MAHABOOB BIBI
[Appellant]

v

SECRETARY OF STATE FOR THE HOME DEPARTMENT
[Respondent]

19 February 1987

Court of Appeal: Parker, Mustill LJJ
Sir Roger Ormrod

[reported as [1987] Imm AR 340]

British Overseas Citizenship — whether by virtue of the British Nationality Act 1981 the appellant acquired that citizenship — whether by operation of the Mauritius Independence Act 1968 the applicant ceased on the appointed day to be a citizen of the United Kingdom and Colonies, and became a citizen of Mauritius — the meaning of 'if he becomes' in s. 20(3) of the Mauritius Independence 1968 ss. 2(2), 2(3): Mauritius Independence Order 1968 ss. 20(1), 20(3): British Nationality Act, 1981 s. 26.

The appellant, a stateless person, sought a declaration that she was a British Overseas citizen. She had been born in Burma in 1927. Her father, who died in 1955, had been born in Mauritius in 1908. The authorities in Mauritius refused to recognise the relationship as claimed and in consequence had refused to acknowledge the appellant as a Mauritian citizen. The Secretary of State denied that she was a British Overseas citizen. Her application for judicial review of that denial was dismissed. On appeal, it was submitted by counsel that following *Oppenheimer v Cattermole* the issue of her Mauritian citizenship was to be determined according to Mauritian law.

Held:

1. The issue before the Court was not whether she was recognised as a Mauritian citizen by the authorities in Mauritius. The issue was whether on a true interpretation of the Mauritius Independence Act and the Mauritius Independence Order, on the appointed day, the appellant became a Mauritian citizen. That involved the construction of an English statute according to English law.

2. On the facts as accepted by the Secretary of State and in accordance with the provision of the Act and the Order, the appellant became a Mauritian citizen on 12 March 1968.

3. The phrase "if he becomes" in the Order could not be read as "if he becomes a Mauritian citizen" and that "is recognised by the state of Mauritius".

4. It followed that the appellant was not still a citizen of the United Kingdom and Colonies on 1 January 1983 and she had no claim thereafter to British overseas citizenship.

I A Macdonald for the appellant
N Pleming for the respondent

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Cases referred to in the judgments:

Oppenheimer v Cattermole [1976] AC 249; [1975] 1 All ER 538.
R v Secretary of State for the Home Department ex parte Mahaboob Bibi (QBD) [1985] Imm AR 134

Parker LJ: This is an appeal from a judgment of Mann J, given on 12 July 1985, dismissing an application for judicial review of decisions, firstly of an immigration officer dated 2 March 1984, and secondly of the Secretary of State dated 31 March 1984, refusing the appellant leave to enter the United Kingdom, and ordering her removal. There was also sought a declaration that the appellant is a British Overseas citizen. It is that declaration only which calls for consideration by this court.

The appellant arrived in this country on 28 February 1984 with three children. The refusal of entry was clearly on the basis that she was a stateless person. If that were right, paragraph 10 of HC 169 required that she should be refused entry unless she could produce an identity document endorsed with a United Kingdom entry visa. She had an identity document issued by the Indian authorities, but it was not so endorsed.

The applicant's contention that she is a British Overseas citizen involves, as the learned judge said, looking at her history to some extent. The concept was introduced by the British Nationality Act 1981 which came into force on 1 January 1983. The question before the court depends on whether, at 1 January 1983, she was a citizen of the United Kingdom and Colonies. If she was, she then became on that date a British Overseas citizen and thus entitled to the declaration which she seeks.

The relevant history is as follows: The applicant was born in Rangoon, Burma on 2 August 1927. At that time, Burma was a Crown colony. She thereby became a British subject by virtue of section 1 of the British Nationality and Status of Aliens Act of 1914. Her father was one Mohammed Ibrahim who was born in Mauritius on 15 August 1908. Mauritius was also a Crown colony. He also, by virtue of his birth, was a British subject.

Burma became an independent country on 4 January 1948 by virtue of the Burma Independence Act of 1947. On that day, persons born in Burma, in general, ceased to be British subjects, but an exception was made in respect of any person so born, *inter alia*, whose father was born outside Burma in a place which at the time of birth was within His Majesty's dominions. By virtue of that exception, the applicant remained a British subject. But it is material to note that she only so remained on the basis that her father was born in Mauritius.

On 1 January 1949, by virtue of the British Nationality Act 1948, the applicant then became a citizen of the United Kingdom and Colonies. She was issued, on 8 October 1964, in Rangoon with a United Kingdom passport, so describing her. On that passport she came to the United Kingdom on 23 October 1966, remaining here until some time in 1968.

When her passport expired on 5 October 1969, she applied for renewal, but {*342} renewal was refused on the ground that she had become a citizen of Mauritius. The reason for that I shall shortly explain. She then applied to the Mauritian authorities for a passport, but was refused.

The Mauritian situation is simple to state. Mauritius became an independent state by virtue of the Mauritius Independence Act 1968, and the Mauritius Independence Order 1968. Section 2(2) of the Act itself provides as follows:

> "Except as provided by section 3 of this Act, any person who immediately before the appointed day is a citizen of the United Kingdom and Colonies shall on that day cease to be such a citizen if he becomes on that day a citizen of Mauritius."

The appointed day was 12 March 1968. As the applicant was a citizen of the United Kingdom and Colonies immediately before 12 March 1968, she would cease on that day to be such a citizen, but only if she became on that day a citizen of Mauritius.

The Act does not assist to determine the question of whether or not she did so become. In order to throw light on that subject, it is necessary to look at The Mauritius Independence Order. That provides, by section 20(1), as follows:

> "Every person who, having been born in Mauritius, is on 11th March 1968 a citizen of the United Kingdom and Colonies shall become a citizen of Mauritius on 12 March 1968."

Subsection (3) provides:

> "Every person who, having been born outside Mauritius, is on 11 March 1968 a citizen of the United Kingdom and Colonies shall, if his father becomes, or would but for his death have become, a citizen of Mauritius by virtue of subsection (1) or subsection (2) of this section, becomes a citizen of Mauritius on 12th March 1968.

The applicant was, it is common ground, born outside Mauritius. The applicant, it is common ground, was on 11 March 1968, a citizen of the United Kingdom and Colonies. Her father, it is common ground between the parties, was a person who was born in Mauritius and was a citizen of the United Kingdom and Colonies. As a result, had he not died in 1955, he would have become, on 12 March 1968, a citizen of Mauritius. Accordingly, by virtue of subsection (3), the facts being common ground between the parties, the applicant became, on 12 March 1968, a citizen of Mauritius, and thereby ceased to be a citizen of the United Kingdom and Colonies.

The reason why her application to the Mauritian authorities was refused was as follows: "... the paternal filiation ... is not borne out by the documents produced and therefore she cannot be considered as a Citizen of Mauritius." That is to be found in a letter from the Mauritian authorities. It will be observed that there is no question of law involved here at all. The question whether, on 12 March 1968, any person became a citizen of Mauritius depends, so far as the law is concerned, o the constitution of Mauritius as set out in the Schedule to {*343} the Order, and so far as the facts are concerned, on the provisions of section 20. No question of conflict of laws arises in any way. All that has occurred in this case is that United Kingdom authorities have accepted the assertions put forward by the applicant, and are satisfied that the conditions laid down in section 20 of the Constitution are fulfilled. If that is right, there is no question but that on 12 March she became a citizen of Mauritius.

It is the present state, unfortunately, that the Mauritius authorities do not accept that position. But for present purposes, this court has to determine, according to English law, whether or not within section 2(2) of the Act, she became on that day a citizen of Mauritius. The facts which she asserts lead inevitably to that result. Those facts were accepted when Burma became independent, and are accepted today by the authorities of this country. On those facts, there can be no doubt that she ceased on that day to be a citizen of the United Kingdom and Colonies.

Mr Macdonald, in an attractive argument, submits that that result which appears to be plain, is to be avoided on this basis. Subsection (2) of section 2 inevitably refers one to the law of Mauritius because it is only by looking at Mauritian law that one can determine whether on that day anybody became a citizen of Mauritius. The Mauritian law to which one is referred is the constitution of Mauritius as set out in the Order. But when one looks at the provisions of the constitution, it is apparent that all that has to be determined is, for present purposes at any rate, matters of fact. Having rightly submitted that one must refer, in order to get the answer, first to Mauritian law, Mr. Macdonald relies on *Oppenheimer v Cattermole* [1976] AC 249, for the proposition that matters of nationality of a foreign state are to be determined by the law of that state.

Oppenheimer v Cattermole was a case in which the question of conflict of laws arose. It does not, in my judgment, assist in the present case because all that arises in the present case is a question of construction of an English statute, coupled with questions of fact which are not in dispute. On the basis that the facts are not in dispute, there is, in my judgment, only one answer to this appeal. That is that it must be dismissed for the reasons which I have given, and also for those in the judgment of the learned judge, with every word of which I agree. I would therefore dismiss this appeal.

Mustill LJ: I agree. As was correctly observed by Mann J, the question here is not whether the English court should declare the status of the applicant so far as concerns the citizenship of Mauritius, but

rather whether she is a citizen of the United Kingdom. That is a question which the English court undoubtedly has jurisdiction to entertain.

Although the issue arising under the constitution of Mauritius was described in argument as a question of mixed fact and law, to my mind the question whether the man who is said to have been the appellant's father became a citizen of Mauritius is a question of fact. The issue was whether he was a person who, having been born in Mauritius, was on the day before the appointed day a citizen of the United Kingdom and Colonies. So, also, it is a question of fact, if there is any issue upon it, whether the appellant is the daughter of the man who is {*344} said to be her father. These questions of fact admit only of an answer, Yes or No. However hard it may be to establish the true position the appellant either did or did not, on 12 March 1968, become a citizen of Mauritius. The question whether she has succeeded in proving the material facts to the satisfaction of the Mauritian authorities is, to my mind, beside the point.

When one turns to look at the language of the statute itself, one finds the words "if he becomes" in section 2(2). There is no mention in the statute of any suspensive condition to the effect that no transfer of citizenship away from the United Kingdom should take place unless and until the facts entitling the person in question to Mauritian citizenship have been established to the satisfaction of any tribunal or any authority. I find it impossible to imply into the English Act any qualification such as would have been introduced by the words "if it is recognised by the authorities of the state of Mauritius that ..."

The argument very skilfully deployed by Mr Macdonald would seem to me to involve attributing to Parliament an intention to cede to the Mauritian authorities the right to decide whether or not a person in the position of the appellant is a United Kingdom citizen. To my mind, no such intention can properly be inferred. It would appear to follow from the argument that the Mauritian authorities could take away United Kingdom citizenship of any person simply by deciding, contrary to the true facts, that the person in question had become a Mauritian citizen by satisfying the tests laid down in the Mauritian constitution. This seems to me a proposition which it is quite impossible to maintain. Here, there is no issue on the facts between the appellant and the Secretary of State. Both accept that the conditions did exist which brought the appellant within the literal words of section 20 of the constitution. Both maintain that the authorities of Mauritius have misapprehended the true position.

In his argument for the appellant, Mr Macdonald relies upon the decision of *Oppenheimer v Cattermole* to show that the English authorities and the courts of England are bound to abide by the consequences of this misapprehension. But I do not regard *Oppenheimer v Cattermole* as establishing any such proposition. What was said by the members of the House of Lords was that the question whether a person is a national of another state is to be decided according to the municipal law of that state. The rule propounded by the House was a rule concerning the conflict of laws, but here there is no conflict on any material question between the law of Mauritius and the law of England. It is common ground that the relevant law of Mauritius consists of the constitution. There has been no suggestion in the evidence or argument that the court in Mauritius would interpret section 20 in any different sense from the way in which it would be interpreted in the English court. If the appellant is right, what has happened is that the Mauritian authorities have misapplied the provisions of the law, the meaning of which is perfectly clear.

Accordingly, the matter comes back to a simple question of fact on which, as I have said, there is no issue between the two parties now before the court. To my mind, it is quite plain that section 2(2) of the English Act applies, and that accordingly, this appeal must be dismissed. {*345}

Before parting with the matter, I think it legitimate to express the earnest hope that one or other of the states which have power to do so may see fit to take some administrative step, whether by issuing the appellant with travel documents, or in some other manner which will enable her to escape from her unfortunate dilemma. It can perhaps properly be brought to the attention of the states that she is in this position through no fault of her own as a result of a state of affairs not contemplated by the legislature when the Act and the convention were framed.

Sir Roger Ormrod: I agree and would only add this. My sympathy with the applicant is very great and very real. She seems to be the victim of a difference of opinion between two national authorities on a question of fact, namely whether she is the legitimate daughter of a man who was born in Mauritius. The British authorities accept her evidence to that effect. The Mauritian authorities have refused to accept it, so she falls, apparently, between two stools and becomes a stateless person.

The argument has ranged over quite a wide field. For my part, I think it boils down to a question of construction of section 2(2) of the Mauritius Independence Act 1968. I think it depends upon the meaning to be given to the words in the subsection "if he becomes on that day a citizen of Mauritius".

On the one hand, Mr Macdonald submits that that must be taken as meaning that he becomes in actual fact or is accepted as a citizen of Mauritius, because it cannot have been the intention of Parliament — and he submits this with considerable force — to produce a situation in which persons might well become stateless through no fault of their own, having lost their United Kingdom citizenship and having failed to gain Mauritian citizenship. One can see the force of that argument.

The alternative construction, it seems to me, is that it means "if" he becomes, in accordance with the terms of the Mauritian constitution which is almost attached to the Act, a citizen of Mauritius. The second of those possible constructions seems to me to be forced upon us inevitably by the reference in the subsection twice to "on that day". So it is clearly contemplated that on 12 March 1968, it will be possible to determine, so far as this country is concerned, definitively whether a person is or is not a citizen of Mauritius, and therefore is or is not any longer a citizen of the United Kingdom and Colonies.

For my part, I do not think it possible to accept Mr Macdonald's construction of the section. It seems to be inevitable that we have to look at the matter as at 12 March 1968. That being so, the applicant must fail. I agree that this appeal should be dismissed.

Appeal dismissed

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