

Present: Fisher C.J. and Driberg J.

MOOSAJEE *v.* CARIMJEE.

198—D. C. Colombo, 3,356.

Administration—Preferential right of widow—Application by attorney—Civil Procedure Code, s. 523.

The preferential right to a grant of letters of administration given under section 523 of the Civil Procedure Code may be claimed by the attorney of a widow who is absent from the Island.

A PPEAL from an order of the District Judge of Colombo.

Hayley, K.C. (with *F. H. B. Koch*), for appellant.

Keuneman (with *Choksy*), for respondent.

December 20, 1927. FISHER C.J.—

This case concerns the administration of the estate of one Abdul Hussein Alibhoy, who died in India in 1923, leaving movable and immovable property in Ceylon. It has been dealt with on the footing of an intestacy, for although the deceased is alleged to have made an oral will, its validity has been contested in Court in India

¹ (1909) 78 L. J., K. B. D. 629. ² (1875) Q. B. D. 447.

³ (1836) 7 C. and P. 303.

1927
 FISHER C.J.
 Moosajee v.
 Carimjee

and no probate has as yet been granted. The deceased left a widow who is in India, and the question for our decision is whether in a contest of claims for grant of administration the provisions of section 523 of the Civil Procedure Code apply to an application by the attorney of the widow. That section puts the claims of widows and widowers on the same footing, and if this were a case of a widow in the Island applying for a grant to herself her right to have her claim "preferred to all others" would have to prevail. See *In re Intestacy of Ukku Banda*.¹ It is contended, however, that the right cannot be given effect to in the present case, and the learned Judge has held that "the privilege provided for is personal to the person given the right and cannot be delegated to another." He rejected the contention that the last four lines of section 518 are applicable to the case, and I think he was right in so doing. In my opinion the words in that section, relied on by the appellant, are limited to cases in which the deceased person left a will. Dealing, therefore, with section 523 by itself—in the first place it must be borne in mind that the right of a widow under section 523 in case of an intestacy is a right created solely by the section and must be distinguished from the right of an executor whose appointment and authority are based on the wish of the testator as expressed in the will, and I do not think that the use of the words "or his attorney" in the case of an executor can be successfully used to sustain the view that the absence of those words, in the case of the preferential right given to the widow, involves the construction that that right is confined to applications by a widow without the intervention of an agent. A right created by statute can be exercised by a duly appointed agent, unless the language used or the object of the statute show that a personal exercise is intended, the presumption being that the Legislature does not intend to exclude the application of the general principle of law "*qui facit per alium facit per se*." See *Maxwell on the Interpretation of Statutes*, 6th ed., p. 135. The practice of granting administration to an attorney is well recognized and established in England (see, e.g., *Williams on Executors and Administrators* (1921), vol. I., p. 352), and I can see no reason for limiting the operation of section 523 in favour of a widow to a case of a personal application by a widow present in Ceylon.

I would therefore allow the appeal and direct that administration be granted to the appellant. The respondent must pay the appellant's costs of the inquiry in the District Court and of the appeal.

DRIEBERG J.—I agree.

Appeal allowed.

¹ (1900) 4 N. L. R. 257.