806 and ancient usage.

When the Code is silent, the Roman-Dutch law has to be invoked (*18 N. L. R. 481*); Counsel cited *Vanderstraaten's Reports, 1873-4 Appendix B., xxxi.; Grenier's Reports, 1873, Part III., 18; 3 N. L. R. 116; 14 N. L. R. 295.* The Muhammadans have lived for a long time in Ceylon, and have adopted many institutions from the common law. Transactions such as these are based on local customs, and should not be lightly interfered with. The document is a valid contract under the Roman-Dutch law and should be upheld.

Bawa, K.C., in reply, cited *2 Bal. 78; 10 N. L. R. 347; 3 Bal. 24; 15 Pro. D. 109; 10 Indian Appeals 279; 2 Haggard 48; 3 Haggard 218; 4 Haggard 457.*

Cur. adv. vult.

August 22, 1916. ENNIS J.—

In this case the plaintiffs are the minor children of one Meera Saibo Lebbe, who died in February, 1911. Meera Saibo was married first in India, about forty years ago, to Hassan Ussan Umma,

the first defendant in this case, and by her had a child, Mohamadu Asia Umma, the second defendant, whose husband is the third defendant. Meera Saibo came to Ceylon, and being desirous of taking a second wife, one Habibu Umma (the 4th defendant), he executed jointly with her on December 9, 1886, the document No. 5,632, of which P 1 and D 20 are the translations put in by the plaintiffs and defendants respectively. Thereafter he married Habibu Umma and had five children by her, viz., the two plaintiffs and the fifth, sixth, and eighth defendants. The seventh and ninth defendants are the husbands of the sixth and eighth defendants. The husband of the fifth defendant is the next friend of the plaintiffs.

After Meera Saibo's death the Ceylon widow applied for and obtained letters of administration for the Ceylon estate. In the testamentary suit the Indian widow, her daughter, and son-in-law were made respondents. The widow and daughter were represented by the third defendant, their attorney, who was also appointed by the Court guardian *ad litem* of the minor Ceylon children. Later the first, second, and third defendants were represented by Sandira Mohideen Marikar, who was the appointed guadian *ad litem* of the Ceylon children in place of the third defendant. Sandira's appointment was subsequently cancelled, and Ibrahim Neina Marikar, the husband of the fifth defendant who at the time of the earlier appointment was in jail, was appointed guardian *ad litem* of the Ceylon minors.

Ibrahim Neina Marikar then petitioned the Court in the testamentary proceedings. With regard to this petition, the Supreme Court in appeal held that the real issue between the parties was whether the administration proceedings should continue or be set aside, but that the parties had shaped the case in the Court below in such a form as to render it impossible to dispose of it on its true basis, the appeal was accordingly dismissed, with a reservation of " the right of the appellant, if he is so advised, to take independent proceedings, with a view to ascertaining the rights of the children of the Ceylon marriage under the agreement No. 5,632. " As a result Ibrahim Neina Marikar instituted the present case. The plaint sets out the facts, and prays (1) for a declaration of title to a definite share of the land, (2) for a declaration that the Indian widow and family are excluded under the deed No. 5,632 from inheriting, (3) that the testamentary proceedings (No. 878) be set aside, and (4) for costs and other or further relief. Many issues were framed, and among them No. 13, " What was the intention and effect of the said document No. 5,632? " It seems to me that this issue represents the true gist of the action; the plaintiffs only seek a declaration of their rights, if any, under the document No. 5,632, and it appears to have been so dealt with by the Court below. The learned Judge held the document to be a valid antenuptial contract;

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that it vested the Ceylon property in the Ceylon children, and, therefore, that the vesting of the property in the administratrix was *ultra vires* and of no avail. On these findings he declared the plaintiffs entitled to the share of the land claimed by them. The first, second, third, sixth, seventh, eighth, and ninth defendants appeal.

It is contended for the appellants that the document No. 5,632 is to be construed according to the principles of Muhammadan law. A series of decisions show that Muhammadan law applies among Muhammadans in Ceylon so far only as it is consistent with the ancient usages of the Muhammadans of Ceylon, and is not at variance with express enactment. (D. C. Colombo, No. 29,129;[1] D. C. Colombo, No. 59,578;[2] *Ibrahim Sayibu v. Muhamadu;*[3] *Tillekeratne v. Samsedeen;*[4] *Affefudeen v. Periyatamby.*[5] There are also a series of decisions to the effect that once such a usage has been found to exist, Muhammadan law may be looked to elucidate it and supplement it in detail (*Tillekeratne v. Samsedeen,*[4] *Lebbe v. Thameen,*[6] *Rabia Umma v. Saibu,*[7] *Marikar v. Marikar*[8]). Some of the ancient usages of the Muhammadans of Ceylon are set out in the Muhammadan Code of 1806 and the operation of this Code was extended to all Muhammadans in Ceylon by the Ordinance No. 5 of 1852. Clearly the Muhammadan law in Ceylon is based on usage, and where the Code is silent and no ancient custom has been proved, the general law of the Island is the law applicable. The Muhammadan Code. clauses 67 to 78, mentions one kind of antenuptial contract, viz., that relating to the marriage gift or *maggar*. The document No. 5,632 is not such a contract. The question of *maggar* was expressly dealt with between the parties in *kaduttam*, P 3, which recited the previous document No. 5,632. The document No. 5,632 deals, *inter alia*, with property to be acquired, and provides for the disposition of property to persons not been born. Inasmuch as it is a contract consisting of reciprocal promises, it is irrevocable (except by the mutual consent of both parties), and it is therefore not a will. It is a document foreign to the principles of Muhammadan law, but good and valid by the general law of Ceylon. In the case in *Grenier's Reports* referred to above, a document *inter vivos* creating a *fidei commissum* was held to be valid in Ceylon, and it would seem that the Muhammadans in Ceylon have adopted and followed the general law of Ceylon in executing such documents. In my opinion the learned Judge is right in finding the document No. 5,632 to be a valid document, as there is nothing to prevent Muhammadans in Ceylon from adopting the general law of Ceylon

[1] *Vanderstraaten's Reports, 1873-4, App. B., xxxi.*
[2] *Grenier's Reports, 1873, Pt. III., p. 18.*
[3] *(1898) 3 N. L. R. 116.*
[4] *(1900) 4 N. L. R. 65.*
[5] *(1911) 14 N. L. R. 295.*
[6] *(1912) 16 N. L. R. 71.*
[7] *(1914) 17 N. L. R. 338.*
[8] *(1915) 18 N. L. R. 481.*

where there is no ancient custom, any more than there is anything to prevent them from disposing of their property as they choose by will under the provisions of the Ordinance No. 21 of 1844 (*Kadiga Umma v. Meera Lebbe*[1]).

As to the intention of the document, I agree with the finding on the last appeal: "The deed looked at both as a whole and with reference to the specially relevant clauses discloses an undoubted intention on the part of the intestate that the Ceylon properties should go, in the event contemplated by the deed, to the children of the Ceylon marriage".

The only point argued on the appeal which remains for consideration is whether the appellants are entitled at present to any relief. It was urged that they have no interest in the property until they reach the age of majority. In my opinion the intention of the document is that the children are to inherit on the death of their father, but are not to have control of the property until they come of age. Inasmuch, however, as the document does not amount to a conveyance of the property, it was properly inventorized in the testamentary proceedings, and the appellants are entitled only to a declaration of their rights to the property in the hands of the administratrix. They are entitled to this relief, as there has been, in effect, a denial of their rights in so far as the Indian heirs have been brought into the proceedings. Subject to these observations I am of opinion that the appellants are entitled to the relief decreed, and would dismiss the appeal, with costs.

SCHNEIDER J.—

One Meera Saibo, a Muhammadan by faith, was married first in India about forty years ago to the first defendant, by whom he had one daughter, the second defendant, who is presently the wife of the third defendant. In anticipation of contracting a second marriage with the fourth defendant in Ceylon, which he was lawfully entitled to do by the law applicable to him in Ceylon, Meera Saibo and the fourth defendant executed the instrument bearing No. 5,632 and dated December 9, 1886. It is written in the Tamil language, is signed by both parties to it, and is attested by a notary and two witnesses. There are two translations of it into English on the record: P 1 produced by the plaintiffs and D 20 by the defendants. Meera Saibo and the fourth defendant contracted the intended marriage and had issue, the first and second plaintiffs and the fifth, sixth, and eighth defendants. The seventh and ninth defendants are the husbands of the sixth and eighth defendants respectively. Meera Saibo died intestate in 1911, leaving as his heirs his two wives and their children, and, among other property in Ceylon, a number of lands, of which a list is appended to the plaint.

[1] *7 N. L. R. 23.*

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In testamentary action No. 878 of the District Court of Chilaw the fourth defendant applied for and obtained administration to her husband's estate upon the footing that all his heirs would take according to the Muhammadan law of intestate succession. She included in her inventory of the estate the lands mentioned in the plaint. She did not disclose the existence of the instrument No. 5,632, which I shall after this refer to as P 1. In the testamentary action the present next friend of the plaintiffs, who are minors, raised the question, that by virtue of P 1 the Indian widow and child were excluded from succeeding to the property in Ceylon. He failed in this contention in the lower Court, but on appeal to this Court, although the appeal, too, failed, he succeeded in obtaining a reservation of the right " to take independent proceedings, with a view to ascertaining the rights of the children of the Ceylon marriage under the agreement No. 5,632." In the result this action was instituted. In their plaint the plaintiffs set out the facts stated by me, and pray, *inter alia*, that they may be declared entitled to certain undivided shares of the lands mentioned in the plaint, upon the footing that the effect of P 1 is to exclude the Indian widow and child from participation in those lands. The action is not happily framed. The first, second, and third defendants, among other matters, plead that P 1 is invalid, as being obnoxious to Muhammadan law; but if valid the plaintiffs being minors have " no present claim to any property of the intestate thereunder. "

A large number of issues was suggested by both parties for trial, all of which were accepted by the Court. But of these issues, I need refer to the following only, as they were the only ones pressed on appeal:—

" 8. Has the plaintiff any cause of action or the right to maintain this action?

" 13 What was the intention and the effect of the said document No. 5,632?

" 18. Can Muhammadans in Ceylon execute antenuptial contracts regulating succession to property after death?"

I propose to take up issue No. 13 first. By it I understand it is intended to raise the question of the intention of the parties in executing P 1 and what effect the instrument has, granting it to be valid and effectual to bind the parties.

To my mind it is quite obvious that this instrument has been drafted by a notary with but an imperfect knowledge of his work. It is important to keep this fact prominently in mind while endeavouring to interpret it. It is headed " agreement ". It has been stamped and numbered by the notary as an agreement *inter vivos*. In general form it is that of an indenture. In the opening lines it sets out that the parties to it bind themselves by it. Its concluding words are to the same effect, but are made to include " the heirs

and legal representatives " of the parties. It expressly states that the parties are executing it in anticipation of their intended marriage. The arrangement of the instrument contemplated by the notary appears to have been to divide it broadly into two parts: one part, consisting of paragraphs 1 and 2, to contain the stipulations or proposals or declarations on the part of the intended husband; the other part, consisting of paragraphs 3 and 4, to consist of those on the part of the intended wife; in the first of these parts that the husband should declare what the wife ought to do as regards her own property; and in the other that the wife should similarly declare as regards the husband's property; and finally, that each party should severally declare himself and herself bound by all stipulations in the instrument as a whole. Hence the concluding paragraph: " We both parties having agreed to the several foregoing conditions this was executed, and have bound ourselves, our heirs, and legal representatives."

If the deed had followed the usual form, the husband would have agreed in regard to his, and the wife in regard to her, property. It is because of its peculiar arrangement that what would be covenants on part of each party, I have been obliged to call stipulations or proposals or declarations. I regard the paragraphs 1 and 2 as stipulations proceeding from the husband as to what the wife shall do or permit in regard to her property in certain events. And the concluding paragraph as the agreement on part of the wife to this stipulation. Similarly, *vice versa* as regards paragraphs 3 and 4. In the events that have happened, it is not necessary to do more than refer incidentally to paragraphs 1, 2 and 4, but I would remark in passing that paragraphs 2 and 4 when read with the other parts of the instrument indicate much looseness of language and some confusion of thought on the part of the draftsman. The issue between the parties is mainly concerned with the interpretation of paragraph 3. The material part of that paragraph is the stipulation or declaration by the intended wife. " In the event of children being born to me by him the properties he is now possessed of in the Island of Ceylon and those he and I may acquire shall be held and possessed by him all his life, and after his demise, my children by him on their attaining majority shall hold and possess in shares they are entitled to according to the religious law."

Having regard to the looseness of language and confusion of thought evident throughout the instrument, I feel that the ends of justice will be best attained by construing this passage, not by its strict letter, but by the intention of the parties. The intention apparent all throughout is that upon the death of either spouse their children should succeed to the property left by them, but that during their lifetime each spouse should be entitled to and stand possessed of his or her own peculiar property. In the light of this intention I interpret paragraph 3, taking it with the

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concluding paragraph as an agreement by the husband and wife that upon the death of the husband their children shall become entitled jointly to the property in Ceylon of the husband, a male taking twice as much as a female, and that as each child attains majority, he or she shall be entitled to enter into physical possession of his or her share. I would paraphrase paragraph 3 to read " and after his demise my children by him shall hold (*i.e.* shall become entitled to) and on their attaining majority (*i.e.*, as each attains) shall possess (*i.e.*, shall be entitled to enter into actual possession)." " In shares they are entitled to according to religious law " is only a reference to the principle of the Muhammadan law of succession, under which a male takes twice as much as a female.

The consideration for the agreements on the part of the husband was the agreements on the part of the wife. The instrument is an indenture, and by its nature irrevocable, except by mutual consent. For this reason it is not a will. It is so for other reasons as well. It has none of the characteristics of a will. Its form, its provisions, and the consideration which supports the mutual promises in it denote that it is an agreement *inter vivos* and not a last will. It is not a deed of gift *inter vivos*, because there is no conveyance of title, nor are the lands or other property it refers to duly specified. I therefore take the view that it is an antenuptial contract or agreement; that it does not operate either as a gift *inter vivos* or by way of a testamentary disposition, or in any other manner in vesting title to the lands in dispute in the Ceylon children of the deceased Meera Saibo. I am of opinion that it operates only as a promise on the part of the deceased to give title, and that the fulfilment of this promise depends on the death of the deceased leaving issue.

I now come to issue No. 8. It raises two questions: (1) Have the plaintiffs a cause of action? (2) Can they maintain this action? I believe the contention of the defendants under the first part of the issue was that no rights whatever vested in the plaintiffs till they attained majority; and hence this action was premature. I hold against this contention, first, because I have already pointed out that, in my opinion, upon the death of Meera Saibo his promise became enforceable, that his Ceylon children, among whom are the plaintiffs, should succeed to the dominion of his property in Ceylon. But even if the vesting of the dominion be postponed to the attainment of majority, the plaintiffs would still have a cause of action entitling them to maintain this action, in that the first, second, and third defendants deny the validity of the agreement No. 5,632, and the result of the administration proceedings will be to distribute the property in Ceylon in contravention of the provisions in P 1.

The second part of this issue, as I understand it, raises the question whether (assuming the validity of P 1 and its effect as being that

the plaintiffs can claim a fulfilment of the promise immediately) the plaintiffs can maintain this action in its present form. It is framed essentially as an action for a declaration of title (*vide* paragraph 21 and the prayer of the plaint). There can be no doubt that the plaintiffs' action is bound to fail in so far as it prays for a declaration of title to the lands. But it is maintainable as an action for a declaration of such rights as they are entitled to under or by virtue of the agreement No. 5,632.

There remains the 18th issue, as to the competency of Muhammadans in Ceylon to enter into antenuptial contracts regulating succession to property after death. In connection with this issue there was never the least suggestion that the principles of the Muhammadan law as obtaining in India should be accepted, whether they were recognized in Ceylon or not, because Meera Saibo's home of origin was Southern India, as alleged in the petition of appeal. The argument on appeal proceeded on the assumption that it was the Muhammadan law as it prevails in Ceylon which should govern the case. But Mr. Bawa, who appeared for the appellants, and argued their case with his usual ability, contended that the text books on Muhammadan law from which he cited should be regarded as evidence of the existence in Ceylon of the law expounded in them. He cited from *Tyabji's Principles of Muhammadan Law*, *Ameer Ali's Muhammadan Law*, *Abdul Rahaman's Muhammadan Law*, and *Macnaghten's Muhammadan Law* certain passages indicating the nature of the contract of donation according to Muhammadan law to show that P 1 is not a valid donation. He cited other passages indicating that marriage gives rights of inheritance to a wife, and that she cannot contract herself out of it. One of the documents put in evidence on behalf of the appellants is that marked D 15. This purports to be a translation of an extract from *Badd-al-Muktar*, said to be a standard work on Muhammadan law, by the witness Abdul Kudus, who was called as an expert by the appellants. One passage in this extract is quite apposite to the present case. It is "The declaration or promise made by a man that all the properties he then owns, and those he would acquire in future, that is, his solid cash as well as his landed properties, should become the property of others, or of his wife, or of his children, cannot amount to an agreement, and if such a declaration is urged to be an agreement, it cannot be valid, as it is a promise in respect to indefinite property."

Now, if the law as stated here is applicable, the appellants are entitled to succeed, but, in my opinion, this law is not proved to prevail in Ceylon. The onus is on the appellants to prove that under the Muhammadan law as it obtains in Ceylon the document P 1 is invalid. The only witness, Abdul Kudus, whom they called proves nothing as to the Ceylon law. He poses as an expert on the Muhammadan law generally, but it appears to me that even

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there his knowledge of the law is questionable, in view of the evidence he has given as to the law as recognized by the different schools or sects.

What is the Muhammadan law which prevails in Ceylon? It cannot for one moment be pretended that the whole body of Muhammadan jurisprudence obtains currency here, for the obvious reason that all law must derive its sanction by virtue of legislation or custom or judicial decisions. Muhammadan law stands devoid of any sanction here, because Muhammed had no right to impose his laws on the inhabitants of any British territory. It is matter of history that the Muhammadans or Moors under the Dutch Government here were allowed to be governed by their own peculiar usages. It is no secret that what is called the Code of Muhammadan Laws of 1806 is mainly a translation of a Dutch compilation. By the Proclamation of September 23, 1799, which was published very shortly after the acquisition of this Island by the British Government, it was declared that the administration of justice should be "according to the laws and institutions that subsisted under the ancient Government of the United Provinces."

By the Royal Charter of April, 1801, section XXXII., it was provided "that in the cases of Cingalese or Mussulman Natives their inheritance and succession to lands, rents, and goods, and all matters of contract and dealing between party and party, shall be determined in the case of Cingalese by the laws and usages of the Cingalese, and in the case of Mussulmans, by the laws and usages of the Mussulmans." This Charter was subsequently repealed. But it is useful as indicating that Muhammadan law in Ceylon derives its sanction from the graciousness of the British Sovereign in recognizing it as the customary law of a portion of the population of this Island. Part of this customary law now derives sanction as Statute law, as, for instance, the Code of Muhammadan Laws, 1806, which by a resolution of Council became Statute law. It has been frequently pointed out that this Code is not exhaustive (*Perera v. Khan*,[1] to cite one case among others). Where the Code is silent, and there is no special custom on any point, it has been held that the Roman-Dutch law should be resorted to, as being the law generally applicable in the absence of any special law, which takes the matter out of the operation of that general law. (Case in the District Court of Colombo referred to in the judgment of Lawson D.J. in 1862 in the anonymous case, D. C. Colombo, No. 29,129,[2] *Ibrahim Sayibu v. Muhamadu*,[3] and *Tillekeratne v. Samsedeen*.[4]

The reported cases show that since 1862 A.D. our Courts have consistently followed the principle that the Muhammadan law which prevails in Ceylon is so much and no more of it as has received

[1] *2 Bal. 188.*

[2] *Vanderstraaten's Reports, 1873-4, App. B., xxxi.*

[3] *(1898) 3 N. L. R. 116.*

[4] *(1900) 4 N. L. R. 65.*

the sanction of custom in Ceylon. ((1862) Anonymous case, D. C. Colombo, No. 29,129;[1] (1873) D. C. Colombo, No. 59,578;[2] (1914) *Rabia Umma v. Saibu* [3] being but a few among a number of others.) It is true that treatises on the Muhammadan law generally are frequently referred to in our Courts. But this is done only to elucidate some obscure text in our written Muhammadan law, or in corroboration of evidence of local custom. I cannot find a single decision that has gone to the length of holding that, apart from the prevalence of a local custom, Muhammadan law has any application in Ceylon. On the contrary, there is authority to the effect that where there is a conflict between the Muhammadan law as found in the treatises and local custom, the latter should be followed. (*Sule Amma v. Mohammado Lebbe Padily*,[4] *Badirala v. Mariuma Natchia*.[5])

The principles of the Mumammadan law as found in treatises have been adopted as governing Muhammadans here in the matter of pure donations, because since 1862 there has been evidence that the customs of the Ceylon Muhammadans recognized those general principles. (D. C. Colombo, No. 29,129, *ubi supra*.) But in the construction of wills, deeds, *fidei commissa*, and in ordinary matters of contract the principles of the ordinary general law, and not of the Muhammadan law, are always applied. (D. C. Colombo, No. 59,578[2] and *Kadiga Umma v. Meera Lebbe*.[6])

Finally, I would add that where Mussulmans or Moors in Ceylon go to a notary and enter into a contract, which is valid according to the general law prevailing in the Island, there should be unequivocal evidence of an inveterate custom before such a transaction could be pronounced by a Court of Law to be invalid or inoperative because of such custom. A strong presumption arises in such a case that the parties intended to be bound by their contract solemnly entered into, and that from long residence in the country they had learned to adopt the general law on the subject, unless there was some definite and well-reputed custom to the contrary. I therefore agree with the order proposed by my brother Ennis.

Varied.

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[1] *Vanderstraaten's Reports, 1873-4, App. B., xxxi.*

[2] *Grenier's Reports, 1873, Pt. III., p. 28.*

[3] *(1914) 17 N. L. L. 386.*

[4] *(1907) 10 N. L. R. 109.*

[5] *(1912) 16 N. L. R. 235.*

[6] *(1903) 7 N. L. R. 23.*