

PRIVY COUNCIL

Mahomed Syedol Ariffin bin Mahomed Ariff

Vs.

Yeoh Ooi Gark

(The Lord Chancellor, Earl Loreburn and Lord Shaw. JJ)

20.7.1916

JUDGMENT

Lord Shaw J.

1. This is an appeal from a judgment and order of the Court of Appeal of the Supreme Court of the Straits Settlements dated the 2nd March, 1915. This judgment and order affirmed the judgment and order of the Court of first instance, pronounced on the 19th September 1914.

2. The action was brought by the respondent, who is a money-lender, against the appellant for certain sums of money, amounting in all to 29,521 dollars. To this action the appellant lodged a defense that at the time of the transaction sued upon he was an infant. The facts briefly slated are these : On the 21st March, 1912, the appellant's father died, the appellant being his second son. On the 16th October, 1912, the 13th December, 1912, and the 17th January, 1913, respectively, he executed in favor of the respondent three mortgages over his one-twelfth share of his late father's property. The amounts in the mortgages were 6,000 dollars, 8,000 dollars, and 10,000 dollars. Interest was stipulated for at 15 per cent, per annum for the first six months, and thereafter at 18 per cent. The respondent swears that at the date of the transaction he "suspected he (the appellant) was under age. "I thought," he says, "his mother would prove his age or, perhaps, his brother. I was in doubt even after the doctor's certificate was produced. It may be wrong. There was still his mother or brother. He wanted the loan, so I did not go to see his mother or brother". Later in his evidence he stated, "I lent because of the high interest, 15 per cent, which was arranged between us."

3. The doctor's certificate was obtained for the following reason. The respondent swears "I asked him" (the appellant) if he were of age. He said "Yes". I asked him for proof of majority. He said he would bring a doctor's certificate." The so-called certificate was : "This is to certify that in my opinion M. S. Ariffin is of the age of 21

years." Dr. Bright, on examination, says that he formed the opinion that the appellant was 21 judging by his teeth, his appearance and his voice. In their Lordship's view such a certificate is worthless. It is in truth not a certificate but only an assertion of opinion. A formality of making a declaration before a magistrate was alone gone through, but the declaration was nearly this : By the certificate of Dr. W. H. M. Bright, hereto annexed and marked 'A', I believe I am over 21 years of age". Such a declaration of their Lordships' opinion, is of no given, ??? than the certificate itself. Proof on the subject is not advanced by such statement. When the evidence in the case same to be taken, the appellants' elder brother, one Che Ariffin, proved an entry relating to the appellants' birth in a book containing a record of births, deaths and marriages in his family, kept by his late father. Entries were contained in the book of the births of three members of the family, and the entry regarding the appellant was this : "A boy by Fatima, alias Pusi, on Tuesday, 27th Rabi Lawal, 1313 exactly at 4 p.m., or 17th September, 1895; name, Syedol Ariffin."

4. The sole question in the case is whether this entry is admissible in evidence. It was not contended before their Lordships that it was not in the handwriting of the father or a genuine document. Both of the Courts below have, however, held that the entry was not admissible, and this being so, they also held that the defence of infancy has not been made out. There is no question that the entry was made by one having special means of knowledge, and no suggestion that it was made before any question or dispute between the parties. If in itself admissible, it would go to show that at the time of the transactions in question the appellant was only seventeen or eighteen years of age.

5. The law of Straits Settlements on the point of the admissibility of such a document in evidence depends upon the construction to be given to the language of Sec 32 of the Evidence Ordinance 1893, which is in similar terms to the Evidence Act No. 1 of 1872.

6. Section 32 provided that:

"Statements written a verbal of relevant facts made by a person who is dead. Are themselves relevant facts in the following cases.... V, when the statement relates to the existence of any relationship by blood, marriage or adoption between persons as to whose relationship by blood, marriage, or adoption the person making the statements and special means of knowledge, and the statement was made before the question in dispute was raised.

7. To this section are appended illustrations, and illustration L is as follows:

"The question is, what was the date of the birth of A ? A letter from A's deceased father announcing the Birth of A on a given date is a relevant fact."

8. In the construction of this language in India the practice of the Indian Courts appears to have been uniform. The cases of *Ram Chandra Dutt v. Jogeswar Narain Deo*¹; *Dhanmull v. Ram Chunder Ghose*² and *Oriental Government Security Life Assurance Co. v. Narsimha Chari*³ have been cited to establish this, and in their Lordships' opinion they do so. In the Madras case Sir Arnold White, referring to the case reported in 20 Calcutta, observes:

"The principle of the decision in my opinion is, that the time of one's birth relates to the commencement of one's relationship by blood and a statement, therefore, of one's age made by a deceased person having special means of knowledge, relates to the existence of such relationship as that referred to in Section 32, Clause 5."

9. The Courts below have, however, declined to accept this principle. They proceed upon two grounds. In the first place they think that the rule with regard to hearsay evidence, adopted in the English case of *Haines v. Guthrie*⁴, should be followed in the Straits Settlements, and that that rule is not varied by the clause just cited from the Evidence Act. and in the second place they hold that the illustration, given in the statute, does not in fact illustrate the section.

10. On the first point, the view of their Lordships is that the rule and principle of the colony must be accepted as it is found in its own Evidence Act, and that the acceptance of a rule or principle adopted in or derived from English law is not permissible if thereby the true and actual meaning of the statute under construction be varied, or denied effect. The learned Sercombe-Smith, J., put the matter thus:

"I think that it is safer to construe Section 32, v., and the illustrations on English lines than to extend the English law of evidence in reliance upon the language of Section 32 v. and the illustrations which it appears to me are construable as enacting in changed phraseology the principles of English adjective law."

11. The Board does not think that such a method of construction is safe or is warranted, and they cannot agree with the view suggested, the true principle being, in their opinion, that above stated.

12. The Board makes no pronouncement upon *Haines v. Guthrie*, or the limitation there affirmed of hearsay to questions of pedigree; but such a limit finds no foundation

in this Col Statute, even in the words of the section, and this is made clearer by the illustration given thereto, as will be presently noted.

13. On the second point, their Lordships are of opinion that in the construction of the Evidence Act it is the duty of a Court of law to accept - if that can be done - the illustrations given as being both of relevance and value in the construction of the text. The illustrations should in no case be rejected because they do not square with ideas possibly derived from another system of jurisprudence as to the law with which they or the sections deal. and it would require a very special case to warrant their rejection on the ground of their assumed repugnancy to the sections themselves. It would be the very last resort of construction to make any such assumption. The great usefulness of the illustrations, which have, although not part of the sections, been expressly furnished by the legislature as helpful in the working and application of the statute, should not be thus impaired.

14. In the present case, however, no special or exceptional case of construction arises. The section admits a statement which "relates to the existence of any relationship," when under all the other conditions as to knowledge, time when made, etc. - all of which conditions it is agreed are fulfilled. The illustration puts the question thus : "What is the date of the birth of A". and "A letter from A's deceased father to a friend announcing the birth of A on a given day is a relevant fact." Their Lordships agree with the judgments in the India Courts above cited, that there is no repugnance between a statement which relates to the existence of a relationship and the illustration by a statement as to when A was born, that is to say, when the relationship began.

15. Their Lordships, with much respect to the Judges of the Court below, think that the document in question was admissible in evidence. The question as to whether the appellant has reached majority at the date of the mortgages sued on was left most doubtful on the evidence of the respondent himself, but the statement of the appellant's father, now admitted, appears to their Lordships to set the doubt at rest, and to establish minority. A case of fraud by the appellant on the subject of his age was set up, but it cannot be doubted that the principle recently given effect to in the case of *R. Leslie (Limited) v. Sheill*⁵ would apply, and such a case would fail. But their Lordships think it right to add that the statement made by the minor as to his age on the declaration before the magistrate: "by the declaration of Dr. W. H. M. Bright.. I believe I am over twenty-one years of age," cannot be justly characterized as fraudulent, in short, a case of fraud does not appear to be established.

16. Their Lordships will humbly advise His Majesty that the judgments of the Court below should be recalled, and that the action should be dismissed with costs.

Appeal allowed.

Cases Referred.

1. [1893] 20 Cal. 758
2. [1897] 24 Cal. 265 : 1 C.W.N. 270
3. [1902] 25 Mad. 183 : 11 M.L.J. 379
4. [1884] 13 Q.B.D. 818 : 51 L.T. 645 : 33 WR 99 : 58 L.J.Q.B.521 : 48 JP 758
5. [1914] 3 K.B. 607 : 111 L.T. 106 83 L.J.K.B. 1145 : 58 S.J.453 30 T.L.R. 460