

Workmen's Compensation Act Reference.

Before Sir Arthur Page, Kt., Chief Justice, Mr. Justice Das and Mr. Justice Maung Ba.

1930

IN THE MATTER OF MAUNG KYAN DECEASED.*

Dec. 23.

Workmen's Compensation Act (VIII of 1923) s. 2 (1)(d) "Brother" whether includes half-brother—Construction of quasi-penal statute.

The term "brother" in its primary sense means a brother of the whole blood, and it is only in a secondary and extended sense that the term is deemed to include a brother of the half blood. Whether the term is to be taken in its primary or secondary sense depends in each case upon the context in which it is found.

In the Workmen's Compensation Act which is a quasi-penal statute, the term "minor brother" in s. 2 (1)(d) of the Act means a minor brother of the whole blood, and does not include a minor half brother.

In re Cozens (1903) 1 Ch. D. 138; *Grieves v. Rawley*, 10 Hare 63, *In re Reed*, 57 L.J. Ch. 790—*distinguished*.

Kyaw Din for the applicant.

PAGE, C.J.:—This is a submission by the Commissioner for Workmen's Compensation under section 27 of the Workmen's Compensation Act (Act VIII of 1923), and the question of law that falls for determination is whether the term 'minor brother' in section 2 (1)(d) of the Act includes a minor half brother. Section 2 (1)(d) runs as follows:—

"Dependant" means any of the following relatives of a deceased workman, namely, a wife, husband, parent, minor son, unmarried daughter, married daughter who is a minor, minor brother or unmarried sister, and includes the minor children of a deceased son of the workman and, where no parent of the workman is alive, a paternal grand-parent.

Under section 8 the Commissioner may apportion the compensation payable in respect of a workman whose injury has resulted in death among the dependants of the deceased workman as he thinks fit.

* Civil Reference No. 20 of 1930.

In the present case the only "dependant" of the deceased workman is his minor half brother Maung Kaung, the deceased and Maung Kaung being sons of the same mother but by different husbands.

It has long been settled in England that the term 'brother' in such documents as a gift or will *prima facie* denotes not only a brother of the whole blood, but also a brother of the half blood. *Grieves v. Rawley* (1); *In re Reed* (2) and *In re Cozens* (3). Where the term 'brother' occurs in such documents it may be assumed that the writer of the document has used the word in its ordinary and every day signification. In *Grieves v. Rawley* (1) the question was whether the daughter of a testator's half brother was one of the testator's nieces. In the course of his judgment Sir George Turner, Vice-Chancellor, observed that it was contended that "the relation of brother and sister subsists only where both the parties are descended from the same father and mother, and not where one of the parties has a different father or a different mother; and it is true that the dictionaries so describe the relation of brother and sister; but this argument appears to me to be open to two objections; in the first place, it goes to the origin of the relation, for the purpose of defining a class which is generally recognised and defined independent of its origin; and, in the second place, it assumes that the meaning which is attributed to the term brother and sister in the dictionaries is the meaning in which the term is ordinarily used; and I do not think this is the case. I think that, in general, when a man speaks of his brothers and sisters, he speaks of them not with reference to the definition of the word in the dictionary, but as a class, standing in the same

1930

IN THE
MATTER OF
MAUNG
KYAN,
DECEASED.

PAGE, C.J.

(1) 10 Hare, 63.

(2) 57 Law Journal Ch. 790.

(3) (1903) 1 Ch. D. 138.

1930

IN THE
MATTER OF
MAUNG
KYAN,
DECEASED.
PAGE, C.J.

relation to one or both of his parents as he himself stands in. Though not descended from the same parents the parties are, as is said in the "Termes de la Ley" [p. 123, tit. Half-blood (Demy Sangue)], "after a sort brothers," "brothers by the father's side," "brothers by one mother;" and however other parties might describe them, or they designate themselves, if required to give a precise description of the nature and degree of the relation subsisting between them, I think that, in ordinary parlance, they would be called, and would call themselves, brothers and sisters." The learned Vice-Chancellor accordingly held that the child of a half brother of the testator was a niece of the testator within the meaning of that term as used in the will (see also the Indian Succession Act, XXXIX of 1925, section 43). I am not sure that I should be prepared to go the whole way with the learned Vice-Chancellor; for in my experience, such as it is, half brothers are wont to describe each other as half brothers and not as brothers. At the same time it may well be that a man in ordinary parlance would refer to his half brother's children as his nephews and nieces, and I am not disposed to question the correctness of the actual decision in that case.

Now, in Murray's new English Dictionary, the signification of the word brother is stated to be "properly, the son of the same parents, but often extended to include one who has either parent in common with another (more strictly called half-brother or brother of the half blood)," and in my opinion the term brother in its primary sense means a brother of the whole blood, and it is only in a secondary and extended sense that the term is deemed to include a brother of the half blood. Whether the term is to be taken in its primary or secondary sense depends in each case upon the context in which it is found.

Now, in a *quasi*-penal statute such as the Workmen's Compensation Act the provisions of the Act ought not to receive a benevolent or a strained interpretation in the interest of those who are made beneficiaries thereunder ; and in such an Act it usually happens that the persons entitled to a share in the compensation awarded are described with particularity in the Act itself. This is the case alike in the English Workmen's Compensation Act, 6 Edward VII, Ch. 58 (now in consolidated form 15 and 16, George V, Ch. 84) and in the Indian Workmen's Compensation Act. In section 13 of the English Act (now section 41 of the Act of 1925) half brothers and half sisters are specifically included among the members of the family of the deceased workman who may be dependants, and the section runs as follows :—

“Member of a family” means wife or husband, father, mother, grandfather, grandmother, step-father, step-mother, son, daughter, grandson, grand-daughter, step-son, step-daughter, brother, sister, half-brother, half-sister.

In the later Indian Act, however, although the “relatives” who are classed as “dependants” are precisely described, no mention is made of half-brothers or half sisters. It cannot be doubted, I think, that the Indian Legislature when framing the Workmen's Compensation Act for India were aware of the terms of the corresponding Act in England, and it may well be argued that in providing that “dependant” should mean (not include) *inter alia* “minor brother,” the Legislature intended and effected that the term brother should be used in its primary sense as denoting a brother of the whole blood, and deliberately excluded from the “relatives” who were “dependants,” brothers and sisters of the half blood. Further, under the Indian Act the “relatives” of the deceased workman who are described as “dependants” in

1930
 IN THE
 MATTER OF
 MAUNG
 KYAN,
 DECEASED.
 PAGE, C.J.

1930
 IN THE
 MATTER OF
 MAUNG
 KYAN,
 DECEASED.
 —
 PAGE, C.J.

section 2 (1) (d) are treated as "dependants" for the purpose of the distribution of compensation under section 8, whether or not they were dependant in fact upon the earnings of the deceased workman; and where the Legislature has described with care and precision the persons who shall be such "dependants" in my opinion the Courts in construing a quasi-penal statute such as the Workmen's Compensation Act would not be justified in placing such an interpretation upon the terms used in section 2 (1)(d) as would increase the number of dependants by adding to the "relatives" of the deceased workman persons whom the Legislature appear deliberately to have excluded from the category.

If it be contended that, whatever may be the case among western people, an Oriental ordinarily and naturally uses the word "brother" as including a half-brother the answer appears to be twofold:—

(1) that in an oriental country the word "brother" in ordinary parlance is used to denote not only brothers of the whole or half blood but cousins and even remote relatives. Indeed, I have heard it used by one friend to another when they stand in close and affectionate relationship to each other and it cannot be that it would be right to interpret the word "brother" in section 2 (1)(d) of the Workmen's Compensation Act in such a sense, thereby sweeping into the category of dependants a number of indiscriminate persons whom the Legislature could never have intended to be included within that term as used in section 2(1) (d); and

(2) that if the word "brother" in its extended sense is universally employed by orientals, that is a matter which we think the framers of the Workmen's Compensation Act must have had in mind, and yet in describing the persons who were to be "dependants"

in section 2 (1)(d) the Legislature deliberately refrained from including even half brothers and half sisters in the category.

In submitting the question under consideration to the High Court the Commissioner expressed the opinion that "minor brother" in section 2 (1)(d) did not include a minor half-brother, but proceeded to observe that there were "strong reasons in equity why Maung Kaung should receive the compensation." That may or may not be so ; but it is a matter with which the Courts have no concern, and I decline to express an opinion upon the subject one way or the other. Hard cases make bad law and if half brothers and half sisters ought to be included among the "dependants" of a deceased workman, the remedy lies with the Legislature and not with the Courts. I would answer the submission in the negative.

DAS, J :—I agree.

MAUNG BA, J :—I agree.

1930
—
IN THE
MATTER OF
MAUNG
KYAN,
DECEASED.
—
PAGE, C.J.