1917.

Present: Ennis J. and De Sampayo J.

SAPOOR UMMA *v.* OMERDEEN.

176—D. C. Colombo, 5,682.

Muhammadan law—Intestate succession—Person dying leaving sister and cousins—" Poor."

Under the Muhammadan law, where a person dies leaving a sister and cousins (sons of a paternal uncle), the sister inherits the half and the cousins the remaining half.

THE facts are set out in the judgment.

Bawa (with him *Abdul Cader*), for appellant.

Wadsworth (with him *Ismail*), for respondent.

Cur. adv. vult.

February 15, 1917. ENNIS J.—

This appeal raises a question of the Muhammadan law of succession. The deceased died leaving (1) a sister, the petitioner, and (2) cousins, sons of a paternal uncle. It is not disputed that the sister, the appellant, is entitled to half of the deceased's property as her " share "; she, however, claims the remaining half.

Article 56 of the Muhammadan Code of 1806 provides: " If the deceased has left a sister she is entitled to the half, and the poor to the other half. " Article 102, second paragraph, says: " The shares allotted to the poor by several of the foregoing articles are not for the poor, but must go to the asewatoekares, aroegamoedeweigel, and the people of the fathers' and the mothers' side who are entitled to the same. "

The Code does not enumerate the persons so entitled, and it is conceded that where the Code is silent the principle of Muhammadan law should be looked to. This was done in the case of *Marikar v. Natchia*.[1]

The classes of persons who by Muhammadan law are entitled in turn to a distribution of the residuary estate are set out in many text books (*e.g.*, *Wilson's Anglo-Muhammadan Law*, *s. 224*):—

" *Class I.*—Sons and sons', h. l. s.

" Daughters and sons' daughters, h. l. s., when not sharers.

" *Class II.*—Father (and true grandfather, h. h. s.).

" *Class III.*—Brothers and brothers' sons, h. l. s., full or consanguine.

[1] *(1915) 18 N. L. R. 446.*

" Sisters, full and consanguine, when not sharers.

" *Class IV.*—Sons and sons' sons, h. l. s., of true grandfathers, h. h. s.; in other words, paternal uncles, great uncles, &c., and their male descendants in the male line. "

As the petitioner-appellant is a " sharer," she does not come in the third class. The respondents are in the fourth class, and are, therefore, entitled to the residuary estate.

I would dismiss the appeal with costs.

DE SAMPAYO J.—

I am of the same opinion. It was rightly conceded in the District Court that the appellant, as sister of the intestate, was, under the Muhammadan law, entitled to a half of the property left by the deceased. It is as " sharer " that she is entitled to such half, inasmuch as there is an entire failure of those who would have been sharers before her. She, however, claims the other half also as sole " residuary. " Now, " residuaries " are those who inherit so much of the estate as is not exhausted by the " sharers, " or the whole if there are no " sharers " at all. It is a clear principle of the Muhammadan law of inheritance that sisters are residuaries only when they are not sharers, and in the present case, therefore, residuaries must be looked for elsewhere. The last class of residuaries are paternal uncles, great uncles, and their male descendants in the male line, and the respondents who are of that class are therefore entitled to inherit the half left unexhausted by the appellant as sharer. Article 56 of the Ceylon Muhammadan Code, which applies to this case, puts it thus: " If the deceased has left a sister she is entitled to the half, and the poor to the other half "; and Article 102 explains that the " poor " to whom shares are allotted means " the asewatoekares, aroegamoedeweigel, and people of the fathers' and mothers' side who are entitled to the same. " These, then, are the persons who, whether as residuaries or otherwise, inherit the half when the sharer is only a sister. The peculiar words " asewatoekares " and " aroegamoedeweigel " refer to " residuaries " and " distant kindred. " They appear to be barbarous Arabic and Tamil compounds, the first signifying the " residuaries " and the second the " distant kindred. " See *Nell's Muhammadan Law of Ceylon, p. 16.* The " distant kindred " are all those blood relations, whether near or distant, who are neither " sharers " nor " residuaries, " and are of four classes. *Wilson's Anglo-Muhammadan Law, s. 239 et seq; Mula's Principles of Muhammadan Law, ss. 54 and 55.* The rule of succession among the " residuaries " and " distant kindred " is that the residue is taken first by the residuaries to the exclusion of the distant kindred, and, in default of residuaries, then by the successive classes of distant kindred in their order. As shown above, the respondents to this appeal are undoubtedly residuaries, and, therefore, take

1917.

DE SAMPAYO J.

Sapoor Umma v. Omerdeen

the entire residue after the sharer's half has gone to the appellant. Mr. Bawa, for the appellant, suggested that the appellant was entitled to the residue by way of " return, " but this involves the whole question rather than meets it, for the principle of the " return " is that if there are no residuaries, the residue " returns " to the sharer or sharers. In my opinion the District Judge was right in holding that the appellant was entitled only to a half share of the estate, and in allowing the respondents to intervene as heirs in respect of the other half share; and I agree that this appeal should be dismissed with costs.

Appeal dismissed.