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MUTTIAH CHETTY *v.* DE SILVA *et al.*

D. C., Galle, 2,721.

Contract by minor—His liability on promissory note—Interest, how to be decreed—Civil Procedure Code, s 129– Evidence of certificate of birth—Ordinance No. 18 of 1867, s. 27.

Under the Roman-Dutch Law the *filius familias* could not bind himself without the consent of his father, except with regard to certain kinds of property. If he contracted, his contracts would not bind him, although, if they were beneficial to the minor, the other party would be bound (*Cens. For. lib. 1, chapter IX., section 5*).

A contract entered into with the authority of his father would bind the unemancipated minor, subject, however, to his right in certain cases, if the contract was a detrimental one, to apply to the Court for the remedy of *restitutio in integrum*.

This remedy, however, is not available in cases where a minor practising a trade or profession incurred liabilities in the course thereof.

Semble, *per* BONSER, C.J.—Trading is not of itself sufficient to emancipate a *filius familias* so long as he lived under the father's roof. Where a minor and his father, trading together, had granted a joint and several note stipulating for interest at the rate of 15 per cent.—

Held (1), that the plea of minority is not open to the minor, as the note must be presumed to have been made with the consent of the father; and (2) that the proper method of ordering interest in the decree is that interest should be calculated down to the date of the commencement of the action, and from thence to the date of the decree at the rate of 15 per cent., and a decree given for the aggregate amount made up of the principal and these two sums for interest, and from the date of the decree the interest should be given on the aggregate amount at the rate of 9 per cent.

Semble, *per* BONSER, C.J.—A certificate of birth given under Ordinance No. 18 of 1867 is *primâ facie* evidence, not only of the birth, but also of the date of birth.

Letchiman Chetty v. Perera (*4 S. C. C. 80*) queried.

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THE facts of this case are sufficiently stated in the judgment of the Chief Justice.

Sampayo, for appellant.

Dornhorst, for respondent.

14th June, 1895. BONSER, C.J.—

This is an appeal from a judgment of Mr. Moysey, acting District Judge of Galle. The appellant was sued on a promissory note which he had made jointly and severally with his father who died after action brought, and the third defendant. He pleaded that at the time the note was made he was a minor, that is, was under the age of twenty-one years, which, by Ordinance 7 of 1865, has been fixed as the age of majority in this Island. It appears that he had been assisting his father in his business of boutique-keeper from the age of fourteen or fifteen onwards ; that the business was carried on under a firm name composed of his own and his father's names ; that he lived in his father's house and was unmarried ; and that the note was given for the purposes of the business.

In support of the plea of minority he gave evidence that he was a minor at the date of the making of the note, and produced a certificate of his birth given under Ordinance No. 18 of 1867. This certificate is not attached to the record, and we do not know what it contained, but I assume that it contained the particulars required by law, amongst which is the date of birth, and was otherwise in order. The Acting District Judge refused to admit this certificate in evidence on the ground that there was no independent evidence of the date of birth, and that therefore the certificate could not be received to prove that date, relying on *Letchiman Chetty v. Perera (4 S. C. C. 80)*.

In that case CLARENCE, J., is reported to have said :—"The 27th "clause of the Ordinance (Ordinance No. 18 of 1867) makes the "certificate evidence of the birth, but does not say that it is to be "evidence of the date of birth. This purports to be a birth which "happened several years before the passing of the Ordinance, "namely, in 1858, and the registration purports to have taken "place in 1869, upon the father's information. The Ordinance "has made the Registrar-General's certificate evidence of the "fact of birth, but I do not see that the Legislature has made it "evidence that the birth took place on the 3rd of September, "1858. At any rate, in this case I am not disposed to accept "it as conclusive evidence that the birth happened on that "date."

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BONSER, C.J. object of making the certificate evidence of the *fact of birth*. That fact, I should have thought, was sufficiently evidenced by the existence of the person. It will be noted that the learned Judge declines to accept the certificate as *conclusive* evidence, while the Ordinance does not purport to do more than to make it *primâ facie* evidence, and that he appears to rest his decision on the special facts of the case. If that case is to be understood as laying down the rule that a certificate of birth cannot in any case be regarded as *primâ facie* evidence of the date of birth, I wish to state that I am not at present prepared to agree with it, and reserve my right to deal with it when the question arises for decision.

But in the present case it is not necessary to determine the point, for, assuming that the appellant was under age when he made the note, I am of opinion that the plea of minority is no defence to this action. By the Roman law, a minor under the age of twenty-five years of age, but above the age of puberty, appears to have full legal capacity of entering into any kind of contract, subject to its being rescinded by the Prætor, if it was unfair to the minor.

The Dutch law, however, curtailed this freedom to a considerable extent.

The *filiusfamilias* could not bind himself without the consent of his father, except with regard to certain kinds of property. If he contracted, his contracts were not binding on him, though, if they were beneficial to the minor, the other party was bound. Van Leeuwen says:—*Præterea consistit (patria potestas) in auctoritate præstanda, sic ut filiusfamilias sine consensu patris ne quicquam polliceri, aut se contrahendo obligare, aut in judicio cum quoquam experiri possit, nisi in castrensi peculio vel quasi, in quibus pro patribusfamilias habentur.* (*Cens. For. lib. 1, chapter IX., section 5.*)

But a contract entered into with the authority of his father bound the unemancipated minor, subject, however, to his right in certain cases, if the contract was a detrimental one, to apply to the Court for the remedy of *restitutio in integrum, i.e.*, rescission.

This remedy, however, was not given in cases where the minor practising a trade or profession incurred liabilities in the course thereof, for the *imperitia negotiorum*, which was the foundation of this relief, was considered to be wanting in such cases (See Van Leeuwen, *Cens. For. lib. 4, chapter XLIII., sections 4 and 5; Voet, 4, 4, 51*).

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In the present case the promissory note was undoubtedly made with the consent of the appellant's father, for he was a joint maker, and I am therefore of opinion that it was binding on the appellant. It was suggested that the appellant had become emancipated by reason of his being engaged in trade with the assent of his father; but I doubt whether, in the circumstances of this case, he was emancipated; for I gather that, according to Roman-Dutch law, trading was not by itself sufficient for this purpose so long as the *filius familias* lived under his father's roof (see *Grotius, Intro. 1, 6, 4; Cens. For. lib. 1, chapter IX., sections 11 and 15; Voet, 1, 7, 12*).

The decree, however, should be varied. The promissory note was for Rs. 3,000, with interest at 15 per cent. The decree orders the appellant and the other defendant to pay the plaintiff the sum of Rs. 3,000, "with interest thereon at the rate of 15 per cent. per annum "from the 19th of August, 1893 (the date of the note), until payment "in full." The interest ought to have been calculated down to the date of the commencement of the action, and from thence to the date of the decree at the rate of 15 per cent., and a decree given for the aggregate amount made up of the principal and these two sums for interest. From the date of the decree the interest should have been given on that aggregate amount, and not on the original principal sum of Rs. 3,000, and that not at the rate of 15 per cent., but of 9 per cent., which is the Court rate of interest. The words "such "rate" in section 192 of the Civil Procedure Code may I think be fairly taken to mean "such last-mentioned rate." The original debt is merged in the decree and no longer exists, and no rate was agreed upon by the promissory note as to interest on the decree.

The decree should, therefore, be amended by substituting for the sum of Rs. 3,000 the sum which represents the aggregate amount above referred to, and substituting for the words "at the "rate of 15 per cent. per annum from 19th of August, 1893, until "payment in full" the words "on such aggregate sum of Rs. 3,459 "at the rate of 9 per cent. per annum from the 27th August, "1894, until payment."

I wish to say, in conclusion, that I have assumed that the appellant had attained his majority at the date of action brought. If he should be able to establish the contrary, this judgment will not preclude him from making an application under section 480 of the Civil Procedure Code to have the proceedings set aside.

BROWNE, A.J.—

As in the view I take of the case it is not necessary to determine the effect of any certificate of registration of birth, and as the

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certificate tendered in this case is not in the record, I agree that this question, considered with different results of opinions thereon in *4 S. C. C. 80* and *3 S. C. R. 82*, should await further decision hereafter when necessary.

Assuming on behalf of the appellant that he adduced sufficient *primâ facie* proof to establish in his favour the first issue, that he was a minor when he made and granted the promissory note sued upon, I hold on the second issue that he is liable upon it on his own showing for the reasons stated in *Voet 4, 4, 51*. I regard the principles there stated as altogether independent of the considerations of *seorsim a patre* and *sejuncta filii a patre habitatione*, which attach to all acts mentioned in *lib. 1, 7, 12*, as indicative of emancipation from the *patria potestas*, and hold that the public profession of business, skill, and knowledge entails the liability for all transactions therein, whether the minor's father had knowledge, and gave consent thereto or not. I agree also that the decree should be amended as regards computation of interest in the manner suggested by my Lord.