1955 *Present:* **Gratiaen, J., and Swan, J.**

HASEENA UMMA, Appellant, *and* HASHIM, Respondent

S. C. 331—D. C. Kandy, M. R. 4,929

Muslim Law—Claim for kaikuli—*Prescription.*

No cause of action for the recovery of *kaikuli* can be said to be complete until there has been a clear and unambiguous demand by the person entitled to claim it.

Where a Muslim wife sued her husband for the recovery of *kaikuli* more than three years after the date of the dissolution of the marriage but had made no demand for it until very shortly before the action commenced—

Held, that the claim was not prescribed. The prescriptive period for the recovery of the *kaikuli* commenced on the date of the demand and not on the date of the dissolution of the marriage.

APPEAL from a judgment of the District Court, Kandy.

A. M. Ameen, for the plaintiff appellant.

No appearance for the defendant respondent.

Cur. adv. vult.

October 13, 1955. GRATIAEN, J.—

The only question for decision in this appeal is whether the claim of a Muslim wife to recover a sum of Rs. 1,001 paid to her husband as " kaikuli " on the occasion of their marriage is prescribed. It is common ground that such a claim becomes time-barred within three years from the date on which the cause of action arose. The marriage between the parties was dissolved on 8th July 1948, and this action was instituted on 1st October 1952. The learned District Judge took the view that the cause of action arose on the date of dissolution of the marriage, and that the claim was therefore prescribed.

The judgment under appeal would have been perfectly correct if the claim was for *Mahr* as opposed to *Kaikuli*. According to Mohammedan law, it is essential to the constitution of a valid marriage that there should be a consideration (*Mahr*) moving from the husband in favour of the wife for her sole and exclusive use and benefit. Limitation does not run until the *Mahr* becomes due either by the death of one of the parties or by divorce. *Ameer Ali on Mohammedan Marriage* (5th. Edn.) Vol. 2 pages 432 and 454. This principle has received statutory recognition in the Codes enacted from time to time regulating the rights of parties to Muslim marriages in Ceylon.

Kaikuli, however, stands on a different footing. According to a custom among certain Muslims in Ceylon,

> " *Kaikuli* is a sum of money given by the parents of the bride to her intended husband. After the marriage has taken place, he owns it but is nevertheless liable to pay it over to the wife if she demands it, even during the subsistence of the marriage . . . . The obligation is to pay the money to his wife *whenever she demands it or, if she dies, to her heirs.*" vide the earlier authorities cited in *Sowdoona v. Muces* [1].

Accordingly, no cause of action for the recovery of *Kaikuli* can be said to be complete until there has been a clear and unambiguous demand by the person entitled to claim it. The dissolution of the marriage would no doubt be a very appropriate occasion for demanding *Kaikuli* if it had not previously been claimed, but, in the absence of such a claim, there is no liability.

In the present case, the wife made no demand until very shortly before the action commenced. I would therefore allow the appeal with costs in both Courts and enter a decree against the defendant in favour of the plaintiff for a sum of Rs. 1,001 with interest thereon from the date of the decree until payment in full.

SWAN, J.—I agree.

Appeal allowed.

[1] *(1955) 57 N. L. R. 75; 52 C. L. W. 47.*