

1947

Present : Howard C.J.

KALENDERLEVVAI, Appellant, and AVVUMMAH, Respondent.

S. C. 136—C. R. Kalmunai, 2,514.

*Minor—Marriage of Muslim—Attainment of majority—Promissory Note—
Bills of Exchange Ordinance, section 22—Age of Majority Ordinance
(Cap. 53), ss. 2, 3.*

A Muslim minor does not attain majority by marriage. This rule is not affected by section 22 of the Bills of Exchange Ordinance.

A PPEAL from a judgment of the Commissioner of Requests, Kalmunai.

Cyril E. S. Perera (with him M. A. M. Hussein), for the plaintiff, appellant.

No appearance for the defendant-respondent.

Cur. adv. vult.

October 8, 1947. HOWARD C.J.—

The plaintiff in this case appeals from a judgment of the Commissioner of Requests, Kalmunai, dismissing his action with costs. The action was brought on a promissory note dated January 3, 1943, in which the defendant promised to pay a certain Meeracandu Athambandu a sum of Rs. 120 with interest at the rate of 18 per cent. per annum. The promissory note in question was endorsed to A. Sulaiha Ummah who in turn endorsed it to the plaintiff. In her reply to the plaint the defendant stated that at the time of the execution of the said promissory note she was a minor and therefore did not incur any liability. The learned Commissioner held that the note was executed by the defendant who was a Muslim without her father's consent and hence was not binding on her.

Mr. C. E. S. Perera has argued that, although the defendant was under age at the time of the execution of the promissory note, she was a major as she was married. The law with regard to capacity to contract in the

case of the promissory note is the Roman-Dutch Law. In *Narayanan v. Saree Umma*¹ it was held that a Muhammadan in Ceylon does not obtain majority by marriage and therefore a Muhammadan under twenty-one years of age cannot validly incur liability by contract. De Sampayo J. in his judgment referred to section 1 of Ordinance No. 7 of 1865 (now Chapter 53) which 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 period, any law or custom to the contrary notwithstanding. 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.”

At p. 440 the learned Judge went on to say that under Roman-Dutch Law emancipation by leaving the parental roof and openly carrying on any trade or business are well-known instances 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 was no law by operation of which the second defendant could be said to have attained his majority by marriage, and the exception provided in the Ordinance is therefore inapplicable to him. De Sampayo J. also stated that he could not assent to the proposition 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. He also said:—

“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 specially dealt with in the Code. *Sarifa Umma v. Mohamedo Lebbe*²; *Pereira v. Khan*³. 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.”

Mr. Perera concedes the authority of the judgment of De Sampayo J. in *Narayanan v. Saree Umma* (*supra*) but contends that it is no longer the law in view of the provisions of section 22 of the Bills of Exchange Ordinance which is worded as follows:—

“22. (1) Capacity to incur liability as a party to a bill is co-extensive with capacity to contract.

¹ (1920) 21 N. L. R. 439.

² (1905) 2 Bal. 188.

³ (1878) 1 S. C. C. 83.

(2) Where such capacity is to be determined by the law of Ceylon, it shall be determined by Roman-Dutch Law as administered in Ceylon subject to the provisions of any Ordinance affecting that law.

(3) Provided that nothing in this section shall enable a corporation to make itself liable as drawer, acceptor, or indorser of a bill, unless it is competent to it so to do under the law for the time being in force relating to corporations.

(4) Where a bill is drawn or indorsed by a minor or corporation having no capacity or power to incur liability on a bill, the drawing or indorsement entitles the holder to receive payment of the bill, and to enforce it against any other party thereto."

The Ordinance was enacted on March 1, 1928, after the decision in the case I have cited. I have not had the benefit of an argument on behalf of the respondent. I cannot, however, accept Mr. Perera's contention that the words in sub-section (2) "shall be determined by Roman-Dutch Law as administered in Ceylon" modifies the law previously in force in regard to the attainment by Muhammadans of majority. The question was raised but not decided in *Shorter & Co. v. Mohamed*. Roman-Dutch Law as administered in Ceylon did not apply in regard to the attainment of majority by Muhammadans. In fact it was held in *Narayanan v. Saree Umma* (*supra*) that Roman-Dutch Law could not be invoked to fill a *casus omissus* in Muhammadan Law on this question.

For the reasons I have given the appeal is dismissed.

Appeal dismissed.

