

Present : De Sampayo J.

1919.

VADIVELU v. HANNIBALSZ.

269—C. R. Batticaloa, 940.

Action by executor for debts due to the deceased—Account books of the deceased—Is corroboration necessary? — Evidence Ordinance, ss. 32 and 34.

Where an executor sued defendant for debts due to the deceased, and produced the account book kept by the deceased in proof of such debt—

Held, that the book did not require corroboration as required by section 34 of the Evidence Ordinance, as it was admissible also under section 32.

“ The circumstances stated in section 32 appear necessarily to imply that the entries made by a person described there need no further corroboration, and therefore the documents or statements are in themselves evidence on the consideration of any question to be decided by the Court. ”

THE facts appear from the judgment.

Spencer Rajaratnam, for plaintiff, appellant.—The account books of the deceased produced by the executor do not need corroboration as required by section 34 of the Evidence Ordinance. It is only the account books relevant under section 34 alone that are themselves not sufficient to charge a person with liability, and should be corroborated by external evidence. But these books are relevant also under section 32 (2). In such a case no corroboration is necessary. *Rampyarabai v. Balaji Shridhar*; ¹ *Amir Ali's Evidence*, 4th ed., p. 238.

J. Joseph, for defendant, respondent.—There were also private transactions other than those found in plaintiff's books, and the learned Commissioner has accepted the defendant's evidence on this point.

December 9, 1919. DE SAMPAYO J.—

The plaintiff in this case claims a sum of money as due by the defendant, and the defendant disputes the claim, and in turn claims certain sums in reconvention. There can be no appeal in

¹ (1904) 6 Bom. L. R. 50 ; S. O. 28 Bom. 294.

1919.

DE SAMPAZO
J.*Yadivehu v.
Hannibalaz*

this case except on a point of law. Counsel for the plaintiff-appellant submits, as a matter of law, that the Commissioner was wrong in holding that the evidence of the account books produced by the plaintiff should have been corroborated in view of section 34 of the Evidence Act. The plaintiff sued as executor of the deceased Sithamparapillai, who appears to have been a steamer agent. The books produced were account books kept by the deceased as such steamer agent. Strictly speaking, I think the Commissioner was wrong in insisting upon corroborative evidence in respect of these account books. It has been pointed out in India, under the corresponding sections of the Indian Evidence Act, that where a document is relevant both under section 34 and under section 32, such corroborative evidence is not required. On this point *Amir Ali's Law of Evidence* at page 238 and the decisions there referred to may be cited. The distinction appears to be this, that under section 32 (2) a document or statement of a person who is dead, or who cannot be found, and who has become incapable of giving evidence, and whose attendance cannot be procured without an unreasonable amount of delay or expense, which, under the circumstances, appears to the Court unreasonable, is relevant, while under section 34 the documents or account books may be of any person, and not necessarily of a person in the situation described in section 32. The circumstances stated in section 32 appear necessarily to imply that the entries made by a person described there need no further corroboration, and, therefore, the documents or statements are in themselves evidence on any question to be decided by the Court. While that is so, I think the judgment of the Commissioner ought to be upheld, for it appears that the defendant's transactions with the deceased Sithamparapillai were not merely in connection with the shipping business, but included various other transactions of a private nature. The defendant gave evidence to the effect that much of his transactions was entered in a different book, which has not been produced. The Commissioner was satisfied with this statement of the defendant, and considered that the books produced did not contain all the transactions, and therefore did not furnish complete evidence for the purpose of deciding the question in this case. He preferred to accept the defendant's evidence as regards some of these transactions, and in the result he dismissed the plaintiff's action, and entered judgment for the defendant for the sum of Rs. 54.55.

I think the Commissioner's judgment cannot be interfered with on the grounds suggested. The appeal is therefore dismissed, with costs.

Appeal dismissed.