

1934

*Present : Dalton J.*MENDIS *et al.* v. PUNCHIHEWA *et. al.*

189-190—C. R. Gampola, 264.

*School-leaving certificate—Refusal to issue—Action by pupil—No right to sue*

The refusal on the part of the principal of a school to issue a school leaving certificate to a pupil does not give him a cause of action for damages.

**A** PPEAL from a judgment of the Commissioner of Requests, Gampola.

*N. E. Weerasooria*, for defendants, appellants.

*C. V. Ranawake* (with him *T. S. Fernando*), for plaintiff, respondent.

*Cur. adv. vult.*

May 1, 1934. DALTON J.—

This is an action by J. D. Mendis, a minor, 14 years of age, by his next friend, his elder brother, against the first defendant the manager and the second defendant the principal of a school called Anuruddha College, Nawalapitiya. The claim is for damages, the defendants, it is stated, having unlawfully declined to issue to the plaintiff a school-leaving certificate, as a result of which he suffered loss and damages to the amount of Rs. 200. The Commissioner of Requests has found that plaintiff suffered no damages and has awarded him the sum of one cent, as the plaintiff proved a wrong was done to him in the unjustifiable withholding of the certificate. He also ordered the defendants to pay plaintiff's costs. Both defendants appeal from this judgment.

I might here state a few further facts. The Commissioner is satisfied that this is really a dispute between the boy's brother-in-law, A. N. G. Gautamadasa, and the first defendant. Gautamadasa had been principal of the school, but the first defendant asked him to quit at the end of October, 1931, whereupon the second defendant was appointed in his place. The boy's father lives at Moratuwa, but when Gautamadasa was principal, the boy lived and boarded with him whilst he was attending the school. There is nothing, however, to suggest the boy did not spend his holidays in his own home, and there is no evidence to justify any finding that Gautamadasa was his guardian. A document was produced (D 1) in Gautamadasa's own writing, inconsistent with any such suggestion. Further, Gautamadasa admitted he was the real plaintiff in the case, the boy and his elder brother clearly being made use of by him to satisfy his spite against the defendants.

In November, 1931, Gautamadasa wrote to the second defendant asking him to deliver to "bearer" the school certificates of "my wards J. B. Mendis and J. D. Mendis", the principal having been instructed to remove their names from the registers as from November 1. Correspondence thereafter passed between these parties and the Education Department, as a result of which the certificates were issued on December 17. The defendants alleged there had been a strike at the school early in November, into which inquiry had to be made, but Gautamadasa denies plaintiff had anything to do with it. The tone of one or two of Gautamadasa's messages is certainly provocative, but the Commissioner is satisfied that the defendants delayed the issue of the certificates through vindictiveness. If that is so, it would certainly seem the conduct of Gautamadasa under the circumstances was the more vindictive.

The defendants urge that no cause of action arises to the plaintiff in the failure, under the circumstances set out in the plaint, of defendants to issue the school-leaving certificate. That contention must be upheld. Under the Code of Regulations for Assisted English Schools, clause 15 (iii.), on the pupil being withdrawn, the leaving certificate is to be handed to the parent or guardian, or to someone authorized in writing by the parent or guardian. The pupil is not entitled to demand it for obvious reasons, whilst Gautamadasa had no authority to demand it. The records of the school in his writing show that the father was "the parent or guardian" for the purpose of the regulations. The father has taken no part in these proceedings, possibly wisely, nor did he ever make any request or demand for the certificate.

It was then urged for plaintiff that there was an implied contract between the boy's father and the defendants, the right to the certificate under the provisions of the regulations being a condition of that contract. Since it was for the benefit of the boy, the boy, it is argued, was entitled to come into Court and sue the defendants for a breach of this contract. Mr. Ranawake concedes he can find no authority for this argument apart from what he states are "general principles". He cannot bring it within the provisions of such a case as *Jinadasa v. Silva*<sup>1</sup>. Whilst supporting the judgment, he also concedes he is unable to adopt the reasoning of the

<sup>1</sup> 12 C. L. R. 179.

Commissioner by which he has come to his conclusion. In the only case cited, upon which apparently both sides relied in the lower Court, *Amaris v. Amarasinghe*<sup>1</sup>, the plaintiff was the father of the boys, it being held there was an implied contract between him, the father, and the defendant, who was the head teacher of the school. That case is of no assistance to plaintiff in this case. The argument raised in the lower Court that there was an implied contract between the pupil and the defendants was not pursued before me.

For these reasons I would hold that no cause of action arises to the plaintiff, and the action must fail. The appeal is allowed and the decree entered is set aside, the plaintiff's action being dismissed. The appellants are entitled to their costs in both Courts. The person who should pay these costs is of course Gautamadasa, but under the circumstances I can make no order to that effect.

*Appeal allowed.*

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<sup>1</sup> 21 N. L. R. 176.