

1912

Present: Wood Renton J.

RAMEN CHETTY v. SILVA

132—C. R. Colombo, 26,251

Minor—Contracts to the benefit of minor—Ratification.

The Roman-Dutch law of ratification of contracts by a minor is in force in Ceylon. Contracts which are neither certainly to a minor's prejudice nor necessarily for his benefit are neither void nor absolutely valid, but are voidable and capable of confirmation after majority.

Obiter, where a minor borrows money exclusively for his father's use, the fact that the minor was living with his father, and that the money was to be applied to get his father employment, which would add to his ability to maintain the minor, would not be sufficient to make the contract a beneficial one to the minor within the meaning of the common law.

THE facts are set out in the judgment.

H. A. Jayewardene (with him *Cooray*), for the defendant, appellant.—The defendant was a minor at the time he signed the note. The contract was one which was not for the minor's benefit. The evidence shows that the money was borrowed for the exclusive benefit of the father of the minor. The minor cannot, therefore, be sued on the note. *Vellasamy Pulle v. Peries et al.*¹

A contract by a minor cannot under our law be rendered valid by ratification. The Roman-Dutch law as to ratification of contracts entered by minors does not appear to have been introduced into Ceylon. In *Gunasekera Hamine v. Don Baron*², it was held that a donation cannot be ratified by a minor when he comes of age.

W. H. Perera, for the plaintiff, respondent.—The minor paid Rs. 25 after he attained majority. Under the Roman-Dutch law that would amount to ratification. (3 *Maas.* 17; 1 *Maas.* 247.) The Roman-Dutch law on the subject is in force in Ceylon.

In *Gunasekera Hamine v. Don Baron*² the donation was a donation of land by a minor; it was held that such a donation was void, and not voidable. See judgment of Bonser C.J.

Cur. adv. vult.

May 31, 1912. WOOD RENTON J.—

The plaintiff-respondent sued the defendant-appellant in this action to recover a sum of Rs. 200 on a promissory note. The

¹ (1906) 3 *Bal.* 3.

² (1902) 5 *N. L. R.* 273.

appellant pleaded that he was a minor at the time of the making of the note. There was no replication by the respondent, but the issues raised two further points, namely, whether, assuming the minority at the time of making the note, the note was invalid, and whether the appellant had not ratified the obligation by a subsequent payment of Rs. 25 upon the note. The learned Commissioner of Requests held that minority had been proved; that the loan was beneficial to the appellant, and that, therefore, the note was not invalid; and further, that the appellant had ratified it after majority by the subsequent payment above referred to. There is no appeal in this case upon the facts. I am doubtful whether, upon the findings of the learned Commissioner of Requests, the loan in respect of which the note was granted could be said to have been for the minor's benefit. The Commissioner of Requests accepts the statement of the appellant that he borrowed the money exclusively for his father's use. If that were so, I do not think that the mere fact that the minor was living with his father, and that the money was to be applied to get his father employment, which would add to his ability to maintain the minor, would be sufficient to make the contract a beneficial one within the meaning of the common law. It is unnecessary, however, to decide this point, as the appellant also states, and this is much more probable, that he required the money for himself. The loan was, therefore, beneficial and could be ratified. I think that the decision of the Commissioner of Requests on the issue of ratification is clearly right. The witness, Ramen Chetty, father-in-law of Sollamuttu Chetty, the payee on the note, now deceased, proved a payment and a promise of a further payment by the appellant subsequent to his becoming a major, and gave evidence also of a similar payment and promise by the appellant to the deceased payee. The proof of the latter payment and promise consisted of statements made by the payee to his father-in-law, Ramen Chetty. Mr. Hector Jayewardene, the appellant's counsel, argued that evidence of these statements was not admissible even under section 32 (2) of the Evidence Ordinance, inasmuch as there was nothing to show that they were made "in the ordinary course of business." The evidence in the record proves, however, that Sollamuttu Chetty, the deceased payee, had been in the habit of consulting his father-in-law, Ramen Chetty, in business matters; that he sent for him to go to India, where he was lying ill, for the express purpose of entrusting him with the collection of the appellant's debt and of other debts also; and that Ramen Chetty was attending to his business while he was ill. Under these circumstances, I think that the statements made by Sollamuttu Chetty to Ramen Chetty may fairly be said to have been made in the ordinary course of business.

Mr. Hector Jayewardene also argued that the Roman-Dutch law of ratification of contracts by a minor was not in force in Ceylon.

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No direct authority was cited to me, nor am I aware of any, in support of this proposition, and all that Mr. Jayewardene could say was that there was no reported case in which that doctrine had been recognized. He referred also to the decision of the Supreme Court in *Gunasekera Hamine v. Don Baron*,¹ that a donation by a minor unassisted by a guardian cannot be ratified subsequently when the minor comes of age. The *ratio decidendi* in that case was that a donation cannot possibly be beneficial to the donor, and Wendt J. in the course of his judgment quotes a passage from Thomson (*Institutes, vol. II., p. 214*) to the effect that contracts which are neither certainly to a minor's prejudice nor necessarily for his benefit are neither void nor absolutely valid, but are voidable and capable of confirmation after majority. In this passage Thomson is stating the law of Ceylon. I see no reason to doubt but that the Roman-Dutch law as to the ratification of a minor's contracts after majority is in force in this Colony.

The appeal is dismissed with costs.

Appeal dismissed

¹ (1902) 5 N. L. R. 273.