Privy Council Appeal No. 82 of 1939

A. L. N. Narayanan Chettyar and another - - *Appellants*

v.

N. K. L. P. Palaniappa Chettyar and another - - *Respondents*

FROM

THE HIGH COURT OF JUDICATURE AT RANGOON

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 19TH JUNE, 1940

Present at the Hearing:

VISCOUNT MAUGHAM
LORD WRIGHT
SIR GEORGE RANKIN

[*Delivered by* VISCOUNT MAUGHAM]

This is an appeal from a decree of the High Court of Rangoon in its appellate jurisdiction reversing a decree of the District Court of Tharrawaddy. It raises a pure question of fact, which ultimately amounts to this:—Was there a fraudulent conspiracy between the first respondent, one N. K. L. P. Palaniappa Chettyar (whom it will be convenient to call the plaintiff), and the second respondent, S. T. S. P. Subbiah Chettyar (who will be called Subbiah), to defraud the two appellants, or was the plaintiff innocent in the matter and therefore entitled to succeed in his action against the appellants and Subbiah? The story is altogether a curious one, and it is as well to begin by stating that Subbiah is a convicted rogue, fortunate in having so far escaped with only 18 months of rigorous imprisonment, and that no reliance whatever can be placed on any statements he has made unless corroborated by written evidence or by someone not likely to have been corrupted by his influence.

The plaintiff at the material times carried on a money-lending business at Othegon in the Tharrawaddy District of Burma. Subbiah carried on a similar business in partnership with his brother at Letpadan also in that district. That business was known as the K.L.R.M.S.P. firm. According to the evidence he was a partner or was held out as a partner with the appellants in another and more important money-lending business carried on at Kyaunggon in the district of Bassein and elsewhere, known as the A.L.A.R.N. firm. The parties to the litigation being all money-lenders might be expected to have some knowledge of business, but in that respect they were very unequally equipped, for the plaintiff was an infant only 14 years old when he inherited his business on the death of his father, and Subbiah who was his first cousin once removed and considerably older than the plaintiff managed that firm (for an adequate consideration)

till the plaintiff came of age (18) and himself took it over in February, 1929. It was in January, 1931, that the events took place which led to this litigation.

It is important to understand the position at that time. In 1929, on the 2nd September, the K.L.R.M.S.P. firm, that is Subbiah and his brother, had mortgaged to the plaintiff a rice mill at Okkan and certain paddy lands to secure a debt of Rs.40,000 at interest. The security was apparently ample, but Subbiah and his brother were in financial difficulties, the interest was in arrear to the amount of Rs.5,828, and other sums were owing on an account known as the Nadappu account by Subbiah or his firm to the plaintiff. Subbiah was being pressed for money by the plaintiff and it would seem probable by other persons.

In these circumstances Subbiah met the plaintiff, either at Othegon or at Rangoon—a matter to be considered later —and executed a promissory note dated the 3rd January, 1931, which (as translated) was in the following terms:—

Palaniappa Chettiar.

" Othegon. Othegon.
On demand. On demand.

N.K-L.P. of Othegon.
3rd January 1931.
19th Margali of Pramodhootha.

Rs.25,000.

I, the undersigned A-L.A-R.N. Subbaya Chettiar of Kyaunggon, owe Rs.25,000 for value received in cash from Nattukottai N.K-L.P. Palaniappa Chettiar of Othegon. This sum of Rupees twenty-five thousand bearing interest at Rs.0-2-0 two annas over and above the Rangoon Current rate per cent. per mensem, that is, the principal and interest, I promise to pay on demand without pleading proportionate liability to the said N.K-L.P. Palaniappa Chettiar or to his order and thus consenting sign hereunder.

(Sd.) A-L.A-R.N. SUBBAYYA CHETTYAR."

It will be observed that the note was apparently executed at Othegon and according to its language was " for value received in cash " from the plaintiff. The word " Othegon " in Tamil was actually written by Subbiah. The note was payable on demand, and as will be seen later both parties apparently intended that payment should be made within 60 days. It is not now in dispute that the note bound the appellants' firm A.L.A.R.N. according to its terms and that Subbiah had the necessary authority to execute it. The plaintiff entered the Rs.25,000 in his books as a loan to the A.L.A.R.N. firm, to be settled in 60 days. Subbiah entered it in the books of the A.L.A.R.N. firm as received and payable in 60 days' time; but what is very strange and remarkable (if Subbiah's subsequent story could be regarded as true) is that on the same date he debited himself in those books as having withdrawn the sum of Rs.23,522 on his own account. It may be mentioned that on the 10th March, 1931, demands in legal form were made on behalf of the plaintiff addressed to the appellants and Subbiah (and another person) claiming repayment of the moneys secured by the promissory note. The appellants regarded the transaction as a fraud by Subbiah and the plaintiff.

In considering the conduct of the plaintiff in the matter, one other circumstance should be mentioned. As stated he was pressing Subbiah for payment of the amounts due under the mortgage of the 2nd September, 1929, and other sums. This difficulty was, however, solved at or about the date when the promissory note was executed by an agreement to convey the mortgaged property to the plaintiff absolutely in settlement of all claims. This agreement was in fact carried into effect by a conveyance of the 8th January, 1931. The consideration was expressed to be Rs.50,000 made up of Rs.40,000 principal debt, Rs.5,828-10-6 arrears of interest, Rs.3,500 balance owing on accounts, Rs.155-14 interest on that balance and Rs.515-7-6 cash. Subbiah signed the deed twice, once as "K.L.R.M.S.P. Subbiah Chettyar" and again as "K.L.C.T.S.P. Subbiah Chettyar." He explained that he did so because the properties conveyed included properties of his own as well as properties of the K.L.R.M.S.P. firm. The deed was executed on the premises of Ganesh Co. in Fraser Street, Rangoon. The plaintiff and Subbiah were then at Rangoon for the purpose. It may be noted that the draftsman took pains to show that there was to be no right of redemption by the vendors. The conveyance was expressed to be in the form of an absolute sale and contained this clause:—

> "The Purchaser shall and may hold the said property unto himself and enjoy the same for ever without anyone claiming any right or claim whatsoever unto the property hereby conveyed or expressed so to be or any part thereof."

So far as the plaintiff is concerned there is nothing suspicious either on the face of the documents or in his conduct at this point. Subbiah had discharged all his debts to the plaintiff, and contemporaneously (though not on the same day) had borrowed at a reasonable rate of interest on short loan Rs.25,000 on behalf of the A.L.A.R.N. firm. The promissory note, the entries in the books of both firms, and the legal demands were all just what might have been anticipated.

The next event of importance which it is desirable to mention was this:—In the month of March, 1931, Subbiah was charged with misappropriation of moneys of the A.L.A.R.N. firm. After a trial lasting more than a year, he was convicted on the 2nd June, 1932, of the misappropriation of (1) Rs.35,229 on or about 28th December, 1930; (2) Rs.70,000 between the 6th and 11th January, 1931, and (3) Rs.14,200 on the 27th January, 1931, and sentenced by the Special Power Magistrate of Bassein to 18 months' rigorous imprisonment on the first and third charges, and two years on the second. On appeal to the High Court of Judicature at Rangoon (Criminal Appeal No. 1636 of 1932), the convictions and sentences on the first two charges were quashed, but the conviction and sentence on the third charge was confirmed. It may be observed that the learned Judge quashed the convictions on the first two charges mainly on the ground that it was not clear on the evidence whether the sums of Rs.35,229 and Rs.70,000 had really been paid to

Subbiah, or whether he had only conspired with other persons to defraud the A.L.A.R.N. firm. His dishonesty with regard to each of the three charges was, as the learned Judge observed, clearly established. It is therefore clear that in December, 1930, and January, 1931, Subbiah was engaged on extensive frauds on the A.L.A.R.N. firm quite apart from the promissory note transaction with the plaintiff.

Subbiah came out of jail in December, 1933. The plaintiff who had been in India returned to Burma, and on the 3rd January, 1934, instituted the suit. In the first instance it proceeded against Subbiah *ex parte*; but on the 13th June, 1935, long after the actual trial had begun and the plaintiff and others had given their evidence, Subbiah applied for permission to defend the suit. This was not opposed by the plaintiff and Subbiah filed his written statement on the 13th July. As the High Court in a very clear and forcible judgment has observed, it is an astonishing document. The material paragraph is as follows:—

> " That at that time (January, 1931), this defendant was sent for to Rangoon by the plaintiff and there they ultimately agreed to the following terms and conditions relating to the settlement of the debts due by this defendant as partner of the KL.RM.S.P. Firm to the plaintiff as stated above, in connection with the purchase of the Okkan rice mill etc., and if possible by realising the said amount from the A.L.A.R.N. Firm through the plaintiff:—
>
> (*a*) That this defendant should convey and transfer by means of conditional sale the Okkan mill worth over a lakh of rupees and also some immoveable properties belonging to him in India worth over Rs.50,000, for a nominal sum of Rs.50,000 only;
>
> (*b*) That this defendant should further execute a pronote in favour of the plaintiff for Rs.25,000 with a view to enable him (plaintiff) to recover the same from the A.L.A.R.N. Firm, and if realised to be adjusted towards the said debt;
>
> (*c*) That the plaintiff should allow redemption of the properties conditionally conveyed nominally and without consideration as aforesaid after the expiry of five years from the date of transfer, on this defendant paying to the plaintiff a sum of Rs.25,000 firstly trying to realise the same from the A.L.A.R.N. Firm by suit or otherwise, and on his failure to so realise the amount, this defendant himself should pay to the plaintiff;
>
> (*d*) That the plaintiff should re-imburse himself the balance of Rs.15,000 due to him out of a total debt of Rs.40,000 by this defendant from out of the rents and profits of the rice mill and the paddy lands in India, by being in possession of the same for a period of 5 years and appropriate the rents and profits so received towards the payment of this Rs.15,000."

The substance of this story is that there was no loan in cash when the promissory note was made by Subbiah and that it was executed without consideration in collusion with the plaintiff with intent to defraud the other partners of the A.L.A.R.N. firm, that it was executed not at Othegon but at Rangoon, and that the plaintiff was to allow redemption of the Okkan Mill and other property for Rs.40,000,

to be obtained by him as to Rs.25,000 by bringing a fraudulent action against the appellants and as to the balance of Rs.15,000 by getting the rents and profits of the rice mill and paddy lands.

It will be noted, if the terms of the conveyance of the 8th January are looked at, and interest on Rs.40,000 is computed, that the plaintiff could only lose by this transaction, quite apart from the fact that he was embarking on a criminal fraud with Subbiah which would probably land them both in jail. There is not a shred of evidence in writing to support the statement apart from Subbiah's affirmation; and there is no suggestion that the plaintiff was an imbecile. No ground whatever is suggested for the form of the conveyance of the 8th January if Subbiah's story were true. It is not improper, still less is it a fraud, to obtain an option to repurchase property which has been sold, if that is agreed between the parties. Why then was no such option given in the conveyance; or why did not Subbiah obtain some document or scrap of paper signed by the plaintiff agreeing to the transaction? Their Lordships have no hesitation in agreeing with the High Court that Subbiah's account of what was agreed between him and the plaintiff in January, 1931, is untrue as well as being ridiculous. It seems probable that in the course of the action he accused himself of the further gross fraud in relation to the promissory note for some ulterior reason of his own, which has not been discovered.

It may be said that Subbiah would have been ready and willing to execute the promissory note in favour of the plaintiff and at the expense of the appellants, if he could have persuaded the plaintiff to join him in the fraud and thought that there were reasonable prospects of success. But it was immaterial to them both on that hypothesis whether such a note was executed in Othegon or in Rangoon; the essence of the fraud of course consisted in the note being expressed to be " for value received in cash " while no money really passed. On Subbiah's story he and the plaintiff must have discussed the prospects of deceiving the Court, and of getting a judgment for Rs.25,000 against the appellants. Subbiah, who would have been personally and deeply interested in such proceedings, would, of course, have had to support the plaintiff as a witness, and they must have agreed on their fraudulent story. Is it within the bounds of reasonable probability that they executed the note at Rangoon, as Subbiah now alleges, though they had taken pains to make it appear that it had been executed at Othegon? It seems to their Lordships much more probable that Subbiah and the plaintiff would on the hypothesis of fraud have carefully agreed on a place and a date for the real execution of the note, and also for two or three apparently reliable witnesses as to the payment of the money. If this was arranged why should the plaintiff have departed from the agreed plan?

Subbiah's entries in the account books of the A.L.A.R.N. firm go a long way to dispose of his present story. It is not the fact that he made entries to show that the firm had received the Rs.25,000 from the plaintiff that is decisive, but

the fact that Subbiah at once drew out Rs.23,522 for himself. He desired somehow to get Rs.25,000 or thereabouts from the plaintiff in order to procure the cash for himself. No doubt it was a fraud on his own firm, but it may observed that there is nothing whatever to show that the plaintiff knew that Subbiah was going to take the money or most of it for his own purposes. The crediting of the Rs.25,000 and the drawing out of the bulk of this sum by Subbiah at the date of the promissory note form the strongest possible corroboration of the note itself being for full consideration in cash and of the rest of the plaintiff's evidence. Further, as is pointed out in the judgment of the High Court, a single false entry cannot be made in the books of a Chettyar banker kept in the usual way; there must be a corresponding false entry or entries on the other side of the books or they will not balance. Yet nothing of the sort has been discovered in the books of either the plaintiff or of the A.L.A.R.N. firm.

It seems to their Lordships, in the light of the above considerations, which can scarcely be disputed, that it would require very cogent evidence to satisfy a Court that the written documents, that is, the promissory note, and the account books of both firms above referred to, must be disregarded contrary to all the probabilities and a small portion of Subbiah's absurd written statement, namely, that relating to the promissory note accepted as the truth. It is important to observe that the appellants are seeking to establish that the plaintiff, against whose character nothing has been proved, engaged without any apparent motive, indeed against his interests, in a criminal fraud in January, 1931. Their Lordships are of opinion that the evidence to support such a case must be little, if at all, short of that which would be necessary to support a serious criminal charge. It would seem that it was owing to a neglect of these considerations that the learned District Judges were led to the conclusions with which the High Court have disagreed.

The parol evidence given at the trial and on commission was of an unsatisfactory character and cannot altogether be reconciled. The main defence was that Subbiah had no authority to sign the promissory note on behalf of the A.L.A.R.N. firm. Apart from that defence, which clearly broke down and is not supported before their Lordships, the defendants were in effect left with the charge of fraud against the plaintiff. He and two witnesses gave evidence that the note was executed at Othegon on the 3rd January and that the cash was paid to Subbiah. There were two main points of attack on this evidence. First, it was attempted to prove that the plaintiff had not got in his possession on the 3rd January the necessary sum of Rs.25,000 and that he could not therefore have paid that sum to Subbiah. Secondly, great efforts were made to prove that the note was executed at Rangoon on the 3rd January and not at Othegon on that date. This apparently subsidiary point became of prime importance since the plaintiff and two witnesses on his behalf gave evidence to show that the note was executed at Othegon

and that the cash was there paid to Subbiah. If this could be shown to be untrue the plaintiff's case would be gravely discredited, though it would remain impossible to explain why he had sworn to so foolish a story if the note, whether fraudulent or not, was really executed at Rangoon.

As regards the first point the plaintiff's books showed that he had in hand the necessary amount. One entry, however, and only one entry in these books, has been attacked, that of a credit for a deposit of Rs.6,000 by one A. K. R. Karuppan Chettyar of Paungde. This man was at first a witness for the plaintiff to say that he saw the payment of cash to Subbiah on the 3rd January at Othegon and that on the previous day in the evening he had deposited the sum of Rs.6,000 with the plaintiff. Some four months later —for the action seems to have dragged on for many months —he was called as a witness for the present appellants, a strange proceeding as the High Court remarked, and his previous evidence as to how he had become possessed of the Rs.6,000 hopelessly broke down. The High Court in their judgment remark that he was obviously a suborned witness. Whether this is the correct inference or not, it seems to their Lordships that his reluctance or his inability to state how he got the Rs.6,000 does not necessarily affect the plaintiff's evidence that he did in fact get Rs.6,000 from Karuppan. The question must be repeated, if Subbiah was not paid the Rs.25,000 why in the world did this man, engaged as he was in a triple fraud against the appellants' firm, instruct his clerk (one Chitambaram) to debit him in the books of the firm on the same day, the 3rd January. with Rs.23,522? Subbiah in his evidence admitted that he told Chitambaram to make this entry, and he does not deny that he withdrew the money. The account produced (Exhibit XIII, AA) appears to show that but for the receipt of the Rs.25,000 it would have been impossible for Subbiah to draw out the Rs. 23,522. The plaintiff also called as a witness, one L. R. M. K. R. Lakshmanan, who gave evidence as to the making of the loan at Othegon and the payment of the money. The fact that this witness was at the plaintiff's place of business on the 3rd January by chance, but for a satisfactory reason, is no reason for disbelieving him. The High Court was right in leaving Karuppan's evidence out of account and relying on the evidence of the plaintiff and Lakshmanan in confirmation of the inferences derived from the promissory note and the various book entries.

On the second point, which as stated above consisted of an endeavour to prove that the note was in fact executed at Rangoon on the 3rd January, was supported by evidence that the document was signed at the residence of Kasi Chettyar (above referred) to in the presence of Kasi Chettyar himself and two other persons, Rama Chandra Pillay and Shamugan Chettyar. It is a forcible comment to observe that not one of these three persons was called, nor was their absence satisfactorily explained. It is, however, true that both Subbiah and the plaintiff were at Rangoon at about this time. The plaintiff went there apparently at the end of

December, 1930, and again was there on the 8th January, 1931, when the deed of conveyance of the mortgaged property to him was executed. He strongly denied that he remained in Rangoon between these dates, and no reason was suggested why he should have done so. Subbiah had to go to Rangoon for the double purpose, first, of getting the conveyance to the plaintiff prepared and executed, and, secondly, of carrying out the various frauds on the A.L.A.R.N. firm with which the plaintiff was in no way concerned. The biggest of these frauds was the sale or purported sale of 1,314 acres of land belonging to the A.L.A.R.N. firm to the same Kasi Chettyar for Rs.70,000. Kasi, as already stated, was not called at the trial and it remains in doubt whether the Rs.70,000 were ever really paid to Subbiah (though a cheque was handed over), and if paid what became of the money; but that is immaterial for the present purpose. Subbiah says he went to Rangoon on the 31st December, 1930, and stayed there till the 5th January, and that he went on the 31st December with Kasi Chettyar to see Mr. Barnabas, a barrister-at-law who gave evidence on commission, to instruct him to draw up two documents, the sale deed for the Rs.70,000 and an agreement in relation to the collection of the rentals on the propertly sold and the payment of these rentals to Kasi. An attempt to make Barnabas say that the plaintiff accompanied them failed. Why he should have gone with them was never explained. Barnabas drew up the documents, but left the schedule to the conveyance to be drawn up by one S. K. Narayan Iyer (who was then in the chambers of Barnabas) and Subbiah. Barnabas told them the documents would be ready on the 5th January. They were in fact then ready and were then executed in the presence of witnesses. Barnabas declined to say that Subbiah came to see him on the 3rd January, and observed what is obviously true that he had no reason to come every day. The deed was of the simplest character. The recollection of Mr. Barnabas was that the plaintiff did not come to see him till he came about the demand notices of the 10th March, 1931, above referred to. The evidence of Mr. Barnabas (who is now dead) must strike the reader as honest and convincing, and it was far from assisting the defence. A clerk of Subbiah, called Krishna Pillay, was also called. He affirmed that he saw the promissory note executed at Rangoon at the residence of Kasi on the 3rd January in the presence of the three persons mentioned, Rama Chandra Pillay, Shamugam Chettyar and Kasi. Krishna Pillay's evidence is not satisfactory, for he ventured to say in chief that " after the execution of the pronote," Subbiah " executed a sale deed in favour of the plaintiff in respect of the rice mill and the lands in India which were already mortgaged." This deed, however, as we know was not executed till the 8th January, and the witness had to admit that he went back to Okkan on the 3rd. It is not possible to place much reliance on such a witness. There remains S. K. Narayan Iyer, then a higher grade pleader, who, as we have seen, had a seat in the office of Mr. Barnabas. He

finished the schedule two days before the sale deed was executed. Plaintiff, he says, had come to Mr. Barnabas' office with Kasi for the preparation of the sale deed to Kasi Chettyar once or twice. It must be observed that the plaintiff had no interest whatever in this fraudulent transaction, and it is impossible to conceive why he should have been present. Iyer says that on the 3rd January Subbiah and Kasi Chettyar and he went to Mr. Barnabas' office, but that he did not see the plaintiff on that day. He kept a diary but, as he says, it merely contained an entry on the 3rd January that he prepared a document for Ganesh and Co. at the request of Kasi Chettyar, and the entry did not mention Subbiah or the plaintiff. Their Lordships cannot regard the evidence of this witness as satisfactory. As a lawyer he must have been perfectly well aware that his diary, if properly kept, must have been of first rate importance; for he was going with its assistance to contradict the evidence of the plaintiff and two other witnesses given some months before, namely, by proving that the plaintiff and Subbiah were in Rangoon at dates when, according to the plaintiff's case they were in Othegon. Yet he said he could not tell whether he still had the diary for 1930 and added, "I must look for it in my house." The implication was that he had not yet looked for it. As regards the diary for 1931, he alleged that he had brought it to the Court on a previous occasion, but, if the learned District Judge's note can be relied on, he apparently had not brought it on the occasion of his being cross-examined. According to the note he was, however, allowed to give evidence as to the entries in the diary without producing it. One would gather from his evidence that he saw both the plaintiff and Subbiah almost daily between the 31st December and the 5th January, and took a leading part in the transactions of Subbiah at the time. It is, however, a singular fact that Subbiah in his elaborate evidence of what he did at this time at Rangoon never mentions the name of Narayan Iyer from first to last. The evidence of Subbiah, moreover, differs in important details from that of Iyer. To take one example out of a number. Subbiah says that on the 3rd of January he, Kasi and the plaintiff went to Mr. Barnabas' office. Iyer says that he, Kasi and Subbiah went to that office—not the plaintiff. Their Lordships think that this witness was placing far too much reliance on his memory, for example, when he thought, giving evidence in November, 1935, that he could remember who went with him on a very unimporant visit to Mr. Barnabas, on the 3rd January, 1931, for the object of that visit was merely to hand over the schedule to him.

It is possible to go by rail from Othegon to Rangoon and back in a day, and there is a night train. The evidence of the witnesses mentioned on behalf of the appellants to prove that the plaintiff and Subbiah could not have been at Othegon on the 3rd January seems to their Lordships as it seemed to the High Court to be wholly unconvincing. But the matter does not stop there. A witness was called on

behalf of the appellants who made a statement in cross-examination of a very significant nature. This was Mayappan Chettyar who was the chief clerk of the A.L.A.R.N. firm at Kyaunggon between 1929 and 1932. Subbiah sent him into the jungle to collect paddy for the firm in December, 1930, probably to get him out of the way while Subbiah was committing his various frauds. But this witness said that on the 2nd January, 1931, he met Subbiah in the jungle and that the latter handed to him Rs.748 which was due to him, and the payment of this sum was in fact duly entered in the day-book of the firm as being paid on the 2nd January. The date is thus fixed by a disinterested witness called by the appellants, and it appears to be strong evidence to show that Subbiah's statement that he was in Rangoon from the 31st December to the 5th January, like so many other statements by him, was completely untrue. It is quite possible on the evidence that Subbiah went on the 31st December, 1930, to Rangoon to set in motion the frauds with which the plaintiff had no concern, met his chief clerk in the jungle on the 2nd January while he was on his way to Othegon, executed there the promissory note on the 3rd, thus dishonestly procuring out of the proceeds the sum of Rs.23,522, and returned by the 2 o'clock train to Rangoon to complete his three frauds on the appellants on the 5th January, and remained there to get the conveyance of the 8th January, 1931, prepared and executed, thus discharging the indebtedness of himself and his brother to the plaintiff. No doubt Subbiah had to do some travelling, but then his frauds were numerous.

Their Lordships are unable to see why credit should be given to any statement by Subbiah, but it is at least significant that when asked in cross-examination what his intention was when he was signing the promissory note, he answered, " I intended this money (the Rs.25,000) to be given to plaintiff if I could get it from A.L.A.R.N. firm." He was then asked how he expected to get that money from A.L.A.R.N. firm, and this was his reply:—" I had shown the Rs.25,000 taken from plaintiff in the books of A.L.A.R.N. firm as having been taken for my use. I intended to repay that loan as I was expecting to get moneys from A.L.A.R.N. firm when accounts were gone into." The question may well be asked whether—by a slip—the witness was not in this answer forgetting his fables and letting the truth escape.

In conclusion their Lordships must hold that the appellants' evidence is quite insufficient to discharge the heavy onus which lay upon them in the circumstances above stated to establish the plaintiff's fraudulent conspiracy with Subbiah. They agree with the High Court that the evidence as a whole leads to only one conclusion, namely, that the loan of Rs.25,000 was made in cash by the plaintiff to Subbiah at Othegon on the 3rd January, 1931, and that Subbiah borrowed the money as a partner or an ostensible partner on behalf of the A.L.A.R.N. firm for the business of that firm.

Their Lordships will therefore humbly advise His Majesty that this appeal should be dismissed with costs.

(25030) W't. 8017 49 100 7/40 P St. G. 338

In the Privy Council

A. L. N. NARAYANAN CHETTYAR
AND ANOTHER

v.

N. K. L. P. PALANIAPPA CHETTYAR
AND ANOTHER

DELIVERED BY
VISCOUNT MAUGHAM

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