1915.

Present: Ennis J. and De Sampayo J.

APPUHAMY v. SILVA.

244—D. C. Kalutara, 5,853.

Power of administrator to sell land—Civil Procedure Code, ss. 539 and 540.

An administrator is entitled to sell landed property of an intestate when the letters of administration contain no limitation of his powers as to such sales.

THE facts are set out in the judgment.

A. St. V. Jayewardene (with him *Mahadeva*), for appellant.

Bawa, K.C. (with him *Drieberg* and *Samarawickreme*), for respondent.

September 14, 1915. ENNIS J.—

The only point for determination in this appeal is whether an administrator is entitled to sell the landed property of an intestate when the letters of administration contain no such limitation of his powers.

In this case letters of administration to the estates (of father and son) were granted on the printed form, in which the clause "you are nevertheless hereby prohibited from selling any movable property of the estate unless you shall be specially authorized by the Court to do so" has been struck out. In one case this deletion has been initialled by the learned Judge (the initialling is dated 12-7-94, *i.e.*, July, not September, as stated in the judgment appealed from), and in the other case the circumstances leave no doubt the deletion was made by the Court before the letters issued.

It was argued that the clause which I have set out above is a substantive enactment of the Legislature, without which no letters of administration should issue. The clause is found in form 87 in the schedule to the Code, and is there put in brackets. It is contended that the form in the schedule is as much a part of the Code as any of the numbered sections, notwithstanding that no reference is made to it in any of the sections. In my opinion this is not so. The Code nowhere prescribes the use of this form; it has not therefore been incorporated in the Ordinance, and its use is optional. The fact that certain portions of the form are contained within brackets also shows that these portions are for use as circumstances may require, and are not applicable in every case where a grant of letters of administration is made. Further, assuming that the contention is sound, the enactment would not go beyond the enactment of a form, *i.e.*, a conventional method of expression adopted to meet, as circumstances may require, the needs of the substantive enactment to which it is subservient. It is nowhere incorporated as part of the substantive enactment, and, being a form, could not be construed as substantive law in the absence of express provision.

Section 519 provides that a grant of letters of administration "may be limited or not in manner hereinafter provided, as the Court thinks fit." Section 540 enacts that if no limitation is expressed in the order making the grant, the power of administration extends to all the property of the deceased person; and section 539 enumerates the cases in which the Court may limit the power of dealing with property; *e.g.*, it may be limited (sub-section (*g*)) for any particular purpose where the Court considers a larger grant unnecessary.

These sections show that the limitation of the powers of an administrator is in the discretion of the Court at the time the grant of administration is made. Ordinarily it would be desirable, for the purpose of securing to the heirs the ancestral lands, to limit an administrator's powers of alienating immovable property. In the present case an examination of the two testamentary suits in which the grants were made shows that the proceeds of sale were applied, *inter alia*, in satisfaction of certain decrees against the deceased; further, in both cases application for administration was originally made by creditors for administration, so the Judge at the time of

the grant must have had in mind the necessity for the sale of the land to provide for the liquidation of the debts. The grants were therefore made without any limitation of the administrative powers, and, in the absence of such limitation, the administrator had, under section 540, full powers.

I would add that the judgment in *Krause v. Pathumma*[1] is not a sufficient authority, if it be an authority at all, for the contention put forward in this appeal. The point was not raised in that case, was not necessary for the decision of the case, and it is doubtful if the point was considered or decided. In that case, and the subsequent case of *Hendrick Appu v. Siriwardene*,[2] the powers of the administrator were limited in the grant itself.

I would dismiss the appeal, with costs.

De Sampayo J.—I agree.

Appeal dismissed.