Privy Council Appeal No. 5 *of* 1945

N. Sankaranarayana Pillayan and others - - - *Appellants*

v.

The Board of Commissioners for the Hindu Religious Endowments, Madras, and another - - - *Respondents*

FROM

THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 22ND JULY, 1947

Present at the Hearing:

LORD SIMONDS
LORD NORMAND
MR. M. R. JAYAKAR

[*Delivered by* MR. M. R. JAYAKAR]

This is an appeal from a decree of the High Court of Judicature at Madras dated 30th April, 1943, setting aside a decree of the District Court of Tinnevelly dated 7th March, 1941, whereby in a suit instituted for that purpose by appellants 1 to 4 a scheme framed by the first respondent Board under section 57 of the Madras Hindu Religious Endowments Act (Madras Act II of 1927) for the proper administration of the Sri Papavinasaswami Temple at Papanasam (hereinafter referred to as "the Temple"), and of certain endowments (called *Kattalais*) for special religious services therein, was substantially modified.

In explanation of the nature of the dispute in this case, it may be stated at the outset, that in the Temple (as in similar other temples in South India) there are, *inter alia*, four or five well-defined periods of daily worship, for the due performance of each of which an endowment or *Kattalai* exists, the name of the particular *Kattalai* being indicative of the period of worship with which it is associated. Thus at the Temple there is an early morning worship, a midday worship, an evening worship and a midnight worship, called *Ardhajama Kattalai*. The dispute in this case relates to the last-named *Kattalai*. As is explained in the judgment of the High Court in this appeal, the term "*Kattalai*" as applied to Temple endowments in Southern India signifies a special endowment for certain specific religious services in the Temple. In this sense the word "*Kattalai*" is used in contra-distinction to the endowment designed generally for the upkeep and maintenance of the Temple itself. In the case of some important temples the sources of their income are classified into distinct endowments according to their importance and each endowment is placed under a special trustee and specific items of expenditure are assigned to it as legitimate charges to be paid therefrom. Each of such endowments is called a "*Kattalai*", and the trustee who administers it is called a "*Kattalaigar*" (see *Vythilinga Pandara Sannadhi* v. *Somasundara Mudaliar*, I.L.R. 17 Mad. 199 at 200).

The Temple in this case is an ancient one and of great repute. Except for a small annual allowance of Rs.1,600 from the Government and a few sites in which there are some shops from which a small rent is derived, and equally small collections from worshippers, there are no properties belonging to the Temple. The worship is conducted from the income derived from the special endowments known as *Kattalais*. The Temple has a general trustee (present respondent No. 2) but, in addition,

each of the said *Kattalais* is in the charge of a special trustee or trustees. The midnight *Kattalai* relates to ceremonials connected with bathing, clothing and feeding the image previous to its retirement for the night.

The properties of the said midnight worship consist of both *inam* (rent free) and *ryotwari* or *ayan* (assessed) lands, situated in the Ambasamudram Taluq of the Tinnevelly District in the Madras Province; and the income thereof is, and has been, applied towards meeting the expenses of the said midnight worship and of other services in the Temple. After meeting all such expenses, however, there remains a surplus, which is claimed by the appellants (plaintiffs) for their own benefit. The respondents say that this surplus is part of the religious endowment and the appellants have no beneficial interest in it.

The appellants claim that, as the heirs and successors of the original donors, who founded the said endowment, they are entitled to the surplus left over from year to year; there was never any absolute dedication of the properties and, in accordance with long-established usage, the expenses of the midnight service are to be incurred according to a fixed scale, and that these expenses only are to be defrayed out of the income of the said properties, the surplus remaining in any particular year being payable to such members of their family as are then in management of the endowment. They contend that they are the owners of the suit properties, which are subject only to a charge in favour of the *Kattalai* for the performance of the worship according to the prescribed scale, and that, there being no general dedication, they are entitled to appropriate the surplus income from the suit properties after performing the religious services in accordance with the prescribed scale.

The case of the first respondent (first defendant) is that the midnight *Kattalai* was founded by the Carnatic Rajas (and not, as claimed by the appellants, by their ancestors) that the entire properties and the income thereof were absolutely dedicated by the said Rajas mainly for the purposes of the midnight worship, any surplus to be utilised for other purposes connected with the Temple; and that the appellants who, admittedly, have managed the said properties hold (as their predecessors must be presumed to have done) the income in trust for the due fulfilment of the said purposes.

This being the true position, the first respondent claims that it has statutory power to regulate the administration of the said endowment under the Madras Religious Endowment Act (Madras Act II of 1927) (hereinafter referred to as " the Act "), which was enacted to provide, *inter alia*, for the better administration and government of certain Hindu religious endowments. The only sections of the Act which are material for the purposes of this appeal are as follows.

Section 10 provides for the constitution of a Board of Commissioners for Hindu religious endowments in the Province of Madras; and section 18 deals with the general powers of the Board, including a general superintendence of all religious endowment within the territorial jurisdiction of the Board which has power to do all things which are reasonable and necessary to ensure that the religious endowments are properly maintained and administered and the income thereof duly appropriated to the purposes for which they were founded.

Section 57 (1) of the Act, read with section 49, deals with the power of the said Board to settle a scheme for the endowment of " non-excepted " temples, such as the Temple in this appeal is. By section 9, clause (5), of the Act, an " excepted " temple is defined as a temple the right of succession to the office of trustee or the offices of all the trustees (where there are more trustees than one) whereof has been hereditary, or the succession to the trusteeship whereof has been specially provided for by the founder.

The power to settle a scheme after consulting, in the manner prescribed in the Act, the trustee or committee, if any, and the persons having interest, is reposed in the Board by section 57 (1) of the Act, which also mentions the several provisions which the scheme may contain for the proper administration of the endowment.

Every order of the Board has to be published in the manner prescribed in the Act, and, on such publication, the trustee or any person interested may, within six months of the date of such publication, institute a suit in the Court to modify or set aside such order. Subject to the result of such suit, every order of the Board shall be final and binding on the committee, the trustee and all persons having interest.

An enquiry for the settlement of a scheme for the Temple, under the Act, was first initiated in 1928 by the Board of Commissioners (now respondent No. 1), but a final decision by the said Board was deferred until the decision in a suit (O.S. No. 15 of 1929) relating to the trusteeship of the Temple was arrived at. The last-mentioned suit was one in which the plaintiff claimed that he was the sole hereditary trustee of the Temple and that the Board could not therefore interfere with his management thereof or with its *Kattalais*. The suit, which was finally disposed of by the High Court of Madras on appeal, was unsuccessful throughout, and it decided finally that the Temple was not an " excepted " Temple within the Act. The said enquiry was thereupon continued and ended on 7th July, 1937, when, by its order of that date, the Board, after hearing all parties interested and giving due consideration to all the relevant evidence, settled a scheme for the due administration of the Temple, including its *Kattalais*.

It is unnecessary to refer to the clauses of the scheme except clauses 6 to 10, to which particular objection was taken by the appellants. These clauses relate to the various *Kattalais* of the Temple including the mid-night service and provide that the trustee of the Temple shall be an *ex-officio* co-trustee of each of the *Kattalai* endowments attached to the Temple, and that a budget of the several *Kattalais* and a consolidated budget of the Temple shall be submitted to the trustee of the Temple. Further provision is made for seeing that the *Kattalais* are performed properly according to the prescribed scale and the budget sanctioned, and, if the *Kattalai* trustee fails to perform the *Kattalais*, the Temple trustee shall perform the same and debit the cost to the account of the *Kattalai*: clause 9 provides that the *Kattalai* trustees shall keep regular accounts supported by voucher, and clause 10 places restrictions upon the right of the *Kattalai* trustees to lease out the lands.

Other provisions of a like nature follow.

Feeling aggrieved by these provisions, the appellants instituted, on 5th January, 1938, in the Court of the District Judge of Tinnevelly, a suit against respondent No. 1 (defendant 1, the Board of Commissioners, principal defendant), defendant 2, the predecessor of respondent 2 (the general trustee of the Temple), defendant 3, the Tenevelly Circle Temple committee, later represented by defendant 1; defendant 4 and defendant 5 were in the nature of *pro formâ* defendants, and they, later, made common cause with the plaintiffs; defendant 4 is now represented by appellant 6, and defendant 5 is now appellant 5.

Objection was raised to the scheme on the ground that it was framed upon the erroneous view that the properties of the said *Kattalai* had been absolutely dedicated to the Temple. The endowment, it was contended, consisted merely of a charge on the properties and the Board had therefore no power to frame a scheme in respect of it. Clauses 6 to 10 of the scheme were unnecessary and also derogatory to the prestige and self-respect of the plaintiffs and their family who had founded the *Kattalai*. The scheme relegated the *Kattalai* trustees to a very subordinate position and imposed unnecessary restrictions on their power of management of the properties.

There were other objections raised which it is unnecessary to notice in detail. The plaintiffs, therefore, prayed, *inter alia*, for a modification of the said scheme by deleting therefrom clauses 6 to 10, and inserting therein a specific clause recognising the plaintiffs' right (and that of defendants 4 and 5) to the balance that may remain out of the income after meeting the expenses of the said *Kattalai*, and, in any event, by

recognising the plaintiffs' right (and that of defendants 4 and 5) to be the sole trustees thereof.

By its written statement, defendant No. 1 denied the plaintiffs' allegations as to the history, nature and usage of the endowments. In particular, the defendant Board denied that the *Kattalai* was founded by the plaintiffs' family and pointed out that the plaintiffs had not produced any written grant relating to the same; and, in the absence of such a grant, the defendant was entitled to rely on the documents relating to *inam* proceedings, *inam* title deeds and entries in the settlement registers and *pattas*, and that, on the proper consideration of these and other documents, it would be found that the endowments of the *Kattalai* had been granted absolutely and that the plaintiffs and their ancestors had held the properties in trust for the institution; that the plaintiffs were not entitled to appropriate the surplus for their use; that such right had never been recognised in any proceeding which was binding on the institution; and that the plaintiffs' ancestors have only been acting as the managers or supervisors of the *Kattalai*.

As for the scheme, the defendant stated that, before framing it, it had to satisfy itself as to what properties were to be governed by the scheme and that defendant, after considering all the materials placed before it and after hearing the parties and their Vakils, decided that the *Kattalais* of the Temple, including the suit *Kattalai*, were endowments made to the Temple by the Carnatic Rajas for the benefit of the Temple in regard to each of the periods of daily worship.

Other defences were raised which it is unnecessary to notice in detail.

Defendant No. 2, the general trustee of the Temple, raised grounds similar to those set out in the written statement of defendant No. 1, and denied the plaintiffs' claim.

Defendant No. 3 (now represented by respondent No. 1, under whose supervision it then was) filed a memorandum practically supporting the decision taken by defendant 1.

Defendants 4 and 5, being members of the same family as the plaintiffs, supported their case.

Ten issues were raised, of which the only material ones requiring consideration are Issue (5) " whether the endowment consists only of the amount of the expenses required for conducting the *Kattalai* in conformity with the recognised scale ", and (8) " whether the entire properties form the endowment or whether the endowment consists merely of a charge on the income of the properties for meeting the expenses of the *Kattalai* according to the fixed scale ".

By a judgment dated 7th March, 1941, the learned District Judge ordered the said scheme to be modified. Clause 10, stated above, was ordered to be deleted, and the words " so far as it relates to the *Kattalai* " were added at the end of clause 9.

A decree in accordance with the judgment was drawn up on 7th March, 1941, and from the said decree defendants 1 and 2 (the present respondents) appealed to the High Court of Judicature at Madras. The appeal was heard by a Bench consisting of Somayya and Horwill, JJ., who, by their judgment dated 30th April, 1943, reversed the decree of the District Court and dismissed the plaintiffs' suit with costs throughout.

In support of their respective cases in the Courts in India, the parties, in the absence of any deed of endowment or grant or any other similar document supporting the plaintiffs' claims, relied mainly upon certain documentary evidence, upon the proper appraisal of which, as upon the correct inferences to be drawn therefrom, depends the decision of the main points of this case. In addition to documentary evidence, the plaintiffs' case was sought to be supported by his own evidence and that of his local agent. This oral evidence has not been regarded as of much consequence.

Their Lordships feel relieved of the necessity of entering on a detailed consideration of the evidence as the High Court has, in a very careful

and elaborate judgment, fully reviewed it, and their Lordships find themselves in complete agreement with the conclusions at which the High Court arrived, and also with the manner in which those conclusions were reached. Their Lordships therefore will content themselves with reviewing only some of the important evidence which was considered by the High Court.

As there was no deed or grant or any document throwing light on the nature or terms of the endowment, the High Court, in their Lordships' opinion, was justified in relying upon other documentary evidence for the purpose of determining what the true nature of the endowment was. Such documentary evidence consisted, *inter alia*, of *inam* registers, title deeds, statements in survey and settlement registers, *pattas* and orders of various revenue authorities to their subordinates in connection with the endowment in question. As for the *inam* title deeds, they followed the *inam* enquiry of 1864, and were issued by the Government to the midnight *Kattalai*, and these have not been printed. It appears, however, that four title deeds (Nos. 72, 121, 122 and 257) were issued by the Government in accordance with the recommendation of the Inam Commission.

Their Lordships' attention was called to these title deeds of the years of 1864 and 1865 and the words occurring therein make it clear that they were all issued " to the managers for the time being of the *Ardhajama* (midnight) *Kattalai* in the Pagoda of the Temple ". These managers were the ancestors of the appellants and they accepted these title deeds. Besides, certified copies were in evidence of the statements made before the Inam Commissioner by the ancestors of the appellants (Exhibits XVI and XVI (a)). The originals of these statements were signed by them. Their Lordships' attention was called to the several entries under the different columns of these exhibits, and their Lordships are in complete agreement with the High Court's interpretation of these documents and several others of a similar nature.

There is not the slightest doubt, in their Lordships' opinion, that all these *inams* are grants made to the *Kattalai* and described as " *Devadayam* " (gift to God). There is no indication that any claim to the surplus was advanced at any time. The predecessors in title of the appellants described themselves as persons who had the " *vicharanai* ", i.e., supervision, or management of the *Kattalai*. The entries in the *inam* statements and fair registers likewise make clear that these endowments were made by Carnatic Rajas and not by the ancestors of the appellants. The original *Sanad*, if in existence, must therefore be with the appellants' family.

The plaint does not state how the appellants became entitled to the surplus, whether under the original grant or under any subsequent arrangement. The only relevant statement is that their family acquired *inams* of various kinds from the rulers of the Carnatic, and have been appropriating the surplus for forty or fifty years. If the documents mentioned above reveal the true nature of the grant, the identity of the donors and the donee and the capacity in which the appellants' ancestors possessed and managed the endowment, the mere appropriation of the surplus by the appellants or their ancestors could hardly give them a title to the beneficial interest in the surplus. They were, on their own admission, solemnly recorded in documents in the course of a public enquiry by Government, as mere supervisors or managers of the endowment. They were therefore in a fiduciary position, with the obligation to employ the income for the purposes of the endowment. They could claim no adverse title against the endowment—in fact, no such claim has been made—and it is obvious that if they utilised the surplus for their own benefit and apart from the purposes of the endowment, they were guilty, as the High Court rightly observes, of a misappropriation of the funds of the trust.

It was argued before their Lordships, relying on certain observations of this Board in the case of *Vidya Varuthi Thirtha* v. *Balusami Ayyar* (L.R. 48 I.A. 302, 326, 327), that *inam* proceedings do not create any

dedication, they are instituted simply with the object of investigating titles to hold lands revenue-free as belonging to valid endowments. It is further urged that the gifts in this case were made long before the *inam* proceedings; the purpose of the gifts must therefore, it is urged, be gathered from established usage and practice. But the observations of this Board in that case have to be read with what was stated by their Lordships in *Arunachellam Chetty* v. *Venkatachalapathi Guruswamigal* (L.R. 46 I.A. 204, 217, 218).

That case, like the present one, dealt with a religious institution and the usages and customs thereof and with reference thereto their Lordships stated that they attached great importance to the *inam* register. " It is true," they observed, " that the making of this register was for the ultimate purpose of determining whether or not the lands were tax free, but it must not be forgotten that the preparation of this register was a great act of state and its preparation and contents were the subject of much consideration under elaborately detailed reports and minutes. It is to be remembered that the Inam Commissioners, through their officials, made enquiry on the spot, heard evidence and examined documents, and, with regard to each individual property, the Government was put in possession not only of the conclusion come to as to whether the land was tax free but of a statement of the history and tenure of the property itself. While their Lordships do not doubt that such a report would not displace actual and authentic evidence in individual cases, yet the Board, when such is not available (as in the present appeal), cannot fail to attach the utmost importance, as part of the history of the property, to the information set forth in the *inam* register.".

It is true that when the terms of the grant are available, the *inam* title deeds are not evidence as to the effect of the grant, which must depend upon the language used in the instrument and the circumstances of the grant itself; the deeds in such a case of the Inam Commissioners confer no higher title than was originally granted (see *Secretary of State for India in Council* v. *Srinivasa Chariar,* L.R. 48 I.A. 56, 67).

The question arose in a recent case before this Board with reference to a Madras *inam* (see *Secretary of State for India* v. *Srimath Vidhya Sri Varada Thirta Swamigal,* L.R. 69 I.A. 22, 40), where it was held that the title deeds and the entries in the *inam* register are evidence of the true intent and effect of the transaction and of the character of the right which was being recognised and continued. The entries in the *inam* register and the description of the *inamdar* therein were accepted as indications of the nature and the quantum of the right and the interest created in the land.

The High Court has bestowed detailed consideration on the case of the *Ryotwari* lands or *Ayan* (assessed lands), the other kind of property belonging to the said *Kattalai*. The main evidence in this behalf was furnished by the *pattas* which were issued by the Government from time to time, and the entries in the settlement registers of various years. After a careful consideration of the several documents, the High Court came to the conclusion, with which their Lordships agree, that the *Pattadar* in all these documents is described as *Papavinasaswami Ardhajama Kattalai Vagai Nelliapappa Pillayan.* In other words, the *Pattadar* is the *Kattalai* and it is described as of the Temple and the appellants' ancestors are mentioned as " *Vagai* " (agents) thereof. These documents therefore clearly show that the *Ryotwari* lands all stand registered in the name of the endowment " *Ardhajama Kattalai* in the Papavinasaswami Temple ". The word " *Vagai* ", which occurs in connection with the names of the appellants' ancestors, means " through " or " represented by ". It is equally clear, as the High Court observes, that if they (appellants' ancestors) had any beneficial interest in the property, or if the properties were given to them subject to the obligation of providing for the particular midnight worship in the suit Temple, they would have been described as the " *Pattadars* ".

The High Court rejected, in their Lordships' opinion rightly, the suggestion that the words " *Papavinasaswami Ardhajama Kattalai* " were

a mere description of the appellants' ancestors. Their Lordships accept the conclusion at which the High Court arrived, that the *Pattadar* in these documents is the Papavinasaswami Temple *Ardhajama Kattalai* represented by the appellants' ancestors; and, as a *Ryotwari* proprietor is entitled to all the interest in the lands, the conclusion is irresistible that all such interests passed to the endowment.

The last piece of evidence which the High Court considered was the earlier documents relating to the history of this institution. These relate to the last century and are in the nature of orders directed by higher revenue officials to their subordinates in connection with the management of this endowment.

It is enough to refer to two out of the several exhibits considered by the High Court: they are illustrative of the rest. Exhibit I (page 5 of part II) relates to the proceedings of the collector at as early a date as 6th January, 1827. In this document, the rent-free lands are mentioned as " having been granted for the *Kattalais* attached to the *Devasthanam* Temples and for other sundry charities " specified in the document. A complaint is referred to that the charities were not properly conducted by those who were in management of them, and in that connection an order is given that the respective charity should be properly and strictly conducted; proper accounts thereof should be furnished to the Government, and if it was not conducted properly it would be taken up by the Government and conducted by it, and that supervision should be exercised to see that the charity was properly conducted and carried out.

Two years later, in 1829, a petition (Exhibit G) was submitted by one of the ancestors of the appellants, in which a claim was made in several places for conducting the " management of the endowment ". One statement of the ancestors is important, that " my own paternal grandfather was conducting the *Vicharanai* (management) of the said *Kattalai* and it was conducted by several others after him ". On the basis of this ancestral right, the petitioner claimed that he was entitled to the management of the aforesaid *Kattalai*, and relied upon two previous decisions in his favour as being the person who had a right to the management of the *Kattalai*. These important documents, which had come into existence before the *inam* proceedings started in the sixties of the last century, show that even at that early period the plaintiffs' ancestors claimed only to be the managers of the endowment, and no claim was made to the surplus of its income.

The peculiar feature of this case is that throughout the long and varied history of the endowment no claim was ever made to a beneficial enjoyment of the surplus income though several opportunities arose for making such a claim. Counsel for the appellant had to admit this fact, but he drew attention to one solitary exhibit in the case, Exhibit CC, dated 10th December, 1879 (part II, page 57), and it was urged that under that document the several members of the appellant's family effected a division and described themselves as owners of the portions which they respectively obtained. But, as the High Court observes, this document was in the nature of a compromise of a dispute between the two sections of the family in which the trust was not represented. The dispute itself was about entering the names of the plaintiffs in that suit in the public registers. The expression " owner " does not therefore necessarily mean that the private ownership of the parties in the properties of the endowment was recognised, and that expression, in the light of the surrounding circumstances, might well refer to the right of management, which privilege was highly valued by the member of the family, as the other documents indicate.

The last three lines of this document, however, are significant; the properties to which the compromise related are mentioned as " set apart for the *Ardhajama* (midnight) *Kattalai* annual celebrations and monthly celebrations in the Temple of the deity, *Papavine Swarar* ". The High Court therefore rightly rejected this document as supporting the plaintiffs' claim.

The entire case of the plaintiffs is built on the assumption that there is a fixed unalterable scale of expenditure for the suit institution, that it left a surplus which, from the beginning, was being appropriated by the trustee. But the evidence proves that, though the institution for brevity was known as *Ardhajama Kattalai*, from the income of the properties, articles of worship were provided not only for the midnight worship but also for various weekly, fortnightly, monthly and annual celebrations (see, for example, Exhibit JJ). Further, there is evidence (Exhibits XII and XIII) which shows that the expenses relating to the repairs of the compound wall, the tank attached to the Temple, the road leading to it, and other necessary repairs, were also made from the surplus income of the *Kattalai*. It is obvious that the amount to be spent on such repairs could not be fixed for all time: it would vary from time to time according to the exigencies of the situation. With a growing income, the amount to be spent on the various festivals might also be increased.

There is therefore no basis for the argument that the objects of the Trust cannot in any case exhaust the entire income. There is evidence to show that the surplus income was occasionally used for new and special charities in the *Kattalai* (see Exhibit O), that the income of the *Kattalai* every year was to be collected and, after meeting the expenses on the fixed scale, the remaining amount was ordered to be kept in the treasury of the Taluq.

The High Court concludes its judgment by a reference to some of its previous unreported decisions, in which it appears that a similar question arose with respect to another *Kattalai* in this very Temple. The facts were very similar: a scheme was framed by the Board on the footing, as in the present case, that the persons in charge of the *Kattalais* had no beneficial interest in the surplus income. Suits were filed by the *Kattalaidars*. The same District Judge held, as in this case, that the plaintiffs were entitled to the beneficial interest in the surplus. The matter came up before the High Court and there was the same kind of evidence as in this case: *inam* title deeds, registers, *pattas* about *Ryotwari* lands. The family had been appropriating the surplus income for a long time. On this evidence, the High Court came to the conclusion that the *Kattalaidars* had not proved a right to the surplus income. Similar questions appear to have arisen in various other suits between the *Archaks* (officiating priests) and the trustees of the Temples, with similar results.

Their Lordships agree with the conclusions which the High Court arrives at after a consideration of all these cases that where the grant is to the deity and the income is earmarked for the services for which the special endowment is created, if there is a surplus which cannot be spent on these services, it would be a case for the application of the *cy-près* doctrine, but a special trustee cannot claim the surplus.

The finding of the High Court that the charity in question was founded by the Carnatic Rajas, and not by the ancestors of the appellants, considerably weakened their case, for, in the face of this finding, it could not be urged that the present case fell within that class of cases where it would be considered proper and in consonance with the principles of Hindu law, that in conformity with the wishes of pious donors their heirs should be regarded as the owners of the property to enable them to maintain the family prestige by conducting the charity. A dedication is not invalidated by reason of the fact that the members of the settlor's family are nominated as *shebaits* or managers and given reasonable remuneration out of the income of the endowment, as also other rights like residence in the dedicated property. But there must be clear words to this effect in the terms of the foundation. The facts proved or admitted in this case clearly show that it does not fall within that class of cases.

A few cases were cited in the course of the appellants' argument, of which only two appear to require consideration.

Ramanathan Chetti v. *Murugappa Chetti* (L.R. 33 I.A. 139, 143) was a case where an unbroken period of nineteen years' usage was in pursuance of an arrangement between members of a family: the existence and legality of the arrangement were denied. This Board held that the evidence of nineteen years' continuous usage was conclusive evidence of the fact of such arrangement and that the arrangement was not improper and could not be avoided except by proper proceedings instituted for that purpose. In the present case no such arrangement is in evidence with which the possession or enjoyment of the appellants' family could be said to have commenced. The only arrangement mentioned is the compromise between the members of the family to which the endowment was not a party.

The other case relied upon was *Mahammad Mazaffar-al-Musavi* v. *Jabeda Khatun* (L.R. 57 I.A. 125, 130), where the rule was affirmed relating to the presumption of a lawful origin in support of proprietary rights long and quietly enjoyed as it was explained in an earlier case by Lord Buckmaster in the following terms: "When every party to the original transaction has passed away and it becomes completely impossible to ascertain what were the circumstances which caused the original grant to be made, it is only following the policy, which the Courts always adopt, of securing, as far as possible, quiet possession, to people, who are in apparent lawful holding of an estate, to assume that the grant was lawfully and not unlawfully made."

But it was explained in the same case that this rule is applicable where there is absence or failure of actual evidence. The presumption, it was stated, of an origin in some lawful title which the Courts have so often readily made in order to support possessory rights long and quietly enjoyed arises where no actual proof of title is forthcoming, and the rule has to be resorted to because of the failure of actual evidence. In the present case, where there is ample and convincing proof of the nature of the grant, the object of the endowment and the capacity of the persons claiming the user and enjoyment, the rule can hardly have any application.

A supplementary argument was advanced on behalf of the appellant that the grant in this case properly interpreted was only of the *Melvaram* (the landlord's share of the produce) and not of *Kudivaram* (the tenant's interest in the produce). Reference was made to the case of *Upadrashta Venkata Sastrulu* v. *Divi Seetharamudu* (L.R. 46 I.A. 123), where the distinction between these two rights has been explained by this Board.

With reference to this argument, it is sufficient to observe that this distinction is not material in this case, as was admitted by Counsel in the main argument of the appellants. The chief question was whether the endowment consisted only of the amount of the expenses required for conducting the *Kattalai* in conformity with the recognised scale, being merely a charge on the income for meeting such expenses, or whether the entirety of the property formed the endowment.

As the High Court has held, and the decision is approved by this Board, that the endowment did not consist merely of a charge on the income of the property, it is unnecessary to pursue the point further, for, whatever was the subject matter of the endowment, the whole of it was intended for the benefit of the endowment, including any surplus which might on occasions arise, and the managers had no beneficial interest in such surplus.

For all these reasons, their Lordships affirm the decision and decree of the High Court, and will humbly advise His Majesty that this appeal be dismissed. The appellants will pay the costs of the appeal.

(35341) Wt. 8013—20 160 8/47 D.L. G. 338

In the Privy Council

N. SANKARANARAYANA PILLAYAN
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THE BOARD OF COMMISSIONERS FOR
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