GLT G2 33,1956

No. 48 of 1955.

In the Privy Council.

ON APPEAL

FROM THE SUPREME COURT OF CEYLON.

BETWEEN

M.R.M.M.M.R. MURUGAPPA CHETTIAR
(Plaintiff) *Appellant*

AND

1. MUTHTHAL ACHY
2. KANNAPPA CHETTIAR
3. KARUPPEN CHETTIAR
4. ARUNACHALAM CHETTIAR
5. ALAGAPPA CHETTIAR
6. NATCHAMMAI ACHY (Defendants) . . *Respondents.*

Case for the Appellant

RECORD.

1. This is an appeal from a Judgment and Decree of the Supreme Court of Ceylon, dated the 9th July, 1954, allowing an appeal from a Judgment and Decree of the District Court of Colombo, dated the 12th October, 1951, whereby, in an action instituted by the Appellant (then a minor and suing by his next friend) against the Respondents for the recovery of a sum of Rs.22,445.52, with legal interest thereon, it was ordered and decreed that the Respondents do pay to the Appellant the sum of Rs.16,658.17, with legal interest thereon at 5 per cent. per annum from the date of the Decree until payment in full and costs of the suit. pp. 98, 107. pp. 85, 93.

In allowing the appeal and setting aside the Decree of the District Court, the Supreme Court dismissed the action with costs in both Courts.

2. The main question for determination on this appeal is whether or not, in the circumstances of this case, the Supreme Court was justified in reversing the said decision of the District Court which was based upon findings of fact arrived at after careful examination of the relevant oral and documentary evidence.

The questions of fact now to be examined are concerned with the circumstances and conditions relating to the deposit, between the

28th September, 1929, and the 27th November, 1929, of sums of money totalling Rs.18,700 in the firm of " K.R.K.N.L." owned by one Letchumanan Chettiar (hereinafter also called " Letchumanan "), the predecessor-in-title of the Respondents. All the parties to this appeal are Chettiars, a Hindu money-lending community governed by usages of its own.

The Appellant's case is that the said sums were part of the share allotted to him on the partition of the joint Hindu family estate to which his father and half-brothers belonged and that they were deposited with the said Letchumanan on his undertaking that they would be repaid to the Appellant and, until repayment, would carry interest at the prevailing Chettiar " *nadappu vatti* " rates of interest, the interest being added to the principal from time to time and calculated in manner customary among Chettiars in their dealings with each other. The Appellant says that, in accordance with his undertaking, Letchumanan has repaid to him the sum of Rs.20,488.18, leaving a balance due, at the date of the Decree of the District Court, of at least Rs.16,658.17, with legal interest thereon as decreed by that Court.

The Respondents deny liability on various grounds. They deny that the said deposits were made on the said undertaking as to the payment of " *nadappu vatti* " rates of interest, and they say that Letchumanan completely discharged his debt to the Appellant by the said payment of Rs.20,488.18. They deny also the Appellant's title to the sums deposited. Evidence in this case, explanatory of " *nadappu vatti* " rates of interest, is referred to in paragraphs 13 and 19 hereof.

3. The facts, briefly stated, are as follows :—

pp. 17, 26. By his Plaint, and amended Plaint, dated the 30th November, 1948, and the 15th July, 1949, respectively, filed in the District Court of Colombo, the Appellant sought to recover from the Respondents (as heirs of the
p. 28, ll. 1–4. said Letchumanan) the sum of Rs.22,445.52, with legal interest thereon from the date of the Plaint until payment in full.

The Appellant (hereinafter also called " the Plaintiff "), being then a minor, sued by his next friend, one Pavanna Vellasamy Pillai (hereinafter called " Vellasamy ") who thus became the 2nd Plaintiff in the suit. The
pp. 13–17. proceedings for the appointment of the next friend are printed on pp. 13 to 17 of the Record. It is convenient to state here that the Plaintiff
p. 38, ll. 29–38. attained his majority during the course of the proceedings and elected to
pp. 39–40. continue the suit, and that the name of the 2nd Plaintiff (Vellasamy) was accordingly struck out of the proceedings by Order of the District Court, dated the 25th October, 1950.

4. The accrual of the cause of action was thus stated in the said
p. 18, ll. 17–44. p. 27, ll. 11–39. Plaint :—

> " 2. In or about August, 1929, one Muthiah Chettiar, the father of the minor above-named " (i.e. the Plaintiff) " died leaving some monies belonging to the minor in the custody of Pavanna Vellasamy Pillai, the 2nd Plaintiff.

" 3. In or about January, 1930, the 2nd Plaintiff . . . acting for and on behalf of the minor . . . deposited in Colombo with one K. R. K. N. L. Letchumanan Chettiar a sum of Rs.18,700/- which amount the said Letchumanan Chettiar agreed in Colombo to pay to the minor the 1st Plaintiff together with interest thereon at the rate prevailing from time to time among the Chettiar Community the interest being added to the principal from time to time according to the custom prevailing, and calculated in the manner customary among the Chettiars in their dealings with each other.

" The parties hereto are Chettiars.

" 4. The said K. R. K. N. L. Letchumanan Chettiar deposited to the credit of the 1st Plaintiff a sum of Rs.20,488.18 in 3836 Civil Guardian of the District Court of Colombo on the 9th April, 1943 " (Curatorship proceedings in which the Secretary of the District Court was appointed Curator of the Plaintiff's estate) " and the balance amount due is Rs.22,445.52 at date hereof, as per account particulars marked ' A ' annexed hereto and pleaded as part and parcel of this Plaint.

" 5. The said Letchumanan Chettiar died leaving behind as his heirs the Defendants above-named who have all adiated inheritance of the said deceased.

" 6. The estate of the said Letchumanan Chettiar was administered in Testamentary Case No. 11556 of the District Court of Colombo and the estate was duly closed.

" 7. There is now justly and truly due and owing from the Defendants above-named as heirs of the said Letchumanan Chettiar deceased the sum of Rs.22,445.52, which or any part thereof the Defendants have failed and neglected to pay though thereto often demanded."

5. By their Answer, dated the 18th March, 1949, the Respondents (hereinafter also referred to as " the Defendants ") denied liability on various grounds and prayed for the dismissal of the action with costs. pp. 21-22.

They said, *inter alia*, that :—

" 1. (B) Assuming (without admitting) the allegations in the Plaint to be correct, the facts disclosed therein disclose no cause of action available to the Plaintiffs. There was no privity of contract between the Plaintiffs and the said K. R. K. N. L. Letchumanan Chettiar. p. 22.

* * * * *

" 4. Certain moneys belonging to and included in the estate of the late Muthiah Chettiar " (father of the 1st Plaintiff) . . . " were left for safe keeping with the said K. R. K. N. L. Letchumanan Chettiar to be dealt with as the said K. R. K. N. L. Letchumanan Chettiar thought fit for the use of an undivided joint Hindu family consisting of the 1st Plaintiff, his mother and his sister.

" 5. The late Muthiah Chettiar died leaving an estate of over Rs.2,500/–. The Plaintiffs cannot maintain this action in terms of Section 547 of the Civil Procedure Code without administering and obtaining grant of probate or letters of administration duly stamped to the estate of the said Muthiah Chettiar deceased.

" 6. From and out of the moneys referred to in paragraph 4 above and with accretions thereof as appearing in the accounts of the said K. R. K. N. L. Letchumanan Chettiar, a sum of Rs.5,010.18 was paid out on a Hundi " (Bill of Exchange) " dated 9th February, 1940, drawn by Segappi Achy *alias* Meenatchi Achy the mother of the 1st Plaintiff in favour of V. R. K. R. Kandavarayanpatty in India.

" 7. Whatever balance that was available on this account was paid in by the said K. R. K. N. L. Letchumanan Chettiar (now deceased) to the credit of Case No. 3836 Civil Guardian of this Court on the 9th April, 1943, and has been drawn out by the 1st Plaintiff on or about 4th March, 1947."

p. 22, l. 41 to p. 23, l. 6. 6. In paragraph 8 of their Answer the Defendants stated that the correctness of Letchumanan's accounts had been accepted by the 1st Plaintiff and his mother and their servants and agents and that therefore the Plaintiffs were estopped from asserting their present claim or challenging the correctness of the said accounts.

p. 23, ll. 7–15. And, in the concluding paragraph 9 of their Answer the Defendants, while admitting that they are the heirs of the said Letchumanan, said that Letchumanan's estate did not include any part of the money claimed by the Plaintiffs, the claim having been discharged in the manner stated in paragraph 7 of the Answer (see the preceding paragraph hereof). They said therefore that " the Plaintiffs have no right in law to sue the Defendants personally in this action."

pp. 28–30, 46, 95–96. 7. Issues framed at the trial were, after a careful assessment of the oral and documentary evidence produced by both sides at the trial, answered thus by the learned District Judge :—

p. 95, ll. 25–26. " (1) Did the 2nd Plaintiff deposit with K. R. K. N. L. Letchumanan Chettiar a sum of Rs.18,700/– in or about January, 1930 ? "

p. 92, l. 4. *Answer :* " It was deposited in September, October and November, 1929."

p. 95, ll. 27–28. " (2) Did the 2nd Plaintiff make the said deposit for and on behalf of the 1st Plaintiff ? "

p. 92, l. 5. *Answer :* " Yes."

p. 95, ll. 29–33. " (3) Did the said Letchumanan Chettiar agree to pay 1st Plaintiff the said sum of Rs. 18,700/– with interest thereon at the rate prevailing among the Chettiar Community, interest being added to the principal from time to time in accordance with the custom prevailing among Chettiars in their dealings with each other ? "

p. 92, l. 6. *Answer :* " Yes."

" (4) (A) Did the said Letchumanan Chettiar deposit to the credit of the 1st Plaintiff in the latter's Curatorship Case on the 9th April, 1943, a sum of Rs.20,488.18 ? " p. 95, ll. 34–38.

" (B) Was such money a portion of the monies referred to in Issues (1) and (3) ?

Answer : (4) (A) : " Yes." p. 92, ll. 7, 8.

(4) (B) : " Yes."

" (5) What balance amount if any is due to the 1st Plaintiff out of the moneys referred to in Issues (1) to (3) ? " p. 95, ll. 39–40.

Answer : " The balance amount will have to be calculated upon my findings. Before decree is entered a statement will have to be filed by Plaintiff in terms of my judgment " (The Decree subsequently entered ordered the Defendants jointly and severally to pay to the Plaintiff the sum of Rs.16,658.17 with legal interest thereon at 5 per cent. per annum until payment in full.) p. 92, ll. 9–11.

8. Issues (6) to (8) relating to the Defendants' liability as heirs of the said Letchumanan and Issue (9) relating to the estate of Muthiah Chettiar (the Plaintiff's father) were answered thus by the learned District Judge :—

" (6) Are the defendants heirs of the said Letchumanan Chettiar who have adiated the latter's inheritance ? " p. 95, ll. 41–42.

Answer : " Yes." p. 92, l. 12.

" (7) Has the estate of Letchumanan Chettiar been closed ? " p. 95, l. 43.

Answer : " Yes." p. 92, l. 13.

" (8) Are the Defendants liable to pay to the 1st Plaintiff the balance of any money found due under Issue (5) ? " p. 96, ll. 1–2.

Answer : " Yes, to the extent to which they have benefited from the estate." p. 92, ll. 14–15.

" (9) (A) Is the money claimed in this case property of the estate of the late Muthiah Chettiar ? p. 96, ll. 3–7.

" (B) Has the estate of Muthiah Chettiar been duly administered ?

" (C) If the estate of Muthiah Chettiar has not been administered can this action be had and maintained ? "

Answer : (9) (A) : " No." p. 92, ll. 16–20.

(9) (B) : " Does not appear to arise. In any case the money is joint family property which is acquired by survivorship and not by succession."

(9) (C) : " Yes."

9. Issues (10) to (14) relating to the terms upon which Letchumanan received the said deposits, the payment of the hundi or undial (bill of exchange) drawn upon his firm by the Plaintiff's mother, his payment into Court in the said Curatorship Case, his sending of accounts to the Plaintiff's

family and the related questions of acquiescence and estoppel, the inclusion in Letchumanan's estate of the moneys due to the Plaintiff and to the consequent personal liability of the Defendants, were answered thus by the learned District Judge :—

p. 96, ll. 8–12. " (10) Were certain moneys the subject matter of the claim in this case left for safe keeping with K.R.K.N.L. Letchumanan Chettiar to be dealt with as the said Letchumanan Chettiar thought fit for the use of an undivided joint Hindu family consisting of the 1st Plaintiff, his mother (Segappi) and his sister ? "

p. 92, l. 21. *Answer :* " No."

p. 96, ll. 13–17. " (11) Did Letchumanan Chettiar from and out of the moneys referred to in Issue (10) and accretions thereof as appearing in the account of Letchumanan Chettiar pay out a sum of Rs.5,010.18 on a hundi dated 9th January, 1940, drawn by Segappi in favour of V.R.K.R. of Kandavarayanpatty in India ? "

p. 92, l. 22. *Answer :* " Yes. Defendants are entitled to credit in this sum."

p. 96, ll. 18–22. " (12) (A) Was whatever balance available " [*sic*] " in the account of K.R.K.N.L. Letchumanan Chettiar paid into and received by Court to the credit of Case No. 3836 C.G. of this Court " (i.e. the said Curatorship Case) " on the 9th April, 1943 ?

" (B) Has the 1st Plaintiff drawn out such moneys in or about 4th March, 1947 ? "

p. 92, ll. 23–24. *Answer :* (12) (A) : " Not the entire balance."
(12) (B) " Yes."

p. 96, ll. 23–28. " (13) (A) Did K.R.K.N.L. Letchumanan Chettiar keep accounts and deal with the deposit in a manner known to the 1st Plaintiff and to the other members of the undivided joint family referred to in Issue (10) ?

" (B) Has the 1st Plaintiff acquiesced in and accepted such accounts and such dealings as correct ?

" (C) Is the 1st Plaintiff estopped from asserting this claim ? "

p. 92, ll. 25–27. *Answer :* (13) (A) : " No."
(13) (B) : " No."
(13) (C) : " No."

p. 96, ll. 29–30. " (14) Did the estate of K.R.K.N.L. Letchumanan Chettiar include any part of the money claimed in this case ? "

p. 92, l. 28. *Answer :* " Yes."

p. 96, l. 31. " (15) Can the Plaintiffs sue the Defendants personally in this case ? "

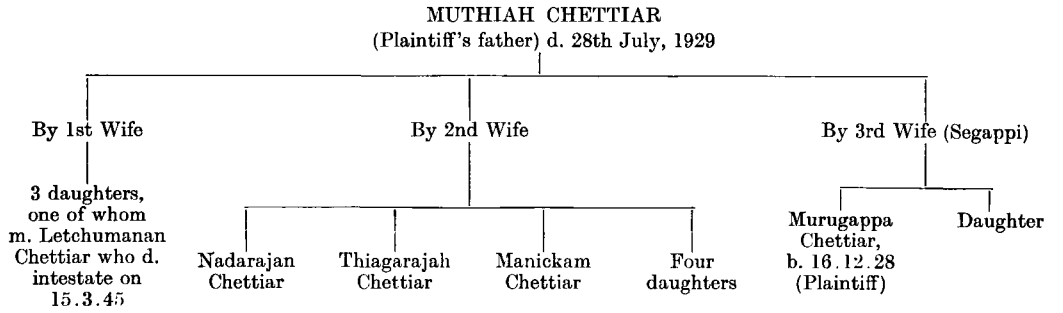
p. 92, l. 29. *Answer :* " Yes, to the extent to which they have benefited."

10. In view, presumably, of his Answer to Issue (3) (see paragraph 7 hereof) the learned District Judge did not consider it necessary to answer the last two issues (16) and (17) which were as follows :—

" (16) If there was no customary rate of interest as pleaded in paragraph 3 of the plaint after June, 1941, is Plaintiff entitled to any interest after that date in any event ? p. 46, ll. 1–10. p. 96, ll. 32–38.

" (17) If there was no customary rate fixed after March, 1941, is Plaintiff entitled to interest at the last rate that was fixed among the Chettiars in March, 1945, or is Plaintiff entitled to reasonable interest and if so at what rate ? " p. 46, ll. 1–10.

11. Evidence in support of the Plaintiff's case was given by the said Vellasamy (the Plaintiff's kanakapulle or business manager and, originally, as next friend, a Co-plaintiff in these proceedings) who testified to certain admitted facts relating to the Plaintiff's family upon which the following genealogical table is mainly based :— pp. 36, 41, 43, 119, 138, 143.



12. The said witness, Vellasamy, who had been in Muthiah Chettiar's employ for nearly 23 years, said that in terms of the award (Ex. 9) made in 1928, partitioning the property of the joint Hindu family of which Muthiah was head, the Plaintiff (then about 8 months old) was allotted as his share a sum of about Rs.181,000/–, with which the Plaintiff's father (Muthiah) established a new and separate firm (M.R.M.M.M.R.) for the Plaintiff. Muthiah died however on the 28th July, 1929, following which event the witness, who had long been a trusted servant and business manager of Muthiah and all his sons, took certain steps for the investment of funds belonging to the Plaintiff. These steps are best described in his own words :— pp. 43–62. Ex. 9, p. 114. p. 43, ll. 16–17, 23–29. p. 43, ll. 45–46. p. 44, ll. 10–12. Ex. D2, p. 119.

" After the death of Muthiah Chettiar I distributed the Murugappen's " (i.e. Plaintiff's) " money to Chetty firms at the prevailing rates of interest (*nadappu vatti*). Manickam's money I entrusted to Nadarajan Chetty to carry on that business. That was done because they were full brothers and Murugappen was a half-brother. In that manner I deposited with Chettiar firms about Rs.150,000/– to Rs.160,000/–. One of the firms in which I deposited Plaintiff's money was K.R.K.N.L. Letchumanan Chettiar. I deposited with that firm Rs.18,700/– . . . Letchumanan . . . was Muthiah Chetty's son-in-law having married his first wife's daughter. These were all entered in the books of Murugappen Chetty " (Plaintiff). p. 44, ll. 19–30.

p. 48, ll. 10–17. " Those books are now in the Indian Courts " (in pending litigation between the Plaintiff and his half-brother Nadarajan) " and I have got certified copies.

p. 44, ll. 30–46. " With regard to the Rs.18,700/– that was deposited with K.R.K.N.L. I spoke to Letchumanan Chettiar. He knew and I also told him it was the minor Murugappen's " (Plaintiff's) " money and that Letchumanan . . . had to return the money to Murugappen . . . with the addition of interest usually paid between Chettiars, that is *nadappu vatti* . . . Letchumanan . . . agreed to pay *nadappu vatti* on this money which was given to him." 10

13. As to " *nadappu vatti* " rates of interest, the witness (Vellasamy) said :—

p. 44, l. 46 to p. 45, l. 6. " In the calculation of *nadappu vatti*, if the interest is not paid from time to time the interest is added to the outstanding amount. That is done once a year. The interest payable for the year is added to the principal and the interest of the previous years or the interest is paid on that total sum in the next year. The *nadappu* rate from 1929 up to date that prevailed among Chettiars is in record in the various Chetty firms except that from the year 1942 p. 45, ll. 32–33. there was no *nadappu* rate prevailing . . . each Chetty firm by 20 agreement charged interest on loans at a rate fixed by them."

14. On the subject of the payment into Court of Rs.20,488.18 on the 9th April, 1943, by Letchumanan in the proceedings for the appointment of a Curator in respect of the Plaintiff's property, the witness (Vellasamy) said :—

p. 47, ll. 16–23. " I produce the motion P2 filed by . . . Letchumanan's proctor
Ex. P2, p. 134. moving to deposit that sum of money . . . In that motion Letchumanan . . . states that the money was due to the Plaintiff . . . in respect of moneys lying to his credit with Letchumanan . . . Rs.20,488.18 is not the full amount that was due—Plaintiff had to 30 get more. In my account I have given credit for the Rs.20,488.18 and I claim " (at this date the witness was, as next friend, a Co-plaintiff) " the balance Rs.22,445."

15. In cross-examination, the witness (Vellasamy) said that he had
p. 57, ll. 5–6, 18–21. deposited the said Rs.18,700/– with Letchumanan on his own authority as kanakapulle (business manager) and not because he was directed to
p. 58, ll. 7–20. p. 59, ll. 12–15. p. 32, ll. 29–38. do so by the Plaintiff's mother (Segappi) and by his half-brother Nadarajan, both of whom had claimed Plaintiff's assets ; that he had declined to accede to Segappi's request but had eventually, in 1930 (prior to his departure from Ceylon to India) entrusted a sum of Rs.34,000/– belonging to the 40 Plaintiff and the Plaintiff's books to Nadarajan as it was essential that there should be somebody in control who could institute proceedings for the recovery of debts due to the Plaintiff.

p. 59, l. 20. to p. 60, l. 8. The witness denied that the Plaintiff's mother had any control over the Plaintiff's funds in Letchumanan's hands and said that the hundi or undial (bill of exchange) which she had drawn in February, 1940, in India

for Rs. 5,000/– on Letchumanan's firm in Colombo in favour of a firm named V.R.K.R. (owned by a relation of hers) with the direction that the Plaintiff's firm should be debited on payment, was drawn up without authority but that it had been met and he (the witness) had received payment on behalf of V.R.K.R. in whose employ he then happened to be. p. 59, l. 9.

16. The Plaintiff called his half-brother Nadarajan Chettiar in support on his case even though the two were not on friendly terms. He had had cause to institute proceedings against his half-brother in India and in Ceylon and, at the time when the witness came to testify, proceedings against him, instituted by the Plaintiff, were pending in India, which might well have been responsible for the semi-hostile manner in which his evidence was given. p. 48, ll. 10–17. p. 63, ll. 37–45.

In examination-in-chief, the witness said :—

" The money that was allotted to the Plaintiff was kept by my father Muthiah Chettiar. He also kept Manickam's money. My father started two businesses under two vilasams" (firm names). " One was M.R.M.M.M.R. which stands for Murugappa Chettiar " (the Plaintiff). " That firm did business with the money allotted to Murugappa Chettiar. Similarly another business was started for Manickam Chettiar . . . p. 62, ll. 28–34.

" After the death of Muthiah Chettiar I took over the business of Manickam who is a full brother of mine. In regard to the moneys that were lying in the firm of M.R.M.M.M.R. they belonged to Murugappa Chettiar because they were credited to him. p. 62, ll. 36–39.

" At the time of Muthiah's death Vellasamy was not then kanakapulle " (business manager). " Somasundaram was the kanakapulle. Vellasamy was employed in the firm which I and Thiagarajah took charge of. I did not ask Somasundaram to hand over to me the assets of M.R.M.M.M.R. Segappi asked that the assets of M.R.M.M.M.R. be handed to her . . . The moneys of the firm of M.R.M.M.M.R. were deposited with various Chetty firms after the death of Muthiah . . . I received from Vellasamy the books of the firm of M.R.M.M.M.R. He also handed to me certain promissory notes in connection with the affairs of the firm. I gave him a receipt for them." p. 62, ll. 40–44. p. 63, ll. 2-4. p. 63, ll. 7–9.

17. In cross-examination, the said witness (Nadarajan Chettiar) said :—

" Somewhere in January " (1930) " Vellasamy gave me all the assets of the firm of M.R.M.M.M.R. and the books of that firm. I did not ask for them. Segappi Achy " (the Plaintiff's mother) " asked him to entrust them to me and go. He says he deposited moneys with other Chetty firms at the request of Segappi." p. 65, ll. 10–14.

In re-examination the witness said that deposits made with certain other Chettiar firms were not made by Vellasamy but by another kanakapulle (business manager) called Somasundaram. p. 65, ll. 20–22.

p. 66, ll. 5–11. In further re-examination the witness admitted that Vellasamy was employed not only in the firm owned by himself and his brother (M.R.M.M.M.N.) but also in that established by his father for the Plaintiff (M.R.M.M.M.R.) and that his salary was debited with his father's firm (M.R.M.M.M.). He admitted also that the assets of the Plaintiff's firm p. 66, ll. 16–17, 29–32. (M.R.M.M.M.R.) " were recognised as belonging to the Plaintiff " and that on his recovering a sum of Rs. 5,000/– from a debtor of the Plaintiff's firm he had credited the Plaintiff's firm with the amount recovered and had not sent it to the Plaintiff's mother.

p. 66, ll. 36–39. He admitted finally that both Vellasamy and Somasundaram acted as kanakapulles in the Plaintiff's firm and that Somasundaram had to take orders from Vellasamy who was his senior. 10

pp. 67–68. 18. Giving evidence in support of his own case, the Plaintiff said that p. 67, ll. 1–19. he carried on business under the firm name of M.R.M.M.M.R. ; that during his minority, his kanakapulle (business manager) Vellasamy had lent money to various Chettiars, and that these transactions had been ratified by him on his attaining majority.

p. 67, ll. 37–41. In cross-examination the Plaintiff stated that in the said Curatorship Case he had said that he was a member of an undivided Hindu family consisting of himself, his sister and mother, and that his mother was his 20 p. 68, l. 21 to p. 69, l. 8. lawful guardian during his minority. He said that his mother had informed him (without going into details) of the said undial or hundi (bill of exchange) on which she had put her thumb impression and which purported to be drawn by her on Letchumanan for Rs.5,000/– for payment out of his funds in favour of the firm of V.R.K.R. to whom she owed Rs.3,500 and interest, moneys borrowed for the Plaintiff's sister's dowry.

19. On the subject of "*nadappu vatti*" rates of interest the Plaintiff called one Ramasamy Chetty who said, in examination-in-chief :—

p. 69, ll. 30–42. " The *nadappu vatti* is discussed in the temple and decided upon and the Pandaram comes round giving the rate to Chetties. This 30 interest is charged only on moneys lent to Chetties and it ceased in 1941. On transactions after 1941 if there is no agreement in regard to the rate of interest the 1941 rate is adopted. If it is above the 1941 rate it is fixed by agreement. If they do not agree upon the rate it is the 1941 rate that is changed. Compound interest is recovered annually."

In cross-examination the witness said :—

p. 70, ll. 12–13. " The last *nadappu vatti* recorded by the association was in p. 70, ll. 31–34. 1941 and the rate then fixed was $\frac{3}{8}$ per cent. per month . . . When a Chetty wants a short loan he takes it from another Chetty on 40 the '*nadappu vatti*' rate of interest. The interest is not agreed upon for each specific loan, the custom is to pay the *nadappu vatti* except when sometimes a higher rate is agreed upon."

20. The Defendant's case was supported by the evidence of the 4th Defendant, Arunachalam Chettiar, who, in examination-in-chief, said that : p. 71, ll. 21–24. (A) Letchumanan had received the said deposits at the request of the Plaintiff's mother, Segappi, without entering into any agreement as to the

payment of interest; (B) he had changed his previous belief that Vellasamy had made the said deposits and now thought that Somasundaram had done so; (C) up to the year 1933 interest on the said deposits was paid at "*nadappu vatti*" rates as the money was being invested by Letchumanan; (D) in 1934 the moneys in question were lying in banks (and were not being invested) and from that year therefore Letchumanan's liability was to pay only the bank rate of interest on deposits; (E) Letchumanan's firm had met the said undial or hundi drawn by the Plaintiff's mother in January, 1940, for Rs.5,000/- in the belief that the said deposits amounting to Rs.18,700/- which a kanakapulle had made with Letchumanan were moneys belonging to, and controlled by, the Plaintiff's mother; (F) "the account shows that till 1933 I allowed interest at the *nadappu* rate and thereafter at the bank rate"; (G) statements of accounts were sent annually to the Plaintiff's mother which Plaintiff, on his attaining 14 or 15 years of age, must have examined; and (H) on the 8th April, 1943, at the request of Plaintiff's mother, Letchumanan paid into Court, in the said Curatorship Case, a sum of Rs.20,488.18 which represented the total sum, less about Rs.5/-, standing to the credit of the Plaintiff's firm in Letchumanan's books, inclusive of interest at ½ per cent. which was the bank rate.

p. 71, ll. 28–30. p. 71, ll. 36–39. p. 71, ll. 40–43. p. 72, ll. 1–11. p. 72, ll. 21–22. p. 72, ll. 23–26. p. 72, ll. 32–35.

21. In cross-examination the said witness (the 4th Defendant) said that he had not previously advised anyone—not even his legal advisers—of his present allegation that annual statements of accounts were sent to the Plaintiff's mother or of his supposition that the said accounts had been examined by the Plaintiff. He said that he was previously unaware of the said partition of the joint family property by Muthiah but yet ventured the opinion (which it is submitted had no foundation whatever, in fact or in law) that the share allotted to the Plaintiff was not given to him exclusively but was intended as the share of his separate family which consisted of his mother, his sister and himself. Continuing, and basing himself, presumably, upon his said opinion as to the share allotted to the Plaintiff on partition, he said :—

p. 73, ll. 8–16. p. 73, ll. 29–34.

> "The money that my father" (i.e. Letchumanan) "took after the death of Muthiah was out of that portion. The Rs.20,000/- was taken out of Segappi's" (the Plaintiff's mother's) "money. Rs.21,000 was allotted to Segappi and Rs.51,000/- to the Plaintiff . . . I have taken copies of Murugappen's" (the Plaintiff's) "account from the Sevaganga" (Indian) "Courts . . . My father borrowed the money at the request of Segappi out of their family money which in the partition came to the Plaintiff."

p. 73, ll. 34–41. p. 73, l. 46 to p. 74, l. 2.

22. By his Judgment, dated the 12th October, 1951, incorporating the said Answers to Issues, the learned District Judge (Mr. N. Sinnatamby) held that "the Defendants are liable to the extent to which they have benefited from the estate to the Plaintiff for the sum deposited with them, together with interest calculated at *nadappu* rates less the amount paid upon the undial. As compound interest is payable, and in view of the fact that credit must be given for payment on the undial, this amount will have to be ascertained. Judgment will, accordingly, be entered for Plaintiff in this sum once it has been ascertained."

pp. 85–92. p. 91, ll. 39–45.

The sum was later ascertained at Rs.16,658.17. p. 93, l. 29.

p. 86, l. 25 to p. 87, l. 11.

23. Tracing the course of events subsequent to the said partition in 1928, the learned District Judge referred to the business which was founded by the Plaintiff's father (Muthiah) for the Plaintiff under the firm name of M.R.M.M.M.R. and which was registered in Muthiah's name only because the Plaintiff (to whom the business really belonged) was then a minor.

p. 87, ll. 12–41.

The learned Judge said that following Muthiah's death on the 29th July, 1929, there was no one to carry on the said business of the Plaintiff and,

p. 87, l. 40.

in the circumstances, Vellasamy, who had acted as chief kanakapulle of

p. 88, ll. 6, 7.

the business and who was also connected with the business of Muthiah and the Plaintiff's half-brothers, invested the Plaintiff's business funds with various Chettiars most of whom were closely related to the Plaintiff. The learned Judge saw no reason to doubt the evidence of Vellasamy on the subject of these investments which were made either by Vellasamy personally or by his assistant Somasundaram acting on his directions.

As to the rates of interest paid, and payable, on the said deposits or

p. 88, ll. 36–37.

investments, it was clear to the learned Judge that Letchumanan, who

p. 89, ll. 15–16.

received the said deposits knowing that they represented part of the Plaintiff's share allotted to him on the said partition, had until March,

p. 88, ll. 11–20, 30–33.

1934, paid the "*nadappu vatti*" rates of compound interest which, admittedly, operated among Chettiars in their dealings with each other. Subsequently Letchumanan had paid the bank rate which, according to Vellasamy, varied from the "*nadappu vatti*" rate by about $\frac{3}{4}$ to 1 per cent.

24. On the subject of Letchumanan's agreement or undertaking to pay interest on the Plaintiff's funds which were deposited with him, the

p. 89, l. 43 to p. 90, l. 20.

learned District Judge, after a close scrutiny of the oral and documentary evidence relating to (1) the dates of the deposits (which he found were made during October and November, 1929, and not, as stated in the Plaint, in January, 1930) and (2) the movements of Letchumanan (who he found was in Ceylon in August, 1929, and not in India, as the Defendants sought to show to support their denial of any agreement between Vellasamy and Letchumanan as to interest) concluded as follows :—

p. 90, ll. 23–28.

> "The fact however is that in his" (Letchumanan's) "books Plaintiff is credited with interest at the *nadappu* rate. If the money was deposited with him for safe keeping there was no need to pay interest at all.
>
> "The books certainly seem to support Vellasamy. I therefore think that Vellasamy's evidence on the point can be accepted inasmuch as it is supported by the Defendant's own books with regard to interest."

p. 88, l. 41 to p. 89, l. 2.

25. On the subject of the rights of the Plaintiff as a member of his joint family and of his mother (Segappi) with particular reference to the said undial or hundi (bill of exchange) which she had drawn for Rs.5,000/– on Letchumanan and which had been met, payment being received by the said Vellasamy on behalf of the firm of V.R.K.R. in whose favour the undial had been drawn and in whose employ Vellasamy then happened to be, the learned District Judge said :—

p. 89, ll. 2–9.

> "Segappi put her thumb mark to the undial and the minor Plaintiff admits that this money was taken by his mother for the

maintenance of herself and for family purposes. Defendant claims credit in this sum. The business of M.R.M.M.M.R. being joint family property, I think that this would be a reasonable charge which could be made against the joint family assets of that firm, and the firm of K.R.K.N.L. should be given credit in this sum. As a matter of fact, it was Vellasamy himself who got payment on this undial from the 4th Defendant.

" I am satisfied upon the evidence that the money of the firm of M.R.M.M.M.R. is in fact money belonging to the minor Murugappen's " (i.e. the Plaintiff's) " joint family and that it did not belong to Muthiah Chettiar " (the Plaintiff's father) " although for the purposes of the Business Names Registration Ordinance it was registered in his name. In point of fact, I do not see how Defendants can dispute this point, in view of the averment in P2 " (motion filed by Letchumanan's Proctor in the said Curatorship Case—D.C. Colombo No. 3836/G) " . . . that the money belonged to the minor Murugappen. It must be noted that at the time of this transaction Murugappen was the sole male member of the joint family, and until sons were born to him his monther and sister, who with him formed his joint family, would only have a right to maintenance and no co-parcener's interest in the joint family property." p. 89, ll. 9–20. Ex. P2, p. 134.

And, for the reasons that he gave, the learned Judge rejected the Defendants' contention that the assets of the firm established by the Plaintiff's father for the Plaintiff (M.R.M.M.M.R.) were vested in the Plaintiff's father and not in the Plaintiff. p. 89, ll. 21–42.

26. The learned District Judge rejected also the defence in law that the Plaintiff was estopped from denying that the total amount of interest he was entitled to recover from Letchumanan's estate was that which had in fact been paid into Court by Letchumanan in the said Curatorship Case. The learned Judge rejected the evidence of the 4th Defendant as to the accounts which he alleged had been sent to the Plaintiff's mother and probably seen by the Plaintiff when he was about fourteen years old—a matter which had not been put to the Plaintiff or to any of his witnesses. He said :— p. 90, l. 39 to p. 91, l. 4.

" I am not prepared upon the evidence of Arunachalam Chetty " (the 4th Defendant) " to hold that the accounts were in point of fact systematically and regularly sent to either Segappi or Murugappen. Even if such accounts were sent I have doubts whether it would operate by way of estoppel." p. 90, l. 47 to p. 91, l. 4.

The learned Judge rejected also the further defence in law " that the wrong parties had been sued and that so long as there was a debt due by the estate of Letchumanan it was the administrator who should have been sued." He said that there was evidence that the administration of the said estate had been completed and proceedings against the executor might therefore have been met by the plea of *plene administravit*. In his p. 91, ll. 5–27.

view, the estate having been distributed among the heirs, it was open to a creditor who had not been paid to sue the Defendants who, as heirs, were in possession of the deceased's estate and who would be liable to the extent to which they had benefited.

p. 93. 27. In accordance with the Judgment of the learned District Judge the Defendant's liability was ascertained at Rs.16,658.17 with legal interest thereon until payment in full and costs of suit, and a Decree incorporating the said ascertainment was entered on the 12th October, 1951.

pp. 94–98. The Defendants, on grounds stated in their Petition of Appeal, dated the 19th October, 1951, appealed against the said Judgment and Decree to the Supreme Court.

p. 98, l. 23. 28. The appeal in the Supreme Court was heard on the 23rd, 25th and 29th June, 1954, by a Bench consisting of Gratiaen, J., and pp. 98–107. Fernando, A.J., who, by their Judgments, dated the 9th July, 1954, allowed the appeal, set aside the Judgment and Decree of the District Court and dismissed the action with costs in both Courts.

pp. 98–107. 29. Delivering the principal Judgment, Gratiaen, J., said that the p. 99, l. 43 to p. 100, l. 3. main dispute related to the circumstances in which the said deposits with Letchumanan were made and the precise obligation which Letchumanan had undertaken in regard to the payment of interest on the moneys he had p. 100, l. 4 to p. 101, l. 9 so received. Having referred to certain subsequent events which, he said, were no longer in controversy (most of these events have already been referred to in the previous paragraphs of this Case) the learned Judge said that p. 101, ll. 10–13. " the validity of the Plaintiff's claim depends very largely, if not entirely, on the truth of Vellasamy's version of the terms on which sums aggregating Rs.18,700/– had been deposited with the Defendants' firm K.R.K.N.L. p. 102, ll. 4–26. in 1929." He drew attention to the following features relating to the progress of the trial: (A) it had commenced in the District Court of Colombo on the 13th December, 1949, before Mr. S. J. C. Schokman, who had recorded part of Vellasamy's evidence; (B) on Mr. H. A. de Silva being appointed as District Judge of Colombo it had, on the 25th October, 1950, commenced afresh before him subject to an agreement that Vellasamy's previous evidence be incorporated in the new proceedings; and (C) on Mr. de Silva ceasing to function as District Judge it was, on the 21st December, 1950, finally resumed *de novo* before Mr. N. Sinnatamby, Vellasamy's evidence again being recorded subject to a similar agreement regarding the earlier proceedings. Vellasamy had thus given evidence before all three of the said District Judges and in view of the long delays, Mr. Sinnatamby could not, in the view of the learned Supreme Court Judge, have had the full advantage of personal impressions of Vellasamy's credibility based on his demeanour in the witness box.

This was, in the Appellant's respectful submission, a view based on a possible misapprehension of the nature and duration of Vellasamy's appearances before the said Trial Judge who eventually decided the case (Mr. Sinnatamby). For it is to be noted that, when the said witness came to testify before Mr. Sinnatamby, he was examined and cross-examined

de novo at great length, thus furnishing to the said learned Trial Judge (who was armed with a record of what the witness had said before the previous Judges) ample opportunity for an assessment of his credibility based on his demeanour.

30. The learned Supreme Court Judge (Gratiaen, J.) stressed the necessity for a cautious judicial approach to the issues of fact which had to be determined, on the ground that the claim was against the estate of a deceased (Letchumanan) and because it was based on a conversation and oral agreement between the deceased and the witness Vellasamy of which there was no independent witness. The learned District Judge had found clear support of the claim in the deceased's books which showed that the deceased had credited the Plaintiff's firm with interest at "*nadappu vatti*" rates, but the learned Supreme Court Judge disagreed with this finding. For reasons which are not clear he expressed the opinion that the entries in the said books were equally consistent with the view that the deceased had undertaken and discharged less onerous obligations.

p. 102, l. 27 to p. 103, l. 16. p. 102, ll. 28–33. p. 103, ll. 19–24.

31. The learned Supreme Court Judge (Gratiaen, J.) found (it is respectfully submitted, without sufficient reason) that the learned District Judge had not directed his mind to the standard of proof laid down by the authorities in the case of a claim against the estate of a deceased person. On this ground and because he thought (for what reason it is not clear) that the learned District Judge had assessed Vellasamy's testimony objectively, and not on his personal impression of the demeanour of the witness, the learned Supreme Court Judge considered it his "duty" to decide afresh "whether Vellasamy's version can be safely acted upon in regard to two crucial issues :—

p. 103, ll. 16–19. p. 103, ll. 25–36.

> "(1) Was the money deposited with K.R.K.N.L." (i.e. Letchumanan's firm) "in pursuance of a contract directly entered into between Vellasamy and the deceased ?
>
> "(2) If so had the deceased" (i.e. Letchumanan) "bound himself unconditionally—i.e. even after the year 1933—to let the sum deposited accumulate at '*nadappu vatti*' rates of compound interest until repayment ? "

32. In the opinion of the learned Supreme Court Judge (Gratiaen, J.) "considerable caution" and perhaps even "strong suspicion" was necessary in examining Vellasamy's assertion that, in making the said deposits, he had acted on his own initiative and not under authority of senior members of the Plaintiff's family. The learned Judge does not appear to have seriously directed his mind to the authority usually exercised by a senior and trusted family kanakapulle as Vellasamy was—but, nevertheless, he expressed the view that it would be "more natural to suppose that he" (Vellasamy) "would have left these important decisions to persons who were more closely concerned with the future management of the minor's affairs." The learned Judge did not specify anyone who, on the material dates, could reasonably be said to have been more closely concerned with the future management of the Plaintiff's business affairs than Vellasamy, a trusted servant who had served not only the Plaintiff but also his father and half-brothers.

p. 103, ll. 37–43. p. 104, ll. 3–5.

33. On the subject of the agreement by Letchumanan to pay "*nadappu vatti*" rates of interest and of the support given by the entries in his books to Vellasamy's testimony that he had so agreed, the learned Supreme Court Judge (Gratiaen, J.) said :—

p. 104, ll. 23–40.

> " To my mind they " (i.e. the said entries in Letchumanan's books) " are equally consistent with the theory that Letchumanan had bound himself by contract (either with Vellasamy or with someone else) to pay compound interest in accordance with Chetty custom so long as he had the money invested with outsiders in the ordinary course of his moneylending transactions, *but not during periods when the money was merely lying idle in the bank owing to altered conditions without profit to himself.* The learned Judge was satisfied that during the latter period (i.e. after the year 1933) ' Letchumanan Chettiar had deposited large sums of money in the Bank, and was therefore paying interest at the rate at which he received it from the Bank.' I find it very difficult to believe that, in the circumstances, Letchumanan would have chosen to retain the money after 1933 on such unprofitable terms if he was still obliged to pay '*nadappu vatti*' rates of interest without any corresponding commercial advantage to himself."

Thus the learned Supreme Court Judge rejected the uncontradicted testimony of a party to the agreement (Vellasamy) supported though it was, at least for some years, by the books of the other party (Letchumanan); and he substituted in its place the theory—unsupported by any evidence and not even mentioned in the Defendants' pleadings—that Letchumanan had agreed " with Vellasamy or with someone else " to pay " *nadappu vatti* " rates of interest only when his investment of the money justified payment of those rates and to pay no more than the bank rate when the money was not so invested.

The learned Judge did not explain—it is respectfully submitted that it would have been difficult to do so—whether the theory he had advanced was based on the supposition that " Vellasamy or someone else " had in regard to the employment of the minor's funds, gratuitously given to Letchumanan an absolute and unfettered discretion enabling him to pay, or not to pay, " *nadappu vatti* " rates on his mere statements as to how the funds were employed ; or whether the said discretion was subject to the normal restrictions or conditions relating to the rendering and approval of accounts at definite and relevant periods showing plainly whether the funds were employed or not, and, in any event, the interest they were earning.

34. Later, on the same subject, the learned Supreme Court Judge, adding, it is respectfully submitted, further unsupported conjectures in reinforcement of the said unsupported theory which, in face of the clear evidence, he had considered it proper to advance, said :—

p. 104, l. 45 to p. 105, l. 10.

> " We cannot reasonably rule out the possibility that the money was taken over by Letchumanan in 1929 as the result of some agreement arrived at after a family conference in India, and not (as Vellasamy alleges) in pursuance of a contract entered into in Colombo with a mere intermeddler. Again, although the original

obligation (according to the debtor's own books) was to pay compound interest on the amount deposited, is it unreasonable to suppose that the terms were subsequently altered by mutual agreement within the family circle when conditions in the money market had so fundamentally changed in 1933 ? Letchumanan did not lack the funds to return the money in 1933 ; nor was he under any proved necessity to retain it for his personal benefit. Segappi " (Plaintiff's mother) " who is still alive was not called by the Plaintiff to state what she knew concerning the transaction.

" It is a matter of common knowledge that it was customary p. 105, ll. 11–17.
for Chettiar money-lenders to pay each other '*nadappu vatti*' rates of interest on short-term accommodation loans received for the purpose of profitable investment by the borrower. It seems very unlikely, on the other hand, that a prudent Chetty with business instincts characteristic of his race would bind himself to pay such onerous rates merely for the doubtful privilege of keeping the money in fixed deposit in a bank."

35. In the Appellant's respectful submission it was unreasonable for the learned Supreme Court Judge to resort to conjectures, suppositions and possibilities in order to reject the evidence before the Court which, even if it did not quite bring conviction to his mind, was, it is submitted, clear and definite.

More specifically, it is respectfully submitted that, in the absence of any evidence whatsoever to that effect, the learned Judge was wrong to suppose that : (A) there was, or might have been, a family conference in India which decided the terms upon which Letchumanan would receive the Appellant's funds ; (B) a subsequent alteration of the original agreement to pay compound interest was effected " within the family circle " by " mutual agreement " in 1933 when conditions in the money market had changed ; and (C) Letchumanan (complete evidence as to whose affairs and ventures was not before the Court) had not profited, directly or indirectly, by retaining, and having at his call, after the year 1933, the funds in question. The learned Judge appears to have overlooked the fact that if after the year 1933 interest at the bank rate was all that Letchumanan had agreed to pay, then the same result would have been achieved much more easily by the direct deposit of the funds in the bank in the name of the Plaintiff's firm without any intervention by Letchumanan at all.

So far as the calling of Segappi as a witness is concerned, this, in the Appellant's respectful submission, was decidedly not a matter for him—his case did not demand it—but for the Defendants who had alleged that she was in complete, or partial, control of the funds in question and had played an important part in their investment with Letchumanan.

36. Finally the learned Supreme Court Judge said that while he p. 105, ll. 18–41.
accepted the finding of the learned District Judge that the evidence of the 4th Defendant (as to the circumstances and conditions under which the said funds were deposited with Letchumanan) was not worthy of belief, this did not affect the real issue which was whether a decree could be made

against the heirs of Letchumanan upon Vellasamy's testimony. In his view the Court was wrong to make such a decree (which, consequently, he would set aside) because the learned District Judge (1) had not shown the " special vigilance " which was necessary in the determination of a belated claim against a deceased's estate; (2) had paid insufficient attention to what, in the learned Supreme Court Judge's view, were " certain inherent improbabilities " in Vellasamy's evidence; and (3) had " treated items of evidence " (presumably, the said entries in Letchumanan's books showing payment of "*nadappu vatti*" rates by Letchumanan) " as corroboration which were in truth corroborative only of matters which were not in controversy."

p. 105, ll. 41–42.

p. 101, l. 44 to p. 102, l. 3.

The learned Judge did not, in the view he had taken, consider it necessary to determine the question which had been argued for the Defendants, as a matter of law, that the said funds belonged to Muthiah Chettiar (the Plaintiff's father) and not to the Plaintiff, and that therefore the only person entitled to recover them would be a duly appointed representative of Muthiah Chettiar's estate.

pp. 106–107.

p. 107.

37. Fernando A.J., in a short separate Judgment, having expressed his agreement with Gratiaen, J., a Decree in accordance with the Judgment of the Supreme Court was entered on the 9th July, 1954, and against the said Judgment and Decree this appeal to Her Majesty in Council is now preferred, the Appellant having been granted leave to appeal by

pp. 109, 112.

decrees of the Supreme Court, dated the 23rd August, 1954, and the 13th October, 1954.

The Appellant humbly submits that this appeal should be allowed, the Judgment and Decree of the Supreme Court set aside, and the Judgment and Decree of the District Court restored, with costs throughout, for the following among other

REASONS

(1) BECAUSE there was good and sufficient evidence that Letchumanan had received the funds in question from Vellasamy or his assistant acting under his directions upon the undertaking or agreement that the funds would carry "*nadappu vatti*" rates of interest until repayment in full to the Plaintiff or his firm.

(2) BECAUSE the rejection by the Supreme Court of Vellasamy's evidence on the ground that it contained inherent improbabilities was, in the circumstances of this case, contrary to reason.

(3) BECAUSE the said rejection naturally, if unjustly, flowed from the erroneous advancement by the Supreme Court of an unsubstantiated theory as to what occurred or might have occurred when (or before) the said funds were deposited and what occurred or might have occurred in the privacy of family circles subsequently when the money market had changed.

(4) BECAUSE the said theory which was supported only by conjectures and suppositions (and not by any evidence) was not pleaded as part of the Respondents' case, was not put to the witness concerned, and amounted, in fact, to a statement of a new case for the Respondents.

(5) BECAUSE Vellasamy's evidence was supported strongly by the entries in Letchumanan's own books and the Supreme Court was in error in its view that the said entries were corroborative only of matters not in controversy.

(6) BECAUSE the reassessment by the Supreme Court of Vellasamy's evidence on the ground that the learned District Judge who eventually decided the case had not assessed the said evidence on personal impressions of Vellasamy's credibility derived from his demeanour was based on a misapprehension of the extent of the opportunity which the learned District Judge had had of forming his impressions of the said witness by reference to his demeanour.

(7) BECAUSE in dealing with the issues of fact in this case the said District Judge had scrutinised and assessed all the evidence before him with care and with due regard to the relevant principles of law, and the Supreme Court was in error in setting aside his assessment of the evidence on the ground that he had not directed his mind to the standard of proof necessary in the case of a claim against a deceased's estate.

(8) BECAUSE the Judgment of the Supreme Court is wrong and the Judgment of the District Court is right.

D. N. PRITT.

R. K. HANDOO.

No. 48 of 1955.

In the Privy Council.

ON APPEAL

from the Supreme Court of Ceylon

BETWEEN

M.R.M.M.M.R. MURUGAPPA CHETTIAR (Plaintiff) *Appellant*

AND

1. MUTHTHAL ACHY
2. KANNAPPA CHETTIAR
3. KARUPPEN CHETTIAR
4. ARUNACHALAM CHETTIAR
5. ALAGAPPA CHETTIAR
6. NATCHAMMAI ACHY
(Defendants) *Respondents*

Case for the Appellant

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