

1946

Present : Canekeratne J.

ANTHONIPILLAI, Appellant, and THYIRAINETHAN *et al.*,
Respondents.

322—C. R. Chavakachcheri, 32,774.

*Evidence—Proof of pedigree—Opinion on relationship, when relevant—
Evidence Ordinance, s. 50.*

In proving pedigree the opinion of a witness as to the relationship of one person to another is relevant provided such opinion is expressed by conduct and the witness has a special means of knowledge on the subject.

A PPEAL from a judgment of the Commissioner of Requests of Chavakachcheri.

H. W. Thambiah, for the defendant, appellant.

S. J. V. Chelvanayagam, for the plaintiffs, respondents.

Cur. adv. vult.

April 17, 1946. CANEKERATNE J.—

The appellant contends that one Marusalin, a descendant of a man called Avuran, who was a son of Thukuniyar, was entitled to the undivided $\frac{1}{4}$ th share of the land called Chempadu which he seized in execution of his judgment against this person. The respondents deny the right of the judgment debtor to any share and allege that Mathesu, a son of Thukuniyar, was the owner of the entire land.

The appellant produced a copy from the thombu extract of 1822 and stated that he has acquired knowledge of the pedigree, apparently relating to the descendants of Thukuniyar, "by inquiries and document". The learned Commissioner refused to allow the witness to give any evidence relating to the pedigree as he was not a descendant of Thukuniyar.

Counsel for the appellant attacks this order of the learned Commissioner and has referred me to section 50 of the Evidence Ordinance and to page 446 of Ameer Ali's commentary (8th edition).

Courts are obliged in cases of pedigree which refer to matters which have occurred in times gone by, and among persons who have passed away, to allow derivative evidence to be given in certain circumstances.

The opinion of a witness as to the relationship of A to B is relevant provided such opinion is expressed by conduct and the witness has a special means of knowledge on the subject. (Section 50).

I think the learned Commissioner should not have stopped the witness at that stage. He can consider the qualifications of the declarant "as a member of the family or otherwise". There is a great difference between the competency of evidence and the credit to which it is entitled.

The judgment is set aside and the case sent back for re-trial. Costs of appeal will be costs in the cause.

Judgment set aside.
