1920.

Present: De Sampayo J. and Loos A.J.

NARAYANEN *v.* SAREE UMMA *et al.*

368—D. C. Kandy, 26,890.

Marriage of Muhammadan—Majority—Capacity to enter into a contract.

A Muhammadan in Ceylon does not attain majority by marriage.

A Muhammadan under twenty-one years of age cannot validly incur liability by contract.

THE facts appear from the judgment.

Bartholomeusz, for second defendant, appellant.

A. St. V. Jayawardene, for plaintiff, respondent.

Cur adv. vult.

March 30, 1920. DE SAMPAYO J.—

The plaintiff sued the two defendants, who are Muhammadans, on a mortgage bond dated September 9, 1915. The second defendant disputed the plaintiff's claim on the ground that he was a minor at the date of the bond. It was proved that he was born on May 26, 1897, and was therefore under the age of twenty-one years at the date of the bond. But it appeared that he got married in May, 1915, and the District Judge held that the rule as to majority being attained by marriage applied to Muhammadans, and gave judgment against the second defendant. I think the decision of the District Judge is erroneous.

Section 1 of the Ordinance No. 7 of 1865 fixes the age of majority at twenty-one years, and declares that, except as in section 2 excepted no person shall be deemed to have attained his majority at an earlier

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period, any law or custom to the contrary notwithstanding. This necessarily excludes and renders inoperative any rule of the Muhammadan law as regards the age of majority. The exception provided by section 2 of the Ordinance is as follows: "Nothing herein contained shall extend or be construed to prevent any person under the age of twenty-one years from attaining his majority at an earlier period by operation of law." Tacit emancipation induced by leaving the parental roof and openly carrying on any trade or business and the contracting of a marriage are well-known instances, under the Roman-Dutch law, of attainment of majority by operation of law. But as the Roman-Dutch law does not apply to Muhammadans, and as these modes of attaining majority are unknown to the Muhammadan law, there is no law by operation of which the second defendant can be said to have attained his majority by marriage, and the exception provided in the Ordinance is, therefore, inapplicable to him. It is urged on behalf of the plaintiff, however, that the special laws governing Muhammadans in Ceylon are only concerned with such matters as inheritance and matrimonial affairs, and that where there is a *casus omissus*, the Roman-Dutch law should be applied even to Muhammadans. I cannot assent to this proposition. The local Muhammadans Code of 1806, it is true, provides only for such matters as those mentioned, but the Muhammadan law as such is applicable to the Muhammadans of Ceylon. By a long course of judicial practice, which cannot be questioned, the original sources of Muhammadan law and the recognized commentaries thereon have always been referred to as authorities on any points not provided for in the Muhammadan Code of 1806, which, though called a Code, is not, and does not profess to be, a complete embodiment of the laws applicable to Muhammadans. Even as regards inheritance, the principles of the Muhammadan law may be invoked in any case not especially dealt with in the Code. *Sarifa Umma v. Mohamedo Lebbe;*[1] *Pereira v. Khan.*[2] That being so, there is no *casus omissus* such as contended for. For the Muhammadan law does, in fact, provide for the attainment of majority so far as it intends to do so, and to apply the rule of the Roman-Dutch law as to the attainment of majority by marriage would, in effect, be, not to supply any omission in the Muhammadan law, but to add to it. As was pointed out in *Marikar v. Marikar,*[3] there are two kinds of "majority" under Muhammadan law, namely, one as regards capacity to marry without the intervention of a guardian, and the other as regards a general capacity to do other acts as a major. We are only concerned now with "majority" in the latter sense. There appears to be no definite limit of age for this purpose under the Muhammadan law, but a person is a major when he attains "discretion," which is generally

[1] *1 S. C. C. 80.*

[2] *2 Bal. 188.*

[3] *(1915) 18 N. L. R. 481.*

understood to be the age of fifteen years, and he is then free from the control of parents or guardians and has the capacity to manage his property and to transact business. Basing himself on this, Mr. A. St. V. Jayawardene sought to avoid the whole difficulty by arguing that the question of majority was not of much consequence, and that as, under the Muhammadan law, a person from and after the age of discretion or the age of fifteen years was able to bind himself by contract, he could do so still, whether he be regarded as a major or not, and he cited *Thyabji's Muhammadan Law 46*. This passage in Thyabji is a speculative discussion as to the effect of the Indian Majority Act and the Contract Act, and not a definite statement of a rule of law, and it is preceded by the statement of a significant principle, that " in the absence of an express or implied rule of Muhammadan law or custom, the Courts will either follow the analogy of the law in similar instances, or act in accordance with justice, equity, and good conscience, " and he proceeds to say that " justice, equity, and good conscience are generally interpreted to mean rules of English law, if found applicable to Indian society and circumstances. " Now, the general rule which incapacitates a minor from entering into an obligation accords with justice, and is eminently suitable to the circumstances of all the people in Ceylon. This, I think, furnishes one reason for not accepting Mr. Jayawardene's argument, and there is another. The capacity to transact business and to enter into contracts depends upon the attainment of " majority " in the sense of the Muhammadan law. But the period of majority has been fixed by the Ordinance at twenty-one years of age even as regards Muhammadans, and consequently no such business can be transacted now by a Muhammadan under the age of twenty-one years. I think the plain object of the Ordinance, when it so fixed the age of majority, is to continue the legal disability of a person up to that age. The preamble recites that " it is expedient that the same period of majority should be fixed for all persons whatever. " There is no question that under the general law a person under the age of majority, that is to say, under twenty-one years of age as fixed by the Ordinance, cannot validly incur liability by contract, and it is inconceivable that Muhammadans alone were intended by the Ordinance to be excepted from that principle, in which case there would be no object whatever in raising the age of majority to twenty-one years in the case of Muhammadans.

In my opinion the second defendant's plea of minority should have prevailed. I would set aside the judgment under appeal, and dismiss the plaintiff's action against the second defendant, with costs in both Courts.

LOOS A.J.—I agree.

Set aside.