RE MOHAMED SAID NABI, DECD.

[O.C.J. (Chua J.) November 2, 1964]

[Singapore — Originating Summons No. 8 of 1963]

Conflict of Laws — Domicile — Declaration in will affirming domicile of origin — Whether domicile of choice acquired by residence and intention of permanent residence.

Administration — Testator a Muslim by birth adopting Christian name by deed poll — Whether a Muslim or Christian at date of death.

Muslims Ordinance, 1957 — Muslim testator adopting Christian name by deed poll — Testator not strictly complying with tenets of Islam — Whether testator a Muslim at date of death.

The testator was born in Hongkong but his father was born in the Punjab, now a part of Pakistan. The testator came to Singapore sometime in 1941 and after that lived and worked in Singapore. He held various jobs during the war years and after the war he commenced to do business of a transport agency in Singapore and subsequently established various companies here. He bought a house in Singapore in 1949 where he lived with his wife. He registered as a Singapore Citizen in 1958 and voted at elections.

The testator was a Muslim by birth and was married according to Muslim rites but the evidence showed that he did not observe the injunctions of Islam strictly. Sometime in 1947 he had changed his name by deed poll to Michael Sidney Nabi.

In his will the testator declared that he was domiciled in Hongkong as it was his domicile of origin and that it was not his intention to remain in Singapore indefinitely.

The following issues were raised for the determination of the court:—

(a) whether the testator was at the date of his death a Muslim and if so of the Hanafi School of Law;

(b) whether at the date of his death he was domiciled in Hongkong, Singapore or Pakistan.

Held: (1) a person who was born in the Muslim faith and had never been proved to have adopted any other religion must be held to be a Muslim unless there was something amounting to a renunciation of that faith. The mere fact that the testator did not follow the injunctions of Islam strictly did not suffice to show that he had renounced his religion and ceased to be a Muslim;

(2) the domicile of origin of the testator was Pakistan but on the facts he had acquired a domicile of choice in Singapore which had not been abandoned by him. The declaration of the testator in his will as to domicile was incorrect and inconsistent with the facts and no importance could be attached to it.

[**Editorial Note:** Reference may be made to *Re Bhagwan Singh deceased* [1964] M.L.J. 360 where the principles to be applied in determining domicile were discussed.]

Case referred to:—

(1) *In re Marrett, Chalmers* v. *Wingfield* (1887) 36 Ch. D. 400.

ORIGINATING SUMMONS.

N. A. Mallal and *Kirpal Singh* for the plaintiffs.

M. Karthigesu and *Mrs. R. Ratnam* for the 1st and 2nd defendants.

J. L. R. Pillai for the third defendant.

Cur. Adv. Vult.

Chua J.: The plaintiffs in this case are seeking for, *inter alia*:

(1) a declaration that the testator Mohamed Said Nabi also known as Michael Sidney Nabi was at the date of his death a Muslim of the Hanafi School of Law and domiciled in Singapore;

(2) an order that the will of the abovenamed testator dated the 19th February, 1959, be varied pursuant to section 41 of the Muslims Ordinance, 1957.

By an order of court dated the 10th May, 1963, it was ordered "that the following issues be tried, without formal pleadings:—

(a) as to whether the abovenamed testator Mohamed Said Nabi also known as Michael Sidney Nabi (deceased) was at the date of his death a Muslim and if so of the Hanafi School of Law; and

(b) as to whether at the date of his death he was domiciled in Hongkong, Singapore, or Pakistan."

It is for the determination of these two questions that the parties are now before the court.

The plaintiffs are the brothers and sisters of the testator. The first defendant is the executor and trustee of the testator's will. The second defendant is the widow of the testator. The third defendant is the daughter of the first plaintiff and is entitled to the corpus of the residuary estate of the testator.

The plaintiffs contend that the testator was at the date of his death, on the 7th July, 1962, a Muslim of the Hanafi School of Law and that he had acquired a domicile of choice in Singapore. The second defendant denies that the testator was a Muslim but concedes that the testator was not domiciled in Hongkong and leaves it to the court to decide whether he was domiciled in Singapore or in Pakistan. The first defendant leaves both questions to the court to decide. The third defendant supports both contentions of the plaintiffs.

Taking up the consideration of the first issue.

The following facts are not in dispute. The testator's name was "Mohamed Said Nabi"; in or about 1947 he changed his name by deed poll to "Michael Sidney Nabi". The testator's father was Ghulam Nabi, a born Muslim of the Hanafi sect. The testator's mother was a Chinese lady who was also a born Muslim. In 1939 the testator married the second defendant in Hongkong according to Muslim rites. On the 8th March, 1955, the testator and the second defendant went through another marriage according to Muslim rites in Singapore before a Hanafi

Kathi. In 1962 the second defendant became a Roman Catholic. When the testator died near Bombay in an aeroplane crash on the 7th July, 1962, the second defendant arranged for the body of the testator to be buried there according to Muslim rites and Muslim prayers were held for the testator in Singapore in the matrimonial home.

The second defendant said that during the whole of their married life she never saw the testator saying his prayers in the matrimonial home and that the testator very rarely went to the mosque and that during the last few years of his life he never went to the mosque, as far as she was aware. She further said that the testator drank alcohol and was not strict about the type of food he ate or whether it was prepared according to Muslim requirements and that the testator never fasted nor did he observe the Muslim festivals. She also said that the testator could not read Muslim prayer books and that he sometimes went to the Roman Catholic church with her. She further said that he used the name "Michael Sidney Nabi" and not "Mohamed Said Nabi" and that he told his friends that he was a Christian.

There is a conflict in the evidence of the second defendant and that of the second plaintiff as to whether the testator was living as a Muslim during the period 1942 to 1952 when the second plaintiff was living with the testator. In my view the second defendant was not a very truthful witness.

From the evidence that was adduced I find that the testator was brought up a Muslim, that he was taught to read the Quran and to recite Muslim prayers. I find that the second defendant became a convert to Islam in 1939 when she n arried the testator. I also find that the testator and the second defendant were living as Muslims during the Japanese occupation and that the testator fasted and attended mosque during that period. In fact the evidence was that he attended mosque up to 1957. From the evidence of Mr. Lewis and Mr. Thurston, two intimate English friends of the testator, I have no doubt that after the testator moved into No. 2 Leedon Park and when his business was prospering he lived more in the European style and that he drank alcohol and ate pork when he was entertained by others and did not pay much attention to the religion of Islam. Although he did those things which were prohibited by his religion he nevertheless held Muslim religious ceremonies in the matrimonial home whenever the need arose and he took part in the prayers.

The argument on behalf of the second defendant is briefly this. The word "Muslim" is defined in the Muslims Ordinance, 1957, as meaning "a person who professes the religion of Islam." To come within this definition it is not sufficient for a man to be born a Muslim, he must be shown to be an orthodox Muslim and he must have outwardly manifested and practised the religion of Islam.

Now what is the meaning to be attached to the word "profess"? According to the *Shorter Oxford English Dictionary* "profess" means: "to affirm, or declare one's faith in or allegiance to (a religion, principle, God or Saint etc.)"

Now the testator was a born Muslim, he was brought up as a Muslim, he lived as a Muslim during the Japanese occupation, he married under Muslim rites in Hongkong and in Singapore, he held Muslim religious ceremonies in his house in which he took part. All this is strong evidence of his having been a person who professed the religion of Islam.

It is said that the testator did not pray five times a day and he did not regularly fast. Now does that mean the testator did not profess the religion of Islam? I do not think so. If the observance of the five daily prayers or regular fasting in Ramazan are to be used as a test I am afraid very few Muslims in Singapore would pass the test.

In my view a person who was born in the Muslim faith and has never been proved to have adopted any other religion must be held to be a Muslim. There is no evidence that the testator had renounced the religion of Islam and had become a Roman Catholic like his wife.

There remains the question whether the testator by reason of his heterodox practices of drinking alcohol and eating pork, which Muslims are forbidden to take, had ceased to be a Muslim before he died. These acts in my opinion do not amount to renunciation of religion. The testator was merely a bad Muslim.

I find, therefore, that the testator was, at the date of his death, a Muslim of the Hanafi School of Law within the meaning of the Muslims Ordinance, 1957.

I now come to deal with the second issue.

The following facts are not in dispute. The testator's father, Ghulam Nabi, was born on the 15th January, 1882, in the Punjab, in the village of Chakwal, in the District of Jehlum, which is now part of Pakistan. He went to Hongkong when he was a young man and took up employment in the Health Department of the Government of Hongkong. While in such employment he went back to his village on leave every five years for a period of eight months. In 1910 or so he married Shariffa, a Chinese Muslim lady. By Shariffa he had one son, Fazal Karim Nabi, the first plaintiff. Later he married Shariffa's

sister, Mariam, and by her he had a number of children — the testator and the second to the ninth plaintiffs. In 1922 when he went on leave to Chakwal he took Fazal Karim and the testator and put the two boys in school there. Fazal Karim was then eleven years old and the testator about six years old. The two boys were in school there for eight or nine months; they were unhappy there and they were taken back to Hongkong by their father. Since then neither of the sons had been back to Chakwal or Pakistan. In 1935 Ghulam Nabi married a young girl in Chakwal and by her he had two children, and the wife and children have been all the time living in Chakwal. In 1940 or 1941 Ghulam Nabi retired from the service of the Government of Hongkong and returned to Chakwal where he died in 1958. Fazal Karim was born in Hongkong. The testator was also born in Hongkong on the 13th October, 1918. In 1936 Fazal Karim came to Singapore to work. The testator at that time was working in Hongkong with a firm of civil engineers which had an office also in Singapore. On the advice of Fazal Karim that there were better prospects in Singapore the testator applied to his firm for a transfer to Singapore and he was given a transfer and he came to Singapore in 1937. He was then about 20 years old. He worked in Singapore for one and a half years and resigned his job and went back to Hongkong. In 1939 he married the second defendant in Hongkong. In September, 1941, he again came to Singapore with the second defendant and took up employment with the Air Ministry. When the Japanese war broke out he lost his job and during the Japanese occupation of Singapore he went into business here. After the liberation he started the business of a transport agency, the Singapore Baggage Transport Agency, which was converted into a limited liability company in 1947. He also started the firm of Nabi Construction Co. in which he and Fazal Karim were partners until 1956. He also bought and sold land and in 1957 he founded the Michael Nabi Estates Ltd. and whatever property was in his own name was transferred to the company. In 1949 he bought a house, No. 2 Leedon Park; the conveyance however was in his wife's name and it is still in her name. He lived in that house with his wife and adopted daughter Annie, who was the daughter of Fazal Karim. In 1951 he founded the Singapore Packing Co. Ltd. and in 1955 he founded the Singapore Baggage Agency (Malaya) Ltd. He had the controlling shares in these companies. Subsequently he transferred large blocks of shares in these companies to his wife and his adopted daughter Annie. All these companies did well. In January, 1958, he registered as a Singapore citizen and he voted at elections. He never owned any property in Hongkong and at the time of his death he owned no property anywhere else except in Singapore. He left a will dated the 19th February, 1959. By clause 2 of his will he declared as follows:

> "I declare that I am domiciled in Hongkong by reason of the fact that my father and myself were both born there and accordingly it is my domicile of origin. It is not my intention to remain in Singapore indefinitely and I do not regard myself as having acquired a domicile of choice in Singapore. It is my intention to eventually return to Hongkong where I lived for some years during the early part of my life."

Those are the undisputed facts.

Fazal Karim's evidence was that the testator had no intention of settling in Pakistan and he had not even been back to visit his father's grave. The testator did not like to live in Hongkong and he very rarely visited Hongkong. The testator regarded Singapore as his permanent home and that was why he registered himself as a Singapore citizen. The testator told him that he made the declaration in the will that he was domiciled in Hongkong in order to escape payment of heavy estate duty in Singapore. The testator also told him that he did not like the life in England.

The second defendant's evidence was shortly this. The testator always gave her the impression that he had no intention of remaining in Singapore permanently. The testator was very fond of England and whenever he went to Europe he always made a point of spending part of his time in England.

Mr. Lewis in his evidence said that the testator at one time suggested that they should start a business in London selling oriental wares and in 1954 the testator bought a residence in England which he eventually sold after he was informed that the house was not worth the money he had paid for it. The testator encountered labour troubles in his business in the last few years before his death and he sometimes said that he would sell his business interests here and go to the United Kingdom. Mr. Lewis said that having known the testator for so long he was convinced that the testator had no fixed and settled intention to permanently reside in Singapore and he formed the view that if business operations became too difficult for the testator, the testator would definitely settle in England and that in any event the testator would eventually settle there. The testator had at various times discussed the matter of his Singapore citizenship and the testator told him that he had registered as a Singapore citizen for business reasons. In cross examination Mr. Lewis said that "It is fair to say Mr. Nabi had not definitely made up his mind where he was going to live."

Mr. Thurston in his evidence said that in the early days the testator's intention was that he would eventually return to Hongkong. Subsequently after a holiday in England the testator favoured settling eventually in England and they had discussed trying to find a suitable property for him in Kent.

There is no dispute that the domicile of origin of the testator was Pakistan. It is the contention of the plaintiffs that the testator had acquired a domicile of choice in Singapore. The second defendant does not contend that the testator had acquired a domicile of choice in Hongkong but she contends that the onus is on the plaintiffs to prove that the testator had acquired a domicile of choice in Singapore and unless they discharged this onus then the testator's domicile of origin has not been lost. The only question now is whether the testator had acquired a domicile of choice in Singapore.

The two requisites for the acquisition of a domicile of choice are residence and intention of permanent or indefinite residence. There is no difficulty about "residence" in this case. It has been sufficiently proved that the testator was resident in Singapore for 21 years. The next question is as regards the testator's intention to remain here. I think that in the evidence the plaintiffs have discharged the burden of proving that the testator intended to remain here permanently. The facts which in my judgment prove that the testator intended to remain here permanently are numerous and I need only shortly mention a few that strike me most. The testator had no intention whatsoever of ever returning to Pakistan and he came to Singapore as a very young man to better his prospects. It is reasonable to infer that he came to Singapore with the intention of staying here permanently or for an unlimited time. Even if he did not have that intention when he first came to Singapore, he had formed and retained a fixed and settled intention of residing in Singapore after the liberation when he commenced to do business of a transport agency and bought a house here to live in. This intention of living in England deposed to by Mr. Lewis and Mr. Thurston came when the testator had become a successful business man and after he had acquired a domicile of choice in Singapore. In order to lose the domicile of choice and revive the domicile of origin it is not sufficient for the testator to form the intention of leaving the domicile of choice, but he must actually leave it with the intention of leaving it permanently. (*In re Marrett, Chalmers* v. *Wingfield* [1]).

There remain the question of the declaration of the testator contained in his will that he was domiciled in Hongkong. I cannot attach any importance to this declaration. The facts stated by the testator that his father was born in Hongkong and that his and his father's domicile of origin was Hongkong are not correct. His declaration that it was not his intention to remain in Singapore indefinitely and that his intention was eventually to return to Hongkong are inconsistent with the facts.

The answer to the second question is that at the date of his death the testator was domiciled in Singapore.

Questions answered.

Solicitors: *Mallal & Namazie; Allen & Gledhill; Pillai & Co.*

REG. v. TAN HONG HENG

[A.Cr.J. (Chua J.) June 25, 1958]

[Singapore — Magistrate's Appeal No. 176 of 1957]

Road Traffic — Using motor cycle whilst not covered by third party insurance — Holder of provisional driving licence — Breach of essential conditions of licence — Road Traffic Ordinance, (Cap. 227), s. 46(2).

Insurance — Third party insurance — Failure to display "L" plates.

The respondent, the holder of a provisional driving licence, was driving a motor cycle with a pillion rider. There were no "L" plates on the front and the rear of the respondent's motor cycle and the pillion rider was not a holder of a driving licence. A policy of insurance had been issued in the name of the respondent in respect of the motor cycle covering third party risk and under the policy the insurance company agreed to indemnify the policyholder or any person who is driving on the policyholder's order or with his permission, provided that the person driving holds a licence to drive the vehicle. No evidence was called at the trial to show that the insurance company had disclaimed liability. The learned magistrate acquitted the respondent on the charge of using the motor vehicle whilst not covered by third party insurance and the Crown appealed against the acquittal. It was argued on behalf of the Crown that the policy of insurance covered the respondent only if he held a licence to drive the motor cycle and as the respondent was driving the motor cycle in breach of the essential conditions of his provisional driving licence he was riding his motor cycle without licence and therefore was using the vehicle without there being in force a policy of insurance. On behalf of the respondent it was argued that the insurance company by issuing the policy have satisfied themselves that they will take the risk whenever the respondent is driving whether the respondent is a holder of a driving licence or not, but where a person other than the respondent drives they will only take risk if such person holds a licence; and that until the insurance company disclaimed liability, it cannot be said that there was no insurance in force when the respondent was driving his motor vehicle.

Held: as the prosecution had failed to satisfy the magistrate beyond reasonable doubt that there was no policy of insurance in force by not calling a representative of the insurance company to clarify the position as to whether or not they considered themselves on risk, the magistrate had rightly given the benefit of the doubt to the respondent.

[**Editorial Note:** See *Dodds* v. *R.* (1962), 3 M.C. 320 which was decided subsequent to this case.]