1942 *Present :* **Howard C.J. and Soertsz J.**

SILVA *v.* SILVA *et al.*

14 & 15—D. C. Galle, 7,960.

*Birth certificate—Evidentiary value—*Prima facie *proof of facts—Statement by father—Genealogical value—Evidence Ordinance, s. 32 (5).*

The statements in a birth certificate afford *prima facie* proof of the fact of birth, of the date of birth, the place of birth and of the identity of the person registering the birth.

Where the declaration is made by the father it has a genealogical value under scetion 32 (5) of the Evidence Ordinance.

APPEAL from an order of the District Judge of Galle.

H. V. Perera, K. C. (with him *E. B. Wickremanayake*), for first to fourth objectors, applicants in (15) and for same parties respondents in (14).

L. A. Rajapakse, for fifth and sixth objectors, appellants in (14) and same parties respondents in (15).

N. Nadarajah, K.C. (with him *S. W. Jayasuriya*), for applicant, respondent.

Cur. adv. vult.

October 10, 1942. SOERTSZ J.—

The questions that arose for determination in these Testamentary Proceedings were, firstly, whether the applicant for letters of administration was the only brother and, as such, the only heir of Cecilia Perera, who died intestate, leaving an estate said to be of the value of nearly Rs. 5,500 ; and, secondly, if he was not a brother of the intestate and, therefore, not an heir, who were her heirs ?

The learned trial Judge found that the applicant was the sole brother and, as such, the sole heir of the deceased, and made absolute the *Order Nisi* the applicant had obtained, authorising the issue of letters of administration to him.

The appeals are against that order, and are preferred by persons claiming to be a sister and some of the children of the two brothers of the deceased.

It would be convenient to consider, in the first place, the applicant's claim that he is the sole brother and heir of the deceased, for that is the question on the answer to which the trial Judge disposed of the case. That claim was based on the following facts :—

(*a*) The evidence given by the deceased Cecilia in D. C. Galle, case No. 8,467 in the year 1908 ;
(b) The evidence given by her in D. C. Galle, 17,169, in 1920 ;
(c) Certain letters that passed between Cecilia and the applicant ;
(*d*) A photograph in which Cecilia and the applicant figure together ;
(*e*) The evidence of the applicant.

In regard to these matters, it must be admitted that they afford admissible and relevant evidence bearing on genealogy. It was evidence given, or letters written, or photographs taken *ante litem motam* by persons who appear to have, honestly, regarded themselves as brother and sister. But the question of the weight to be attached to this evidence must be determined in the light of the other evidence in the case.

Before an examination of that evidence is made, it would be proper to consider what value may, properly, be put upon the evidence of the applicant given in this case, and upon that of Cecilia in the two earlier cases. Obviously, so far their relationship was concerned, they were testifying to what they believed to be the true state of things and no more ; not to matters within their knowledge. The question, then, ultimately, is whether their belief and the reality correspond. So far as that question is concerned, there is strong documentary evidence against its being answered in the applicant's favour. First of all, there is the fact that the birth certificates of all the others who are admitted to be Mathes's *alias* Cornelis's, that is to say, the intestate's father's, children have been produced in evidence. They show that Mathes, describing himself as the father, registered the births of the two youngest children, namely, the deceased intestate Cecilia (born 1868), and Carlina (born 1864) on June 29, 1870. The names of the parents are given as Pannangala Liyanage Mathes and Ganiyarayodage Natolie. Three other birth certificates are produced to show that the births of three other children have been registered by Mathes himself, the names of the parents being the same—Mathes and Natolia. These children are Nonaihamy (born in 1857), Singhoappu (born 1859) and Hendrick (born 1862). These births, although they occurred earlier than those of Cecilia and Carlina, have been registered about six months after their births had been registered, namely, on January 14, 1871.

This topsy-turvy order of registration has misdirected the trial Judge to the conclusion that Mathes had both legitimate and illegitimate children and that he first registered the births of two of his legitimate children, given the names of the parents correctly, but that, later, his conscience pricked him, and so he came to register the births of his illegitimate children as well, charitably ascribing them to his lawful wife's maternity, although they were, in fact, the children of a mistress.

But the Births and Deaths Ordinance, then in operation, No. 18 of 1867, contradicts this plausible inference, and shows that, while the births of the two youngest children could have been registered on the mere declarations made by their father, an inquiry was necessary before the births of the older children could be registered, they having been born before a certain year. In accordance with the principle that, in respect of official acts, *omina praesumuntur rite esse facta,* it must be presumed that such an inquiry preceded the registration of their births. The interval that elapsed between the two sets of registrations must be assumed to be due to the holding of that inquiry.

The next question is in regard to the evidentiary value of these birth certificates. It seems to me, they have a twofold value. Inasmuch as they are statements occurring in Registers, that the Law required to be kept by a Public Officer, they afford *prima facie* proof of the fact of birth, and of the date of birth, and of the place of birth, and of the identity of the person registering the births, for the principle upon which these entries are received is that "it is the public duty of the person who keeps the register to make such entries after satisfying himself of their truth" (see *Phipson on Evidence 7th ed., p. 328* and *Doe v. Andrews*[1]). Again, inasmuch as the declaration of parentage is made by the father, they have a genealogical value under section 32 (5) of the Evidence Act. But, of course, in regard to both these matters, they are open to rebuttal, and, therefore, the next question is whether there has been satisfactory rebuttal in this case. Clearly not. Such evidence as has been adduced to the end that the three elder children are children of a mistress appears to be the hearsay of persons "who had no special means of knowledge" of what they state. It seems to me that they, too, were probably drawing an inference from the apparently curious order of registration, and then passing from inference to assertion. I have already commented on the evidence of the applicant in this case and of Cecilia in the earlier cases. The letters written by them to each other, and the photograph are of no greater value. There is, thus, a strong preponderance of evidence in favour of the case that Cecilia and Carlina had brothers and other sisters— and so we come to the question whether there is any other fact to show that the applicant was one of the brothers or not. A negative answer is strongly indicated by the fact of his failure to produce his birth certificate. It is hardly conceivable that Mathes, having gone to all the trouble he appears to have taken to register the births of the children— some of them, according to the applicant's case, illegitimate children— he would have omitted to register the birth of his youngest son if the applicant was a son.

The evidence of the applicant is that he was born in 1872, about a year before his mother's death. His father, Mathes, was, certainly, alive in 1875, for he bought a land in that year. Why then did he omit to register this birth? The explanation given that the applicant's mother having died of cholera, the consequent confusion was so great that this duty of registering his birth must have been overlooked, is far from convincing. What is more, the objectors to the applicant's

[1] *15 Q. B. 756.*

application have produced what they say is the applicant's birth certificate. That this is his certificate, is, to say the least, extremely probable. It shows that a child named Uberis was born on October 21, 1876, the parents being Jayawina Kandranange Andiris and Kankani Gamage Ginasa *alias* Hinnihami. The objectors seek to identify this Uberis with the applicant by means of the evidence of Nonaihamy, who is in a position to speak with knowledge on the matter, if she would but speak truthfully. That her evidence is truthful appears to be established by two significant facts. When the applicant married in 1898, he gave his age as 22, thus taking his birth back to 1876, the date in this birth certificate, and again in 1908, when he appeared as a witness on behalf of the deceased intestate in a case of hers, he said he was 32 years old, once more confirming the year of his birth as 1876.

The only other hypothesis is that the birth certificate refers to another Uberis and that the applicant in 1898 and 1908 gave his age in a manner that agreed with the date of birth of that Uberis and inconsistent with his own date of birth—an improbable hypothesis. The conclusion is inescapable that the applicant is not a brother of the deceased.

I would, therefore, set aside the order of the learned trial Judge and remit the case for inquiry into the question of who the true heirs of Cecilia are, a question not considered sufficiently so far, in view of the conclusion to which the Judge came. Nonahamy's heirship may be taken as established. The Judge will also consider the question of the person to whom letters should be granted. The applicant appears to have had good reason for believing that he was what, in fact, he was not. I would, therefore, order all costs up to date, not to exceed Rs. 600, to be charged against the Estate. That means the applicant will be entitled to one-third of this sum, and each of the two sets of objectors to one-third. Any costs incurred over and above this amount, the parties must bear.

HOWARD C.J.—I agree.

Set aside.

Case remitted.