

In the Matter of Section 13 of
Marriage Act, Cap. 50.

- and -

In the Matter of Purported Marriage
between MOHAMMED IKBAL and AMEETA BIBI
which took place at Registrar General's
office on 31.5.84

R v REGISTRAR GENERAL

Ex parte ABDUL HAMID

D E C I S I O N

On 31st May, 1984 one Mohammed Ikbal, who was then 19 years and 9 months of age, applied under section 13 of the Marriage Act (Cap. 50) to a magistrate, who had been appointed under section 13 of the Fijian Affairs Act (Cap. 120) for consent to marrying a lady, one Ameeta Bibi, who was then aged 23 years and 2 months.

Mohammed Ikbal's father had refused his consent to the proposed marriage and that is why the application was made to the magistrate.

Without giving Mohammed Ikbal's father an opportunity to be heard - that is common ground - the magistrate granted consent to the proposed marriage under section 13.

Section 13 reads as follows :

"13-(1) If either of the parties to a proposed marriage is under the age of twenty-one years, such marriage shall not be performed without the prior consent of -

(a) the father of such party; or

(b) in the event of the father being dead or out of Fiji, the mother of such party; or

(c) in the event of neither of the parents being alive or in Fiji, or if the father or the mother, as the case may be, refuses or withholds such consent or is from any other cause incapable or unable to give such consent, a Commissioner or a magistrate.

(2) Any applications under the provisions of paragraph (c) of subsection (1) shall be made on the prescribed form to a Commissioner or magistrate who shall make inquiry on oath as to the facts and circumstances of the case and, if the Commissioner or magistrate is satisfied that there is no parent alive or in Fiji or that the parent whose consent would otherwise be required has refused such consent unreasonably or is incapable or unable to give such consent, he may give the required consent in the manner prescribed.

(3) Where a Commissioner or a magistrate gives his consent to the marriage of a minor, such consent shall operate for the purposes of this Act, as the consent of the parent whose consent would otherwise have been required.

(4) For the purposes of this section 'father' in relation to an illegitimate child, means the person who, in connexion with the registration of such child, has acknowledged paternity. "

It is also common ground that the magistrate had jurisdiction to entertain that application for consent - see definition of "magistrate" under section 2 of the Act. However, I think that the magistrate's failure to give the father an opportunity to be heard was an omission of such seriousness as to sustain an application for certiorari to quash the magistrate's decision were an application made in appropriate circumstances.

Later that same day, Mohammed Ikbal and Ameeta Bibi went through a ceremony of marriage before Mr. J.P. Naidu who, counsel inform me, was then the Registrar-General. It is common ground that the ceremony was itself correct in form.

Mohammed Ikbal's father, Abdul Hamid, applies in the present proceedings for the following declarations :

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- " (a) Declaration that the purported marriage between Mohammed Ikbal and Ameeta Bibi which took place on 31.5.84 is null and void for want of proper and lawful consent because the said Mohammed Ikbal was a minor and there was no lawful proper or valid consent to this purported marriage;
- (b) And for Declaration that the purported consent to the said marriage was no consent in law, and ought not to have been issued, nor the Registrar General ought to have acted on it;
- (c) And for Declaration that the applicant was entitled to be heard before the purported consent dated 31st May, 1984 was issued or to receive a notice of the inquiry to grant consent. No such hearing or notice of inquiry took place, nor did any lawful inquiry at all took place and therefore the purported consent is null and void and of no effect at all. "

It is true, I think, at least that Abdul Hamid was entitled to be heard by the magistrate and that, because Abdul Hamid was not given an opportunity to be heard the purported consent granted by the magistrate was not valid. However, I must consider whether I should, in the exercise of my discretion, make declarations to that effect, and the other declarations sought, in the light of the circumstances and the relevant law as I find it.

Section 12 of the Marriage Act reads as follows :

" 12. Any person may contract a valid marriage under the provisions of this Act if such person is, in the case of a male, of the age of eighteen years or upwards, or, in the case of a female, of the age of sixteen years or upwards. "

On 31st May, 1984, Mohammed Ikbal was 19 years 9 months of age and Ameeta Bibi was aged 23 years 2 months. According to section 12, read on its own, both of them had power to contract a valid marriage. Section 12 is itself unequivocal: it does not say anything like "provided necessary parental or judicial consent is obtained".

Paragraph 957 on page 601 of Vol. 22 of the 4th Ed. of Halsbury reads as follows :

"957. Effect of absence of consent. The marriage of a minor without the requisite consent is not invalid, whether it is by banns or licence or superintendent registrar's certificate. Where any such marriage has been duly solemnised under a superintendent registrar's certificate it is not necessary in support of the marriage to give any proof that any person whose consent is required had given his consent, nor may any evidence be given to prove the contrary in any proceedings touching the validity of the marriage. "

That is the position in England notwithstanding that section 3 of the Marriage Act, 1949, requires parental consent, or judicial consent in lieu thereof, when the parties are under the age of 21 years.

Section 6 of the Matrimonial Causes Act, (Cap. 51) does not include the absence of parental or judicial consent as a circumstance rendering a marriage void. Nor does section 9 of that Act include the absence of such consent as a circumstance rendering a marriage voidable.

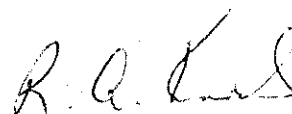
Section 31 of the Marriage Act (Cap. 50) says that every person "who wilfully and unlawfully marries a person under the age of 21 years without having obtained such consent to the marriage as is required by this Act" is guilty of an offence and may be punished. That, to my mind, clearly implies that a person may become married notwithstanding the absence of such consent.

Marriage is the fulfilment of a contract satisfied by the solemnization of the marriage - see para 1240, page 775, Vol. 19 Hal., 3rd Ed. Mohammed Ikbal and Ameeta Bibi, both having power to contract a valid marriage, voluntarily went through a proper marriage ceremony. They thus became married to each other, I hold, notwithstanding the absence of parental consent or proper judicial consent.

Having so held, I cannot make declaration (a). As to declaration (b), I see no good purpose in declaring at this stage that the magistrate's consent "was no consent in law" and I can see no reason at all for declaring that the Registrar-General ought not to have acted on it. I think it more appropriate to say that he was entitled to presume that the magistrate's consent had been properly given.

As to declaration (c) I can see no good purpose in declaring at this stage that the applicant was entitled to be heard and to receive a notice of the enquiry which the magistrate was required to hold under section 13(2) of the Marriage Act. There is insufficient evidence to justify declaring that "no such hearing or notice of enquiry took place, nor did any lawful enquiry at all took place" and, as I have already intimated, I can see no good purpose in declaring at this stage "that the purported consent is null and void and of no effect at all".

This application for declarations is dismissed. I will now hear counsel as to costs.



(R.A. Kearsley)

JUDGE

Suva,

21st September, 1984