



at the date when the marriage was to be solemnised, the contract of marriage was void: Section 3 (2) of the Marriage (Amendment) Law, No. 48 of 1957. In defence to Plaintiff No. 216/69, Rachael Williams pleaded the special defences of (i) that she was under 21 years of age when the contract of marriage was made and was entitled to repudiate it, and (ii) she could not contract a valid marriage as at the date when the marriage was to be solemnised, she was under 16 years of age.

On Plaintiff 215/69, the learned Resident Magistrate gave judgment for James and Edith Williams with Costs and on Plaintiff 216/69, he gave judgment for Leonard Maragh in the sum of £50 and Costs, but later in his reasons for judgment he said that on reflection, he was wrong as Rachael Williams "was not capable of contracting a legal marriage, on the 10th of November, 1968 being then under the age of 16 years."

The facts are not really in dispute and a careful examination of them reveals:-

- (i) On 12th May, 1968, both Leonard Maragh and Rachael Williams, of their own free will agreed to marry and immediately thereafter the parents of Rachael Williams gave their consent to the marriage;
- (ii) Edith Williams told Leonard Maragh that her daughter was between the ages of 16 and 18 years;
- (iii) though the parties were of East Indian descent and of the Hindu religion, the marriage was to be celebrated before a Marriage Officer by Christian rites at the Calvary Baptist Church;
- (iv) the date of the marriage was fixed to be celebrated on 10th November, 1968;
- (v) notice for banns, Ex.1. was duly published and in it Rachael Williams stated her age to be 18 years;
- (vi) on 10th September, 1968, Edith Williams wrote letter, Ex.2, in which she insisted on being informed in ample time of the name of the Church in which the marriage was to take place;
- (vii) on 10th November, 1968, Rachael Williams refused to exchange vows with Leonard Maragh on the ground that he had threatened her;
- (viii) at the trial, Rachael Williams gave evidence on oath that on 12th May, 1968, when the promise of marriage was made, she knew her date of birth to be 24th October, 1953, from her mother.

Learned Counsel for the Maraghs submitted that Rachael Williams was capable, with her parents consenting, of contracting a legal marriage; that the Maraghs were at all relevant times ignorant of the true age of Rachael Williams and that the Maraghs were not in pari delicto and were entitled to recover damages. On the other hand, Counsel for the Williamses submitted that the agreement to marry was illegal as on 12th May, 1968, Rachael Williams was in fact under 16 years of age, and being under 21 years, she was entitled to repudiate the agreement of marriage. Section 3 (2) of The Marriage (Amendment) Law No. 48 of 1957 provides that any marriage solemnised where either party is under 16 years of age is void.

For the purposes of civil liability, a person under the age of twenty-one is an infant, and by the common law his contracts are avoidable at his option, either before or after he has attained his majority, unless for necessaries. By the Infants Relief Act 1874 all contracts entered into by an infant ... (2) for goods supplied or to be supplied (other than necessaries) ... shall be absolutely void. By way of corollary to an infant's liability for necessaries, he may be absolutely bound by a contract which is clearly for his benefit. In *Cowern v. Nield* (1912) 2 K.B. p.422, Phillimore J. said:-

"An infant is not necessarily liable on a contract merely because it is for his benefit. The only contracts which, if for the infant's benefit, are enforceable against him are contracts relating to the infant's person, such as contracts for necessaries, food, clothing and lodging, contracts of marriage and contracts of apprenticeship and service. In my opinion a trading contract does not come within that category."

The Court of Appeal case of *Roberts v. Gray* (1913) 1 K.B. 870 approved of the dictum of Phillimore J. At p.876 Hamilton L.J. said:-

"It seems to me clear therefore upon the first question that this contract is one for necessaries, and in so far as the antithesis formulated by *Cowern v. Nield* by the Divisional Court is presented to us, I entertain no doubt that this is not such a contract, and is amply within the other side of the antithesis as there stated by Phillimore J., referring to contracts relating to infants' persons which can be supported such as contracts for necessaries, of which he there mentions various heads."

Therefore, an infant can be bound by a contract of marriage - "if for her benefit." In my view, the object of s.3(2) of the Marriage (Amendment) Law No. 48 of 1957 is to prohibit the solemnisation of a marriage where either party at the date of the marriage was under 16 years of age; it was never intended that contracts of marriage between infants would generally be illegal.

It has been argued by learned Counsel for the Williamses that on 12th May 1968 when the contract of marriage was entered into, the parties had agreed for the wedding to be solemnised on 10th November 1968 and as on that date a lawful marriage between the parties was prohibited by law. There was, therefore, an agreement to do an unlawful act and so the agreement cannot be enforced nor can it give rise to any rights to either of the parties.

On this aspect, I wish to refer to the following statement of law in Halsbury, Laws of England, 3rd Ed. Volume 8 at pages 127-128 paragraph 220;

"A contract to do a thing which cannot be performed without a violation of the law is void, whether the parties knew the law or not; but in order to avoid a contract which can be legally performed on the ground that there was an intention to perform it in an illegal manner, it is necessary to show that there was an intention to break the law. [citing *Waugh v. Morris* (1873) LR 8 Q.B 202 *Hindley & Co. Ltd v General Fibre Co. Ltd* (1940) 2 K.B. 517]. The law presumes against illegality in such cases."

The contract of marriage in the instant cases was capable of being legally performed. Thus if

- 1 on 12th May 1968, the Maraghs knew the age of Rachael Williams to be under 16 years,
- 2 the Williamses had consented for their daughter to be married, but
- 3 the marriage was fixed to be solemnised at a date when Rachael Williams had attained 16 years of age, or
- 4 on 10th November 1968, when the marriage was fixed to be solemnised, the parties had postponed the performance of the contract of marriage thereof to a date when Rachael Williams was 16 years or over,

the solemnisation of the marriage would have been lawful. Therefore, in my view, the Williamses to avoid the contract, must show that it was the

intention of the Maraghs to perform the contract in an illegal manner; that is, an intention of the Maraghs to break the law. This they cannot show as the Maraghs were ignorant of the facts which constituted a breach of the law. They were therefore, not committing any breach of the law if the facts told to them about the age of Rachael Williams, were true, that is that Rachael Williams was older than 16 years on 10th November 1968. Are the Maraghs, in the circumstances of these cases, without remedy in the actions they have brought against the Williamses?

In Archbolds (Freightage) Ltd. v. S. Spanglett Ltd. (1961)

1 Q.B. p.374, Randall, the defendants' driver carried 200 cases of whisky belonging to the plaintiffs on a van with a "C" licence which prohibited the defendants from carrying goods of others for reward. On the way to the London docks, the whisky was stolen. The plaintiffs sued the defendants for the value of the whisky and the defendants pleaded the illegality of the contract that is, that the van did not have an "A" licence as required by the Road Traffic Act 1933. The trial judge gave judgment for the plaintiffs, and on appeal, the Court of Appeal dismissing the appeal, held:-

- (1) There was no justification for any finding that the plaintiffs knew or should have known that the defendants' van had only a "C" licence.
- (2) The plaintiffs could not assert a right of action without relying on the contract.
- (3) The contract was not expressly forbidden by statute.
- (4) The contract was not prohibited by implication under the Act since loading the van by the plaintiffs did not constitute a "use" of the vehicle within the meaning of s.1 of the Road Traffic Act; nor were the plaintiffs aiding and abetting the defendants' illegal act, since they were unaware of the true facts.
- (5) The contract was not ex facie illegal, and public policy did not constrain the court to refuse aid to plaintiffs, who did not know that the contract would be performed illegally.

At page 387, Pearce L.J. said:-

"...Further knowledge, namely, knowledge of the fact that Randall's van was not properly licensed, would show that it could only be performed by contravention of the statute, but that does not make the contract ex facie illegal.