

Ralli Vs. Gau Kim Swee

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Court : Kolkata

Decided On : Jun-11-1883

Reported in : (1883)ILR9Cal939

Judge : Norris and ;Wilkinson, JJ.

Appellant : Ralli

Respondent : Gau Kim Swee

Judgement :

Norris, J.

1. We are of opinion that the document is admissible. Mr. Jackson says that it is not proved to be a copy within the meaning of Section 63 of the Evidence Act, and that if it is a copy at all it comes under Sub-section 3. The witness says: 'The copy now produced is a copy of the original, and I know it to be so.' Mr. Jackson says that that is not sufficient to show that the document is a copy made from or compared with the original. I think the fair interpretation is that the witness knew it to be a copy made from the original from personal knowledge. Then was there an original document? The evidence shows that a letter was sent to the Boston Dye Wood Company, and that certain action was taken upon it.

2. Then is this copy admissible in evidence? Section 65 says: 'Secondary evidence may be given of the existence, condition or contents of a document in

the following cases:

(a) When the original is shown or appears to be in the possession or power of the person against whom the document is sought to be proved, or of any person out of reach of, or not subject to, the process of the Court, or of any person legally bound to produce it, and when after the notice mentioned in Section 66 such person does not produce it.' There is therefore a clear legislative enactment that notice, or a reasonable notice, must be given, but that is qualified by Section 66, Clause (b) which dispenses with notice 'when the person in possession of the document is out of reach of, or not subject to, the process of the Court.

3. Mr. Jackson argued that there must be evidence of a refusal to produce the original document. I do not see that that is required by the Act at all, and I do not think that it is requisite.

4. Mr. Phillips wishes us to read 'such notice' as applying to statutory notice first and then to reasonable notice. That I think would be governed by or subject to Sub-section 6 of Section 66. The Boston Dye Works are persons out of the jurisdiction of the Court, and we think therefore that notice was not requisite and that the copy is admissible.

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