

10, 1957

No. 27 of 1953.

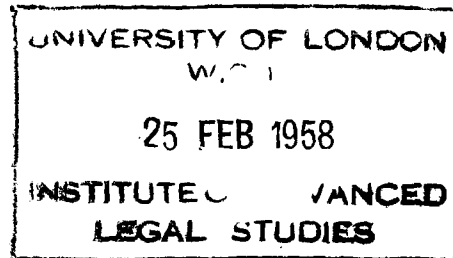
# In the Privy Council.

## ON APPEAL

FROM THE SUPREME COURT OF CEYLON.

BETWEEN

10 NAGAMMAI ACHI, widow of A. T. K. P. L. MUTTIAH  
CHETTIAR and PALANIAPPA CHETTIAR son of  
V. R. M. T. ARUNACHALAN CHETTIAR both of  
Sirukoodalpatti in Ramnad District South India  
(Plaintiffs) substituted in place of the late A. T. K. P. L.  
MUTTIAH CHETTIAR pursuant to Order in Council  
dated the 17th March 1955 . . . . .



*Appellants*

49792

AND

A. R. L. LAKSHAMANAN CHETTIAR of No. 42,  
Kaluwella Street, Galle (Defendant) . . . . . *Respondent.*

## Case for the Appellants

RECORD.  
pp. 90-99, 100.  
pp. 79-87, 87-88.

1. This is an Appeal from a judgment and decree of the Supreme Court of Ceylon dated the 25th November 1948, setting aside a judgment and decree of the District Court of Galle dated the 27th May 1946, whereby  
20 the Respondent was ordered to pay to one, A. T. K. P. L. Muttiah Chettiar, since deceased, the sums of Rs. 8,500/- and Rs. 5,706/81 with interest on the said sums. For convenience the said A. T. K. P. L. Muttiah Chettiar is hereinafter referred to as "the deceased Appellant."

2. The main question raised by this Appeal is whether the Respondent was guilty of fraud, as the District Judge found, or whether his finding was contrary to the weight of the evidence; but the Appeal also involves questions of the burden of proof and of the construction of section 111 of the Trusts Ordinance (Legislative Enactments of Ceylon, chapter 72), which relates to prescription.

30 3. The deceased Appellant's claim was that he being a money-lender resident in India, his affairs in Ceylon were managed by the Respondent as his agent up to January 1933; that shortly before the termination of his agency the Respondent assigned to one Alagappa, first a decree which he had obtained in favour of the deceased Appellant in 1929 for Rs. 8,618/20 with legal interest and costs against the estate of a deceased debtor, and secondly a promissory note for Rs. 7,000/-

in favour of the deceased Appellant signed by another debtor ; that both these assignments were fraudulent and carried out in order to enable the Respondent through Alagappa to recover the moneys due, and that Alagappa had in fact made recovery ; that the fraud of the Respondent had not been discovered by the deceased Appellant until 1942 ; and that in the circumstances the Respondent was liable as trustee of the deceased Appellant to make restitution of the proceeds of the decree and promissory note purported to be assigned. The District Judge of Galle found all the issues of fraud in favour of the deceased Appellant, and gave judgment for him for the amount claimed with costs. In the Supreme 10 Court of Ceylon, however, this judgment was reversed, it being held, first, that the claim was not for the recovery of trust property or the proceeds thereof retained by a trustee, nor had there been a conversion of trust property or its proceeds by the Respondent and accordingly the action was statute barred in the absence of fraud or fraudulent breach of trust ; and, secondly, that there was a doubt whether the assignment of the decree and promissory note by the Respondent was fraudulent, and that the Judge ought not to have found fraud proved.

4. The deceased Appellant was a professional moneylender residing in India. He carried on his moneylending business under the name and 20 style of " A.T.K.P.L.M." through agents at several places in India, Burma, Malaya and in Ceylon at Colombo. The Respondent was his agent and attorney in Colombo from the 5th April 1919 when he was appointed by a power of attorney (P. 35), until the 28th January 1933, when he severed his connection with the deceased Appellant and left Ceylon for India.

pp. 113-4.  
pp. 20, 69.

5. Among the clients of the deceased Appellant who owed him money were two persons named I. M. S. Alles and C. D. A. Samaranyake, both of Galle. Alles died owing A.T.K.P.L.M. the sum of Rs. 6,500/- and interest on a promissory note for Rs. 7,000/- dated the 1st January 1931 (P. 1). His estate was administered by his executor W. R. de Silva. Samaranyake 30 died owing A.T.K.P.L.M. the sum of Rs. 7,000/-. E. C. Abeygoonewardene, who had intermeddled with the estate of Samaranyake, was sued by the Respondent as the deceased Appellant's attorney in Case No. 27002 in the District Court of Galle, and the Respondent obtained a decree against him on the 23rd September 1929 for the sum of Rs. 8,618/20 with interest and costs. Of this sum Rs. 2,695/- had been recovered and accounted for by the Respondent.

p. 129.

6. Shortly before the Respondent left the deceased Appellant's employment the Respondent endorsed Alles' promissory note to one A. L. A. S. M. Alagappa Chetty, alias Samasunderam Chetty, alias Sovanna 40 Mana (referred to herein as " Alagappa "), who recovered from W. R. de Silva, Alles' executor, the sum of Rs. 8,500/- on the 3rd October 1934 and signed a receipt for it (P. 2). At about the same time as the Respondent endorsed the note, i.e., on the 25th January 1933, the Respondent assigned the decree against Samaranyake's estate to the same Alagappa for an alleged consideration of Rs. 3,000/- (P. 20). Alagappa had himself substituted as Plaintiff in D.C. 27002 and recovered in that suit sums amounting to Rs. 5,706/81, as was proved by journal entries in D. C. Galle Case No. 27002 (P. 19).

p. 148.

p. 136.

pp. 153-7.

7. The deceased Appellant knew nothing of the endorsement of the promissory note (P. 1) or of the assignment (P. 20) of the decree until February 1942, when he learnt of them from M. Chinniah Pulle. Chinniah (or Sinniah) had worked for the deceased Appellant in A.T.K.P.L.M. in Colombo as a clerk or bookkeeper since 1915 and had succeeded the Respondent as agent and attorney of the deceased Appellant for two years by a power of attorney dated the 26th January 1933 (D. 20). Chinniah learnt about the latter part of 1941 from M. Nadaraja Pulle (or Nadarajah) that Alagappa had recovered monies both on the note and under the decree. The deceased Appellant thereupon wrote to Nadarajah on the 19th February 1942 (P. 4) for further information and Nadarajah sent it to Chinniah (P. 5 and P. 6), informing the deceased Appellant (P. 7 and P. 8). The deceased Appellant then had the accounts looked into and instructed Chinniah to bring an action against the Respondent.

p. 21, ll. 2-8.  
p. 29, l. 14.  
p. 35, ll. 5-8.  
pp. 139-141.  
p. 20, l. 38.  
p. 22, l. 39.  
p. 31, ll. 13-29.  
p. 37, l. 42-p. 38, l. 6.  
p. 205.  
p. 21, ll. 9-12.  
p. 31, l. 29-p. 32, l. 9.  
p. 38, ll. 6-8.  
p. 207.  
p. 20, l. 45.

8. The deceased Appellant as Plaintiff instituted the proceedings out of which this Appeal arises by Plaint filed on the 29th July 1942. The Respondent as Defendant filed his Answer on the 21st September 1942. The deceased Appellant filed Replication on the 7th December 1942, but by an order of the District Court of Galle dated the 11th December 1942 the deceased Appellant was ordered to plead the new material raised in his Replication by amending his Plaint. The deceased Appellant accordingly filed an amended Plaint on the 25th January 1943 and the Respondent filed his amended Answer on the 23rd February 1943.

pp. 1-4.  
pp. 5-6.  
pp. 6-7.  
p. 8.  
pp. 8-11.  
pp. 12-3.

9. On the 5th November 1943 issues were framed, which are set out in full in the Record and the Respondent was allowed to re-amend his amended Answer. Meanwhile the evidence of W. R. de Silva, Alles' executor, was recorded for the deceased Appellant *de bene esse*.

pp. 16-9.  
pp. 14, 19, ll. 5-27.  
pp. 15-6.

10. The deceased Appellant's contentions, put forward in his pleadings, may be summarized as follows :—

30 (A) Alles owed the deceased Appellant's firm Rs. 7,000/- on the promissory note P. 1, but had paid off Rs. 500/-. The Respondent on the 5th December 1932 had written off the balance of Rs. 6,500/- and interest in the books of the deceased Appellant's firm as an irrecoverable debt, and then fraudulently and without the authority or knowledge of the deceased Appellant endorsed the note to Alagappa, who was associated with him in his business of "S.S.L." in Galle.

p. 129.

40 (B) Alagappa was acting in this transaction as the Respondent's nominee and agent for the collection of the amount due on the note, and in fact collected Rs. 8,500/- on the note without the knowledge of the deceased Appellant in October 1934.

(C) The Respondent was acting in this transaction in his own interest in order to misappropriate, and did misappropriate, the note and/or its proceeds.

(D) The deceased Appellant did not discover the Respondent's fraud in endorsing the note to Alagappa and receiving the proceeds, namely Rs. 8,500/-, until February 1942.

(E) Samaranayake's estate owed the deceased Appellant's firm Rs. 5,918/29 under the decree in Case No. 27002. The Respondent on the 25th January 1933 had fraudulently and without the authority or knowledge of the deceased Appellant assigned (P. 20) the balance due under the decree to Alagappa for Rs. 3,000/- which he had not paid over to the deceased Appellant.

(F) Alagappa was acting in this transaction also as the Respondent's nominee and agent for the collection of the amount due to the deceased Appellant and in fact collected Rs. 5,706/81 under the decree between May 1933 and June 1938. 10

(G) The Respondent was acting in this transaction in his own interest in order to misappropriate, and did misappropriate, the decree and/or its proceeds.

(H) The deceased Appellant did not discover the Respondent's fraud in assigning the decree and recovering Rs. 5,706/81 or Rs. 3,000/- until February 1942.

Alternative contentions put forward were :—

(I) The Respondent by collecting through Alagappa the sums of Rs. 8,500/- and Rs. 5,706/81 had constituted himself a trustee for the deceased Appellant and was liable to account to him for those two sums with interest. 20

(J) The Respondent fraudulently misrepresented to the deceased Appellant that the two debts of Alles and Samaranayake were irrecoverable and fraudulently concealed the endorsement of the note and the assignment of the decree in favour of Alagappa and the subsequent collections of the two sums.

The deceased Appellant claimed the sums received by the Respondent with interest at 6 per centum per annum, amounting until the date of the action to Rs. 20,278/42, and interest thereafter till payment.

11. The Respondent's contentions, put forward in his pleadings, 30 may be summarized as follows :—

(A) The Court had no jurisdiction.

(B) The Respondent did write off Alles' debt, but he did so at the request and on the orders of the deceased Appellant.

(C) The Respondent did endorse the note to Alagappa, but he did so at the direction and on the orders of the deceased Appellant.

(D) The Respondent did assign the decree to Alagappa, but he did so at the direction and on the orders of the deceased Appellant and received no money or other consideration for doing so. 40

(E) The deceased Appellant gave the Respondent these directions and orders in connection with the fact that during the year 1932 and early 1933 the deceased Appellant's business was failing, he was unable to meet his creditors and he therefore directed the Respondent to close his business.

(F) The Respondent rendered to the deceased Appellant an account of all his transactions as the deceased Appellant's attorney and handed over to him all documents connected with the Respondent's employment as the deceased Appellant's agent, whereupon the deceased Appellant gave the Respondent a discharge in writing dated the 28th April 1934 (D.3) from all claims against him. p. 146.

10 (G) The deceased Appellant was estopped from making any claim against the Respondent because the Respondent had handed over to him at his request all documents, including letters written by the deceased Appellant to the Respondent, in reliance upon the truth of a representation made by the deceased Appellant to the Respondent on or about the 28th April 1934 that the deceased Appellant discharged the Respondent from all claims.

(H) The deceased Appellant's claims and causes of action were prescribed.

12. The deceased Appellant gave evidence himself and called five witnesses, de Silva, Nadarajah, Chinniah, Suwaris and Velaithan. De Silva, Alles' executor and a magistrate, produced the promissory note (P. 1) and said that he paid the amount of the note to Alagappa by cheque dated the 3rd October 1934, for which he produced Alagappa's receipt (P. 2) and an entry in the final account which he filed (P. 3). In cross-examination he stated that he knew that the Respondent as payee had endorsed the note and confirmed that he paid Alagappa and not the Respondent. p. 15, l. 10-p. 16, l. 6. p. 129. p. 158. p. 15, l. 44-p. 16, l. 6.

13. The deceased Appellant's own evidence extended over two days in 1943 and 1944 and occupies eleven pages of the Record. He said he was 75 years old. He traced the history of his moneylending business of A.T.K.P.L.M. and the Respondent's connection with it as his agent from 1919 to 1933. He described the financial difficulties in 1931 and 1932 which led him to instruct the Respondent to close the business and to terminate the Respondent's services in 1933. His instructions to the Respondent were to recover as much as possible from his assets (loans to debtors), to pay as much as possible to his creditors, to hand over the remaining assets to Chinniah and to come over to India. He said that the Respondent did come over to India in January or February 1933, but that he learnt of the two debts which are the subject of the proceedings out of which this Appeal arises only about 1½ years ago, and then not from the Respondent but from Chinniah; and he referred to his correspondence with Nadarajah as a result of what he learnt from Chinniah. He then instructed his agents, one of whom was Velaithan (or Velasam), to look into the accounts, as his eyes were too bad for him to read them, and gave instructions for these proceedings. pp. 20-30. p. 20. p. 22, l. 32. p. 20, ll. 30-43. p. 20, l. 45. p. 20, l. 18.

14. The deceased Appellant denied that he had ever authorised the Respondent to endorse the note or to assign the decree. He admitted that he was connected with Alagappa by the marriage of his adopted son to Alagappa's daughter, that he had long known him well, that they were still on speaking and visiting terms and that about five or six months ago he had asked Alagappa to arbitrate in a dispute of his. He also admitted that in the latter part of 1932 he had told Alagappa to assist the Respondent in settling the deceased Appellant's affairs in Colombo by recovering as p. 21, l. 36. p. 28, l. 40. p. 30, l. 30. p. 21, l. 25. p. 27, l. 32-p. 28, l. 4. p. 30, l. 17. p. 27, ll. 12-32.

p. 21, l. 26.  
p. 30, l. 18.

p. 21, l. 38.

p. 30, l. 19.

p. 27, ll. 1-12.

p. 30, ll. 33-40, ll. 40-7.

p. 28, ll. 40-2.

much as could be recovered and paying off the creditors. But he pointed out that Alagappa was also a first cousin of the Respondent, had recently become the Respondent's father-in-law, had been in business with the Respondent in Galle and had originally introduced the Respondent to the deceased Appellant's business. He also pointed out in cross-examination that Alagappa still owed him (the deceased Appellant) Rs.15,000/- or Rs. 10,000/- on a loan and that it was hardly likely that the deceased Appellant would direct the note to be endorsed to Alagappa. It is submitted that it is equally improbable that the deceased Appellant would have directed an assignment of the decree to a debtor like Alagappa, 10 when he was directing the Respondent to pay off creditors.

p. 21, l. 18.  
p. 23, l. 21.  
p. 25, l. 35.  
p. 28, l. 19.  
p. 30, l. 1.

p. 23, l. 10.  
p. 25, l. 23.

p. 22, l. 50-p. 23, l. 2.

p. 29, l. 14.

p. 23, l. 40.

p. 28, l. 8.

p. 29, l. 17.

p. 29, l. 1.

p. 15, l. 42.

15. Efforts were made in cross-examining the deceased Appellant to show that the Respondent had furnished him with complete and true accounts of his Colombo business, that the Respondent had handed over all the business books to him or to his agent Chinniah and that Chinniah knew of the endorsement of the note and the assignment of the decree. The deceased Appellant explained that his eyesight was not good in 1932 or when he gave evidence and that he had to rely on his agents to read his letters and to look into accounts. He said that it was not the custom or practice for him to get back from his agents all the documents relating 20 to the business, including his letters to them, at the end of their period of employment before discharging them; his letters to the Respondent would have remained in Colombo and if the Respondent had handed them over to Chinniah, Chinniah would have handed them over to him. He agreed that Chinniah had been working for him in Colombo since 1915, and *might* have known everything that happened in the Colombo business in 1931 and 1932, and *should* have received the promissory note from the Respondent when the latter left India; he could not say positively what Chinniah in fact knew, e.g. about Case No. 27002, but he did ask how the Respondent could have handed over the note to Chinniah as it bore 30 the Respondent's endorsement in favour of Alagappa. If de Silva's evidence was true that he got back the note after paying Alagappa—and his evidence was not challenged on that point—it is difficult to see how there could be anything in the suggestion made on the Respondent's behalf that the Respondent should have handed, and presumably did hand, the note over to Chinniah, or at least informed him of the reason why he was not doing so.

p. 24, l. 20.

p. 25, l. 4.  
p. 29, l. 48.  
p. 30, l. 3.  
p. 25, l. 12.  
p. 28, l. 30.

p. 146.

16. The deceased Appellant produced all the letters written to him by the Respondent and two books of press copies of them (D. 2 and D. 4). Two of them dated the 29th October 1932 (D. 2B) and the 7th December 40 1932 (D. 2A) were put to him, and he agreed that he received from the Respondent ledger balances and a day book. He also gave a full account of the circumstances in which he signed the receipt (D. 3) on which the Respondent relied as a discharge of all claims and by way of estoppel.

17. The translation of this document, which is described as a receipt written and granted by the deceased Appellant to the Respondent and bears a date corresponding to the 28th April 1934, is as follows:—

I have taken charge of all documents you had in respect of the transaction of lending and recovering carried on by you last as

10 Agent in our Colombo shop from January 1930 till January 1933, and have also looked into the accounts relating to the lending and recovering transaction [*sic.*], the amount due by you on current account and the amount drawn on salary account and all such other accounts and that the amount which was found to be due from you is settled at Rs. 3000/- in full settlement. As I have received the payment of this sum of rupees three thousand on Hundial handed to me to obtain the money from Soona Seena Leyna Karupposhpulle of Galle, and as all the accounts due to date have been looked into and settlement effected, I have no connection with you nor any claim against you hereafter. I have this day returned to you your Memo. of salary agreement (Cheetu). As I have then and there looked into the accounts relating to the lending and recovering transactions carried on by you at the aforesaid place previous to the above year and approved it [*sic.*] and as was already settled, I have no connection with you nor any claim against you hereafter in respect of which also [*sic.*] and that this document shall be the proof in respect thereof.

20 According to the deceased Appellant, this receipt was drafted by the Respondent, and dictated by him from a document he carried in his waistband to the deceased Appellant's son-in-law, a man of the same names as the Respondent, with whom he was staying at Pullemangalam, and submitted to him for his signature by the Respondent in the presence of a creditor of the deceased Appellant named Arunasalam Chettiar (or Arunachalam). The Respondent had overdrawn his salary account by about Rs.5,000/- and the deceased Appellant accepted Rs.3,000/- in settlement, apparently on the understanding that that sum for the balance should be paid over to Arunasalam. The deceased Appellant had the old accounts of his Colombo business with him, but not the current accounts, which the Respondent told him, correctly, had been sent to Rangoon for Income Tax purposes. He was sure that the Respondent had no books with him on this visit to Pullemangalam (except the document carried in his waistband), and equally positive that at that time he did not know of the endorsement of the note or of the assignment of the decree; if he had known, he would not have signed the receipt. There were minor variations and confusions in his answers to questions about this document, perhaps to be expected as he had signed the document nine or ten years before he gave his evidence, had kept no copy of it and could not read it when it was produced to him. But he affirmed that he gave the receipt without looking into the accounts or receiving from the Respondent any documents because he trusted him and in complete ignorance of the fact that the Respondent had transferred to Alagappa the promissory note or the decree.

18. The deceased Appellant did not recollect whether the Respondent had informed him that he had written off irrecoverable debts or had sent him a list of debts written off; but he said that he had instructed the Respondent to write off in the expense account those debts which were really and hopelessly irrecoverable and that when so instructed in 1932 the Respondent wrote off irrecoverable debts.

19. No letter or conversation was put to the deceased Appellant in the course of his long-cross-examination as containing any request, direction

or order of his relating to Alles' or Samaranayake's debt or to the writing off of either of them or to the assignment of either of them to Alagappa, whether in a letter of the 18th October 1932 (although he was cross-examined about the letter of the 7th December 1932 referring to it—D 2A) or in a letter brought by Alagappa to the Respondent in January 1933. No particulars appear to have been requested or given of the deceased Appellant's directions or orders alleged in paragraphs 5, 6, 7 and 8 (B) of the Respondent's Amended Answer; and the Respondent was able to keep the alleged letter brought by Alagappa as a surprise for the 2nd March 1945.

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20. The deceased Appellant gave a few particulars of the Respondent's residence and activities in Galle to meet the Respondent's objection to the jurisdiction of the District Court of Galle.

21. The deceased Appellant's statement about the date when he first learnt of the assignment of the two debts which he sought to recover from the Respondent was sufficient, if believed, to meet the Respondent's plea of prescription.

22. The next witness called for the deceased Appellant was Nadarajah (Nadaragapulle). He worked from 1929 to 1934 in the Respondent's business of "S.S.L." in Galle, and said that the Respondent came to "the shop" in Galle whenever he came to Colombo from India. Alagappa's sons were partners of the Respondent in the firm of S.S.L., but Alagappa himself was not. S.S.L. used to act for the deceased Appellant's firm A.T.K.P.L.M. in Galle, and Nadarajah did the Court work for them regarding the recoveries of moneys in the *Samaranayake* case and so knew personally of the assignment of the decree obtained by A.T.K.P.L.M. in that case to Alagappa and of his recoveries of moneys under it. He had also learnt from de Silva, Alles' executor, that money had been recovered by Alagappa on a promissory note from de Silva.

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23. Nadarajah described how he met Chinniah accidentally in Galle in 1941 (Chinniah was on a visit from India for the purpose of evidence being given on commission before an Indian court), and told him about the *Alles* and *Samaranayake* cases and that Alagappa had recovered moneys in them, and produced his correspondence with Chinniah and the deceased Appellant giving particulars (P. 4, P. 5, P. 6, P. 7 and P. 8). It was suggested in cross-examination that he had given his information to Chinniah out of friendship and for money, but no doubt was or could be thrown on the truth of this information and all that could be extracted from him in the Respondent's favour was that neither the action against Samaranayake nor the assignment of the decree was secret and that Nadarajah knew of the assignment and did not know whether there was anything wrong about the assignment or whether Chinniah was or was not aware of the recovery from Alles' estate at the time when he told Chinniah of it.

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24. Chinniah (Chinniah Pulle) was then called. His evidence occupied most of two days in 1944 and 1945 and fills over twenty-one pages of the Record, his cross-examination alone extending to 16 pages. On one point the District Judge regarded his evidence as unsatisfactory: Chinniah

p. 28, l. 28.

p. 177.

pp. 12-3.

p. 68, ll. 2-7.

p. 21, ll. 36-46.

p. 21, ll. 1-36.

pp. 31-4.

p. 32, l. 5.

p. 32, l. 18.

p. 31, l. 18.

p. 31, l. 25.

p. 32, ll. 21-7.

p. 31, l. 22.

p. 32, ll. 36-41.

p. 33, l. 16.

p. 31, l. 13-p. 32, l. 9.

p. 32, l. 46-p. 33, l. 27.

p. 34, ll. 29-40.

pp. 205-7.

pp. 35-36.

pp. 38-54.

pp. 37, l. 16, 46, l. 12,  
47-8, 49, l. 4, 54, l. 15,  
55, l. 32.



stated that he had no knowledge of the assignment of the decree against Samaranayake's estate to Alagappa; but the District Judge thought that he must have learnt of it from the documents which he forwarded to Alagappa with his letter of the 14th February 1933 (D. 7). Chinniah also admitted that he had corresponded with Alagappa about matters connected with the deceased Appellant's business in Colombo in 1933, that Alagappa might have arrived in Colombo before the Respondent left on the 28th January 1933, and that Alagappa was left in charge of the deceased Appellant's business in Colombo when he himself left for India in 1935. But he insisted that he was also endeavouring to get Alagappa to repay his large debt to the deceased Appellant and corresponding with him about the affairs of Alagappa's own business, and that Alagappa was never appointed or regarded as the deceased Appellant's agent, but was merely a relation of the deceased Appellant who knew about some transactions of the deceased Appellant's business and could therefore be consulted and trusted.

p. 185.  
p. 45, l. 33.  
p. 49, l. 37.  
p. 49, l. 23.  
p. 52, l. 43.  
p. 49, l. 39.  
p. 50, l. 4.  
p. 55, l. 21.  
p. 54, l. 35.  
p. 53, l. 1.  
p. 51, l. 11.

25. Chinniah traced his relationship with the deceased Appellant, as kanakapulle in his Colombo business from 1915 to 1933 and as attorney and agent from 1933 to 1935. He also confirmed that the Respondent was his predecessor as agent and that the Respondent started his own business of S.S.L. in Galle in partnership with Alagappa. (It appears from the extracts produced from the Register of Business Names (see paragraph 33 below) that Alagappa himself was not a partner in S.S.L., though his sons were, and that Nadarajah's evidence is to be preferred to Chinniah's on this point.) He said that the deceased Appellant never visited Ceylon between 1927 and 1943 and therefore during those years gave all his instructions to the Respondent by letter. The Respondent kept all these letters in his own custody, but told Chinniah about some of them.

p. 35, l. 4.  
p. 37, l. 34.  
p. 35, ll. 10-25.

26. Chinniah confirmed that the deceased Appellant's business got into difficulties in 1931 and 1932, and that the deceased Appellant gave written instructions to the Respondent to recover as much as possible from debtors and to write off in the expense account those debts which were irrecoverable. On the 1st September 1932 Chinniah opened new books of account, containing a page for recoveries of old accounts but entering, on the Respondent's instructions, recoverable debts only. The Samaranayake debt was not transferred and entered, the Alles debt of Rs. 6,500/- was, the Respondent having made a note in the old Alles account (P. 12): "Testamentary proceedings are going on and this money will come in about a year's time." However, on the 5th December 1932, again on the Respondent's instructions, Chinniah wrote off as irrecoverable debts amounting to Rs. 47,000/-. Those debts included the Alles' debt and, on the Respondent's instructions, Chinniah made an entry in the Alles' account in the new book that the debt had been written off in the expense account as irrecoverable. It was suggested to Chinniah in cross-examination that the Respondent did not tell him that Alles' debt was irrecoverable. He agreed that on 29th October 1932 the Respondent had written a letter to the deceased Appellant (D6.) enclosing a list (D. 6A) of recoverable debts and a list of irrecoverable debts; that Alles' debt was listed in the former with the note "This person is dead—his properties

p. 35, l. 25.  
p. 40, l. 51.  
p. 35, l. 31.  
p. 35, l. 47-p. 36, l. 4.  
p. 36, l. 43.  
p. 56, l. 14.  
p. 36, l. 28.  
p. 56, ll. 7, 14.  
pp. 126-7.  
p. 53, l. 17.  
p. 36, l. 7.  
p. 53, l. 35.  
p. 56, l. 16.  
p. 42, l. 35-p. 43, l. 3.  
p. 174.  
p. 152.

are subject to Testamentary Case. It will take about 2 years for the Testamentary case to be over—thereafter only collection can be attempted”; but he asserted that nevertheless the Respondent had told him to write off the debt on 5th December 1932 as irrecoverable because Alles was dead.

27. Chinniah also confirmed that the Respondent left for India and severed his connections with the deceased Appellant’s business on 28th January 1933, leaving behind with him the notes and other securities relating to those debts which were entered in the new ledgers as recoverable, and also the new ledgers. The old account books were sent to Burma 10 for income tax purposes. The Respondent told Chinniah that he need not ask about the notes and securities relating to irrecoverable debts which had been written off and did not hand them over to Chinniah, although it was the Chetty custom to preserve notes and securities after writing off debts in the expense account. He pointed out that there were no entries in the books either of the endorsement of Alles’ note or of the assignment of the Samaranayake decree; and he denied all knowledge of either transaction at that time, or indeed until 1942. He would not agree that he had read the contents of documents which he had forwarded to Alagappa in connection with the Samaranayake case. 20

28. Chinniah said that Alagappa came to Ceylon about two weeks after the Respondent’s departure, but in cross-examination he admitted that he could not say definitely whether Alagappa came before or after the Respondent left. He also admitted that Alagappa’s services were used in settling a debt to the deceased Appellant when Alagappa visited Ceylon in 1932 and that he himself wrote a dozen letters to Alagappa (D. 7 to D. 18 inclusive) in 1933; but he denied that Alagappa was sent to Colombo as the deceased Appellant’s agent, though he might have been sent to attend to the deceased Appellant’s business there. He pointed out that no power of attorney was ever given to Alagappa, such as was given to him when he 30 succeeded the Respondent—and to Karuppiyah when he succeeded Chinniah (see paragraph 34 below)—and that no expenses of Alagappa’s were ever charged to the deceased Appellant or entered in the books of his Colombo business, as were the Respondent’s and Chinniah’s. On the contrary, he confirmed that Alagappa owed about Rs. 65,000/- to the deceased Appellant and he produced an extract of Alagappa’s account with A.T.K.P.L.M. (P. 18), showing that indebtedness but no endorsement of the Alles note or assignment of the Samaranayake debt, as the account ought to have done. He also produced a letter which he wrote to the deceased Appellant on the 9th June 1933 (P. 24) describing Alagappa’s excuses and his own endeavours 40 to get Alagappa to repay the debt.

29. Chinniah left Colombo for India in 1935, apparently because of his wife’s illness, and Karuppiyah succeeded him, although the accounts and the recovery of outstanding debts were left in charge of Alagappa on the instructions of the deceased Appellant. How far the urgency of Chinniah’s desire to rejoin his sick wife dictated this arrangement is uncertain. It is, however, clear that Karuppiyah turned out as untrustworthy as Alagappa, because in 1941 Chinniah re-entered the deceased Appellant’s employment and returned to Ceylon for the purpose of having evidence

p. 37, l. 4.  
p. 44, l. 7.  
p. 54, l. 28.  
p. 37, l. 5.

p. 43, l. 39.  
p. 40, l. 14.  
p. 37, l. 20.

p. 37, l. 14.  
p. 46, l. 12.  
pp. 47-8.  
p. 49, l. 4.  
p. 54, l. 12.  
p. 55, l. 32.

p. 37, l. 22.  
p. 44, l. 15.  
p. 49, l. 18.  
p. 41, ll. 6-24.

pp. 185-90, 192, 194-9,  
199.

p. 45, l. 32.  
p. 54, l. 35.

p. 54, l. 40-p. 55, l. 3.

p. 37, ll. 26-34.

p. 128.

p. 55, l. 10.  
p. 193.

p. 37, l. 37.  
p. 52, ll. 10-46.  
pp. 201, 202-3.

p. 37, l. 41-p. 38, l. 7.

taken on commission in Galle for an action brought by the deceased Appellant against Karuppiah in India in respect of securities left with Karuppiah and recovered by him but not accounted for by him to the deceased Appellant. Chinniah then described how he met Nadarajah in Galle and how his telling Nadarajah his business in connection with an action in respect of recoveries of debts due to the deceased Appellant led Nadarajah to tell him of S.S.L.'s two recoveries and to ask whether those had been accounted for to the deceased Appellant.

30. Chinniah produced the journal entries relating to the  
 10 Samaranayake Case No. 27002 in the District Court of Galle (P. 19); the  
 assignment of the decree to Alagappa (P. 20) and an extract from the  
 Respondent's salary account (P. 21) showing that it was overdrawn to the  
 extent of Rs. 5,193/02 on the 28th January 1933 and settled at Rs. 3,000/-  
 on the 9th May 1934, with an "undial" for Rs. 3,000/- granted to  
 Arunasalam. The entries in this account appear to confirm the deceased  
 Appellant's version of the circumstances in which he signed the receipt of  
 the 28th April 1934 (D. 3).  
 p. 38, ll. 9-23.  
 p. 153.  
 p. 136.  
 p. 131.  
 p. 146.
31. To account for the awkward facts (A) that Samaranayake's debt  
 was not transferred to the new ledger on 1st September 1932, and (B) that  
 20 Alles' debt was written off as irrecoverable on 5th December 1932, it was  
 suggested to Chinniah that these debts were treated in this manner for  
 the purpose of avoiding and evading payment of income tax. This  
 suggestion was repudiated by Chinniah. Although he gave evidence that  
 the deceased Appellant's instructions to the Respondent were at the  
 material time given by letter and that the Respondent had told him of  
 written instructions received from the deceased Appellant, it was never  
 suggested to him, except in the vaguest terms with reference to the assign-  
 ment of the decree, that the deceased Appellant instructed the Respondent  
 to endorse the note to Alagappa or to assign the decree to him for the purpose  
 30 of avoiding income tax or any other purpose. There was no reason why  
 the deceased Appellant or the Respondent should have endorsed the note  
 or assigned the decree to Alagappa; Chinniah himself under his power of  
 attorney could recover on the note unendorsed or on the decree, as he had  
 done in other cases.  
 p. 40, l. 28.  
 p. 43, l. 32.  
 p. 53, l. 31.  
 p. 56, l. 22.  
 p. 35, ll. 11-18.  
 p. 49, l. 15.  
 p. 53, l. 42-p. 54, l. 4.
32. Suwaris, the next witness, was the Chief Clerk of the Mercantile  
 Bank of India, Galle. He produced a certified extract from the bank  
 account of S.S.L. (P. 25) and a certified copy of the witness de Silva's  
 No. 2 account (P. 26). The letter showed that on the 3rd October 1934 the  
 Bank had paid a cheque (which had been destroyed) of Rs. 8,500/- drawn  
 40 by de Silva in favour of Alagappa; the former that on the same day a sum  
 of Rs. 4,500/- in cash had been deposited by S.S.L. to their account. The  
 deceased Appellant tendered this evidence as evidence of the recovery by  
 Alagappa of Alles' debt from his executor and of payment of more than  
 half of the sum recovered to the Respondent, who was at that time partner  
 with one of Alagappa's sons in the firm of S.S.L. (P. 29).  
 p. 56, l. 31-p. 57, l. 8.  
 p. 141, p. 144, l. 38.  
 p. 147.  
 p. 133.
33. The last witness called on behalf of the deceased Appellant was  
 Velaitham Chetty, his agent in India since December 1934. Before that  
 p. 57, l. 20-p. 60, l. 11.  
 p. 57, l. 1.  
 p. 59, l. 20.  
 p. 59, l. 44.

he had worked for the deceased Appellant in Burma, but he had not been in Ceylon between 1912 and 1941. He got to know the Respondent in 1935 when the Respondent was a partner in S.S.L. in Galle and the proprietor of another business in Galle named A.R.L. He produced registered particulars of these two businesses (P. 27 to P. 32 inclusive), which showed that the Respondent was, after 1931, one of two partners in S.S.L., the other being a son of Alagappa, who ceased to be a partner in 1939. He also stated that the Respondent went to Ceylon every year since he had known him and produced a letter written to him by the Respondent from Galle (P. 33). This evidence effectively established the jurisdiction of the District Court of Galle over the proceedings.

pp. 118, 130, 133, 149,  
150, 151.

p. 203.

34. Velaithan confirmed that Chinniah handed over the deceased Appellant's business to Karuppiyah in 1935 and that the deceased Appellant did not then give a power of attorney to Alagappa; but he added (A) that after 1935 the deceased Appellant had very little business in Ceylon and Karuppiyah was at the same time agent for S.S.L., (B) that the deceased Appellant did give a power of attorney to Karuppiyah, which the Respondent had admitted in earlier proceedings (P. 38). He too confirmed Chinniah's evidence of Karuppiyah's defalcations and of the circumstances in which Chinniah came to Ceylon in 1942 and the deceased Appellant learnt that S.S.L. had recovered money due to A.T.K.P.L.M. He himself then discovered from the books of A.T.K.P.L.M. that Alles' account had been written off and that the Samaranayake decree had not been transferred from the old account, and told the deceased Appellant that some fraud had apparently been committed. He denied that he was "the genius behind this action." He knew Alagappa and that the deceased Appellant had had dealings with him, but he did not know what dealings they had had in 1932 nor had he seen the correspondence between the deceased Appellant and the Respondent in 1932.

p. 58, l. 32.

p. 60, l. 2.

p. 59, l. 46.

p. 60, l. 3.  
p. 159.  
p. 58, l. 34-p. 59, l. 4.

p. 59, ll. 4-18.

p. 59, ll. 32-43.

p. 59, l. 29.

35. The correspondence between the Respondent and the deceased Appellant in 1932, particularly the letters from the deceased Appellant to the Respondent, was, of course, vital to the Respondent's case that he was instructed by the deceased Appellant to endorse Alles' note to Alagappa and to assign the Samaranayake decree to him. The deceased Appellant produced two press copy books (D. 2 and D. 4) of the Respondent's letters to him, which had been brought to India by Chinniah in 1935, and from which various letters were extracted and are printed in the Record. The Respondent was claiming that he had handed over to the deceased Appellant in April 1934 all the deceased Appellant's letters to him, which the deceased Appellant denied. Each party denied that he had those letters, and none of them was ever produced. It seems on the face of it unlikely that they would have been returned to the deceased Appellant, when they might have been of use to the Respondent's successor; and it is worth noting that, when Chinniah severed his connection with the deceased Appellant's Colombo business in 1935, he returned to the deceased Appellant the press copy books of letters written to the deceased Appellant, but although he was cross-examined about letters written to him by the deceased Appellant, it was never suggested to him that he had returned any original letters written by the deceased Appellant. The suggestion that the Respondent had returned to the deceased Appellant all the letters

p. 24, l. 20.  
p. 25, l. 3.

p. 29, l. 48.

p. 41, ll. 27-42.

p. 22, l. 31.

p. 35, l. 35.  
p. 65, l. 13.  
p. 77, l. 49.

p. 38, l. 25-p. 39, l. 37.

p. 41, ll. 28-42.

which he had received from the deceased Appellant seems to be an attempt to explain another awkward fact, namely the absence of any written instructions from the deceased Appellant authorising the transfer of Alles' debt or Samaranayake's debt to Alagappa.

36. The Respondent gave evidence himself and called one other witness, Jinadasa. Jinadasa, a clerk in Colombo Port Health Office, was called solely to prove that Alagappa arrived in Colombo on the 23rd January 1933, i.e., before the Respondent left. The District Judge described him as "a thoroughly unsatisfactory witness who showed a lack of intelligent understanding of his own duties." He produced two documents: one a register (D. 19), in which the material entry had been altered and was the subject of inconsistent explanations; the other a certificate, which was ruled inadmissible. But the District Judge felt able to find that Alagappa arrived in Colombo on the 23rd or 24th January 1933, and the exact date of his arrival appears to be of little assistance to the decision of the question whether he was sent by the deceased Appellant to arrange the affairs of his Colombo business and of still less assistance to the decision of the question whether the transfer of the two debts to Alagappa was a fraud on the deceased Appellant or an act authorised by him. It was, however, essential for the Respondent to establish that Alagappa arrived not only before he left but before he endorsed the note or assigned the decree to Alagappa, if he was to be believed in saying that Alagappa brought him written instructions from the deceased Appellant to endorse the one and assign the other. It is submitted that he failed to establish this by the evidence of this one unsatisfactory witness, but that, even if the Respondent succeeded in proving that it was possible for Alagappa to have brought him such instructions, there were good reasons for the District Judge's belief that he never did so.

37. The Respondent's own evidence was spread over two days in 1945. He agreed that he was the deceased Appellant's agent and attorney, at a salary of Rs. 15,000/- originally for a period of three years beginning in 1919, the period being renewed until he left on the 28th January 1933, and that he was assisted in the deceased Appellant's business by Chinniah, whom he described as "a trustworthy man," as he had also described him in letters to the deceased Appellant (P. 36, P. 37). He spoke of the loans to Alles and Samaranayake, the note given by Alles, and the decree he obtained against Samaranayake, and admitted in cross-examination that it was through him that the deceased Appellant's firm had lent them money, that they had also had loans from the Respondent's own firm of S.S.L., and that at the time he left for India they had paid off their loans from S.S.L. but were the only debtors in Galle whose debts to the deceased Appellant's firm were outstanding.

38. The Respondent agreed that the deceased Appellant's Colombo business was in financial difficulties in 1932 and said that the deceased Appellant asked him, then in India, to go to Ceylon to recover the outstanding debts and pay the creditors. The deceased Appellant also said that he would ask Alagappa to assist the Respondent in this task. The Respondent himself arrived in Ceylon in April 1932 followed by Alagappa apparently later the same month, when the Respondent wrote a letter

(D. 4F) putting the irrecoverable debts (not including Alles' and Samaranayake's debts) at Rs. 40,000/-. Alagappa remained in Ceylon helping the Respondent to settle the deceased Appellant's affairs until July, as the correspondence showed. Creditors were not willing to take assignments of debts owed to the deceased Appellant in satisfaction of their claims against him. Thenceforth he pressed the deceased Appellant by letter to let him leave Chinniah in charge and return to India, but was instructed to wait until Alagappa returned to Ceylon.

39. In the course of his 1932 correspondence with the deceased Appellant the Respondent sent, with other books of account in October, the list of debtors (D. 6A) which included Alles' debt of Rs. 6,500/- as recoverable after two years. The balance sheet (aianthonai) also sent then must, he said, have shown Alles' debt, but he admitted that when he sent another balance sheet (P. 9) in December, that did not show Alles' debt because he had written it off. The reason he gave first for writing it off, although he never considered it irrecoverable and never told Chinniah that it was, was that he wrote it off "with the idea of bringing it back to the books later on when the recovery is made." But he followed this lame excuse by alleging that he wrote the debt off on the specific instruction of the deceased Appellant contained in a letter of the 19th October 1932 (which was not produced) to write off that particular debt and others which he named. In cross-examination he agreed that there was no reference to Alles or any other person in the letter he wrote (D. 2A) acknowledging the deceased Appellant's letter of the 19th October; and when pressed whether he did not regard it as curious that the deceased Appellant, who only knew what he was told by the Respondent about the financial position of his Ceylon clients and who had been told that the debt might be recovered from Alles' estate after two years, should instruct him to write off the debt, the Respondent could only suggest that the deceased Appellant was in bad circumstances and wanted to hide his assets from his creditors. This explanation did not explain why the deceased Appellant should have added Alles' debt to the list of debts to be written off as irrecoverable, but should not have added the debt for Rs. 8,735/84 of one Pieris, which appears in the Respondent's list (D. 6A) as recoverable in about a year but was in fact never recovered. The only explanation the Respondent could give why he omitted Samaranayake's debt from his list altogether was that "it was in the old books," as indeed were the other debts included in the list.

40. The Respondent said that Alagappa arrived in Ceylon on the 23rd January 1933 with a letter for the Respondent from the deceased Appellant (which was not produced) instructing him to endorse the note from Alles and deliver it to Alagappa and to assign the Samaranayake decree in favour of Alagappa, as well as to hand over all the books to Chinniah. He therefore endorsed the note (P. 1) and executed on the 25th January an assignment of the decree (P. 20) and on the 26th a power of attorney in favour of Chinniah (D. 20). Chinniah knew about the transactions and the note was handed over to him. The Respondent then left for India on the 28th January 1933. The assignment was executed in Galle in the absence of Alagappa and was given "in order that the Plaintiff (the deceased Appellant) might recover it," an object

that would appear to have been more naturally and certainly achieved by assigning it to the trustworthy new attorney Chinniah. He denied that he ever received the money due on the note or the decree or that he received the Rs. 3,000/- of which he acknowledged receipt in the assignment. In his evidence-in-chief the Respondent could not fix the date between the 23rd and 28th January when he endorsed the note, and gave the impression that he endorsed the note before assigning the decree; but in cross-examination he stated that he returned to Colombo after executing the assignment in Galle and endorsed the note in Colombo before executing the power of attorney there, i.e., on the 26th (or possibly 25th) though in re-examination he could not remember the exact date.

41. In cross-examination the Respondent affirmed that Chinniah knew of the all-important letter brought by Alagappa, although that was never put specifically to Chinniah. Asked why the deceased Appellant directed that the note and decree should be assigned to Alagappa, the Respondent first replied that "it may be for purposes of Income Tax or it may be so that Alagappa may recover the amount due [on] from Alles without the amount being shown in the Account books." But he went on to say that he had asked Alagappa, after these proceedings were brought, why the deceased Appellant had directed the endorsement of the note, and Alagappa had said that he had paid the amount recovered on the note and the decree over to the deceased Appellant. This rather improbable request of the Respondent was as surprising as Alagappa's important answer. It was never suggested to the deceased Appellant that Alagappa had paid these two amounts to the deceased Appellant, although it was put to him that Alagappa had endorsed to the deceased Appellant an "undial" from the Respondent for Rs. 10,000/-; and Alagappa, though on the Respondent's own evidence in touch with the Respondent since the proceedings, was not called to say so. The Respondent agreed that Alagappa was a very important witness for him and that he had been able to get from him Chinniah's letters through the help of his son (married to Alagappa's daughter). But he stated that he had served a summons on Alagappa to come and give evidence but he had not come, and in re-examination said that Alagappa's whereabouts were not known.

42. The Respondent's business relationship with Alagappa was demonstrated to be extremely intimate. He admitted that Alagappa subscribed Rs. 29,000/- out of the Rs. 40,000/- capital of the firm of S.S.L. and that he the Respondent was looking after the interests of Alagappa's sons in the firm of S.S.L. in Galle, from which Alagappa himself had borrowed money, and therefore Alagappa was looking after the Respondent's interests in the firm of A.R.L. in Pussellawa also in Ceylon. He also admitted that Alagappa used to come to Pussellawa to help in his business matters and took charge of his business of A.R.L. there about February 1933; but he denied that that was the reason why Alagappa came to Ceylon in January 1933. He agreed that Alagappa also owed money lent him by the deceased Appellant's firm and was in fact that firm's greatest debtor and still owed Rs. 75,000/- or more in January 1933; he reluctantly conceded that the deceased Appellant might have written to him repeatedly asking him to demand payment from Alagappa (but not in the letter of 19th October 1932) and that he might himself have "gently"

asked Alagappa to pay up. Yet he assigned the two debts, both in Galle, to this debtor openly on the eve of his own departure from Ceylon, leaving creditors unsatisfied and Chinniah with authority to deal with every other debt but these two. It is small wonder that the Respondent appreciated that only express written instructions from the deceased Appellant could justify such an inexplicable transaction.

43. Even express written instructions to transfer these debts to Alagappa could not, however, justify the omission of any record of either transfer in any book of account. The Respondent attempted at least three explanations of this omission. His first was: "because they had already been transferred to the Expense Account I could not enter the fact of assignment and endorsement to Alagappa." When it was pointed out to him that the decree had not been entered in the Expense Account, he said that the assignment of it was not entered in the books "because it is not customary," which he modified by saying that it was only some people who observed the custom of entering in the account books debts written off as irrecoverable but subsequently recovered. Finally he made an effort in his re-examination to improve upon these not very clear and convincing explanations by saying that the assignment of the decree was not entered "because the Books were in Rangoon." Not even in re-examination did he suggest that the entry of the endorsement and assignment in the books might have put the Income Tax authorities on inquiry, an omission which demonstrates how little the Respondent thought of the explanation he had earlier attempted of the deceased Appellant's alleged instructions for the endorsement and assignment.

44. The Respondent also gave his account of what happened at his interview with the deceased Appellant when the receipt of the 28th April 1934 (D. 3), which he had kept, was signed. The receipt was written and witnessed by the deceased Appellant's son-in-law, with whom he was staying in India, and witnessed also by Arunachalam, who had sued the deceased Appellant in Ceylon and came with the Respondent. The Respondent asserted that he took with him a bundle of 200 original letters which he had received during the last three years before his departure from Ceylon on the 28th January 1933, consisting of, or including, all the letters written to him by the deceased Appellant, and returned them to the deceased Appellant, although, as he admitted in cross-examination, he had no occasion to do so. Apparently, according to the Respondent, the accounts were already there and the deceased Appellant had the opportunity of examining all the accounts and in fact they looked into some and he told the deceased Appellant about Alles' and Samaranayake's debts, a curious embellishment added in cross-examination without explanation of what he told him or why. If the deceased Appellant had instructed him in October 1932 to transfer those debts to Alagappa, it is difficult to see what further interest the deceased Appellant could have had in them. The Respondent denied making any false representation to the deceased Appellant to get the receipt, and paid him Rs. 3,000/- on it. He agreed that if Arunachalam had been called as a witness he could have corroborated the Respondent's allegation that he handed over all the deceased Appellant's letters; and indeed the absence of that witness left the District Judge to resolve the conflict



between the deceased Appellant and the Respondent on other matters arising at this interview on their uncorroborated evidence alone. He preferred the evidence of the deceased Appellant.

p. 86, ll. 1-30.

45. The Respondent stated further in cross-examination about this interview that he expected to be paid three years' salary of Rs. 15,000/- by the deceased Appellant but had only drawn Rs. 5,000/- because Alagappa would not agree; he denied endorsing the note as a second line of defence—to be sure of the Rs. 15,000/-. But it is not clear whether this suggestion and denial related to the endorsement by the Respondent to Alagappa of the Alles' note or the alleged execution by the Respondent to Alagappa's sons and endorsement by Alagappa to the deceased Appellant of an "undial" for Rs. 10,000/- in 1939. If the Respondent regarded himself as underpaid by the deceased Appellant—and he appears to have admitted as much—he might have sought to recover his due through Alagappa and might have assigned the Alles' and Samaranayake debts to him with this object.

p. 77, ll. 32-41.

p. 27, l. 8.  
p. 73, l. 36.

46. The Respondent denied that he in fact received any of the moneys which Alagappa recovered from Alles' or Samaranayake's estates. But he could not explain the payment of Rs. 4,500/- into the account of his firm of S.S.L. on the 3rd October 1934 as shown by the bank account (P. 25) produced by Suwaris. He agreed that the books of S.S.L. would have shown who had paid that amount in cash and could have provided a strong defence to the allegation that it came from Alagappa, and that he had been summoned to produce the books; but he had only produced books relating to 1936-7-8, because the earlier books were with one of Alagappa's sons away in Hyderabad on war service. He had asked Alagappa in vain for the books. There were hearings of the action spread over two years before the Respondent gave his evidence, and not unnaturally the District Judge was most unfavourably impressed by these excuses.

p. 69, l. 23.

p. 69, l. 45-p. 70, l. 19.

p. 141.

p. 56, l. 31.

p. 70, l. 17.

p. 69, l. 45.

p. 84, ll. 24-39.

47. The Respondent gave evidence that he rented a room within the jurisdiction of Galle, and of his business visits and activities. He also gave his account of the deceased Appellant's action against Karuppiah and himself in which he was dismissed from the suit. He praised the deceased Appellant as a good man to him and was unable to explain why he should have brought this action against him, unless it was his difficult circumstances. Even that explanation could not have accounted for the deceased Appellant not suing Alagappa, for which there was no obvious reason, as the learned District Judge pointed out, except that the deceased Appellant was speaking the truth when he said that he never gave the Respondent the alleged instructions.

p. 73, ll. 11-23.

p. 78, ll. 12-19.

p. 78, l. 3.

p. 77, l. 37.

p. 78, l. 1.

p. 83, l. 22.

48. On the 27th May 1946 the learned District Judge delivered his reserved judgment. He summarised the undisputed facts and the rival cases concisely and completely as follows:—

p. 79, l. 57.

p. 79, l. 1.

The deceased Appellant's case was that the Respondent assigned the decree and endorsed the note to Alagappa without his authority, and with fraudulent intention; that no consideration received from Alagappa had been accounted for; that the assignment and endorsement had been

p. 79, l. 29.

made for the Respondent's benefit and that through Alagappa he had collected the sums of Rs. 8,500/- and Rs. 5,706/81 ; and that the Respondent was liable to pay them to the deceased Appellant.

p. 79, l. 37.

The Respondent's case was that the deceased Appellant's business was failing and as he was in insolvent circumstances he directed the Respondent to close the business at Colombo, to assign the decree to Alagappa and to endorse the note and to write off in the books the amount due on the note. The Respondent executed these directions. He received no consideration of any nature from Alagappa ; nor did Alagappa pay sums recovered by him to the Respondent. After the termination of his service the Respondent rendered an account to the deceased Appellant of his stewardship ; the deceased Appellant was satisfied and gave him a written discharge dated the 28th April 1934. Therefore the deceased Appellant was not entitled to maintain the action. The action was prescribed. The court had no jurisdiction to try the case. 10

p. 79, l. 49-p. 80, l. 35.

49. He decided that the court had jurisdiction on the grounds (A) that the room which the Respondent rented in Galle was one of his places of residence, (B) that Galle was the place where the deed of assignment was executed, where Alagappa collected the sums due on the decree and where de Silva made payment to Alagappa on the note. Although want of jurisdiction was one of the grounds of appeal, the Supreme Court apparently thought so little of it that there was no reference to it in the judgment under appeal. 20

p. 90, l. 7.

p. 91, l. 40.

p. 86, l. 31-p. 87, l. 4.

p. 91, l. 41-p. 92, l. 42.

50. The other findings of fact and law by the learned District Judge in his answers to the 31 issues are clearly and conveniently set out in the judgment of the Supreme Court under 13 heads as follows :—

(1) The Respondent wrongfully, unlawfully, fraudulently and without the consent and approval of the deceased Appellant endorsed the promissory note (P. 1) and assigned the decree in case No. 27002 for the sum of Rs. 3,000/- to Alagappa (and) thereby misappropriated the said note and decree or their proceeds. 30

(2) Alagappa recovered a sum of Rs. 8,500/- on P. 1 and a sum of Rs. 5,706/81 under the decree and the deceased Appellant was entitled to recover those sums from the Respondent.

(3) The frauds in connection with P. 1 and the decree were discovered by the deceased Appellant in or about February 1942.

(4) The Respondent neglected and failed to hand over to the deceased Appellant a sum of Rs. 3,000/- alleged to be paid by Alagappa as consideration for the assignment of the decree in D.C. 27002. 40

(5) The consideration of Rs. 3,000/- alleged to have been received by the Respondent prior to the execution of the deed was not paid in the presence of the Notary. The learned District Judge did not think the consideration of Rs. 3,000/- was paid by Alagappa to the Respondent. It was only a colourable transaction to enable the Respondent to collect the monies due on the decree through Alagappa as his agent. Therefore it is not Rs. 3,000/- but Rs. 5,706/81 which the deceased Appellant is entitled to recover from the Respondent.

(6) Alagappa collected the two sums of Rs. 8,500/- and Rs. 5,706/81 for and on behalf of the Respondent and the latter became the trustee of these two sums for the deceased Appellant, who is entitled to recover those two sums with interest thereon at 5 per cent. from the Respondent.

(7) The Respondent wrongfully and fraudulently represented to the deceased Appellant that the two debts were irrecoverable, and after the recovery of the same fraudulently and wrongfully concealed the fact of collection from the deceased Appellant.

10 (8) The Respondent realized the sum of Rs. 5,706/81 through Alagappa. There was no direct evidence that Alagappa paid the Respondent this sum, but it is unlikely that Alagappa double-crossed the Respondent of the amount collected by him on the assignment.

(9) The Respondent did not endorse P. 1 or assign the decree at the direction and on the orders of the deceased Appellant.

20 (10) The Respondent rendered an account to the deceased Appellant of the Respondent's transactions as the deceased Appellant's agent, but failed to disclose the fact of his assigning the decree and endorsing the note. All the account books were left with the firm and were available to the deceased Appellant. No letters written by the deceased Appellant to the Respondent were handed to the deceased Appellant.

(11) The deceased Appellant on the 28th April 1934 gave the Respondent a complete discharge and acknowledged that the deceased Appellant had no present or future claims against him.

30 (12) The Respondent did not hand over the books and papers to the deceased Appellant relying on a representation that the Respondent was discharged from all present and future claims. (The District Judge found that he did not hand over any letters and appears to have accepted the deceased Appellant's evidence that the Respondent did not hand over any books or papers.)

p. 86, ll. 7-21,  
p. 86, l. 49-p. 87, l. 2.

(13) The deceased Appellant's causes of action were not prescribed.

51. The learned District Judge regarded the principal question in the case, it is submitted rightly, as whether the assignment and endorsement were made at the instance of the deceased Appellant. He thought that the arrangement made by the deceased Appellant was that, after the Respondent left Colombo, Chinniah should be in charge and function as the deceased Appellant's agent while Alagappa should advise and assist Chinniah : it was unlikely that the deceased Appellant would have chosen Alagappa, who owed him a very large sum, as the person to whom his securities should be entrusted. He considered that the deceased Appellant wrote to the Respondent instructing him to write off irrecoverable debts, without specifically mentioning any debts : he could not understand why he should have instructed the Respondent to write off Alles' debt which the Respondent had indicated would be recoverable after a couple of years,

p. 80, l. 36.

p. 81, l. 29.

p. 81, l. 38.

p. 82, l. 17.

p. 82, l. 29.

p. 82, l. 44.

p. 82, l. 52.  
p. 83, l. 1.

but thought that the deceased Appellant might easily have acquiesced in the writing off of Alles' debt even if he had taken the trouble to scrutinise the accounts, and might easily have lost sight of Samaranayake's debt since its last appearance in the accounts of December 1931. He was not satisfied that the deceased Appellant gave special directions to write off the Alles' debt or the Samaranayake debt.

p. 83, l. 15.

p. 84, l. 8.

p. 84, l. 35.

p. 84, l. 42  
p. 86, l. 21.

p. 86, l. 10.  
p. 87, l. 6.  
p. 86, l. 1.

p. 86, ll. 5, 30.

p. 84, l. 47.

p. 84, l. 51-p. 85, l. 3.

52. The learned District Judge came to the conclusion that it was in the Respondent's power to have called Alagappa or to have taken out a commission to record his evidence in India, and thought the Respondent's failure to call him a serious defect. He was of opinion that Alagappa arrived in Colombo either on the 23rd or the 24th January 1933, but was not satisfied that he carried any letter from the deceased Appellant to the Respondent. With regard to the payment of Rs. 4,500/- into the account of S.S.L. on the 3rd October 1934, the learned District Judge considered that the Respondent could not have had any difficulty in procuring the relevant books of S.S.L., and that it was reasonable to presume that their production would not have helped him to show that that sum was deposited by some person other than Alagappa. With regard to the letters written by the deceased Appellant, the District Judge could not see why they should have been so secret that their return to the deceased Appellant should be a *sine qua non* for the discharge of the Respondent, and he found that no letters were handed over to the deceased Appellant and that the discharge of the 28th April 1934 was granted without the deceased Appellant knowing that the Respondent had assigned the decree and endorsed the note. There was therefore no effective discharge and no estoppel. He commented on the fact that the Respondent had not called Arunasalam, and came to the conclusion that the Respondent, believing the deceased Appellant's business to be crashing and closing down, had conceived the idea of collecting the amounts due on the decree and on the note and of assigning and endorsing the documents to his cousin Alagappa so that the amounts might be collected for the Respondent himself.

p. 85, l. 41.

p. 85, ll. 8, 18.

p. 85, ll. 38-40.

p. 85, ll. 44-52.

p. 87, l. 4.

p. 86, l. 35.

p. 86, l. 44.

53. That being his conclusion on the whole of the evidence, the learned District Judge regarded the assignment and endorsement as a fraud on the deceased Appellant, and a concealed fraud of which, as the District Judge found, there was no trace in the accounts and of which the deceased Appellant only became aware in February 1942. He found that Chinniah was aware not only of the decree but of its assignment, but that that did not import knowledge to the deceased Appellant himself. And he rejected the suggestion that the correspondence of Nadarajah with Chinniah and the deceased Appellant was not entered into deliberately for the purpose of making up a case against the Respondent. He held, on the authority of *Punchihamine v. Ukku Menika* [1926] 28 N.L.R. 97 that the cause of action in a case of concealed fraud did not arise until discovery of the fraud, that the action was not prescribed, and that the Respondent held in trust for the deceased Appellant the monies recovered by him from the deceased Appellant's debtors, namely, the sums of Rs. 8,500/- and Rs. 5,706/81 claimed in the action. The sum of Rs. 3,000 was never in fact paid by Alagappa to the Respondent and therefore it was not Rs. 3,000/- but Rs. 5,706/81 which the deceased Appellant was entitled to recover : there was no direct evidence that Alagappa paid the

Respondent that sum, but it was unlikely that Alagappa double-crossed the Respondent and defrauded him of the amount collected by him on the assignment.

54. In a passage criticized in the judgment of the Supreme Court, the learned District Judge said: "It is admitted that the Defendant (Respondent) assigned the Samaranayake decree and endorsed Alles' note to Alagappa Chetty. That being so the burden rests on him to prove that he did so at the instance of the Plaintiff (deceased Appellant)." It will be submitted that this was not a misdirection of himself, rightly understood in its context, by the District Judge and that the criticism to be found in the judgment under appeal was unjustified.

55. On the 27th May 1946 a decree of the District Court was entered in accordance with the foregoing judgment, ordering and decreeing that the Respondent should pay to the deceased Appellant the sum of Rs. 8,500/- together with legal interest thereon at the rate of 5 per cent. per annum from the 3rd October 1934 and the sum of Rs. 5,706/81 together with legal interest thereon at 5 per cent. per annum in full and the costs of the action as taxed by the Officer of the Court.

56. From this judgment and decree the Respondent appealed to the Supreme Court of Ceylon by Petition dated the 27th May 1946 in which the grounds of appeal are fully recorded.

57. The appeal was heard before the Supreme Court (Howard, C.J. and Canekeratne, J.) on the 10th and 12th November 1948 and the reserved judgment of the Court was delivered by Howard C.J. on the 25th November 1948.

58. Howard C.J. summarized the undisputed facts and the rival cases almost in the exact words used by the District Judge, except that, as already pointed out, no reference was made to the issue of jurisdiction. He then set out the District Judge's answers to the issues under the thirteen heads already quoted. He then stated that the deceased Appellant's case was based on two contentions, (A) that the assignment and endorsement to Alagappa were fraudulent transactions and (B) that apart from fraud the Respondent was a trustee of the two sums and liable to account for them to the deceased Appellant, both contentions having been answered by the learned District Judge in favour of the deceased Appellant. He proceeded to examine contention (B) first.

59. He complained that the reasons guiding the District Judge to his decision of contention (B) in the deceased Appellant's favour had received but scant consideration in his judgment. He pointed out that the relationship between the deceased Appellant and the Respondent was that of beneficiary and trustee under an express trust and that by subsection (2) of section 111 of the Trust(s) Ordinance Chapter 72 (which he set out in full and which is annexed as Appendix A to this Case) the deceased Appellant's claim would be barred by section 6 of the Prescription Ordinance Chapter 55 (also annexed, as Appendix B, to this Case; the Chapter is misquoted as Chapter 72 at p. 94, l. 2 of the Record) because not instituted within six years, unless the claim came within subsection (1)

p. 94, l. 4—p. 97, l. 27.

of s. 111 of the Trusts Ordinance. He proceeded to consider the narrow interpretation put upon words in section 8 of the English Trusts Act, 1888 (51 and 52 Vict. c. 59) similar to the words in section 111 (1) (b) of the Trusts Ordinance by a number of English authorities, namely Lewin on Trusts (now the 15th edition (1950) pp. 814–5); *How v. Earl Winterton* [1896] 2 Ch. 626; *In re Bowden* [1890] 45 Ch. D. 444; *Re Gurney* [1893] 1 Ch. 590 and *Re Timmins* [1902] 1 Ch. 176; and came to the conclusion that this was not a “claim to recover trust property, or the proceeds thereof still retained by a trustee, or previously received by the trustee and converted to his use.” In the absence of fraud or fraudulent breach 10 of trust to which the Respondent was party or privy, the claim should have been brought within six years from the 28th January 1933. As the action was not instituted till the 29th January 1942, the Prescription Ordinance applied and the claim was statute-barred.

p. 97, ll. 27–36.

60. It is the submission of the Appellants that the claim of the deceased Appellant was always primarily a “claim by (any) beneficiary against a trustee founded upon (any) fraud or fraudulent breach of trust to which the trustee was party or privy” within section 111 (1) (a) of the Trusts Ordinance. The Appellants do not dispute the law laid down in the English cases cited in the judgment of the Supreme Court or their 20 general applicability to section 111 of the Trusts Ordinance. They only point out that in none of the decided cases cited was the trustee guilty of converting trust property to his own use and that in this case it was not the primary contention for the deceased Appellant, or found by the District Judge, that the Respondent had *retained* trust property. What was and is contended is that the Respondent received the sums claimed, which were the deceased Appellant’s property or at any rate the proceeds thereof, either by Alagappa, the Respondent’s agent, or personally from Alagappa, and thereafter converted them to his own use. Accordingly, in so far as the Respondent still had cash of an equivalent amount and (he did not 30 suggest that he had not) these proceeds were still retained by him. What was and is also contended is that the Respondent received trust property in the shape of the promissory note and the decree and converted them to his own use by transferring them to his agent Alagappa. These contentions, which, if valid, would defeat the plea of prescription, are not dealt with either in the English cases or in the judgment under appeal; indeed that judgment gives no reasons at all for its conclusion against contention (B) and for rejecting the District Judge’s considered opinion that the Respondent assigned and endorsed the documents to his cousin so that the amounts due on them might be collected by the Respondent 40 himself.

p. 97, l. 37—p. 99, l. 31.

61. On contention (A) the Supreme Court also reversed the decision of the learned District Judge on the grounds (1) that the burden of proof in regard to fraud had been placed by the learned District Judge wrongly on the Respondent, (2) that even with the burden so placed the Respondent had raised a reasonable doubt whether he was guilty of fraud when he assigned the decree and endorsed the note in favour of Alagappa:—

(1) The Supreme Court attributed to the District Judge error in imposing on the Respondent the burden of disproving fraud, on the strength of the passage already quoted from his judgment to 50

p. 83, ll. 3–6.

10 the effect that, the assignment and endorsement being admitted, it was for the Respondent to prove that he did so at the instance of the deceased Appellant. It is submitted that this was not so: the Respondent was setting up the affirmative case that a transaction, which unless properly authorised would be plainly fraudulent, was in fact specifically ordered to be carried out by the deceased Appellant. It is submitted that the District Judge was right in those circumstances in saying that it was for the Respondent to prove the specific order he relied on, that his approach to the evidence on this, the principal question in the case, was correct, and that his finding of fraud was not, as the Respondent contended, against the weight of evidence or contrary to law or based on suspicion or conjecture, but upon proof. It is submitted that whether the charge of fraud had to be established beyond reasonable doubt as in criminal proceedings or on a balance of probabilities as in other civil proceedings, it was so established by the evidence. p. 90, l. 5.

(2) The Supreme Court appears to have taken the view that the Respondent had raised a reasonable doubt of his guilt in three respects:— p. 98, l. 2-p. 99, l. 31.

20 (A) It had not been established that the Respondent obtained any financial advantage from these transfers to Alagappa. p. 98, l. 5.

(B) Doubt arose by reason of the relationship between Chinniah and Alagappa, the Plaintiff's own account of his instructions to the Respondent, the Plaintiff's knowledge that Alles' debt was recoverable, Chinniah's knowledge of the assignment to Alagappa and of his proceedings against Samaranayake's estate. p. 98, l. 10.

30 (C) Doubt arose by reason of the relationship between the Plaintiff and Alagappa and the Plaintiff's own account of his instructions to Alagappa and of his request to him to act as arbitrator. p. 98, l. 31.

40 62. As to (A) it could only be a matter of inference that the Respondent had derived financial advantage from the transfers to Alagappa; but it is submitted that it was an inference which the District Judge, who saw and heard the witnesses, was entitled to draw from all the evidence, particularly the unexplained payment of cash to S.S.L. on the 3rd October 1934, the very day on which Alagappa was proved to have been paid by Alles' executor, and from the Respondent's failure to produce available evidence, namely Alagappa himself and the books of S.S.L. before 1936.

As to (B) the reasoning of the judgment under appeal is, perhaps by reason of accidental omissions in the Record, inconsequential and incomplete. In the form in which it appears in the Record it can only be submitted that it shows less appreciation of the evidence on the matters apparently relied on than the judgment of the District Judge, and affords no ground for reversing his views on the arrangements and relationships between the deceased Appellant, the Respondent, Chinniah and Alagappa.

As to (c), the Appellants repeat their submission as to (B) and add that the weight to be given to these matters, as to all matters of evidence, must depend on the impression made by the witnesses on the learned District Judge who saw and heard them, and that the District Judge was in a much better position to assess the weight and value of their evidence than the learned Judges of the Supreme Court, who had not the advantage of seeing and hearing them. Unfortunately for the Respondent, the District Judge believed the deceased Appellant's denial that he instructed the Respondent to carry out the transfers to Alagappa, and that was the end of the only real defence to the allegation of fraud. 10

p. 100. 63. In accordance with the said Judgment a Decree of the Supreme Court was entered dated the 25th November 1948, whereby it was decreed that the appeal of the Respondent be allowed and judgment entered for him with costs in the Supreme Court and below.

p. 102. 64. Being aggrieved by the said Judgment and Decree of the Supreme Court dated the 25th November 1948, the deceased Appellant applied for and was granted conditional leave to appeal to the Privy Council on the p. 104. 7th June 1949, and final leave so to appeal on the 13th July 1949.

p. 109. 65. By an order of the Supreme Court dated the 17th February 1955 the Appellants were declared to be the proper persons to be substituted 20 on the Record for the deceased Appellant, who died on the 18th December 1953, and by order in Council dated the 17th March 1955 the Appellants were ordered to be so substituted and this Appeal was ordered to stand revived accordingly.

66. The Appellants humbly submit that the said Judgment and Decree of the Supreme Court of Ceylon dated the 25th November 1948 should be set aside and the decree of the District Court of Galle dated the 27th May 1946 restored for the following amongst other

## REASONS

- (1) BECAUSE by assigning the relevant promissory note 30 and decree, the property of the deceased Appellant, to Alagappa without authority the Respondent committed the tort of conversion.
- (2) BECAUSE the deceased Appellant's cause of action for the said tort was fraudulently concealed from the deceased Appellant until about February 1942 and, the proceedings being brought within about five months from that date, the Prescription Ordinance afforded no defence.
- (3) BECAUSE the Respondent, as servant or agent, of the 40 deceased Appellant, was a trustee as regards property of the deceased Appellant of which he was put in charge and as regards the proceeds of such property.



- (4) BECAUSE the deceased Appellant's claim against the Respondent as such trustee was founded upon fraud and/or fraudulent breach of trust so as to preclude the application of the Prescription Ordinance
- (5) BECAUSE the Respondent had received the proceeds of the said trust property and still retained such proceeds, or alternatively had converted the said trust property or the proceeds thereof to his own use, so as to preclude the application of the Prescription Ordinance.
- 10 (6) BECAUSE the District Judge rightly held that, when the only justification for a transaction which without justification must be fraudulent is express authority or instruction to carry out that transaction, the onus of establishing such express authority or instruction is on the person seeking to set it up.
- (7) BECAUSE the District Judge, who saw and heard the witnesses, found as a fact that no such express authority or instruction had been given by the deceased Appellant and this finding ought not to have been disturbed.
- 20 (8) BECAUSE on all substantial matters of conflict between the deceased Appellant and the Respondent the District Judge who saw and heard the witnesses accepted the evidence of the deceased Appellant and rejected the evidence of the Respondent and this finding ought not to have been disturbed.
- (9) BECAUSE the issue of fraud or innocence was peculiarly a matter to be decided by the District Judge who saw and heard the witnesses and his finding of fraud against the Respondent both in what he did and in the concealments he effected ought not to have been disturbed.
- 30 (10) BECAUSE the evidence abundantly justified the District Judge in coming to the conclusion he did on the issue of fraud.
- (11) BECAUSE there was no proper accounting by the Respondent to the deceased Appellant.
- (12) BECAUSE the discharge and release relied on by the Respondent was vitiated by his fraudulent conduct as found by the District Judge.
- 40 (13) BECAUSE the estoppel relied on by the Respondent was not established and was negated by the District Judge.
- (14) BECAUSE the cause of action arose and/or the Respondent resided within the jurisdiction of the District Court of Galle.

- (15) BECAUSE the decision of the District Judge was right and ought to be restored.
- (16) BECAUSE the decision of the Supreme Court was wrong and ought to be set aside.

STEPHEN CHAPMAN.

JOHN STEPHENSON.

### APPENDIX A.

#### AN ORDINANCE TO DEFINE AND AMEND THE LAW RELATING TO TRUSTS.

(Chapter 72, Section 111, Legislative Enactments of Ceylon,  
Vol. 2, page 261.) 10

111.—(1) In the following cases, that is to say—

- (a) in the case of any claim by any beneficiary against a trustee founded upon any fraud or fraudulent breach of trust to which the trustee was party or privy ;
- (b) in the case of any claim to recover trust property, or the proceeds thereof still retained by a trustee, or previously received by the trustee and converted to his use ; and
- (c) in the case of any claim in the interests of any charitable trust, for the recovery of any property comprised in the trust, or for the assertion of title to such property, 20

the claim shall not be held to be barred or prejudiced by any provision of the Prescription Ordinance.

(2) Save as aforesaid, all rights and privileges conferred by the Prescription Ordinance shall be enjoyed by a trustee in all actions and legal proceedings in the like manner and to the like extent as they would have been enjoyed if the trustee had not been a trustee :

Provided that in the case of any action or other proceeding by a beneficiary to recover money or other property, the period of prescription shall not begin to run against such beneficiary, unless and until the interest of such beneficiary shall be an interest in possession. 30

(3) No beneficiary as against whom there would be a good defence by virtue of this section shall derive any greater or other benefit from a judgment or order obtained by another beneficiary than he could have obtained if he had brought such action or other proceeding and this section had been pleaded.

(4) Nothing in this section shall preclude the court from giving effect to any application by a trustee for any equitable relief to which he would otherwise be entitled on any ground recognised by the court.

(5) This section shall not apply to constructive trusts, except in so far as such trusts are treated as express trusts by the law of England. 40

**APPENDIX B.****AN ORDINANCE TO AMEND THE LAW REGULATING THE PRESCRIPTION  
OF ACTIONS.**

(Chapter 55 of the Legislative Enactments of Ceylon Vol. 2 page 87).

**RELEVANT SECTIONS.**

6. No action shall be maintainable upon any deed for establishing a partnership, or upon any promissory note or bill of exchange, or upon any written promise, contract, bargain, or agreement, or other written security not falling within the description of instruments set forth in  
10 section 5, unless such action shall be brought within six years from the date of the breach of such partnership deed or of such written promise, contract, bargain, or agreement, or other written security, or from the date when such note or bill shall have become due, or of the last payment of interest thereon.

7. No action shall be maintainable for the recovery of any movable property, rent, or mesne profit, or for any money lent without written security, or for any money paid or expended by the plaintiff on account of the defendant, or for money received by defendant for the use of the plaintiff, or for money due upon an account stated, or upon any unwritten  
20 promise, contract, bargain, or agreement, unless such action shall be commenced within three years from the time after the cause of action shall have arisen.

9. No action shall be maintainable for any loss, injury, or damage, unless the same shall be commenced within two years from the time when the cause of action shall have arisen.

10. No action shall be maintainable in respect of any cause of action not hereinbefore expressly provided for, or expressly exempted from the operation of this Ordinance, unless the same shall be commenced within three years from the time when such cause of action shall have accrued.

**In the Privy Council.**

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**ON APPEAL**  
*from the Supreme Court of Ceylon.*

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BETWEEN

**NAGAMMAI ACHI, widow of  
A.T.K.P.L. Muttiah Chettiar and  
PALANIAPPA CHETTIAR son  
of V.R.M.T. Arunachalan Chettiar  
both of Sirukoodalpatti in Ramnad  
District South India (Plaintiffs)**  
substituted in place of the late  
A. T. K. P. L. MUTTIAH CHETTIAR  
pursuant to Order in Council  
dated the 17th March 1955) . *Appellants*

AND

**A.R.L. LAKSHAMANAN CHETTIAR  
of No. 42, Kaluwella Street, Galle  
(Defendant) . . . . . Respondent**

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**Case for the Appellants**

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**DARLEY, CUMBERLAND & CO.,**  
36 John Street,  
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*Appellants' Solicitors.*