

Privy Council Appeal No. 163 of 1919.

The Indian Immigration Trust Board of Natal - - - *Appellants*

v.

Vencategin Govindasamy, trading as The Stamford Hill Laundry - *Respondents*

FROM

THE SUPREME COURT OF SOUTH AFRICA

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE
PRIVY COUNCIL, DELIVERED THE 25TH NOVEMBER, 1920.

Present at the Hearing :

VISCOUNT CAVE.

LORD DUNEDIN.

LORD MOULTON.

LORD PHILLIMORE.

[*Delivered by* LORD DUNEDIN.]

The question in this case arises under the Indian Immigration Act of Natal, being Law 25 of 1891. By Section 50 of that Act, it is provided that the Immigration Trust Board are authorised

“to appoint a duly qualified medical practitioner to attend upon the Indian Immigrants employed upon any estate or elsewhere, and upon any such appointment the proprietor of the estate or the employer of such Immigrants shall be released from his obligation to obtain a duly qualified medical practitioner to attend upon such Immigrants. And every employer of Indian Immigrants not being free domestic servants, on any estate or place for which estate or place the said Board may have appointed a medical practitioner as aforesaid, shall pay quarterly on or before the 10th January, 10 April, 10th July and 10th October in each year to the Protector of Indian Immigrants (for whom for this purpose the Appellants were substituted by Section 10 of Act No. 17, 1895), a sum not exceeding 1s. sterling per month for every male statute adult Immigrant in the service of such employer.”

A medical officer was so provided by the appellants and they applied to the respondents, who employed Indians, for their contribution. The respondents were willing to pay in

respect of indentured Indian immigrants, but contended that they were not bound to pay in respect of either (1) Indian immigrants who had been indentured but whose term of indentured service had expired, and who had not re-indentured themselves, and (2) descendants of Indian immigrants. The local magistrate held that the respondents were liable in respect of both classes (1) and (2). Appeal being taken to the Supreme Court of Natal, the learned Judges, unanimously on point (1), by a majority on point (2), affirmed the decision of the local magistrate. Appeal being taken to the Supreme Court of South Africa that Court upheld the decision as to the Indian immigrants who had been indentured but were subsequently free, but, by a majority, reversed as to the descendants. An appeal has now been taken to this Board against that decision on the latter point. There is no cross appeal as to the former.

The question, therefore, is simply whether the expression "every male statute adult immigrant" in Section 50 in respect of whom payment is to be made, does or does not include the descendants of Indian immigrants. Section 118 is in the following terms:—

"The words 'Indian Immigrant' shall mean and include all Indians introduced from India to Natal under the provisions of the Laws regulating such introduction, and those descendants of such Indians who may be resident in Natal."

The respondents' first argument is that the interpretation clause does not apply, because in specifying those in respect of whom payment is to be made, the expression is "every male statute adult immigrant," and not "every male statute adult Indian Immigrant." To this there are two answers. In the first place the nominative of the whole sentence, which is "every employer of Indian Immigrants"—he who is directed to pay—makes it clear that the immigrants in respect of whom he is to pay are Indian immigrants. Otherwise there would be the fantastic result that an employer of immigrants to Natal of whatever nationality in the world, would have to pay in respect of these persons if he employed as well at least two Indian immigrants, and would not have to pay if he did not. In the second place, the matter is made clear beyond all doubt by Section 51, which says:—

"The age of eighteen years and upwards shall be, and is hereby declared to be the age of an Indian Immigrant male adult for the purpose of the foregoing section."

There seems, therefore, no force in this argument.

Now, when the interpretation clause in a statute says that such and such an expression shall include so and so, a Court in construing a statute is bound to give effect to the direction unless it can be shown that the context of the particular passage where the expression is used shows clearly that the meaning is not in this place to be given effect to, or unless there can be alleged some general reasons of weight why the interpretation clause is to be denied its application. It is obvious that there is nothing to be

found in the context of Section 50 which would fulfil the first stated requirement. It is accordingly on general considerations that the majority of the Supreme Court have based their judgments. The first suggestion made is that inasmuch as the Act of 1891 is a consolidating, as well as an amending Act, and as one finds that the set of provisions as to medical attendance were in the earlier Acts, which did not mention descendants and had no interpretation clause like Section 118, it may be conjectured that the wider scope of the interpretation clause was meant to be applied to the provisions which were new and not to the provisions which were a repetition of former legislation. This suggestion in their Lordships' opinion loses all force as an argument, from the very fact that is necessary for its statement, namely, that the Act is an amending as well as a consolidating Act. There is no intrinsic improbability that any of the older sections may not be amended, and it is a novel and, to their Lordships, unheard of idea that an interpretation clause which might easily have been so expressed as to cover certain sections and not to cover others, should be, when expressed in general terms, divided up by a sort of theory of *applicando singula singulis*, so as not to apply to sections whose context suggests no difficulty in its application. It is also said that there are sections which show that the interpretation clause does not apply, e.g., Section 10, which says :—

“ Every Indian Immigrant leaving India to come to Natal for hire shall, before leaving India, either be engaged to an employer named in his contract, or shall be taken as bound to serve any employer to whom he shall be allotted by the Protector of Indian Immigrants on his arrival at Natal.”

It is, however, not really accurate to speak of the interpretation clause not applying to such sections ; the interpretation clause remains as it was, applicable to the expression “ Indian Immigrants,” but among the Indian immigrants there are classes, and such sections as Section 10 obviously only apply to one of them.

The further remark that the time has now come when both in number and in possible social position, the descendants of Indian immigrants are such that to hold them among the number of those for whom medical attendance is provided, and in respect of whom payment is to be made, is irksome and unlikely to be the wish of the legislature, is an argument that might well be addressed to a legislative body, but cannot have weight in the interpretation by a Court of a clause which spoke in an Act, dated nearly 40 years ago, when circumstances were very different.

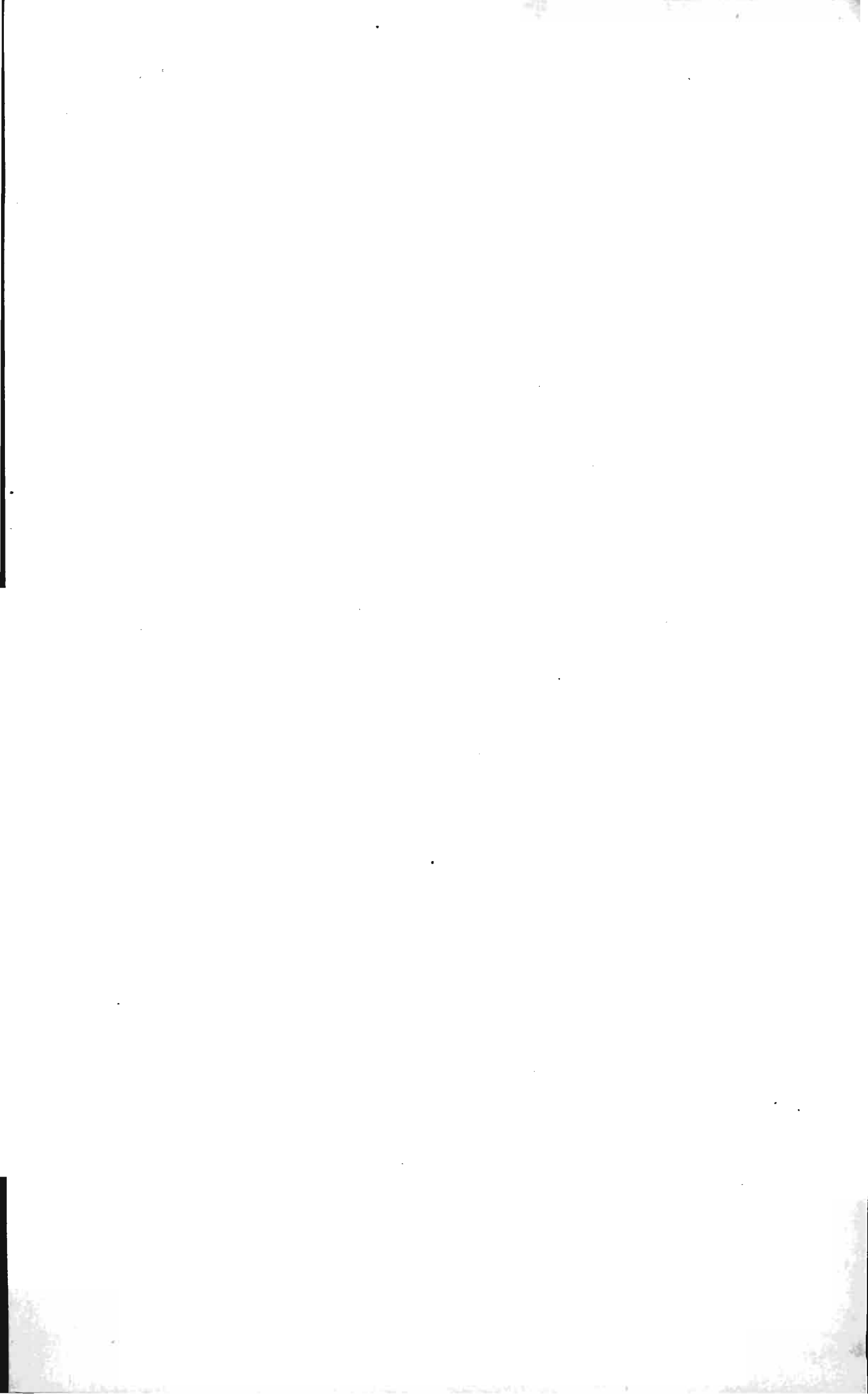
An argument of a very technical character was presented by the learned counsel for the respondents. Taking it that Section 50 was an alternative to Section 48, which imposed on the employer himself the duty of providing medical attendance, he then turned to Section 94, which is the penalty section, and is as follows :—

“ Every employer who shall neglect to retain a duly qualified licensed and registered medical practitioner to attend upon the Immigrants in his

employ, or who shall fail or neglect to supply proper medicine or nourishment for any such Immigrant when sick, or who shall neglect to keep such general and medical register book as provided by this Law, or who himself or by any overseer or sirdar employed by him shall wilfully ill-treat any Immigrant in his employ, or who shall fail or neglect to supply to any such Immigrant any article of food, or to pay any wages to which such Immigrant shall be entitled, shall on conviction thereof before any Court forfeit and pay such sum not exceeding Ten Pounds Sterling for every offence as to the Court shall seem fit, or in default may be adjudged to imprisonment not exceeding thirty days: Provided always, that it shall be at the same time lawful for the Governor, if he shall see fit, to determine the contract of service of such Immigrant, and also of any other Immigrants in the employ of the same employer and to assign such Immigrants to some other person for the residue of the original terms of service of such Immigrants respectively."

As the proviso, by its terms, can only refer to indentured Indian immigrants he argued that the failure to supply medical attendance can only refer to that class, and that, therefore, the alternative of Section 50 must be commensurate with Section 48 so construed. But Section 94 in its body refers to matters which obviously affect other Indians than indentured Indians, *e.g.*, payment of wages. It follows that the proviso is not, strictly speaking, a proviso, but is really an added power to be exercised in cases where it is applicable, such as, *e.g.*, cruelty, in favour of the only class to which it is applicable, and cannot control the meaning of the earlier part of the section. In any event, the argument is too subtle and too indirect to prevail over the plain language of Section 118, which finds no obstacle to its application in the phraseology of Section 50. Their Lordships' view may be well summed up in the words of the learned Judge-President Dove Wilson, who said, "I am unable to see anything either in the subject matter or the context to prevent the definition in Section 118 having full force and effect in the application of Section 50."

Their Lordships will humbly advise His Majesty to allow the appeal and restore the judgment of the Provincial division of the Supreme Court affirming the judgment of the local magistrate with costs. The costs of this appeal will be dealt with in accordance with the undertaking of the appellants at the time that special leave to appeal was granted, *viz.*, to pay the costs of the respondents as between solicitor and client in any event.



In the Privy Council.

THE INDIAN IMMIGRATION TRUST BOARD OF
NATAL

2.

VENCATEGIN GOVINDASAMY, TRADING AS THE
STAMFORD HILL LAUNDRY.

DELIVERED BY LORD DUNEDIN.

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