1st December, 1924.

RAHMAN DAVIES - - - - *Appellant.*

v.

JARRATU DAVIES, TUMAH DAVIES, MARIE DAVIES (WIDOWS) - - *Respondents.*

Action for revocation of Letters of Administration—Onus on grantee to show interest—Legitimacy.

The facts of this case are sufficiently set out in the judgment.

Appeal from a judgment of Purcell, C.J., in the Supreme Court of the Colony of Sierra Leone.

Barlatt for Appellant cites:—

Williams on Executors, 10th Ed., pp. 452, 456, 458.
In *re* Heslop. 1 Roberts, Eccl. Reps., p. 457.
In the goods of Reid, 11 Prob., p. 70.
Mohammedan Marriage Ordinance, 1905 (No. 20 of 1905), Sec. 9.[1]
Best on Evidence, 10th Ed., pp. 245, 247, 302.
Broom, Legal Maxims, 7th Ed., p. 724.
Eversley, Law of Domestic Relations, 2nd Ed., p. 516.

Wright for Respondents cites:—

Tristram & Coote, Probate Practice, 15th Ed., p. 371.
Halsbury, Laws of England, Vol. 14, p. 215.
Crosbie *v.* Norton, 16 L.T. (N.S.), p. 153.

Barlatt in reply cites:—

Dobbs *v.* Cheeseman, 1 Phil., p. 155.
Hibben *v.* Calenberg, ibid., p. 166.

BUTLER LLOYD, J.

In this case an action was brought by four widows of a deceased Mohammedan against the Defendant, who alleges that he is the eldest son of deceased, and who took out Letters of Administration to his estate in October, 1923. The deceased died in February, 1921, and the affairs of the estate had been managed in the meantime by the "Jama," which appears to be a sort of committee of the Mohammedan community.

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[1] Now Cap. 128, sec. 9, Vol. I, p. 898.

The statement of claim denied that Defendant was the lawful son of deceased, and asked the Court to revoke the grant of Letters of Administration and to grant them to one of the Plaintiffs or such other person as the Court should think proper.

The defence, *inter alia*, asserted the legitimacy of the Defendant, which thus became the main issue to be decided.

I will not refer to the unfortunate misunderstanding at the close of the case in the Court below, as a result of which an order was made with which Plaintiffs' Counsel was not satisfied, though he would have accepted it as a compromise, and which Defendant's Counsel asserts that he never, in fact, agreed to, further than to say that I think it a pity that the Appellant found himself unable to accept an order which would have ensured the proper administration of the estate without prejudicing his right to establish his claim to an elder son's share according to Mohammedan law.

This Court is now asked to decide the question of the legitimacy of Appellant, and as a corollary, his right to take out Letters of Administration, since by section nine of Ordinance No. 20 of 1905,[1] the eldest son of a deceased Mohammedan is the first person entitled to take out Letters of Administration.

I may say here that I regret that Appellant's Counsel should have relied on what he calls the presumption of law in favour of marriage and legitimacy as supporting his case. It is, of course, obvious, that these presumptions only arise from a state of facts from which they can be presumed, *i.e.*, that the man and woman are, or were, at the critical time, living together as man and wife.

A great deal of the argument in this case turned on the question of, on which of the parties the onus of proof lies, but it seems to me clear, from the passages quoted by Respondent's Counsel in Tristram and Coote, at p. 368 (11th edition), and Ingpen, p. 157 (2nd edition), that when a suit for revocation has been brought, it is for the person who has obtained the grant to show his interest, and the reason for this is obvious, when it is remembered that letters are granted without further formality to any person prepared to swear that he is the person entitled to the grant.

Appellant's Counsel cited certain passages in Williams on Executors and Administrators, pp. 412, 450 and 458 of the 10th edition, but I am unable to find in these passages any support

[1] Now Cap. 128, sec. 9, Vol. I, p. 898.

DAVIES v. DAVIES AND OTHERS.

BUTLER LLOYD, J.

for the proposition that the onus of proving non-interest in the person to whom letters have been granted is on the party asking for revocation.

But even apart from the question of onus of proof, I am of opinion that there is ample evidence before the Court to enable it to decide in the sense asked for by the Respondents, namely, that the original grantee is not the legitimate son of deceased, and that therefore the letters granted to him must be revoked.

Apart from the unanimous evidence of the four widows, it would be hard to imagine more cogent proof than the certificate of birth (exhibit "A"), which records the birth of Appellant in 1902 of a father unknown. It cannot be argued that the father did not know of this or disapprove of it, as he subsequently made a declaration, now attached to the certificate, that he acknowledged the Appellant as his son, and this evidence is supported in a remarkable way by the letter from Appellant's mother to one of the Respondents, referring to the death of "*your* dear husband" and referring to "Abdu Rahman *my* son." Against this we have only the certificate of marriage, dated after the commencement of these proceedings, and sworn to by persons who, on their own showing, were mere boys at the time of the alleged marriage, and the vaguest allegations that Appellant was always regarded as legitimate (one witness said "he was a son to him," and another, "I take him to be his son"), and had specially favourable treatment in the matter of education, which is not remarkable, when it is remembered that the only other son we know of, the witness Hollist, was not a Mohammedan.

On this evidence I have no difficulty in coming to the conclusion that Appellant was not the legitimate son of deceased, and that, he having failed to show his interest in the estate, the letters granted to him must be revoked.

This appeal will therefore be dismissed with costs.

McDONNELL, Acting C.J.

I agree.

SAWREY-COOKSON, J.

I agree.