PC GLR 2

16, 1957

No. 16 of 1955.

In the Privy Council.

ON APPEAL

FROM THE SUPREME COURT OF CEYLON

BETWEEN

THE ATTORNEY GENERAL OF CEYLON . . . . . *Appellant*

AND

1. V. RAMASWAMI IYENGAR
2. K. R. SUBRAMANIA IYER,
Administrators of the Estate in Ceylon of Rm. Ar. Ar. Rm. Arunachalam Chettiar, deceased . . . . . *Respondents.*

RECORD OF PROCEEDINGS

T. L. WILSON & CO.,
6 WESTMINSTER PALACE GARDENS,
LONDON, S.W.1,
Solicitors for the Appellant.

LEE & PEMBERTONS,
46 LINCOLN'S INN FIELDS,
LONDON, W.C.2,
Solicitors for the Respondents.

The Solicitors' Law Stationery Society, Limited, Law and Parliamentary Printers, Abbey House, S.W.1
WL5867–23238

~~G11 6.2~~

No. 16 of 1955.

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THE ATTORNEY-GENERAL OF CEYLON . . . . *Appellant*

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RECORD OF PROCEEDINGS

INDEX OF REFERENCE

EXHIBITS

DOCUMENTS NOT TRANSMITTED

EXHIBIT MARK	DESCRIPTION OF DOCUMENT	DATE
A 4	Decree in Case No. O.S. 93 of 1938 Dewakottai Sub-Court ..	17th February 1947
A 5	Petition filed in Case No. C.R. 2490 and 33 of 1941–42 in the District Court of Bangalore Division	17th October 1941
A20	Letter from Assessor, Estate Duty, to Wilson & Kadirgamar ..	2nd June 1941
A24	Letter from Commissioner of Estate Duty to Wilson & Kadirgamar	12th May 1942
A25	Letter from Wilson & Kadirgamar to the Commissioner of Estate Duty	22nd May 1942
A26	Letter from Wilson & Kadirgamar to the Commissioner of Estate Duty	1st July 1942
A27	Letter from the Commissioner of Estate Duty to Wilson and Kadirgamar	6th July 1942
A28	Letter from Wilson & Kadirgamar to the Commissioner of Estate Duty	25th July 1942
A29	Letter from the Commissioner of Estate Duty to Wilson and Kadirgamar	14th August 1942
A30	Letter from the Commissioner of Estate Duty to Wilson and Kadirgamar	22nd August 1942
A31	Letter from Wilson & Kadirgamar to the Commissioner of Estate Duty	18th September 1942
A32	Letter from the Commissioner of Estate Duty to Wilson and Kadirgamar	1st October 1942
A33	Letter from Wilson & Kadirgamar to the Commissioner of Estate Duty	5th October 1942
A34	Letter from Commissioner of Estate Duty to Wilson and Kadirgamar	18th November 1942
A35	Letter from Wilson & Kadirgamar to the Commissioner of Estate Duty	16th December 1942
A36	Letter from the Administrators to the Commissioner of Income Tax	30th December 1941
A37	Letter from the Administrators to the Assessor	11th December 1942
A38	Letter from the Administrators to the Commissioner of Income Tax	9th February 1944

No. 16 of 1955.

In the Privy Council.

ON APPEAL

FROM THE SUPREME COURT OF CEYLON.

BETWEEN

THE ATTORNEY-GENERAL OF CEYLON . *Appellant*

AND

1. V. RAMASWAMI IYENGAR
2. K. R. SUBRAMANIA IYER,
Administrators of the Estate in Ceylon of RM. AR. AR. RM. ARUNACHALAM CHETTIAR, deceased . . . . . *Respondents.*

RECORD OF PROCEEDINGS

In the District Court, Colombo.

No. 1.
Journal Entries, 16th May 1942 to 30th October 1953.

No. 1.

JOURNAL ENTRIES.

Special No. 37 T.

JOURNAL

(1)
16.5.42

* * * * * torn

(2)
22.5.42

* * * * * torn

(3)
2.7.42

* * * * * torn
* * * * *

(8)
10.9.43

Messrs. Wilson & Kadirgamar for Appellant.

Mr. John Wilson for Respondent.

In the District Court, Colombo.

No. 1. Journal Entries, 16th May 1942 to 30th October 1953, *continued.*

Case called to refix date for inquiry.

Mr. Adv. Peri Sundram for Appellant.

Mr. Wilson for Respondent.

I am informed that there is another case from this Court pending in appeal where questions of Hindu Law arise for decision. The decision of the Supreme Court in that case will be helpful in the determination of similar points arising in this appeal. The parties move therefore that this case be called in a few months time when it is expected that the appeal in the Supreme Court will be decided.

Of consent call 27th January . . . 10

(9)

27.1.44

* * * * * torn

(10)

4.5.44

* * * * *

(11)

30.5.44

* * * * *

(12)

3.10.44

Messrs. Wilson & Kadirgamar for Appellant. 20

Mr. Wilson for Respondent.

Inquiry.

Mr. Adv. Nadarajah with Mr. Adv. Peri Sunderam for the Appellant.

Mr. J. Wilson for the Respondent.

Mr. Wilson applies for another date as Crown Counsel who was to appear in this case is engaged on other public duties and is unable to appear today.

Mr. Nadarajah has no objection.

Hearing is refixed for 26th 27th and 28th February 1945.

(Intld.) . . . 30

* * * * torn

(15)

25.1.45

Case called—with order.

Mr. Adv. Peri Sunderam for Appellant.

Mr. John Wilson for Respondent.

Several days will be required for the hearing of this appeal. Mr. John Wilson for the Crown informs me that there is no urgency in this matter. The Appellants have filed a list of witnesses including the Advocate-General of Madras and three other Advocates of Madras but summons has not yet been taken out on them. I think it is preferable that several consecutive dates of hearing should be fixed for this and the connected appeal (No. 38/Spl). Both sides leave it to me to fix dates suitable to my trial roll. I fix hearing for 15th, 18th, 19th, 20th and 22nd June 1945.

(Intld.) . . . SS.

(16)

7.5.45

As the 15th, 18th, 19th, 20th and 22nd June 1945 for which dates the case is fixed for inquiry will not suit the Solicitor-General, Mr. John Wilson for Respdt moves that Court be pleased to refix inquiry for 5 other dates suitable to Court. The case may be called on 15.6.45 or earlier for fresh dates to be fixed. Proctors for Petitioner consent.

Call on 15.6.45.

(Intld.) . . . A.D.J.

(17)

15.6.45

Messrs. Wilson and Kadirgamar for Appellant.

Mr. John Wilson for Respondent.

Vide (16)—Case called to fix fresh dates for the inquiry.

On motion of Proctor for Appellant that the case be called after the August Court vacation to enable the Court to fix a date of inquiry. Proctor for Respondent consents.

Call on 24.8.

(Intld.) . . .

(18)

24.8.45

Mr. Adv. P. Sunderam instructed by Messrs. Wilson & Kadirgamar for Appellant.

Mr. J. Wilson for Respondent.

Case called to fix a date of inquiry.

Mr. Sunderam moves that the case be called on another date to refix date of inquiry.

Call on 18.10.45 to refix date of inquiry.

(Sgd.) . . . A.D.J.

(19)

18.10.45

Mr. Adv. Peri Sunderam instructed by Messrs. Wilson & Kadirgamar for Appellant.

In the District Court, Colombo.

No. 1. Journal Entries, 16th May 1942 to 30th October 1953, *continued.*

Mr. J. Wilson for Respondent.

Case called—vide order at (18) to refix date of inquiry.

Inquiry 12th & 13th March 1946.

(Intld.) . . .

(20)

12.3.46

Messrs. Wilson & Kadirgamar for Appellant.

Mr. J. Wilson for Respondent.

Inquiry.

Vide order, in 38 (Special). 10

Call 3.4.46 to refix date of inquiry.

(Sgd.) . . . A.D.J.

(21)

3.4.46

Case called to fix a date of inquiry.

Inquiry 28th and 30th August 1946.

(Intld.) . . .

(22)

18.7.46

Messrs. Wilson & Kadirgamar for Appellants move that the inquiry 20 fixed for 28 & 30th August be postponed to some other date as Senior Counsel Mr. N. Nadarajah, K.C., is engaged in the Delimitation Commission.

Inquiry refixed for 1 & 4.11.

(Intld.) . . .

(23)

12.9.46

Proctors for Appellant and Respondent move for a postponement and move to call case to fix another inquiry date as these dates do not suit Counsel. 30

Allowed. Call 1.11 to fix date.

(Intld.) . . .

(24)

1.11.46

M/s. Wilson & Kadirgamar for Appellant.

Mr. J. Wilson for Respondent.

Case called to fix date for inquiry.

Inquiry 28 & 29th April 1947.

(Intld.) . . .

(25)
1.4.47

The Attorney-General moves that Court do grant leave to revoke the proxy granted by him to Mr. John Wilson.

Mr. Wilson consents.

Allowed.

(Intld.) . . . A.D.J.

(26)

2.4.47

Mr. Trevor de Saram tenders for filing formal revocation (26A) together with fresh proxy 26B in his favour.

File.

(Intld.) . . . A.D.J.

(27)

2.4.47

For reasons given in motion, Proctor for Petitioners with consent of Proctor for Respondent moves that the inquiry fixed for 28th & 29th April 1947 be postponed.

Allowed, postponed for 9.9.47.

(Sgd.) . . . A.D.J.

(28)

8.8.47

M/s. Wilson & Kadirgamar for Petitioners move that the inquiry fixed for 9.9.47 be postponed to some other date convenient to Court subsequent to 30.9.47 as Mr. Chelvanayakam is a candidate in the forthcoming elections. Proctor for Respondent has no objection.

Call on 30.9.47.

(Intld.) . . . A.D.J.

(29)

Respondent's proctor's bill is taxed, at Rs.364/29.

(Intld.) . . .

21.8.

(30)

30.9.47

Messrs. Wilson & Kadirgamar for Appellant.

Mr. J. Wilson for Respondent.

Case called—vide order at (28) for fresh date of inquiry.

Inquiry for 8 & 9th March 1948.

(Intld). . . .

In the District Court, Colombo.

No. 1. Journal Entries, 16th May 1942 to 30th October 1953, *continued.*

(31)

26.2.48

Messrs. Wilson & Kadirgamar for Appellants move to file Appellants' additional list of witnesses and documents and also move for summons. Proctor for Respondent received notice with copy.

Re 1 and 2 obtain.

Certified copies. Subject to this allowed.

(Intld.) . . . A.D.J.

(32)

26.2.48

Messrs. Wilson & Kadirgamar for Appellants, move to file Appellants' further additional list of witnesses and move for summons. The proctor for Respondent received notice with copy.

Allowed.

(Intld.) . . . A.D.J.

(33)

2.3.48

SS. to witnesses in (32) (Respt.) issued to W.P.

(Intld.) . . .

(34)

5.3.48

Proctors for Appellants move to amend para. (c) of the prayer of the petition by adding " the sum of Rs.100,000/- in fixed deposit in the Bank of Mysore and the sum of Rs.40,120/25 due by the firm of T.N.V. of Negapatam and " after the words " to wit " in para. (c) of the prayer of the petition to be in conformity with paragraph (12) (b) of the petition, which words due to an oversight were omitted from the said paragraph (c) of the prayer of the petition.

Proctor for Respondent received notice.

Mention on 8.3.48.

(Intld.) . . . A.D.J.

(35)

8.3.48

Messrs. Wilson and Kadirgamar for Appellants.

Mr. T. de Saram for Respondent.

1. Inquiry.

2. Vide (34) and order thereon.

Vide proceedings—adjourned for 9.3.48.

(Intld.) . . . A.D.J.

Proxy filed.

(Intld.) . . .

1.6.

(36)

9.3.48

Mr. T. de Saram for Respondent moves to file Respondent's list of witnesses for trial. Proctor for Appellants received notice with copy. File.

(Intld.) . . . A.D.J.

(37)

9.3.48

Messrs. Wilson & Kadirgamar for Appellant.

Mr. T. de Saram for Respondent.

Adjourned inquiry.

(Intld.) . . .

Vide proceedings—Further hearing adjourned for 2.6.48.

Call case on 26th to 30th July 1948 for expert evidence.

(Intld.) . . . A.D.J.

(38)

18.5.48

Mr. T. de Saram for Respondent moves that dates in the 3rd week in August is fixed for leading of expert evidence and for addresses as explained in the motion.

Call on Bench 2.6.

(Intld.) . . .

(39)

2.6.48

Case called Vide (38).

List of documents filed.

Documents A15, A16 and R4 filed.

Proceedings filed.

Further evidence on 19th July 48.

Expert evidence from 4th to 8th October 48.

(Intld.) . . . A.D.J.

(40)

19.7.48

Messrs. Wilson & Kadirgamar for Appellants.

Mr. T. de Saram for Respondent.

Vide proceedings (40a) Further hearing on 6th September 1948.

(Intld.) . . . A.D.J.

In the District Court, Colombo.

No. 1. Journal Entries, 16th May 1942 to 30th October 1953, *continued.*

(41)

6.9.48

Messrs. Wilson & Kadirgamar for Appellants.

Mr. T. de Saram for Respondent. Further inquiry.

Vide proceedings (41a).

Expert evidence from 4th to 8th October 1948.

(Intld.) . . . A.D.J.

(42)

24.9.48

Proctor for Respondent moves that the Court be pleased to postpone the inquiry and adjourn the same to five other days convenient to Court.

Proctor for Appellants have received notice for 29.9.48 and have cause to show.

Call 29.9.

(Intld.) . . . A.D.J.

(43)

29.9.48

Case called Vide (42).

Messrs. Wilson and Kadirgamar for Appellants.

Mr. T. de Saram for Respondent.

Vide proceedings 43a. Adjourned for 4.10.48.

(Intld.) . . . A.D.J.

(44)

4.10.48

Case called.

Messrs. Wilson & Kadirgamar for Appellants.

Mr. T. de Saram for Respondent.

Vide proceedings 44a & 44b.

Adjourned for 5.10.48.

(Intld.) . . . A.D.J.

(45)

5.10.48

Case called.

Vide proceedings 45a.

Further hearing tomorrow.

(Intld.) . . . A.D.J.

(46)

6.10.48

Case called.

Vide proceedings 46a.

Adjourned till 7.10.48.

(Intld.) . . . A.D.J.

(47)

7.10.48

Case called.

Vide proceedings 47a Interval.

(Intld.) . . . A.D.J.

(48)

8.10.48

Vide proceedings.

After lunch.

(Intld.) . . . A.D.J.

(49)

1.12.48

Messrs. Wilson & Kadirgamar for Appellants.

Mr. T. de Saram for Respondent.

Further hearing.

(49a)

3.12.48

Proceedings filed, Further hearing on 7.12.48.

(Intld.) . . . A.D.J.

(50)

4.12.48

Proceedings of 1.12.48 and 2.12.48 filed.

(51)

6.12.48

Messrs. Wilson & Kadirgamar for Appellants.

Mr. T. de Saram for Respondents.

Further hearing.

Proceedings filed.

Further hearing on 7.12.48.

(Intld.) . . . A.D.J.

In the District Court, Colombo.

No. 1. Journal Entries, 16th May 1942 to 30th October 1953, *continued*

(52)

7.12.48

Further hearing.

Proceedings filed.

Addresses on 24th and 25th and 28th and 29th March 1949.

(Intld.) . . . A.D.J.

(53)

24.3.49

Messrs. Wilson & Kadirgamar for Petitioner.

Mr. T. de Saram for Respondents. 10

Addresses—vide (52).

Proceedings (53a) filed.

Further hearing tomorrow.

(Intld.) . . . A.D.J.

(54)

25.3.49

Messrs. Wilson and Kadirgamar for Petitioner.

Mr. T. de Saram for Respondents.

Addresses. Proceedings filed.

Further hearing (54a) for 28.3.49. 20

(Intld.) . . . A.D.J.

(55)

28.3.49

Addresses (proceedings filed 55a).

Further hearing tomorrow.

(Intld.) . . . A.D.J.

(56)

29.3.49

Addresses. Proceedings filed. (56a.)

(Intld.) . . . A.D.J. 30

(57)

30.3.49

Messrs. Wilson & Kadirgamar for Petitioner.

Mr. T. de Saram for Respondents.

Addresses. Proceedings filed (57a).

Further hearing for 5.4.49.

(Intld.) . . . . A.D.J.

(58)

5.4.49

Addresses.

Proceedings filed.

(Intld.) . . . A.D.J.

(59)

6.5.49

Addresses.

Proceedings filed. Further hearing 27.5.49.

(Intld.) A.D.J.

(60)

27.5.49

Addresses.

Vide proceedings. Postponed for 1.7.49.

(Intld.) . . . A.D.J.

(61)

1.7.49

Addresses.

Vide proceedings. Postponed for 3.8.49.

(Intld.) . . . A.D.J.

(62)

3.8.49

Messrs. Wilson and Kadirgamar for Appellant.

Mr. T. de Saram for Respondent.

Addresses.

Vide proceedings filed.

Judgment 17.10.49.

(Intld.) . . . A.D.J.

(63)

10.8.49

Documents R1–R6 filed by proctor for Respondent.

(Intld.) . . . A.D.J.

(64)

Documents A1–A38 filed by proctor for Appellant—part III.

(Intld.) . . .

In the District Court, Colombo.

No. 1. Journal Entries, 16th May 1942 to 30th October 1953, *continued.*

(65)

8.11.49

Judgment delivered in open court.

Enter judgment for the Appellants in the sum of Rs.283,213/24 with legal interest from date of action till date of decree and thereafter on the aggregate amount of the decree until payment in full.

The admrs. will be entitled to the costs of these proceedings.

(Intld.) . . . A.D.J.

(66)

17.11.49

Mr. Trevor de Saram Proctor for Respondent-Appellant files Petition of appeal against the judgment of this Court dated 8.11.49, and moves that the same be accepted, and that notice of appeal on the Appellants–Respondent be allowed.

1. Accept.
2. Issue notice of appeal for 15.12.49.

(Intld.) . . . A.D.J.

(67)

21.11.49

Notice of appeal issued.

(Intld.) . . .

(68)

30.11.49

Proctor for Respondent–Appellant applies for two typewritten copies.

Allowed.

(Intld.) . . . A.D.J.

(69)

15.12.49

Mr. Trevor de Saram for Respondent–Appellant.

Notice of appeal—await return 26.1.

(Intld.) . . .

(70)

26.1.50

Mr. Trevor de Saram for Respondent–Appellant.

Notice of appeal—no return.

Call for it for 16.2.

(Intld.) . . . A.D.J.

(71)

27.1.50

Letter written to Fiscal calling for notice of appeal.

(Intld.) . . .

(72)

14.3.50

Proctors for Respondents apply for two typewritten copies of this record and they apply for a paying-in voucher for Rs.50/–.

Issue.

10 (Intld.) . . . A.D.J.

(73)

14.3.50.

Paying-in voucher for Rs.50/– entered.

(74)

22.3.50.

K.R. No. 1874/037437 of 15.3.50 for Rs.50/– filed.

(75)

3.5.50.

Proctor for Respondent–Appellant files an application for 3 copies of
20 typewritten briefs in this case and moves that his previous application for two copies be cancelled.

(A) Previous application for two copies cancelled.

(B) Issue 3 copies of typewritten briefs.

(Intld.) . . . A.D.J.

(76)

5.7.1950

Record forwarded to the Supreme Court Registry for preparation of appeal briefs and other steps.

(Intld.) . . . Secy.

30 (77)

6.6.51

Briefs forwarded to Proctors.

2 briefs to Crown Proctor.

2 briefs to Messrs. Wilson & Kadirgamar.

(Intld.) . . .

6.6.

In the District Court, Colombo.

No. 1. Journal Entries, 16th May 1942 to 30th October 1953, *continued.*

(78)

23.5.52

Respondent files minute of revocation of proxy to Mr. C. T. de Saram together with fresh proxy appointing Messrs. B. K. Billimoria, K. C. G. Jayasuriya.

(See Proctors *re* D. C. Proceedings).

(Intld.) . . . Dy. Reg. S.C.

(79)

24.5.52

Respondent files proxy appointing above Proctors to act for him in the Supreme Court appeal.

(Intld.) F.C.V., Dy. Regr. S.C.

(80)

25.3.53

Mr. S. Somanathan files his appointment as Proctor for Appellants, together with minute of revocation granted to Mr. S. J. C. Kadirgamar and moves that the court be pleased to allow same.

1. File.
2. Revocation allowed.

(Intld.) . . . A.D.J.

(81)

30.10.53

Record returned by the Registrar Supreme Court.

Appeal dismissed with costs.

Proctors to note.

(Intld.) . . . A.D.J.

No. 2.

PETITION OF APPEAL.

In the District Court, Colombo.

No. 2. Petition of Appeal, 14th May 1942.

IN THE DISTRICT COURT OF COLOMBO.

IN THE MATTER of an APPEAL under Section 34 and the other Sections of the Estate Duty Ordinance (Chapter 187 of the Legislative Enactments of Ceylon) against Assessment of Estate Duty in Estate File No. ED/A 300 Charge No. 8208/37.

1. V. RAMASWAMI IYENGAR and
2. K. R. SUBRAMANIA IYER, Administrators of the Estate in Ceylon, of RM. AR. AR. RM. ARUNACHALAM CHETTIAR, deceased, of Devakottai, South India . . . . . Appellants

Vs.

THE HONOURABLE THE ATTORNEY-GENERAL OF CEYLON . . . . Respondent.

No. 37.

Class : V.

Amount : Rs.221,743/70.

To : His Honour the District Judge and other Judges of the District Court of Colombo.

This 14th day of May 1942.

The petition of appeal of the Appellants above-named appearing by Samuel Jebaratnam Christian Kadirgamar practising under the name style and firm of " Wilson & Kadirgamar " and his Assistants David Frederic de Silva and Francis Nicholas Dias-Abeyesinghe their Proctors states as follows :—

1. The Appellants are the Administrators of the Estate of one Rm. Ar. Ar. Rm. Arunachalam Chettiar, deceased. Letters of administration to the said Estate were issued to them in case No. 8727 Testamentary of this Court.

2. The Respondent is the Attorney-General of Ceylon required to be made a Respondent by Section 38 of the Estate Duty Ordinance (Chapter 187 of the Legislative Enactments of Ceylon).

3. The Commissioner of Estate Duty Income Tax & Stamps by his Notice of Assessment dated the 31st day of October 1938 assessed

In the District Court, Colombo.

No. 2. Petition of Appeal, 14th May 1942, *continued.*

the Estate Duty alleged to be payable in respect of the alleged Estate of Rm. Ar. Ar. Rm. Ar. Arunachalam Chettiar (Son of Rm. Ar. Ar. Rm. Arunachalam Chettiar deceased of whose Estate the Appellants are administrators) at Rs.215,000/–. Thereafter by his Additional Notice of Assessment dated 9th May 1941 assessed the Estate Duty alleged to be payable in respect of the said alleged Estate of the said Rm. Ar. Ar. Rm. Ar. Arunachalam Chettiar at Rs.223,493/70 (true copies whereof are annexed hereto marked " A " and " B " respectively.)

4. In terms of Section 35 of the said Estate Duty Ordinance the Appellants lodged with the Commissioner of Estate Duty Income Tax and Stamps a written notice of objection setting out specifically the several grounds upon which the Appellants contended that the Estate was not liable to pay any Estate Duty and that the assessment was erroneous.

5. The said Commissioner has by his letter dated 16th April 1942 (No. ED/A300) notified to the Appellants that he has determined to maintain the assessment except as regards the exclusion of a quarter share of Thannakerney, Thachchankadu, and Vannankerny Estates and by his Amended Notice of Assessment dated 29th April 1942 has reduced the Estate Duty alleged to be payable to Rs.221,743/70 (true copies whereof are annexed hereto marked " C " and " D " respectively).

6. Being dissatisfied with the said determination and aggrieved by the assessment, the Appellants beg to appeal therefrom to Your Honours' Court for the following among other reasons that will be urged at the hearing of this appeal :—

(1) The Appellants state that they are not the proper persons against whom assessment in respect of the alleged estate of Rm. Ar. Ar. Rm. Ar. Arunachalam Chettiar, deceased, can in law be made.

(2) The Appellants are not liable to pay any Estate Duty on the alleged Estate of the said deceased.

(3) The said deceased left no Estate in Ceylon liable to Estate Duty.

(4) The said deceased was a member of an Undivided Hindu Family which carried on the business of a money-lender, Rice Merchant etc., under the Vilasam of Rm. Ar. Ar. Rm. and Ar. Ar. Rm. in Ceylon and the deceased was not entitled to any definite share in the assets of the said family. His interest therein, if any, ceased on his death.

(5) No Estate duty is payable on the joint property of a Hindu Undivided Family when a member of such family dies.

(6) The value of the alleged estate of the said deceased is nil. The Appellants state that the amount at which it has been valued is fictitious and grossly exaggerated.

(7) The Appellants state that the assessment is bad and invalid in law as the said deceased left no estate belonging to him on which any duty is payable.

(8) On the death of the said deceased no properties passed to any person.

(9) The said deceased was a domiciled Indian and was governed by the Mitakshara School of Hindu Law.

(10) Under Section 73 of the said Estate Duty Ordinance no Estate Duty can be charged upon the Estate of the deceased as he was a member of a Hindu Undivided Family and because—

(A) the movable properties sought to be charged with duty were the joint properties of that Family, and

(B) the immovable properties sought to be charged with duty if they had been movable properties would have been the joint properties of that family.

(11) The Appellants plead as a matter of law that the said Commissioner is precluded in law from claiming any estate duty as he has always accepted the position of the deceased as a member of an undivided Hindu Family that owned joint properties in Ceylon to wit :—the business carried on under the Vilasam of Rm. Ar. Ar. Rm. and Ar. Ar. Rm. and assessed Income Tax on that basis.

(12) (A) The valuation of the Estate is wrong.

(B) That the Assessor should not include the sum of Rs.100,000/– in fixed deposit in the Bank of Mysore and the sum of Rs.40,120/25 due by the firm of T.N.V. of Nagapatam and the sum of Rs.13,050/– being the interest on the above said amounts as part of the assets of the Ceylon Estate of the deceased Rm. Ar. Ar. Rm. Arunachalam Chettiar.

(C) The said sums are not in Ceylon and cannot be deemed to be assets in Ceylon in any sense of the term.

(D) That the Assessor cannot assess the value of a business but can only assess the Ceylon Estate of the deceased, if any, and levy duty thereon.

(13) The Appellants state that the assessor is in error in adding the sum of Rs.15,206/– being Income Tax for the year 1933/34. The said sum was a liability at the time the deceased died but was ascertained later.

(14) The Appellants state that the Ceylon estate of the deceased, if any, is entitled to a reduction in terms of Section 20, subsection 3 to 5 of Ordinance No. 1 of 1938 in respect of the immovable properties alleged to constitute the Ceylon Estate of the deceased.

(15) The Appellants state that the Estate is not liable to pay interest at the rate of 4 per cent. for a period anterior to the date of assessment.

In the District Court, Colombo.

No. 2. Petition of Appeal, 14th May 1942, *continued.*

Wherefore the Appellants pray that Your Honours' Court will be pleased to enter judgment for the Appellants with costs of appeal,

(A) setting aside the said assessment of the said Commissioner of Estate Duty, Income Tax & Stamps;

(B) declaring that the Estate of the said Rm. Ar. Ar. Rm. Ar. Arunachalam Chettiar deceased is not liable to pay any Estate Duty and ordering the refund of the amount that may hereafter be paid as duty in pursuance of the assessment in respect of the aforesaid Estate with interest;

(C) or in the alternative by reducing the said assessment by the deletion of the amount in fixed deposit in the Bank of Mysore, the sum due by the said firm of T.N.V. of Nagapatam, to wit :— the sum of Rs.13,050/- interest on the above said amounts, and the sum of Rs.15,206/- to wit :—the Income Tax for the year 1933–34 and granting relief under Section 20 Sub-sections 3 to 5 of the said Estate Duty Ordinance;

(D) and granting such other and further relief as to Your Honours' Court shall seem meet.

(Sgd.) WILSON & KADIRGAMAR,
Proctors for Appellants.

Documents filed with the Petition :

1. Notice of Assessment dated 31st October 1939 marked " A."
2. Additional Notice of Assessment dated 9th May 1941 marked " B."
3. Letter No. ED/A300 dated 16th April 1942 addressed by the Commissioner of Estate Duty to the Appellants marked " C."
4. Amended Notice of Assessment dated 29th April 1942 marked " D ", and
5. Appointment.

(Sgd.) WILSON & KADIRGAMAR,
Proctors for Appellants.

Settled by
Messrs. Peri Sunderam &
N. Nadarajah, K.C.
Advocates.

J.N. 72352–800 (1/38)
Form No. 236.
(F2 1/38.)

In the District Court, Colombo.

No. 2.
Petition of Appeal, 14th May 1942, *continued.*

THE ESTATE DUTY ORDINANCE, NO. 1 OF 1938.

NOTICE OF ASSESSMENT.

File No. ED/A300—AJ 2943.

Charge No. 8208.

RM. AR. AR. RM. AR. ARUNACHALAM CHETTIAR, deceased.

To Messrs. V. Ramasamy Iyengar, Vakil and K. R. Subramania Iyer,
10 c/o C. Sevaprakasam Esq., Proctor S.C. 349 Dam Street, Colombo.

TAKE NOTICE that the Estate Duty in respect of the estate of the deceased above named has been assessed as follows :—

ASSETS.	
Deceased's interest in the business of Rm. Ar. Ar. Rm. & Ar. Ar. Rm. estimated at	Rs.2,150,000.00
DEDUCTIONS.	Nil
Nett value	2,150,000.00
ESTATE DUTY.	
20 Duty on Rs.2,150,000/– at 10%	215,000.00

With interest from 10.7.1935 at 4% per annum.

The above amount is payable by you on or before the 12th December 1938 and should be remitted to the Commissioner of Estate Duty. This form should accompany your remittance.

If you object to the above assessment you must give notice of appeal in writing WITHIN 30 DAYS of the date hereof, stating the grounds of objection.

(Sgd.) Not clear,
Assessor, Estate Duty.

30 Colombo, 31st October, 1938.

True Copy,

(Sgd.) WILSON & KADIRGAMAR,
Proctors for Appellants.

In the District Court, Colombo.

No. 2. Petition of Appeal, 14th May 1942, *continued.*

Form No. 236.

THE ESTATE DUTY ORDINANCE No. 1 OF 1938.

ADDITIONAL NOTICE OF ASSESSMENT.

File No. ED/A300

Charge No. 8208/37.

RM. AR. AR. RM. AR. ARUNACHALAM CHETTIAR, deceased.

To Messrs. V. Ramasamy Iyengar & K. R. Subramania Iyer c/o Messrs. Wilson & Kadirgamar, Proctors, P.O. Box No. 224, Colombo.

TAKE NOTICE that the estate duty in respect of the estate of the deceased above named has been assessed as follows :—

ASSETS :

Value of business of Rm. Ar. Ar. Rm. & Ar. Ar. Rm. as per Balance Sheet		Rs.4,295,464.00
Add amount disallowed on A/c of Income Tax	15,206	
Interest due and claimed as bad on secured loans shown in Sch. B	47,690	
Interest due on unsecured loans shown in Sch. D.	20,825	
Bad debts claimed in Sch. E	168,039	
	251,760	
Amount allowed as bad debts	180,000	
	71,760	
Increase by Offl. Valn. of the immovable properties list I	54,600	
		126,360.00
Add half share of Thannakerny, Thachchankadu and Vannakerny Estates ..		35,000.00
Interest due on Fixed Deposit in Bank of Mysore and loan due from T.N.V. ..		13,050.00
		4,469,874.00
Deceased's half share		2,234,937.00

ESTATE DUTY.

Duty on Rs.2,234,937/- at 10%	223,493.70
Duty as per previous assessment	215,000.00
Additional Duty	8,493.70

With interest at 4% per annum from 10.7.35.

The above amount is payable by you on or before 20th June 1941 and should be remitted to the Commissioner of Estate Duty. This form should accompany your remittance.

If you object to the above assessment you must give notice of appeal in writing WITHIN 30 DAYS of the date hereof, stating the grounds of objection.

(Sgd.) L. G. GUNASEKARA,
Assessor, Estate Duty.

Colombo, 9th May, 1941.

True Copy,
(Sgd.) ...
Proctors for Appellants.

(*List I referred to.*)

	Item	*Increase*
House Properties	1	Rs.2,000
	3	1,000
	5	8,000
	6	4,000
	7	1,000
	10	4,000
	11	1,000
	12	4,000
	13–15	8,000
	16	1,000
	17	500
	18	2,000
	20	6,500
	21	700
		Rs.43,700
Estates	2	2,500
	3	500
	4	1,000
	5	500
	6	1,000
	12	3,000
	14	2,400
		Rs.54,600

In the District Court, Colombo.

No. 2. Petition of Appeal, 14th May 1942, *continued.*

Estate Duty Office,
Colombo,
April 16, 1942.

Ref. ED/A300.

ESTATE No. ED/A.300—RM. AR. AR. RM. AR. ARUNACHALAM CHETTIAR, DECEASED.

Gentlemen,

With reference to your letter dated the 27th February 1942 you are hereby notified under Section 37 of the Estate Duty Ordinance that I have determined to maintain the assessment subject to the exclusion of a quarter share of Thannakerny, Thachchankadu and Vannankerny Estates.

Yours faithfully,
(Sgd.) T. D. PERERA,
Commissioner of Estate Duty.

Messrs. V. Ramaswamy Iyengar
and K. R. Subramania Iyer,
c/o Messrs. Wilson & Kadirgamar,
P.O. Box No. 224,
Colombo.

True Copy.
(Sgd.) WILSON & KADIRGAMAR,
Proctors for Appellants.

THE ESTATE DUTY ORDINANCE No. 1 OF 1938.

AMENDED NOTICE OF ASSESSMENT.

File No. ED/A300.

Charge No. 8208/37.

RM. AR. AR. RM. AR. ARUNACHALAM CHETTIAR, deceased.

To Messrs. V. Ramasamy Iyengar & K. R. Subramania Iyer, c/o Messrs. Wilson & Kadirgamar, Proctors, P.O. Box No. 224, Colombo.

TAKE NOTICE that the estate duty in respect of the estate of the deceased above named has been assessed as follows :—

ASSETS.

Nett value of estate as per assessment dated 9th May 1941	Rs.2,234,937.00
Less ¼ share of Thannakerny, Thachchankadu and Vannankerny Estates now excluded	17,500.00
	2,217,437.00
Estate Duty on Rs.2,217,437/- at 10%	221,743.70
Duty as per assessment dated 10.11.1938	215,000.00
Amended additional duty payable	6,743.70

With interest at 4% per annum from 10.7.1935.

The above amount of Rs.221,743.70 is payable by you on or before 19th May 1942 and should be remitted to the Commissioner of Estate Duty. This form should accompany your remittance.

If you object to the above assessment you must give notice of appeal in writing WITHIN 30 DAYS of the date hereof, stating the grounds of objection.

No 2. Petition of Appeal, 14th May 1942, *continued.*

(Sgd.) L. G. GUNASEKARA,
Assessor, Estate Duty.

Colombo, 29th April 1942.

True copy.

(Sgd.) WILSON & KADIRGAMAR,
Proctors for Appellant.

No. 3.

No. 3. Introductory matters, 8th March 1948.

INTRODUCTORY MATTERS, Agreement of Parties as to Leading Evidence common to both Appeals, Opening of Case.

D.C.37/T.

8.3.48.

Mr. Adv. Chelvanayagam K.C. with Mr. Adv. Peri Sunderam and Mr. Adv. Thavathurai instructed by Messrs. Wilson & Kadirgamar for the Appellants.

Mr. Weerasooria, Crown Counsel, with Mr. Deheragoda, C.C. instructed by Mr. de Saram for the Respondent.

There are two cases before this Court, No. 37/T relating to the estate of Arunachalam Chettiar, the son, in which objection is taken to an assessment of Rs.221,743/70, and case No. 38/T relating to the father's estate wherein objection is taken to an assessment amounting to Rs.633,601/76. Learned Counsel for the Appellants states that the evidence in both cases would be more or less the same, the pedigree will also be the same.

It is agreed that case No. 37/T be taken up first. It is further agreed that evidence be led in case No. 37/T and it be regarded as having been led in case No. 38/T also subject to the right of either side in case No. 38 to lead any additional evidence. For the purpose of convenience a copy of the proceedings in case No. 37/T will be filed in No. 38/T.

Agreement of Parties, 8th March 1948.

Mr. Chelvanayagam draws attention to the application to amend the prayer of the petition of appeal dated 23rd February 1948.

Mr. Weerasooriya has no objection to that. I allow the application.

In the District Court, Colombo.

No. 3.
Original Appellants Opening Speech, 8th March 1948.

Mr. Chelvanayagam opens his case.

He submits to court a copy of the pedigree which he says he will prove. He states that he is unable to prove the date of birth of the original Arunachalam Chettiar but he is able to prove the date of his death.

After the partition Arunachalam Chettiar (Sr) a son of Ramanathan Chettiar started business under the vilasam of Rm. Ar. Ar. Rm. adding his father's initials to his grandfather's vilasam. Somasunderam started business under the vilasam Ar. Ar. Sm.

When Arunachalam Chettiar (jr) No. 3 died in 1934, the Estate Duty Ordinance in force was Ordinance No. 8 of 1919. His contention is when Arunachalam Chettiar (No. 3) died, no estate passed which would be liable for estate duty ; his father Arunachalam Chettiar (No. 2) being at that time alive—and that is the point for decision in this case—did any property pass or not.

An attempt was made when Arunachalam Chettiar (No. 3) died to have a citation issued on his agent one Manickam Chettiar, who made a declaration under the ordinance. But this application was dismissed by Court and after the death of the father the Revenue department assessed the son's estate for estate duty.

On the death of Arunachalam Chettiar (No. 3) the only coparcener or male member of the family left was Arunachalam Chettiar (No. 2). He was the sole surviving male member of a joint Hindu family. Normally all the coparceners own the coparcenery property jointly, but when all the male members die leaving only one member, he holds the property in such a way that as soon as a son is born to him the property becomes the joint property of both. Not merely would that property become his joint property and that of his son born to him but it also becomes the joint property of his and the son adopted by his daughter-in-law.

He states when Arunachalam Chettiar (No. 3) died he left a widow. He says all the three widows had an adopted son each.

The position in law, as a matter of Hindu law, is that after the death of a husband a widow can adopt a son in certain cases and in certain circumstances and all property becomes joint.

The point to consider is the nature of the rights these sole surviving coparceners had in the properties which the crown is attempting to tax.

The Crown did not assess the son's estate under the old Ordinance, but assessed after the new ordinance came into force, the latter portion of the new Ordinance is applicable for administrative purposes. With the result it is contended that Section 73 applies even to an estate before that Ordinance came into force.

The second point is that Section 73 of the ordinance would apply even in respect of persons who died before that ordinance came into force.

If the estate is assessable other subsidiary points arise. At the time of Arunachalam Chettiar (3)'s death a sum of Rs.100,000 was in deposit in the Bank of Mysore. It is contended that this is not a Ceylon asset.

Before the date of death of the father the vilasam here had bought Mysore Government's promissory notes to the extent of 10 laks. It is admitted that all the money that was utilised for the purpose of buying these notes were sent from the Colombo shop. These notes come only in the father's estate. It will be proved that the father never came to Ceylon, that the father and son had domicile in India, and that they had branches in various places including Ceylon. It is contended that this money did not form part of the Ceylon estate. These were not bearer notes. When title passes by endorsement and delivery they will be situated in the country either where the debtor is or in the country where the person who has endorsed and delivered them is.

There is also the manner of placing value on immovable property. Section 20 (3–5) of Ord. 1 of 1938 asks for reduction on certain premises, but the Estate Duty Department has not made those deductions.

A large amount has been charged in the son's estate as interest as assessment was not made for many years after his death. The Crown's right to place any charge or interest on the estate prior to the date of assessment is disputed.

With regard to the father's estate, the father died in 1938 after the new Ordinance came into operation, and definitely Section 73 of the new Ordinance would apply, even though the father was the sole surviving coparcener. On this point expert evidence would be led.

The Appellants are raising the question of estoppel against the Crown saying that the Crown having assessed this estate on the basis of the Joint family and on the basis of joint property is estopped from now through another department of its activities saying that it is not joint family property or joint estate of a joint Hindu family.

No. 4.

FRAMING OF ISSUES.

Mr. Chelvanayagam formulates in the form of issues the points raised in his appeal in this case. He suggests :—

1. Are the Appellants the proper persons on whom assessment in respect of the alleged estate of Rm. Ar. Ar. Rm. Ar. Arunachalam Chettiar (Jr) can in law be made ?

2. Are the Appellants liable to pay any estate duty on the said estate ?

(Mr. Chelvanayagam states that he is raising these issues because his clients are the administrators of the estate of the father and that therefore they are not the persons on whom the assessment can be made.

In the District Court, Colombo.

No. 4. Framing of Issues, 8th March 1948, *continued.*

He further states that it is on that basis that the Crown has assessed them. He contends that they are not the party responsible for the payment of estate duty in respect of the son's estate even if such estate duty was payable).

3. Did the deceased leave an estate in Ceylon liable to estate duty ?

4. (A) Was the deceased a member of an undivided Hindu family which carried on business in Ceylon of money lender, rice merchants etc. under the vilasams of Rm. Ar. Ar. Rm. and Ar. Ar. Rm. ?

4. (B) Was the deceased not entitled to any definite share in the assets of the said family ?

(C) Did whatever interest the deceased have in the assets of the said family cease on his death ?

5. Was all the property that has been assessed as liable to estate duty the joint property of a Hindu undivided family of which the deceased was a member ?

6. If any portions of Issue (4) or if Issue (5) is answered in favour of the Appellant, is estate duty payable on the property that has been assessed ?

7. If issue 6 is answered in favour of the Respondent, what is the value of the interest of the deceased in the property that has been assessed ?

8. If issue 5 is answered in favour of the Appellant, is the alleged estate in question exempt from estate duty by virtue of section 73 of Cap. 187 ?

9A. Had the Crown for purposes of income tax accepted the position of the deceased that all his income in Ceylon was the income from the joint property of an undivided Hindu family of which he was a member ?

9B. If so, is the Crown estopped from denying that the said estate is joint property of an undivided Hindu family ?

10. Are the items referred to as " the amount in deposit in the bank of Mysore and the debt due by the firm of T.N.V. of Nagapatam " liable to be included amongst the assets which are liable to duty.

11. Are the Appellants entitled to claim a reduction of Rs.15206/– being income tax for the year 1934/35 from the total value of the estate assessed as liable to duty ?

12. Are the Appellants entitled to a reduction in terms of Section 20 sub-sections 3 to 5 of Ordinance No. 1 of 1938 in respect of immovable property which have been assessed as liable to duty ?

13. Are the Appellants liable to pay interest on the assessed duty for any period anterior to the date of assessment ?

(Lunch interval)

(Sgd.) . . . A.D.J.

(After Lunch)

8.3.48

No. 4.
Framing of Issues, 8th March 1948, *continued.*

Mr. Chelvanayagam suggests two more issues :—

14. On the death of the deceased did any property pass within the meaning of the Estate Duty Ordinance of 1919 or 1938 ?

15. If issue 14 is answered in the negative, is any estate duty payable ?

In place of issue 4 (c) Mr. Chelvanayagam suggests :

4. (c) Did the deceased have no interest in the assets of the said family which passed on his death ?

Mr. Weerasuriya agrees to these issues ; he has no issues to suggest. I accept the issues.

No. 5.

ADMITTED FACTS.

No. 5.
Admitted Facts, 8th March 1948,

The following facts are admitted by both sides in respect of both cases :—

(1) That for the purposes of the payment of income tax in Ceylon during the lifetime of Arunachalam Chettiar Jnr. the returns of income derived by him and his father were made on the basis that they were members of a Hindu Undivided Family ;

(ii) That during the aforesaid period the income of Arunachalam Chettiar Jnr. and his father was assessed for purposes of payment of income tax in Ceylon on the basis that they were members of a Hindu undivided family ;

(iii) That only one return was made for each year in respect of the joint income of father and son and one assessment was made on that return ;

(iv) That after the death of Arunachalam Chettiar Jnr. the returns of income derived by his father were made on the basis that he was a member of a Hindu undivided family ;

(v) That after the death of Arunachalam Chettiar Jnr. the income of his father was assessed on the footing that the latter was a member of a Hindu undivided family ;

(vi) That the property assessed for payment of estate duty on the estate of Arunachalam Chettiar Jnr. was the joint property of a Hindu undivided family of which he and his father were members.

(Note. Mr. Chelvanayagam states that while he agrees to this so far as it goes he does not concede that they were the sole and only members of the undivided family.)

In the District Court, Colombo.

No. 5. Admitted Facts, 8th March 1948, *continued.*

(vii) That the property assessed for payment of estate duty on the estate of Arunachalam Chettiar, Snr. was property which, had his son been alive on the 22nd February 1938, would have been on that date the joint property of a Hindu undivided family of which the father and son were members.

(Note. Mr. Chelvanayagam while admitting that father and son were members of a joint Hindu undivided family, does not concede that they were the only members.)

Original Appellants' Evidence.

ORIGINAL APPELLANTS' EVIDENCE.

No. 6. Ramassamy Ramanathan Chettiar, 8th March 1948, Examination.

No. 6.

Ramasamy Ramanathan Chettiar.

Mr. Chelvanayagam calls:—

RAMASAMY RAMANATHAN CHETTIAR: Affirmed, 61, Money Lender, Devacottai.

My mother is Unnamalai Achichi. Her father's name is Arunachalam Chettiar.

(Mr. Weerasuriya objects to this witness' evidence being led. He states that his name was not in the list of witnesses transmitted to the Commissioner under Section 36 (*a*) of the Estate Duty Ordinance and the Appellant cannot therefore lead his evidence under Section 39, sub-section 2. These amendments to the original ordinance were brought into force by Ordinance No. 8 of 1941.

Mr. Chelvanayagam states that this witness' name is given in the list submitted to the Commissioner of Estate Duty as Ct. Lr. M. Ramanathan Chettiar. Ct. Lr. M. is the vilasam for Seena Thana Lena Ravanna Mana Ramanathan Chettiar. Seena may be spelt either with S. or with C. Mr. Chalvanayagam states he is one and the same witness as No. 8 in the list furnished to the Commissioner.

Witness states his father is Ramasamy, the vilasam for which is Rm.

Mr. Weerasuriya states that with regard to this objection he is in doubt as to whether this witness is the same witness as No. 8 in the list. He further states that the Commissioner called for the evidence of all the witnesses whose names were submitted to him in the list and this witness' evidence was not submitted to the Commissioner. He therefore states under Section 39 (2) (*b*) the evidence of this witness cannot be led in this court.

Mr. Chelvanayagam states (1) that the witness has already started giving evidence (2) that this witness, along with a number of other witnesses mentioned in the list furnished to the Commissioner was going to speak to the pedigree and family history of the deceased; he has sent affidavits of some of the witnesses relating to the family history and

pedigree and added that this witness would give the same testimony ; and (3) witnesses who were to speak to the pedigree and history are dead. He refers to the letter of the 19th February 1942 to the Commissioner in which he gave the list of witnesses and the copies of the statements made by them. Witness Nos. 2 and 9 gave statements with regard to the pedigree. Witness No. 9 is present in court but cannot speak to the entire pedigree. Witness No. 2 is not present in court ; he is ill and refuses to come.

Mr. Weerasuriya admits the receipt of this letter. The letter further states that the other witnesses whose statements were not submitted were unwilling to make statements and they could not be compelled.

In all the circumstances I think the ends of justice will be met if I direct the Appellant now to furnish the Crown with a statement of the evidence which this witness is likely to have given the Commissioner. After that has been furnished I shall permit him to be called.

Mr. Chelvanayagam states he will furnish that statement today and call the witness tomorrow. Mr. Weerasuriya states that his ability to cross-examine the witness tomorrow will depend on the nature of the statement made.

I accordingly direct that the witness do stand down and that a copy of the statement that would have been given to the Commissioner by this witness be now furnished to the Crown.

Mr. Chelvanayagam is not calling any other evidence today. It is now 3.45 p.m.

(Sgd.) . . . A.D.J.

Further hearing tomorrow.

9.3.48

37/T Spl.

Appearances as before.

9th March 1948.

R. RAMANATHAN CHETTIAR : Affirmed. 61, Moneylender, Devacottai.

Arunachalam Chettiar No. 1 in the pedigree is my mother's father. (Mr. Chelvanayagam marks the pedigree A1.) That Arunachalam Chettiar had two sons, Ramanathan Chettiar and Somasunderam Chettiar, and three daughters Umaiyal Achchi, Meenachi Achchi and Unnamalai Achchi. This Arunachalam Chettiar No. 1 was called Chattiran because he had built a Chattiran at Devacottai. I knew him as my grandfather, it is now 47 years since he died ; when he died I was 14. Chattiran Arunachalam Chettiar had a business Rm. Ar. Ar. at Rangoon, Colombo, Jaffna, Galle and in the cities along the railway line in British India. Ramanathan Chettiar predeceased his father Chittiran Arunachalam Chettiar 5 years earlier, Ramanathan Chettiar who died, my uncle, married twice : his first wife was Umayal Achchy, she died ; his second wife Sivagamy Achchi is alive and has come today. Sivagamy Achchi has no children but Umayal Achchy who died had two children Alamelu Achchi and Arunachalam Chettiar No. 2. Alamelu Achchi is dead, and Arunachalam

In the District Court, Colombo.

Original Appellants' Evidence.

No. 6. Ramasamy Ramanathan Chettiar, 9th March 1948. Examination, *continued.*

Chettiar No. 2, son of Ramanathan Chettiar, died 10 years ago. Arunachalam Chettiar Snr. my cousin, married three times; first Valiamma Achchi, then Letchumi Achchi and Natchiar Achchi. Valiamma Achchi died leaving one son and 3 daughters, i.e. Arunachalam Chettiar No. 3, Umaiyal Achchi, Sivagamy Achchi and Unnamalai Achchi. His second wife is alive but has no children. His third wife is also alive, had a child who died. Arunachalam Chettiar No. 2 married his third wife Nachiar Achchi after the death of his son Arunachalam Chettiar No. 3, in order to get a son. Nachiar Achchi had a daughter who was alive when Arunachalam Chettiar No. 2 died; after the death of Arunachalam Chettiar No. 2 she died.

Arunachalam Chettiar No. 3 died 14 years ago. He married twice. His first wife is dead, I do not remember her; his second wife is Umaiyal Achchi who is alive. Two of the daughters of Arunachalam Chettiar No. 2 were given in marriage in his lifetime; the last, Unnamalai Achchi, married after the death of Arunachalam Chettiar the son and before the death of Arunachalam Chettiar the father. (Arunachalam Chettiar No. 3 is referred to as the Jnr., the son; his father is Arunachalam Chettiar Snr. No. 2.)

Somasunderam, son of Chittiran Arunachalam Chettiar, survived his father; he died about 25 years ago.

All those mentioned in the pedigree A1 are from South India, belonging to the Nattucottai Chettiar community, and are Hindus; their native country is India; they go out of India for business and come back to India. They are governed by Hindu Law.

Among ourselves I have heard of the system of joint family. When the daughters marry they join the family of their husbands. My father's name is Ramasamy Chettiar, I belong to his family and we form a joint family ourselves all my brothers. My grandfather Arunachalam Chettiar No. 1 and his sons formed a joint family. My grandfather had an ancestral home at Devacottai where he lived; I did not live there. I was living in my house and visiting him; that ancestral house is still in existence. One half of that house is occupied by Chittiran Arunachalam Chettiar's elder brother's family and the other half by Chittiran Arunachalam Chettiar's grandsons. The daughters in law of Chittiran Arunachalam Chettiar were living in the old house and also in the opposite bungalow which was built by Chattiran Arunachalam Chettiar in his lifetime; those are the very houses in which Chattiran Arunachalam Chettiar lived. The widows of my cousin Arunachalam Chettiar No. 2 are living in the southern half of the old house in which Chattiran Arunachalam Chettiar lived and also in the new bungalow which he built. The widow of Arunachalam Chettiar No. 3 lives in the same bungalow. Both are common houses and they are living in both houses. They have not been divided yet.

My grandfather Arunachalam Chettiar No. 1 had a business in various places in India, Burma and Ceylon. When he died the properties that he left were taken charge of by Somasunderam Chettiar and Arunachalam Chettiar No. 2, the grandson of Chattiran. These two persons before the death of my grandfather lived in the same house. When they took charge of the business, for some time they ran it as a joint business, and six months or one year later they divided it by arbitration, gradually. After the division Somasunderam took the vilasam Ar. Ar. Sm. i.e. his father's

In the District Court, Colombo.

Original Appellants' Evidence.

No. 6. Ramasamy Ramanathan Chettiar, 9th March 1948. Examination, *continued.*

initials, his grandfather's initials and his own ; my grandfather Arunachalam Chettiar No. 1's father was also Arunachalam. It was a very big business with branches all over Ceylon, Burma and other places. I cannot say what happened to that business later. Arunachalam Chettiar No. 2 took the name Rm. Ar. Ar. and added his father's initials to his grandfather's vilasam. Before the separation they were carrying on under grandfather's vilasam Rm. Ar. Ar. After the separation he added Rm. to that Vilasam and carried on his business all over where his grandfather carried on, in Colombo, Jaffna, Rangoon ; I am not sure whether or not in Galle also. He also carried on business in Saigon, Penang, rice mills at Cuttalam as well as India. This Arunachalam Chettiar No. 2 had only one son, Arunachalam Chettiar No. 3. Son and father lived together and owned the properties together, and business was all done jointly. The son predeceased his father. When he died the other members left of that family of which father and son were members, were his stepmother, three sisters, his wife and his grandmother. The unmarried sisters, his widow, his step-mother and his step-grandmother were all living in the same house and were supported out of the income of this property. His sister Unnamalia Achchi was given in marriage. Arunachalam Chettiar No. 2 died some 10 years ago leaving a large common property. Those who were depending on that property for their livelihood at his death were the people I referred to now ; the step-mother Sivagmi Achchi, the two widows Letchumi Achchi and Nachiar Achchi—all the others were given in marriage and his daughter in law Umaiyal Achchi and daughter by Nachiar Achchi. All these female members were there and were all dependent on the income of this property. They were all occupying the house and bungalow.

My cousin Arunachalam Chettiar No. 2 never came to Ceylon or Burma ; he did not cross the seas.

Cross-examination.

XXD.

I have come from India to give evidence. I received no summons. I was not willing to give evidence on behalf of the Appellants ; when they called me I said I was an old man and I could not rough it out, but when they begged of me I came. The first time they asked me to give evidence in this case was about a week ago ; I was not approached earlier by anyone. But I usually do not go out except on pilgrimages. In 1941 or 1942 I was not asked to give evidence.

My father is Ramasamy Chettiar, he married Umaiyal Achchi, sister of Ramanathan Chettiar. I am one of the children by that marriage ; there was another son Arunachalam Chettiar. Arunachalam Chettiar No. 2, son of Ramanathan Chettiar, left a Last Will under which my brother was one of the executors.

Re-examination.

ReXD.

During the war years I heard of the Japanese raid ; that was 4 or 5 years ago. During that time if anyone asked me to come to Ceylon I would not have been willing to come. I came to Ceylon only 1½ years ago for Vel.

(Sgd.) . . . A.D.J.

No. 7.

A. Ulagappa Chettiar.

Original Appellants' Evidence.

No. 7. A. Ulagappa Chettiar, 9th March 1948, Examination.

A. ULAGAPPA CHETTIAR : Affirmed. 70, Trader, Chettinad.

Nachiar Achchi the last wife of Arunachalam Chettiar No. 2 is my daughter. This Arunachalam Chettiar had a son also Arunachalam Chettiar. My daughter was given in marriage 3 or 4 years after the death of Arunachalam Chettiar the son. Nachiar Achchi was married to her husband for about 3 or 4 years before her husband's death. Arunachalam Chettiar No. 2 married my daughter to get a son ; at that time there was another wife living, Letchumi Achchi who had no children. Nachiar Achchi my daughter is alive. My village is Sokalingam Pudur, 18 miles from Devacottai. My daughter Nachiar Achchi since her marriage is living at Devacottai in Arunachalam Chettiar's house. She had two children, one died before the death of her husband and the other after his death. My daughter Nachiar and the other widow of Arunachalam Chettiar, and the daughter in law of Arunachalam Chettiar, have litigation over this property. The case has gone up to the Federal Court. My daughter Nachiar adopted a child Ramanathan in 1945. I was present at the ceremony. At the same time as she adopted this son Letchumi Achchi the other widow also adopted a son, and Umaiyal Achchi also adopted a son. According to custom they adopted these children on the same day by arrangement, and all the three sons entered the ancestral home at the same time. My daughter's adopted son Ramanathan is about to be 18 years, Letchumi Achchi's adopted son will be 18 in about two years time, and Umaiyal Achchi's adopted son is already a major, and married, and he is in Court. My daughter's adopted son Ramanathan is one of our people ; he is now at Devacottai with his mother.

Cross-examination.

XXD.

The adoption of these three children by the widows took place the same day at the same house at the same time. I was present at the ceremony. An agreement was written between the person who handed over the child and the person who received the child. The uncle of the adopted child held the hand of a near relative of the person who receives, and then hands over. In the case of Ramanathan his mother's brother handed him over and on behalf of Nachiar Achchi I and my son. Nachiar's brother, received him. In the case of Letchumi Achchi's son also, he was handed over by his uncle similarly and Letchumi Achchi's elder brother received him. Letchumi Achchi's adopted son is 15 or 16 years old. In the case of Umaiyal Achchi's son he has handed over to St. Mr. The witnesses were members of the particular agnatic group. Only the persons who handed over and the persons who received signed the agreement. After that there was a feast of all the relatives. There can be no condition when the uncle consents to give over.

Re-examination.

ReXD.

My daughter's adopted son Ramanathan will be called her husband Arunachalam Chettiar's son. Arunachalam Chettiar had a will to that effect.

(Mr. Chelvanayagam marks A2, the will of Arunachalam Chettiar No. 2.)

In the process of adoption the child has to be received by the adoptive mother; on her behalf mostly her brother or such person receives the child. On behalf of my daughter my son and I received him. Umayal Achchi has a brother Murugan who received her child.

(Sgd.) . . . A.D.J.

In the District Court, Colombo.

Original Appellants' Evidence.

No. 7.
A. Ulagappa Chettiar, 9th March 1948. Re-examination, *continued.*

No. 8.

V. Ramaswamy Iyengar.

No. 8.
V. Ramaswami Iyengar, 9th March 1948, Examination.

V. RAMASAMY IYENGAR: Affirmed. 65, Lawyer, Devacottai.

I am one of the Appellants in this case. I am a Graduate in Arts and Laws of Madras University, a B.A., B.L. I am practising as a Vakil in the Devacottai Courts. I am not an Advocate, only a Pleader. Later this distinction was given up and all the lawyers are of one class, Advocates. It is open to me to become an Advocate on payment of the necessary fees. The other Appellant is also a practitioner in the Devacottai Courts. He is younger to me, and is an Advocate, having joined later.

Both of us were appointed administrators by this Court of the Ceylon Estate of Arunachalam Chettiar No. 2 in case No. 8727. Before I was appointed administrator here there was a case in the sub-court of Devacottai between the daughter in law and the two widows of Arunachalam Chettiar and the Executors—the daughter in law on one side and the two widows and Executors on the other.

Arunachalam Chettiar died leaving a last Will; the execution has been proved in India. A2 is a certified copy of the Will. Under that last Will Arunachalam Chettiar appointed two Executors, one of them is the brother of the previous witness Ramanathan Chettiar and the other Sunderesan Chettiar the son of Somasunderam Chettiar, that is Arunachalam Chettiar's two cousins. The Executors filed a case in the District Court of Madras for Probate. Under the Indian division of Court functions the subordinate court is mainly a civil court with unlimited jurisdiction; normally it does not function as a Probate Court. Probate and Administration matters are dealt with by the District Court. This particular D.C. is the D.C. of Ramnad held in Madura. The Executors instituted the original petition in the Ramnad District Court at Madura for proof of the Will. The daughter in law instituted a case at Devacottai. The two cases were consolidated and both suits were tried together. While those matters were pending the large estate had to be looked after and for that purpose the Subordinate judge of Devacottai appointed me and Mr. Subramaniayyar as Receivers earlier on 18th August 1938. From that date both of us are administering the estate and looking after its affairs. As such Receiver I came to this court and asked for Letters of

In the District Court, Colombo.

Original Appellants' Evidence.

No. 8. V. Ramaswami Iyengar, 9th March 1948, Examination. *continued.*

Administration to administer the Ceylon Estate of the deceased Arunachalam Chettiar No. 2. The genuineness of the Will was attacked in the Devacottai Sub-Court. I produce a copy of the petition filed by me asking for Letters of Administration in this Court marked A3.

The case filed by the daughter in law against the two widows and the Executors was decided in the Devacottai Court and it had gone to the Madras High Court. The decision of the High Court is contained in 1944 A.I.R. Madras 340. From there it went up to the Federal Court. In the Federal Court judgment was delivered as reported in 45 A.I.R. Federal Court, P. 25. There was an appeal to the Privy Council, and the matter was settled. The compromise was recorded in Court and I have a copy of it. The compromise was between the widows and the adopted sons; there were also parties to the suit. The decree was in accordance with the compromise. I produce a copy of that compromise marked A4.

As Receivers the two of us were invited to the adoption functions, we went but took no real part.

Arunachalam Chettiar Snr. had an old house and a bungalow. All the members of the family used both houses indiscriminately. We Receivers have an office for administering the affairs of this estate in the bungalow, i.e. the new house. In that office we have about 10 clerks. In that bungalow Arunachalam Chettiar No. 2 had his office before he died. I knew him before his death; it is his office that we are using as our office. When we took charge of the estate we considered the Head Office as at Devacottai and branches in several places in India, at Cuttalam. There were business centres out of India at Colombo, Rangoon, Saigon; outstandings were attended to at Kuala Lumpur where business had been closed.

Among the assets I found in the Colombo business there were some Mysore Government Securities; they were in the form of promissory notes, to the total value of about Rs.10 lakhs. The notes were many in number; all the Notes were at the date of death of Arunachalam Chettiar lying in the Colombo shop. To establish my right to the Notes I had to take proceedings in the Court of Mysore where I had been granted the Succession Certificate. For the purpose of obtaining that certificate I made an application in the Mysore Courts. I produce a certified copy of the application which sets out the list of Notes—numbers and amounts—marked A5. The schedule to that application gives a list of the promissory notes. Each Note is described in the schedule. They were redeemable at different periods. The 3 per cent. Notes were redeemable in 1961, for instance. They are referred to in that schedule as Bonds, but they are all promissory notes of the Government of Mysore.

One lot was redeemable in 1940; they are given in schedule "E" of the list. I have redeemed that lot. For the purpose of redeeming I had to surrender the Notes to the Government of Mysore and get the value. I actually surrendered those Notes in Bangalore City, in Mysore State.

I produce one of the other Notes marked A6, which is 4 per cent., redeemable 1954–63, for Rs.25,000. I have a few of the Notes here, the others are in Devacottai. This one A6 has been made payable to the Comptroller Mysore Government, or order, at the Government Treasuries of the Mysore State on a certain date. The Comptroller Mysore State had specially endorsed it, first to the Bank of Mysore or order, which bank

had endorsed it to the Eastern Bank or order and so on from person to person until finally it was endorsed in Column 6 " Pay Rm. Ar. Ar. Rm. Arunachalam Chettiar or order." At the back there is a column which sets out the payment of interest. For receiving the interest we have to send it to the bank for collection : we cut the document into two, first send one part and when we find it has been received we send the other.

I have examined all these notes. They are all payable to the order of the holder ; not one of these Notes was payable to the bearer. The holder Rm. Ar. Ar. Rm. Arunachalam Chettiar was away in Devacottai and he died in Devacottai. I claim that these Notes did not form part of the Ceylon Estate. (Mr. Chelvanayagam states all these Notes were submitted to the Commissioner of Estate Duty. He marks one note of each kind.)

I produce marked A7, a promissory note of the 5 per cent. 1955 class for Rs.1,000 ; that was also payable to the Comptroller, Mysore Government, or order, endorsed to the banks by the various holders until finally it was endorsed to the deceased Rm. Ar. Ar. Rm. Arunachalam Chettiar or order ; the last endorsement is the granting of succession to the Appellants. I produce A8, a note of the 3½% 1951–58 class which was payable to one Mansami Lakshmiar or order ; that has been endorsed by Lakshmiar to others or order and so on until it came to the deceased and thereafter to me. I also produce A9, a promissory note of the 3 per cent. 1956–61 class ; it is payable to the Bank of Mysore Ltd. or order, endorsed until it reached the deceased and thereafter myself. There were altogether 5 classes of promissory notes. One has been redeemed and of the four other classes I have produced one each. All these promissory notes are in my custody as Receivers and are at the Devacottai Office. I have been receiving interest on them since I took over and crediting the accounts. There is a firm of TNV at Nagapatam ; when I took over there was a mortgage bond from them, of Indian property. I have sued on it in India. The bond had been given to Arunchalam Chettiar, snr. in his lifetime.

Myself and my Co-receiver are from Devacottai. We do not belong to the Chettiar community ; we have nothing to do with this estate except as Receivers in India and Administrators appointed here. We have been called upon to pay estate duty and we have paid under protest. One position I take up is that I am not liable to pay duty in respect of the son's estate. I have not applied for administration of the estate of the son.

I have seen the pedigree produced in this Court A1. Depending on the assets of this estate there are a number of ladies. There is an order from the High Court to distribute the income of some to the heirs, viz. to the three ladies concerned, Umaiyala Achchi and the two wives. We have paid in accordance with the directions of the High Court as well as the Subordinate Court. Under the Will we have been directed to pay Sivagamy Achchi, the step-mother of Arunachalam Chettiar No. 2, Rs.50 a month. There was a minor child of Nachiar Achchi who was also given an allowance.

I am a Hindu myself. I have practised for 40 years as a Vakil. These women are entitled to support from the family estate of Arunachalam

In the District Court, Colombo.

Original Appellants' Evidence.

No. 8. V. Ramaswami Iyengar, 9th March 1948, *continued.* Cross-examination.

Chettiar under the Hindu Law. It is by virtue of that right that the Court has made order for the allowances to be paid to them. I know that Arunachalam Chettiar Snr. had given permission in the Will to the widows to adopt.

XXD.

The holder of the Mysore Government Securities can endorse it to anyone; it is negotiable. I do not know whether there are any rules with regard to the registration of endorsements. I have a copy of the rules. (Mr. Chelvanayagam marks the book of rules A10.) We had to look into the rules to find out whether we had to obtain the succession certificates; we have not examined all the rules.

As receivers and Administrators we are in possession of the entire estate of this Hindu undivided family of which Arunachalam Chettiar Snr. and Jnr. were members. At the time we took charge Arunachalam Chettiar Jnr. (No. 3) was dead; the members of the family were only the three widows and the child, and also the stepmother of Arunachalam Chettiar No. 2.

When I came to Ceylon in 1938 I was served with a notice of assessment. I cannot remember whether I had an interview with the Commissioner in that connection and whether we set out objections. There should be something about it in writing, I cannot recollect. (Shown declaration dated 7th November 1939—Crown marks it R1.) For the purpose of setting out a balance sheet of Rm. Ar. Ar. Rm. Colombo, in connection with this estate duty we employed an accountant. This is signed by me. (Crown marks the declaration R2A and the Account R2B.) The account accompanied the declaration. This account contained a balance sheet of Rm. Ar. Ar. Rm. Colombo as at 9th July 1934. The assets of the firm in Colombo was one of the items shown, under the heading " Out of Ceylon as per books; fixed deposit Mysore Bank Ltd. and loan Rs.1 lakh, and also TNV Negapatam Rs.40,120." In the petition of appeal in this case one of our objections is in regard to Rs.15,206 being income tax for the year 1933–34 (para. 13). The Accountant employed by me may have had correspondence with the Commissioner of Estate Duty, acting on our behalf. (Shown letter dated 26th November 1940.) I admit this letter. (Mr. Weerasuriya marks it R3.) It may be the Rs.15206/40 referred to in this letter which is the subject of appeal.

(Sgd.) . . . A.D.J.

Adjourned for lunch.

(*After Interval.*)

9.3.48.

V. RAMASWAMI IYENGAR: Affd. (recalled).

Re-examination.

ReXN.

I produce marked A11, letter from the Estate Duty Department to my Proctors Messrs. Wilson & Kadirgamar dated 18th April 1939. That is in respect of the son's estate Rm. Ar. Ar. Rm. Ar. Arunachalam Chettiar. The son had an extra Ar. added to the vilasam. I also produce a copy of the statement of objections filed in respect of the son's estate, marked A12.

(Sgd.) . . . A.D.J.

In the District Court, Colombo.

Original Appellants' Evidence.

No. 9. Further Issues, 9th March 1948,

No. 9.

Further Issues.

At this stage Mr. Weerasuriya says, in view of the evidence already led, he desires to raise a further issue. He suggests—

(16) Has any claim for refund been made to the Commissioner of Estate Duty in terms of Section 58 of the Estate Duty Ordinance ?

(17) If the answer to issue (16) is in the negative is it open to the Court to make an order for a refund in terms of prayer (B) in the petition of appeal ?

With regard to issue (16) Mr. Chelvanayagam objects. He states it involves a question of fact and he will have to place evidence in Court on the question as to whether a demand was made or not.

I allow all the issues and permit Mr. Chelvanayagam to lead any further evidence he desires on these additional issues.

Mr. Chelvanayagam suggests the further issue—

(18) What amount if any of the duty paid is repayable ?

No. 10. S. K. Srinivasan, 9th March 1948, Examination.

No. 10.

S. K. Srinivasan.

S. K. SRINIVASAN *:* Affirmed. 47 years, Registered Accountant, 83 Chatham Street, Colombo.

I practice as an accountant and auditor in Colombo. I have been in practice from August 1932.

To Court :

I am a Bachelor of Commerce of the Bombay University.

I do income tax work also. That is, I prepare the returns of income tax of my clients who are business men. I am approved as an accountant under the Income Tax Ordinance. I have been doing work for the vilasam Rm. Ar. Ar. Rm. ever since income tax came into operation in 1932. I am an Indian myself. I am conversant with the provisions of the Hindu Law to a certain extent. A large number of my clients are Indians. I know the system called the Hindu Joint Family which exists in South India. The returns that I made of the vilasam Rm. Ar. Ar. Rm. for income tax purposes were made on the basis that the business belonged to a joint Hindu family. I know that a joint Hindu family can have joint property as well as a separate property. My return went on the basis that all the property of this vilasam was the joint property of a joint

In the District Court, Colombo.

Original Appellants' Evidence.

No. 10. S. K. Srinivasan, 9th March 1948. Examination, *continued.*

Hindu family ; it was considered as a joint family business. They were assessed on a family income rather than as an individual. They were assessed as a unit of a joint Hindu family.

The son Arunachalam Chettiar died in 1934. Even thereafter the returns were made on the same basis and the assessment was also on the same basis, on the unit of a joint Hindu family.

The father Arunachalam Chettiar died in 1938. Thereafter I made the return again on the basis of a joint Hindu family. That is, the income was the joint income of a joint Hindu family. For the 1934/35 assessment, on account of the death of Arunachalam Chettiar (Jr.) the Commissioner sought to assess the business on an individual basis. I appealed against that and the Commissioner determined in favour of the Appellant. The Appellant claimed that the income was the income of a joint Hindu family. The Commissioner allowed the appeal. Thereafter the Appellant continued on the same basis. After the death of Arunachalam Chettiar (Snr.) there was no change in the assessment ; it continued on the same basis of a joint Hindu family. But for some years the administrators were assessed at twice the unit rate, I mean without the additional levy applicable to a Joint Hindu family. I am not able to say specifically for what years. (Shown R2B.) After the death of the father Arunachalam Chettiar the Administrators were asked by the Estate Duty department to make a return of the properties as at the date of death of the son. For that purpose I made a computation of the assets of the business and I handed the administrators a copy and that is R2B. The son died on 9th July 1934. In R2B I give the assets and liabilities. I have shown two assets as " out of Ceylon as per the books." They are, a sum of Rs.100,000 fixed deposit in the Bank of Mysore and Rs.40,120/25 of the firm of T.N.V. of Negapatam. The interests on those two assets were never assessed for income tax purposes as the income of this vilasam. I know there were promissory notes of the Government of Mysore which were the assets of the family. The interest received on those promissory notes was not assessed as Ceylon Income at any time. The interest was credited in the books for some time. In the computation we deleted that as income arose out of Ceylon and not liable for taxation. For the year 1934/35 the joint family was assessed for income tax. I do not remember the figure of assessment.

(Mr. Chelvanayagam asks for permission to recall this witness if necessary with regard to the additional issues which were just framed. I inform him that I shall give him permission to do so.)

Cross-examination.

XXN.

(Shown R3) : This is written by me. Originally I made a claim for a deduction in respect of the Rs.16,603/- which included a specific sum of Rs.15,206/-. I have stated that that Rs.15,206 is in the nature of a reserve for tax liability. It may have to be deleted as a deduction ; it should not be taken as a liability.

Q. It would be on the footing of a liability, that you would claim a deduction ?—Yes.

Now I state that it should be regarded as a liability and therefore no deduction should be made. Actually there was no assessment in respect of the Rs.15,206/-.

In the District Court, Colombo.

Original Appellants' Evidence.

No. 10.
S. K. Srinivasan, 9th March 1948.
Examination, *continued.*

Q. Was assessment for purposes of income tax after the death of Arunachalam Chettiar (Snr.) at any time made on the footing that the three widows were not members of a family but were mere co-owners?— I don't exactly recollect in what language I have put it, but we claimed a division of income I think for the three widows.

(Shown R4, letter dated 29.1.45): This is a letter written by the two administrators returning the form of declaration.

In that the administrators say that the three widows should be treated as co-owners and not as members of an undivided Hindu family. I am familiar with the signatures of the administrators. I identify their signatures in R4.

(Mr. Chelvanayagam states that this letter should have been put to the administrator when he was giving evidence. I agree that it should have been put to the administrator but I allow it to go in and I shall give Mr. Chelvanayagam an opportunity of recalling the administrator on that letter.)

Re-examination.

ReXN.

I did not advise the administrators with regard to R4. I had nothing to do with R4.

(Sgd.) . . . A.D.J.

Further hearing adjourned for 2.6.48. For evidence of experts and for addresses, case is postponed for 26th to 30th July 1948.

(Sgd.) . . . A.D.J.

2.6.48

Appearances as before.

Errors in previous day's proceedings are corrected by consent. The word CHATTIRAM has been misspelt SATHARAM: it needs correction throughout the proceedings.

Issue 10 (a)

Mr. Weerasuriya points out that issue 10 (A) has no relevancy to this case. It was suggested as an issue in case 38/T. I accordingly score out issue 10 (A).

In the District Court, Colombo.

Original Appellants' Evidence.

No. 11. Manicam Chettiar, 2nd June 1948, Examination.

No. 11.

Manicam Chettiar.

Mr. Chelvanayagam calls :—

MANICAM CHETTIAR : Affirmed. 37, Agent, Rm. Ar. Ar. Rm., Sea Street.

I joined the firm of Rm. Ar. Ar. Rm. in 1929 at the age of 19. I myself am a Chettiar belonging to the Nattucottai Chettiar community. I come from Ramnad District in South India from where the Nattucottai Chettiars come. Chettiars start their business life very early ; I cannot say whether they do so even before the age of 15. This family of Rm. Ar. Ar. Rm. I know since the time I joined their firm. When I joined there was one Chettiar above me ; I joined as a clerk ; later on I was in charge of the firm here at various times ; for a number of years I am in sole charge of the business in Ceylon under the Administrators. The Administrators themselves divide their time between India and Ceylon ; they are in charge of the whole estate of the family in India, Ceylon and elsewhere. The person in direct charge of Ceylon affairs is myself. I know the affairs of the Ceylon House of this family from the time I joined the Colombo shop in 1929 ; occasionally I go to India. I have been going to the house of Arunachalam Chettiar the father and Arunachalam Chettiar the son who were living in the same house. Whenever I go to India I first go to that house and then only visit my own place, and during my stay in India whenever I am wanted I call at Arunachalam Chettiar's house. From their house to mine there is a distance of about 20 miles.

In Colombo originally this family had one vilasam. The first vilasam is Rm. Ar. Ar. Rm. Later they had a second vilasam Ar. Ar. Rm. ; I do not know which year Ar. Ar. Rm. was started ; that was before I came. Rm. Ar. Ar. Rm. applies to the moneylending business and Ar. Ar. Rm. to the rice business. The rice business was closed after Arunachalam Chettiar Snr's death. There was no difference in ownership as far as the assets of the second business were concerned ; the two vilasams were only used for convenience of division of the business.

Arunachalam Chettiar the son died on 9th July 1934. At the date of death of the son the members of the family who survived him were the father, the father's stepmother Sivagamai Achchi, the father's wife Letchmi Achchi and the son's widow Umayalai Achchi. There was a sister who had married at the time of the son's death ; the other two sisters also had married earlier. The youngest sister of Arunachalam Chettiar the son was Unnamalai Achchi ; she married before Arunachalam Chettiar (3)'s death. These were the male and female members of the family that survived the son. The son died young at the age of 33 ; he left no son himself, with the result that Arunachalam Chettiar Snr. married again his third wife Nachiar Achchi in 1935 in order to get a son. By that last wife Arunachalam Chettiar Snr. had two daughters, one of whom predeceased Arunachalam Chettiar Snr. and the other survived him. Arunachalam Chettiar Snr. thereafter died on the 23rd February 1938. On that date the members of his family who survived are his two wives Letchmi Achchi and Nachiar Achchi, his stepmother Sivagami Achchi,

his unnamed daughter by the third wife and his son's wife Umayalai Achchi. All these people who survived Arunachalam Chettiar Snr. were females and they all lived in Arunachalam Chettiar's house before his death and after his death, in the same family house, depending for their livelihood on the family property. The family property of this family was situated in India, Ceylon, Saigon, Rangoon and the Federated Malay States.

In Colombo they have an office which belongs to the family itself. Similarly they must be having offices in these other countries. The headquarters of the family business and property was at Devacottai, and the Headquarter Office was in the family house ; it is still there, where the Administrators are carrying on their work. The father Arunachalam Chettiar never went out of India, he never came to Ceylon.

I am aware of the declaration made to the Estate Duty Department by the Administrators in respect of the son's estate as well as the father's estate. In respect of the son's estate there is an item " Mysore Deposits " ; I know the facts relating to that item. In respect of the son's estate steps were taken by the Department to issue a citation and a notice was issued by this court to show cause why I should not submit a declaration.

In proceedings No. ED/A300 of this court the Commissioner of Stamps moved for a citation to issue on me personally in respect of the son's estate. The citation was served on me and I filed objections. (Mr. Chelvanayagam marks the journal entries, citation and affidavit, A13.) The application of the Commissioner was dismissed with costs. Thereafter they did not move in the matter.

The Mysore Deposit represents a sum of Rs.100,000 deposited on 3rd July 1934, money sent from Colombo to the Bank of Mysore ; that money has not been returned to Ceylon yet. I do not know whether it is still in the Bank of Mysore or in any other bank. That money was sent before the son's death. The Estate Duty Department has included this item for tax in respect of the son's estate but not the father's estate. I claim that this is not a Ceylon asset.

I know the facts relating to the money borrowed from the firm PNV. This was a firm in Ceylon, the members being from Negapatam. We had dealings with that firm for a long time. That firm failed, before Arunachalam Chettiar the son's death. We were not able to realise their assets in Ceylon ; we pursued them in India, and the firm of Rm. Ar. Ar. Rm. obtained a mortgage bond for Rs.50,000 in respect of immovable properties in India out of which Rs.38,125 was for Rm. Ar. Ar. Rm. and the balance for another creditor-firm of TNV in India having no relations with the family of Arunachalam Chettiar. Rs.38,125 was the share of the debit due to Rm. Ar. Ar. Rm. by TNV as at 21st July 1931, Rs.37,750 representing interest and capital and Rs.375 being cost of the mortgage bond. This bond was sued on in India in 1933, before the death of the son Arunachalam Chettiar. As at the date of death of Arunachalam Chettiar the son, i.e. 9th July 1934, the state of this asset was Rs.40,120/25, being principal and litigation expenses ; accrued interest was Rs.13,050, altogether making Rs.53,170/25. That asset I claim, should be deducted from the son's estate as an item not forming part of the Ceylon estate. A portion of this amount has been recovered.

In the District Court, Colombo.

Original Appellants' Evidence.

No. 11.. Manicam Chettiar, 2nd June 1948. Examination, *continued.*

To the declaration R2 was attached a statement of assets, R2B ; that is the state of the assets of the family as at the date of death of the son. The Crown had assessed certain lands in Ceylon set out in this as liable to duty. I claim that the lands referred to therein, if they become liable to duty, should be subject to the deduction mentioned in Section 20, sub-sections 3–5 of the Estate Duty Ordinance.

In R2B I have given a schedule of estates. The total value given there of the landed properties is Rs.275,100. In the assessment it has been increased to Rs.286,000. This represents the value of agricultural property and as such it is subject to a deduction of 10 per cent., under Sub-section 3 of Section 20. Therefore the value has to be reduced by Rs.28,600.

There is also property in undivided shares of a total value of Rs.78,100. A deduction is allowed under sub-section 4 of Section 20, of 10% in respect of undivided property, and I claim a deduction of Rs.7,810 on this item.

Under subsection 5 I am entitled to a further deduction in respect of undivided shares of properties other than agricultural properties. The value of properties that come under this definition is only Rs.2,000 ; 10% of that to be deducted comes to Rs.200.

The total claim for deduction on all these items under sub-sections 3, 4 and 5 is Rs.36,610.

Before the son's death the Income Tax Department assessed all the assets in Ceylon of the father and son together as a joint family. When the son died the Income Tax Department sent a notice of assessment on the father as an individual, there was an appeal against it and it was argued before the Commissioner of Income Tax ; I was present ; the appeal was allowed and the assets were assessed as a joint family again. The Commissioner of Income Tax sent me a letter dated November 7, 1936 (A14) embodying his finding. In that connection Arunachalam Chettiar the father sent an affidavit to be filed before the Commissioner ; that was filed.

(Mr. Weerasuriya objects to the affidavits being produced by this witness. Mr. Chelvanayagam refers to Vol. IV, page 667, Sub-section 5 and examines the witness further) :—

I told the court that I was present at the inquiry before the Commissioner ; that was on 4th November 1936 ; Counsel appeared on my behalf. At the hearing these affidavits were tendered, sworn to by Arunachalam Chettiar, Snr., and they were considered by the Commissioner. Those affidavits were in support of the petitioner's case. I have obtained certified copies of those affidavits from the Commissioner of Income Tax himself.

(Mr. Chelvanayagam submits that this evidence is admissible under Section 33. Mr. Weerasuriya desires to cross-examine the witness relating to the circumstances under which the affidavits in question were given to the Commissioner of Income Tax in order that the question of admissibility might be argued. I allow him to do so.)

To Mr. Weerasuriya :—

Arunachalam Chettiar, Snr., was in India at the time this appeal was heard ; he never came to Ceylon. In these proceedings he was not a

witness. I got the affidavits from India. In the appeal before the Commissioner the question was whether the income of the estate was to be assessed as the income or property belonging to a joint family.

In the District Court, Colombo.

Original Appellants' Evidence.

No. 11.
Manicam Chettiar, 2nd June 1948. Examination, *continued.*

(Mr. Weerasuriya continuing his argument states that " witness " referred to in the Section is a witness in a different context. He refers to Sec. 40 of the Estate Duty Ordinance. He also states that the questions raised here were never in issue in the proceedings before the Commissioner, and the parties are not the same.

For the present I make no order with regard to the admissibility of these documents as Mr. Chelvanayagam wishes to address me further on the point. After the evidence of this witness on the other points is over, I shall give him an opportunity of addressing me further, and then I shall make an order with regard to the admissibility of the documents in question.)

After the attempt made by the Department to assess the son's estate in 1936, they took no steps till 1938, till the death of the father. By notice dated 31st October 1938 (A15), the Assessor, Estate Duty, served a notice of assessment on the present two Appellants, the Receivers, claiming duty of Rs.215,000. The Department amended that by a notice dated 10th November 1938 (A16) on the present Appellants. To that an objection was sent dated 8th December 1938 (already marked A12). Thereupon an interview was held on the 18th March 1939 in respect of that assessment at the Estate Duty Office. The Assessor thereafter wrote letter A11 of April 1939 by which he asked that a declaration and statement of assets be sent. In response to that a declaration was sent by the Receiver Mr. Ramasamy Iyengar, marked R2A to which was attached the account R2B. R2A and R2B were sent on 29th July 1939 with the proctor's covering letter dated 30th July 1939.

On 22nd August 1939 the Assessor, Estate Duty wrote to me letter (A17) calling for a declaration on form 225. In response to A17 I sent R1, a declaration in statutory form ; that was followed by a notice of assessment dated 9th May 1941 (A18). In reply to A18 my proctor wrote letter (A19) of 27th May 1941. The reply to A19 was A20 dated 2nd June 1941. Thereupon I gave formal objection to the Assessment by A21 dated 2nd June 1941. On the objection raised the Commissioner of Estate Duty gave his ruling by his letter dated 16th April 1942 (A22). Thereafter the Assessor served an amended notice of assessment (A23) dated 29th April 1942. The Appellants followed up the Commissioner's order (A22) by filing the present appeal on 14th May 1942, which is now being heard. By his letter of the 12th May 1942 (A24) the Commissioner called upon me to pay duty. My proctor by his letter dated 22nd May 1942 (A25) sent a sum of Rs.200,000 under protest. Pending appeal I have paid the balance duty. On 1st June 1942 the proctor wrote letter A26 sending the balance duty, also under protest. On July 6, 1942 the Commissioner wrote to my proctor letter (A27) asking for the interest payable on the duty. That also was paid by my proctor by letter dated 25th July 1942 (A28) without prejudice to my rights in appeal. By letter dated 14th August 1942 (A29) the Commissioner called for a balance of Rs.16.97 and by his letter dated 22nd August 1942 (A30) he called for a further sum of Rs.6,743/70. My proctor paid the Rs.16.97 by letter dated 18th September

In the District Court, Colombo.

Original Appellants' Evidence.

No. 11. Manicam Chettiar, 2nd June 1948. Examination, *continued.*

Cross-examination.

1942 (A31). By (A32) letter dated October 1, 1942, the Commissioner called for remittance of the balance, otherwise he would issue writ for recovery. By (A33) letter of 15th October 1942 my proctor sent the balance Rs.8,693 which was acknowledged by letter (A34) of 8th November 1942 which also called for a balance of Rs.5.78. Interest was paid by letter (A35) of 16th December 1942. All the duty in this case was paid after the appeal was filed, without prejudice and subject to the appeal.

(Mr. Weerasuriya states that he does not object to the affidavits which Mr. Chelvanayagam proposed to put in being formally marked in evidence without the witness being recalled in the event of the court holding that they are admissible.)

XXD.

As far as you are aware, was any claim addressed to the Commissioner of Estate Duty asking for a refund of the Estate Duty paid in this case ?—*A*. There was no specific application.

Q. All the payments of Estate Duty in the case of the estate of Arunachalam Chettiar Jnr. were made after the petition of appeal has been filed ?—Yes.

Q. The final notice of assessment issued in this case was A23 ?—*A*. The last one issued was A23. The duty was paid under protest and subject to appeal. Excepting the letters written, paying duty under protest, no application for a refund was made.

The amount on the mortgage bond from the firm of TNV was subsequently realised, I cannot say when. The money had been realised in India and the entries were made in Colombo. The book is in my office and I can get it down.

In regard to the Mysore deposit of Rs.100,000 I cannot say where that money is today. It has been entered in the Colombo Office against the Head Office ledger about 4 or 5 years back-transferred. I have that book also and can produce it after the adjournment.

The Receivers used to come to Colombo occasionally in connection with their work but the greater part of the Administration of the estate was carried out in Devacottai, in their office.

(Shown R4 dated 28th January 1945.) This letter has been written on that day by the Receivers. I cannot say how they came to write this letter.

(Sgd.) . . . A.D.J.

Adjourned for lunch.

MANICKAM CHETTIAR : Affirmed (Recalled).

XXN contd.

The date the entry was made in the book relating to the realisation of the asset debt of T.N.V. Nagapatam is 31st March 1947. I have the entry in the book. (Witness reads the entry.)

To Court :

They settled the matter with some of the Defendants and got payment in India. T.N.V. firm has been credited in the book here and the head office is debited with that amount.

According to this entry the asset is shown as an asset of the Colombo business.

As regards the fixed deposit of Rs.100,000 the date of transfer in my book is 31st March 1943. Rs.258,523/94 was transferred to the head office. There were subsequent deposits also after 1934. The whole thing was transferred. The administrators gave instructions to transfer, therefore we transferred to the head office on the 31st March 1943. It was not originally credited here and subsequently transferred to the head office. The deposit was there in Mysore. A credit entry was made in these books ; no money came in.

Q. In order to enable the head office to obtain the payment of Rs.100,000/– it was necessary for the purpose of the books to transfer this in the book to the head office ?—Even without an entry here they can recover in India.

To Court :

This was also transferred on the instructions of the administrators. In other words what I did was to make an entry here debiting the head office with that sum.

It was debited against the capital of the head office. I do not know whether it was money earned in connection with the Ceylon business. At the first instance the money was sent from the Ceylon business.

Q. Against any previous transaction between the head office and the Ceylon branch showing the head office as a creditor or debtor to the extent of this entry, that position will have to be adjusted. E.g. up to the time of this transaction the head office was a creditor of the Ceylon branch to the extent of 3 lakhs ; as a result of this transaction the credit balance will come down by one lakh ?—*A.* Yes.

Re-examination.

R'exn. :

The duty was all paid after the filing of the petition of appeal. Unless the appeal is decided in my favour I would have no right to get a refund. A certain time was fixed within which I had to appeal and I have appealed within time. Thereafter I had been asked to pay the duty and therefore I had to pay.

Regarding the entries transferring the account to the head office in 1947 the money has not come in. The entries are book entries. Without making an entry I cannot close that account in this book. I had to make an entry to close that account and treat it as an account of the head office. For book-keeping purposes an entry had to be made, otherwise I will have to account for that folio.

(Sgd.) . . . A.D.J.

In the District Court, Colombo.

Original Appellants' Evidence.

No. 12.
V. Ramasami Iyengar, recalled, 2nd June 1948.

No. 12.

V. Ramasamy Iyengar (recalled).

Mr. Chelvanayagam recalls the witness Ramasamy Iyengar in relation to the document R4.

RAMASAMY IYENGAR Affirmed (recalled).

I have already given evidence (Shows R4). I wrote this letter to the Commissioner of Income Tax. I have used there the term " co-owners ". I do not withdraw that word. My first letter to the Commissioner of Income Tax will explain this position. I call them co-owners because there was a suit for partition after the death of the deceased and there was a preliminary decree for partition and thereafter there have been co-owners. Umayal Achy the daughter-in-law of Arunachalam Chettiar (Snr.) filed an action for partition of the entire joint property between herself and the two widows of Arunachalam Chettiar (Snr.) I wrote R4 after the original suit No. 93 of Devakottai on the basis that there has been a decree ordering partition. The joint family property can always be partitioned amongst various coparceners. After partition the various coparceners will own the whole bulk in common but not jointly. If *A*, *B* and *C* were coparcenery owners of joint family property and one of them sues for partition and a decree is entered for partition then their status becomes divided and they will be owning common or become co-owners with reference to the property of the family. Until the property is divided among them they will continue to be co-owners. In India also they have interlocutory decree and final decree for partition. An interlocutory decree is called a preliminary decree in India. The suit for partition was filed a few months after the death of Arunachalam Chettiar (Snr.). At the stage I wrote the letter R4 only the preliminary decree had been passed. Even now the final decree has not been passed. If a decree had been entered dividing the estate amongst the three widows then each person who gets a fraction of the joint family property will hold that portion as joint property of herself and the members of her family.

On this subject I have written letters earlier to R4 to the Commissioner of Income Tax. I produce my letter of the 30th December 1941 referring to this case and the division (marked A36). Also my letter of the 11th December 1942 to the Assessor (marked A37).

(Mr. Weerasooria objects to the production of these documents saying that he has not been noticed to produce them nor that they have been listed. Mr. Chelvanayagam states that he wrote yesterday asking him to produce the letters. Perhaps that letter has not yet reached the other side.

I disallow the production of those two documents.)

Cross-examination.

XXN.

Before I wrote R4 a preliminary decree for partition had been entered in the Devakottai Court. At the time I wrote the first letter the preliminary decree had been passed. At the time of R4 the Federal Court had disposed

of the appeal on the preliminary decree. The appeal was taken to the Federal Court against the preliminary decree. On the decision of the Federal Court an appeal was taken to the Privy Council and it was pending. I do not know whether there was an appeal at the time I wrote R4. Later on the appeal to the Privy Council was withdrawn owing to the compromise. I may be having a copy of the preliminary decree passed in the Devakottai Court.

No. 12. V. Ramasami Iyengar, recalled, 2nd June 1948. Cross-examination, *continued.*

ReXN.

Nil.

(Sgd.) . . . A.D.J.

No. 13.

No. 13. Argument regarding admissibility of Affidavit of Arunachalam Chettiar (Senior), 2nd June 1948.

ARGUMENT regarding Admissibility of Affidavit of Arunachalam Chettiar (senior) sworn in 1938.

Mr. Chelvanayagam now addresses me with regard to the admissibility of the two affidavits.

He states that he is seeking to bring them under the provisions of Sections 34 and 35 of the Evidence Ordinance. He states the present proceedings are between the Appellant as representing the estate and the Attorney-General as representing the Crown. The proceedings are not against the Attorney-General personally but against the Crown. In the Income Tax proceedings also the proceedings were between the deceased person whom the Appellant now represents and the Government, that is, the collector of the tax.

He submits that the decision given by the Income Tax Commissioner would not operate as *res judicata* in proceedings where estate duty is concerned, because the matter decided only relates to the income of a particular year and is only of an administrative nature. It is not a judicial finding on matters which a tribunal decides. He refers to 45 N.L.R. 230.

On the question of between the same parties, he says the explanation in section 33 does not apply to the present case but it gives a reason. The parties in the Income Tax case were the Crown as represented by the Commissioner of Income Tax and the Chettiar—the parties were the assessor and the assessee. In the present case the parties are the Crown as represented by the Attorney-General and the Appellant as representing the estate of the deceased.

He submits that the explanation supports the view, but for it in all criminal proceedings it will be held that the parties are the Crown and the accused and not the Prosecutor and the accused.

He refers to Amir Aly page 374 (9th edition) commentary under section 33.

In the District Court, Colombo.

Original Appellants' Evidence.

No. 13. Argument regarding admissibility of Affidavit of Arunachalam Chettiar (Senior), 2nd June 1948, *continued.*

Mr. Weerasooriya in reply.

As regards proviso (*b*) of section 33 he cites A.I.R. (1930) Privy Council, p. 79 at 80. Monir on Law of Evidence at p. 320. He submits in an appeal before the Commissioner of Income Tax the two parties are the Assessor and the assessee, the tribunal being the Commissioner of Income Tax. He refers to section 64 of the Income Tax Ordinance under which an assessment is made and section 69 which provides for appeals. He also refers to Section 73 (1) and (3). It is clear from all these provisions that first of all the Assessor makes an assessment. It is from that assessment an appeal is taken to the Commissioner who is the tribunal of appeal. There is an appeal to the Board of Review from that tribunal. Even before the Board of Review it is the assessor who appears. In this case the party appealed against is the assessor. He submits that even for purposes of proviso (*a*) there is no analogy between this case and the case contemplated in that sub-section.

The initial difficulty of the Appellant, he says, is the requirement under section 33. Section 33 speaks of evidence of a witness, that is, evidence and witness; it excludes affidavit evidence. According to proviso (*b*) there must be a right to cross-examine and that right is a legal right. A legal right would exist only in proceedings where the Evidence Ordinance applies. Proceedings in an appeal before the Commissioner would not be governed by the rules of the Evidence Ordinance and there will be no right to cross-examine a witness.

In regard to the position of the Commissioner of Estate Duty he refers to Cap. 187, section 32 and subsequent sections. He submits there is no provision for a formal hearing before the Commissioner; he considers such evidence as is placed before him. Even there, there is no question of right of cross-examination.

He refers to Monir on Law of Evidence p. 324. Mr. Chelvanayagam is heard :

He says the Appellant's case is that the other side had a right of cross-examination, they had an opportunity before the Commissioner but they allowed the evidence to go in without cross-examination. The question of opportunity is not a question of physical opportunity ; it is an opportunity in the sense that they could have, if they wanted to, cross-examined the witness.

Regarding the identity of parties he submits the Crown function through certain persons and the party on the other side is the Crown.

He cites Amir Ali at page 371.

I reserve my order for the next date.

(Sgd.) . . . A.D.J.

Further evidence on 19th July 1948.

Expert evidence from 4th to 8th October 1948.

(Sgd.) . . . A.D.J.

No. 14.

ORDER re Affidavit of Arunachalam Chettiar (senior).

In the District Court, Colombo.

No. 14. Order *re* Affidavit of Arunachalam Chettiar (Senior), 19th July 1948.

ORDER.

Learned Counsel for the Appellants seeks to put in evidence two affidavits sworn to by Arunachalam Chettiar (Snr.) in 1936 which were submitted to the Commissioner of Income Tax in connection with an appeal to the Commissioner against an assessment by the Assessor assessing the income of the father as that of an individual. It was the assessor's contention that the income in question was not his individual income but that of a joint Hindu undivided family of which he and his son were, during the latter's lifetime, co-parceners. The affidavits seek to establish the assessee's contention. Learned Crown Counsel objects to the production of these affidavits. His contention is that the two affidavits are not admissible under Section 33 of the Evidence Ordinance, under the provisions of which it was sought to put them in.

Section 33 provides for evidence given by a witness before any person authorised by law to take it being admitted in a subsequent judicial proceeding when, as in this case, the witness is dead, subject to certain provisoes. The first requirement is that the earlier proceedings should be between the same parties or their representatives in interest. The next is that the adverse party in the first proceeding had the right and opportunity to cross-examine. For the Crown it was argued that evidence given by affidavit is not evidence within the meaning of Section 33 and that in any case the Crown did not have the right and opportunity to cross-examine.

The Commissioner of Income Tax is authorised by Section 69 (5) " to summon any person whom he may consider able to give evidence respecting the appeal to attend before him at the hearing and examine such person on oath or otherwise." I shall take it that this power empowers the Commissioner to summon the Appellant himself when the latter appears by an authorised representative. This provision clearly covers only oral evidence : the word " evidence " is so defined in Section 3 of the Evidence Ordinance. The only documentary evidence contemplated by the Evidence Ordinance is defined by the Code to be " all documents produced for the inspection of the Court." Affidavit evidence really is oral evidence reduced to writing and sworn to by the witness before some person other than the Judge or person authorised by law to take it. Section 69 of the Income Tax Ordinance does not empower the Commissioner to admit evidence given by affidavits. In civil proceedings where affidavits are admitted the Courts are empowered expressly to order evidence on affidavits to be taken—vide Section 179 of the Civil Procedure Code—or the Code expressly enjoins that evidence shall be by affidavit as in the case of interlocutory applications. The Commissioner of Income Tax is not empowered to take evidence on affidavit under Section 69 (5) of the Income Tax Ordinance. If he does so, he does it without jurisdiction and Section 33 would not apply to evidence so taken—vide Amir Ali, page 364 (9th edition) where reference is made to a case in which it was held that evidence given before a Judge or Magistrate who had no jurisdiction cannot be used under this section : vide also Monir, p. 314 (2nd ed.). With regard to the right to

In the District Court, Colombo.

cross-examine, although this is not expressly provided for in Section 39, it is a general principle of law that when a party is given the right to appear in person or by a representative the right to cross-examine is implied.

No. 14. Order *re* Affidavit of Arunachalam Chettiar (Senior), 19th July 1948, *continued.*

I shall next deal with the question of the opportunity to cross-examine, particularly a witness whose evidence is taken on affidavit. When evidence is taken in the presence of a party the presumption normally is that he had the opportunity to cross-examine on the maxim " Omnis Praesunmuntur rite esse acta." In a case where the evidence is on affidavit and the deponent is not present to be tendered for cross-examination, this presumption will obviously not arise. In an India case (*Doresamy Iyer* vs. *Balasunderayer Ayer*—A.I.R. 1927 Madras, 507) it was held that the affidavit of a defendant who was in fact not subjected to cross-examination was not admissible under Section 33 of the Evidence Act. In this particular case the evidence is that when the affidavits were tendered to the Commissioner of Income Tax, Arunachalam Chettiar (Snr.) was away in India and never came to Ceylon. As the opportunity to cross-examine is not admitted by the Crown the burden is on the Appellant to prove that the Crown had full opportunity to cross-examine on the affidavit before it can be admitted under Section 33, vide Monir (2nd Edn.) p. 324 : Amir Ali (9th edn.) p. 372. This burden has not been discharged.

I accordingly hold that the two affidavits are inadmissible in evidence under Section 33 of the Evidence Ordinance and rule them out.

(Sgd.) . . . A.D.J.

19.7.48.

No. 15. Proceedings, 19th July 1948,

No. 15.

PROCEEDINGS.

19.7.48.

Appearances as before.

Errors in previous proceedings are corrected by consent.

I draw Mr. Chelvanayagam's attention to the proceedings of the last date wherein he is reported to have said that he seeks to bring in the two documents under Sections 34 and 35 of the Evidence Ordinance. He states that in point of fact it is a mistake and that he sought to bring them in under Section 33 only.

Order with regard to two the affidavits is delivered in the presence of Counsel on both sides.

Mr. Chelvanayagam leads in evidence letters A36 and A37.
Mr. Weerasuriya has since been given notice to produce these letters and he has no objection to bring to these being now marked in evidence.

Mr. Chelvanayagam also marks A38, letter of 9th February 1944 to the Commissioner.

Mr. Chelvanayagam closes his case subject to expert evidence being led.

(Sgd.) . . . A.D.J.

In the District Court, Colombo.

No. 15. Proceedings, 19th July 1948, *continued.*

(*After interval.*)

19th July 1948.

Appearances as before.

Mr. Weerasuriya, before opening his case states that admission (vi) of the admissions noted of record, was intended to refer to a point of time immediately prior to the death of Arunachalam Chettiar (Jr.), namely, the state of the property at the time both of them were members of an undivided family. It was not intended to be an admission with regard to the state of the property immediately after the death of Arunachalam Chettiar (Jr.). In order to make the matter clear he seeks to interpolate the words " immediately prior to his death " after the word " was " and before the word " the " in line 2.

Mr. Chelvanayagam states that he does not wish to make any statement without consulting learned advisers on questions of Hindu law.

Mr. Chelvanayagam states that this admission was drafted by the Crown and he put it to his clients who are Indian lawyers, and his clients may have read into it more than what the other side intended to convey. He, therefore, wishes to consult them before he agrees to, or objects to, what Mr. Weerasuriya says. He asks that he be given an opportunity to make his submissions with regard to it on the next date.

I allow the application.

(Intd.) . . . A.D.J.

ORIGINAL RESPONDENT'S EVIDENCE.

Original Respondent's Evidence.

No. 16.

L. E. Gunesekera.

No. 16. L. G. Gunesekera, 19th July 1948, Examination.

Mr. Weerasuriya calls—

L. G. GUNASEKERA : Affirmed.

Assistant Commissioner of Income Tax, Estate Duty and Stamps.

Arunachalam Chettiar (Jr.) died on the 19th July 1934. No declaration of property belonging to the estate was furnished on his death in terms of Ordinance No. 8 of 1919, which was the Ordinance in operation at that time. Subsequently Arunachalam Chettiar (Snr.) died on the 23rd February 1938 and the Appellants were appointed Receivers of the estate left by Arunachalam Chettiar (Snr.). On the 5th October 1938 the Receivers wrote a letter to the Commissioner of Estate Duty notifying that they had been appointed Receivers and also annexing a copy of the letter of appointment. (Mr. Weerasuriya marks letter dated 5th October 1938 as R5 and the annexure as R6.) Subsequently assessments were made and served on the Appellants as Receivers. These assessments have already been produced marked A15, A16, and A18. The Appellants also themselves furnished a declaration which has already been marked R1. On the 5th June 1941, the Appellants filed objections to the assessment which has already been marked A21, and the Commissioner maintained the

In the District Court, Colombo.

Original Respondent's Evidence.

No. 16.
L. G. Gunesekera, 19th July 1948. Examination, *continued.*

assessment by his notification marked A22, subject to the exclusion of a half share of certain properties, and the present appeal has been taken from that determination of the Commissioner of Estate Duty. The estate duty due in case Nos. 37/T Spl. as well as 38/T Spl. has been paid. If any application for a refund had been made to the Commissioner under section 58 of the Ordinance in respect of the payments made that application would have been dealt with by me. I do not recall any such application either in 37/T Spl. or 38/T Spl. for a refund of estate duty paid.

Certain objections to the assessment had been taken in both the petition of appeal to the Commissioner as well as in the petition of appeal filed in this Court. One objection is (in 37/T Spl.) that the Appellants are not the persons against whom an assessment in law can be made. The assessment was made on the Appellants as Receivers in charge of property belonging to the estate of Arunachalam Chettiar (Jnr.) and I rely on section 26, Cap. 187. Another ground of objection is that Arunachalam Chettiar (Jr.) left no property in Ceylon liable to estate duty. Reliance was placed on section 73 of Cap. 187. The view taken by the Estate Duty Department in making the assessment is that the value of the property had to be made in terms of Ordinance No. 8 of 1919 and that section 73 of Cap. 187 does not apply in determining the liability for estate duty.

In the case of Arunachalam Chettiar (Sr.) the various assessments made have already been produced marked A41, A44 and A62. The statement of objections to the assessment has already been marked A42 and A47. The notification of the Commissioner of Estate Duty maintaining the assessment subject to the exclusion of a half share of certain properties has been produced marked A61. The present appeal is from that determination of the Commissioner of Estate Duty.

Cross-examination.

XXN.

Q. In respect of the son's estate you have taken proceedings under the new Ordinance of 1938 ?—I have used certain sections of the Ordinance of 1938. The making of the return was under the New Ordinance. My assessment was under the New Ordinance.

To Court :

I made use of the Ordinance of 1938 because the corresponding section of the Ordinance of 1919 had been repealed at that time. At the time Arunachalam Chettiar (Jr.) died the Ordinance of 1919 was in force. When the son died certain portions of the 1919 Ordinance had not been repealed. Sections 1 to 17 are still in force.

In the case of the son's estate I assessed without a return first and the Appellants objected to that assessment. Thereafter they made a return because I called upon them to do so. I called upon them to make a return in the prescribed form and thereafter declaration R1 was made. The procedural part of all the assessments was under the new Ordinance. Under the new Ordinance there is provision to appeal to the District Court. Under the old Ordinance there also was provision to appeal to the District Court. This appeal was also conducted under the new

Ordinance Procedure. This appeal is from a ruling by the Commissioner that the son's estate was liable to duty. As long as that ruling stands, duty has to be paid.

Q. There is no question of asking for a refund of that duty as long as that ruling stands ?—There is a section under which they can ask for a refund ; that is section 58.

Section 58 deals with the question of repayment of duty ; that is repayment of duty that is not liable to be paid.

Q. You do not contend that you will pay back duty which is liable to be recovered ?—That does not prevent a claim being made.

I am a Barrister-at-law and an Advocate of the Supreme Court. I was practising as an advocate for a short time before I joined the Estate Duty Department.

Q. Repayment of duty by the Department will be considered when the duty is not leviable ?—Yes.

Q. When an overpayment has been made by mistake or under this proviso ?—Yes.

Q. In other words if the Commissioner is satisfied that duty has been wrongly collected he would repay that duty ?—Yes.

Q. Are you satisfied that the duty in either of these two cases has been wrongly collected ?—No.

Q. As far as the Department is concerned there is no question of repayment ?—Not unless this appeal is lost. Until the Commissioner's finding is reversed there is no question of repayment. The duty has been correctly levied as far as the Department is concerned.

Q. In fact in both these cases the Department wanted the duty paid notwithstanding appeals ?—Yes.

Q. The Commissioner has power to recover duty notwithstanding appeals ?—Yes.

Q. You wanted to exercise that power ?—I am not sure of that. I did not deal with it. I have not studied the file. I do only part of the file dealing with assessments. I do not deal with the collection part ; that is done by some other branch. I know only about the assessments. With regard to repayments in the first instance in those days that matter would have come to me. Now it is not done by me. The order to repay is done by me.

Q. On an order made by the Commissioner ?—Yes.

Q. You have no papers under which the Department called upon the Appellants to pay ?—It is done in a separate file. I have not brought that file to Court. I knew that I had to give evidence in this case on behalf of the Crown. I was in Court throughout the entirety of these proceedings. When letters were produced by the Appellants written by the Department I was in Court.

(*Shown A32*) :

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L. G. Gunesekera, 19th July 1948, Cross-examination. *continued.*

The Department had threatened to issue writ if the duty was not paid.

Q. Do you mean to say in either case the duty was wrongly paid ?—No.

Q. The question of whether the duty is payable or not is for determination in this case ?—Yes. I am instructing the Crown in this matter. I am a staff officer of the department dealing with this matter.

Q. It is on your instructions the Crown is raising an objection that the Appellants should have made a specific claim for the return of this duty before duty can be repaid ?—I cannot say that I gave those instructions specifically. I drew attention to certain facts.

Q. Have you discussed with the Commissioner about this objection that duty is not repayable in these cases unless a specific application is made to the Commissioner ?—I may have discussed it, I cannot be sure.

Q. You say that a demand should be made under section 58 ?—Yes.

Q. The only section that you could refer to under which you say that a demand should be made is section 58 of the Ordinance ?—Yes.

Q. Under what ground do you say the Appellants should get a refund ?—It is left to them. Whatever their grounds are that is the only section under which we can repay.

Q. What are the grounds under which you say the Appellants should have asked for the return of the duty ?—If they thought that duty was not payable they should have asked for the return of the duty.

Q. In the son's case the duty was paid after the appeal was filed ?—Yes.

Q. When can such a demand be made, before or after an appeal is filed ?—Any time within three years of the date of issue of the notice of assessment.

Q. If the demand can be made then the amount is paid ?—Yes.

Q. When the amount is paid the payer can say " I want this returned " ?—Yes.

Q. That would be sufficient according to you ?—Yes.

Q. When the amount is paid the payer can say " I am not liable to pay this, I am paying under compulsion without prejudice " ?—I don't think that will be sufficient.

Q. Similarly in the case of the father's estate the duty was paid before and after appeal ?—A portion before and a portion after.

Q. You say every time duty is paid there should be a demand that it be repaid ?—Not necessarily.

Q. After all was paid there should be a formal demand for repayment ?—Yes.

Q. It would have been a useless demand in both these cases ?—Not necessarily.

To Court :

As far as my Department was concerned until the appeal was over it would have been refused.

Q. From that refusal there is no remedy ?—Not under the Ordinance.

Q. Did you study section 58, subsection 2 also ?—Yes.

Q. Some of the payments in the son's case were made three years after the notice of assessment ?—I cannot say that. They can be verified from the receipts that were here.

(It is 4 p.m. now. Further hearing adjourned for 6th September 1948.)

(Sgd.) A.D.J.

6th September 1948.

Appearances as on the last date except that Mr. Adv. Chelvanayagam appears with Mr. Adv. Perisunderam and Mr. Adv. Thavathoram for the Appellants.

Errors in previous day's proceedings are corrected of consent.

L. G. GUNASEKERA : Affirmed. (recalled.)

XXN. Contd.

The duty in the son's case was first paid on the 26th May 1942. The notice of assessment was on the 26th October 1938. All the duties were paid three years after the notice of assessment.

Q. Have you been able to verify that in the father's case certain payments of duty were made three years after the notice of assessment : some were paid within three years of the notice of assessment, some were paid after ?—I don't think so. The first notice of assessment was on 5th October 1939.

Q. And there were payments after 5th October 1942 ?—The last payment according to my file was on 14th September 1942 ; that is within three years.

(*Shown R5 and R6.*)

R5 is a letter written by the Receivers to me dated 5th October 1936 and R6 is the annexure to it stating that the Indian Court had appointed them Receivers. The request contained in R5 was in relation to the father's estate. The request was for time to give particulars or declaration in respect of the father's estate, not in respect of the son's estate.

In regard to the son's estate our position was that the Receivers were in charge of the son's estate and that therefore they were liable under section 26 for the payment of duty. The Receivers are from India ; they are lawyers practising in India and are not people from Ceylon. The Receivers took charge of the property in Ceylon after the father's

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death by virtue of their right as Receivers appointed by the Devakottai Court. According to R5 they took charge on the 18th August 1938—That was more than four years after the death of the son.

Q. They took charge of whatever property they got in Ceylon as belonging to the estate of the father ?—They took charge of the property left by the father.

Q. They took charge of the business of Rm. Ar. Ar. Rm. and they took charge of whatever movable property that belonged to that business which formed the estate of the father ?—I do not know.

Q. Your position is that the son's estate fell into the father's estate ? —Yes.

Q. But you say that the Receivers took charge of the estate left by the father as the father's estate ?—Yes.

Q. Your contention is that the son's estate merged with the father's, was with the father and when the Receivers took charge of the father's estate they took charge indirectly of the son's estate ?—Yes.

Q. It is not your position that the Receivers sought to administer the son's estate ?—No.

Q. There is no administration case filed in these Courts to your knowledge in respect of the son's estate by anybody ?—No.

Q. In respect of the father's estate exemption was claimed under section 73 ?—Yes.

Q. Which exempts from duty joint property of a Hindu undivided family ?—Yes.

Q. In respect of the father's estate in addition to that claim a further claim was made under section 6, that is quite irrespective of section 73 ? —It said that the deceased left no estate in Ceylon liable to estate duty. I am looking at the objections sent to the Commissioner of Estate Duty dated 2nd June 1941. That is one of the objections taken. There were a number of objections filed as there were a number of assessments.

Q. The objection was that no estate liable to estate duty was left ? —Yes.

Q. Is that the same as saying that nothing passed ?—I do not know.

Q. A similar objection was taken in respect of the son's estate?—Yes.

Q. Regarding the son's estate you took proceedings under the old Ordinance—in case No. ED/A300 which has been marked A13 ?—Yes.

Q. You personally handled this matter at that time also ?—Yes.

Q. You asked for a citation under the Old Ordinance on Manicam Chettiar ?—Yes.

Q. He was the attorney in Ceylon at that time of the father ?—Yes.

Q. Manicam Chettiar filed an affidavit saying that the son left no estate ?—Yes.

Q. And you withdrew your application for a citation ?—Not for that reason. We really withdrew it because we had no power to cite that particular person under the old Ordinance.

Q. But thereafter you took no steps whatsoever against anybody in Ceylon at that time ?—There was nobody in Ceylon against who we could have taken steps.

Q. The father was carrying on the business of Rm. Ar. Ar. Rm. ?—Yes.

Q. And he had attorneys in Ceylon ?—Yes. He had two attorneys; one was Manicam Chettiar, I do not know the other.

Q. Anyway Manicam Chettiar was the attorney of the father in Ceylon ?—Yes.

Q. Your view then was that the attorney in Ceylon of the father was not liable ?—Yes.

Q. It is the same business and property which the attorney was handling after the father's death that has fallen into the hands of the Receivers ?—Yes.

Q. Do you say that there is a change in the law under the new Ordinance ?—Yes.

Q. . . . which makes the Receivers liable whereas the attorney Manicam Chettiar was not liable ?—Yes.

Q. It is your contention that section 26 of the new Ordinance is new, or wider than the old one ?—I think it is a new provision.

Q. As far as the actual property was concerned Manicam Chettiar during the father's lifetime was handling the very same property which the Receivers thereafter handled after the father's death ?—Yes.

Q. Manicam Chettiar was, on behalf of the father, in possession of the property left by the son ?—Yes.

Q. But still you thought that the law did not give you powers ?—We had no power to make an assessment unless a return was made under the old Ordinance. So we at first get the return and we had no power to compel them to make a return.

REXN. Nil.

(Sgd.) A.D.J.

With regard to Mr. Weerasuriya's application of the 19th of July 1948 Mr. Chelvanayagam states that he has since consulted the Indian Lawyers and he agrees to the interpolation suggested by Mr. Weerasuriya in the admission (vi).

(Intld.) A.D.J.

In the District Court, Colombo.

No. 17.

PROCEEDINGS.

29.9.48.

No. 17. Proceedings, 29th September 1948.

Appearances as before.

Mr. Weerasuriya refers to the fact that originally the expert evidence was fixed for 26–30 July 1948. This was done without reference to the experts. Subsequently those dates did not suit the experts and after they had been consulted the matter was fixed for 4–8 October. On the 14th September the Crown received a telegram from Mr. Rajah Aiyar, Advocate-General of Madras, asking for an adjournment on the ground that he had to argue an important Crown appeal in Madras.

Mr. Weerasuriya states that his proctor was handicapped in that Mr. Kadirgamar the Proctor for the other side was away out of the Island, but he got in touch with the proctor who was dealing with the matter on Mr. Kadirgamar's behalf and understood that the other side would object to a date. The Crown Proctor then sent a letter to Mr. Rajah Aiyar requesting him to postpone his appeal, to which he received a reply that a postponement of the Indian appeal there was impossible, but that the experts of the other side had agreed to a postponement of the Colombo case. Thereafter the Crown Proctor saw me in Chambers in regard to a possible postponement. I understood then that the other side was not opposed to a postponement; presumably he was acting upon a telegram received by him dated the 17th September from Mr. Rajah Aiyer.

Mr. Chelvanayagam opposes the application. He states when he starts on the 4th October his evidence in chief will take some time on the elements of Hindu Law. The application of Hindu Law in this matter will be contentious. The other side might cross-examine as far as they can and wait till Mr. Rajah Aiyar comes on the 6th morning. The cross-examination of Mr. Chelvanayagam's expert will continue into the 5th. Mr. Chelvanayagam suggests that his expert be allowed to give evidence on Monday and Tuesday and cross-examined on Wednesday, by which time Mr. Rajah Aiyar is likely to be here, and if necessary the Court could consider a postponement of the case further if the Crown finds itself unable to get its evidence on the 7th and 8th.

Mr. Weerasuriya has no objection to this.

I allow the present dates to stand subject to the above. It is stated that Mr. Rajah Aiyar will be here on the 6th evening.

(Intld.) . . . A.D.J.

4th October 1948.

4.10.48.

Appearances as before.

Mr. Adv. Weerasuriya closes his case reading in evidence R1 to R, subject to the expert evidence.

ORIGINAL APPELLANTS' EXPERT EVIDENCE.

No. 18.

K. Bhashyam.

Mr. Chelvanayagam calls :

K. BHASHYAM : Affirmed.

No. 18. K. Bhashyam, 4th October 1948, Examination.

I am an Advocate of the Madras High Court. I have been an Advocate of the Madras High Court from 1906 onwards and have been practising all along with certain interruptions which I shall refer to. Before becoming an Advocate I graduated in Arts and in Law in the Madras University. After becoming an Advocate I worked as a Junior under Sir V. Bhashyam Iyengar who was at that time considered a very great lawyer in Madras ; he acted in the Madras High Court Bench for some time and was also Advocate General for some years. Thereafter I worked as a Junior with the late Mr. S. Srinivasa Iyengar who was also an Advocate General of Madras and who edited the latest edition of Mayne's Hindu Law. Mayne's Hindu Law is a very old book and Mr. Srinivasa Iyengar almost rewrote it. In Madras there is only one branch of the profession. In Madras there is a practice of taking permanent Juniors to senior lawyers, to serve in the office. The junior has to do all the solicitor's work and if necessary appear in Court if the Senior is not available or if he is directed to do so. In the absence of the Senior I have argued cases in Court. After I left Mr. Srinivasa Iyengar, Mr. Rajah Aiyar came in as junior to him ; he came in just before I left. Mr. Rajah Aiyar is younger than I. Thereafter I have had an extensive practice in the Courts more on the civil side than criminal, and in the civil side more appellate than original.

I was for many years an active worker of the Congress. When Congress contested the elections I got elected to the Madras Legislative Assembly on the Congress ticket. I am still a Congress Member of the Assembly. When Congress accepted office I was in the Cabinet as Minister for Law and Courts in the Ministry headed by Mr. Prakasam and when Mr. Prakasam resigned I also resigned with him. The resignation was due to certain internal differences of opinion between the Congress High Command and the Ministry. Since then I have been in active practice. I am at present a member of the Legislative Assembly representing the three Universities of the Madras Province.

I am well acquainted with the law administered by the Madras High Court which is the same as that administered by all the Courts in the Province of Madras. The Madras High Court consists of an appellate division to which judgments from all the provincial courts are brought up in appeal. One of the branches of the law I am acquainted with is the Hindu Law. The bulk of the population of Madras is Hindu, about 88 per cent. The High Court has original jurisdiction, civil and criminal confined to the City. Hindu Law applies to all the Hindus in the Province. The population of the Madras Province is about 50 million, Hindus form nearly 40 million.

Among the classes of Hindus in the Madras Province there is a class called the Nattucottai Chettiars who are Hindus and to whom the Hindu

In the District Court, Colombo.

Original Appellants' Expert Evidence.

No. 18.
K. Bhashyam, 4th October 1948.
Examination, *continued.*

Law applies. They live mostly in the southern portion of the Province, in Ramnad and the outlying areas and they are subject to the jurisdiction of the Madras High Court. I know the law applicable to them, the Hindu Law. I have personally appeared in a number of cases affecting Nattucothai Chettiars. I have read through the evidence recorded already in both these cases Nos. 37 and 38 (Special) which has been handed to me. Arunachalam Chettiar the father and Arunachalam Chettiar the son were natives of and resident in Devacothai in Ramnad District, subject to Madras High Court Jurisdiction. Some of these Chettiars live in a small State called Pudukottai, a feudatory State, and also in Chettinad. I am competent to give evidence on questions of Hindu Law which arise in both these cases before this Court.

As a practising lawyer I have written a book on " The Indian Negotiable Instruments Act." That Act applies to the whole of India including the States. My book has gone through eight editions and I am now preparing for the ninth. Apart from practising in the Madras High Court I have also been practising in the District Courts of the Province and in the Subordinate Courts. Subordinate Courts of the Province have unlimited civil original jurisdiction. Concurrently with the Subordinate Courts the District Courts also have such jurisdiction. I have also been enrolled as Advocate in some of the States of Madras such as Pudukottai, Travancore, Cochin, Mysore, and have practised in Courts there. The same Hindu Law prevails in these states except in Cochin and Travancore. In other cases they follow what might be called British Indian Law.

After the liberation of Malaya a number of Indian nationals were put up for trial and I was sent by the Indian Government to defend those persons in Malaya; I defended only a few of them because by that time most of them had been released.

The Hindu Law is personal. It applies to all the Hindus in India and all over India. It is of great antiquity. We claim divine origin for Hindu Law. Textbook writers deal with Hindu Law as a whole but, there are certain schools into which the Hindu Law is divided; the country being so vast there are some local variations. The main schools of Hindu Law are Methakshara, Dayabhage, Mayuka and Mithila. Of these schools the one that applies to the whole of the Madras Province is the Methakshara; it applies to portions of the Provinces of Bombay, Bengal and the United Provinces. Dayabhaga applies to the remaining portions of Bengal; Mayuka to the rest of Bombay and Mithila round about Benares. One has to have these distinctions in mind when applying the decisions of the Courts to a particular case, and this we always do. When we are dealing with a Methakshara subject we have to apply the Methakshara decisions Nattucottai Chettiars and the people concerned in these cases come completely under the Methakshara school of Hindu Law. Methakshara itself is a commentary by Vignaneshwar a number of centuries ago and the Methakshara School follows that as its text, and even today when doubtful questions arise Methakshara is referred to as authority. The text was written in Sanskrit. I passed my B.A. in Sanskrit also and I can read Methakshara in Sanskrit.

Apart from these four big schools, there are local customs in certain parts, of limited application to the limited locality, recognised by the

Courts. Even these have to be kept in mind when applying decisions. Apart from Methakshara there are now a number of modern textbooks on the Hindu Law and there are the decisions of Courts and of the Privy Council which are the sources of Hindu Law today.

Some of the books treated as authoritative treatises on the Hindu Law are Mayne's book on Hindu Law latest (1938) edition by S. Srinivasa Iyengar. Mr. Srinivasa Iyengar is now dead and there is no other edition of this book by anyone else. This book is treated as of great authoritative value. I may add that John D. Mayne was practising in Madras for a long time, he wrote the book when he was practising there and he went to the Privy Council and had an extensive practice before the Privy Council on Hindu Law. Then there is " Principles of Hindu Law " by Sir D. F. Mullah who was a Principal of a Law Colege and later became a member of the Privy Council ; this too is treated as authoritative. There are also other text books.

One of the main principles of Hindu Law is that of Joint Hindu Family. The family is considered a unit of contradistinction to the individual ; it is considered as a " sort of corporation " owning property just as under other systems of law individuals own property. Even in Hindu Law there is the conception of individuals owning property. In ancient times, however, there was no conception of individual ownership. The ancient conception of Hindu Law is the family owning property. The individual owning property is only a later development. When a joint family owns property it is the Hindu Joint Family property. When a person acquires property himself without detriment to the Hindu Joint Family property, it is his self-acquired property as distinguished from joint property. The term " self-acquired property " is sometimes used in contradistinction to joint family property. When we speak of joint family property we speak of a family as a unit. Even before Methakshara the system was of a joint family holding property, not of the individual holding property. At the time Methakshara was written there was a development, of individual property. Hindu Law is even older than Methakshara.

A Joint family consists of male members and female members. Within the joint family there is a narrower body called the co-parcenary, consisting of male members within a certain degree of relationship to each other. The co-parcenary consists of a man, his son, his son's son, and his son's son's son. A man and his three descendants on the male line form the co-parcenary which is a body within the larger body called the joint Hindu Family. Males below the co-parcenary in descent are members of the family but they are not members of the co-parcenary. As an older generation dies off a generation from the bottom steps up into the co-parcenary. There are differences between the rights of a co-parcener in the Family property and those of an ordinary member of the Family. Members are admitted into the Family by birth, by adoption, by marriage. Marriage applies only to women entering into a family. A woman leaves her own father's family and becomes a member of her husband's family. Similarly people leave a family by death, by being given away in adoption and being given away in marriage which last applies to women. Adoption applies to males. When a son is adopted he leaves his natural family and

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becomes a member of his adoptive family. The fiction is he is born into the new family, and for all purposes in the eyes of the law he is a member of the family into which he is adopted, even enjoying co-parcenary rights. This unit called the Family changes from time to time when persons drop out of the family and others are admitted in the manner I have mentioned. Although its composition goes on changing, the Family continues as a " sort of corporation."

(Sgd.) . . . A.D.J.

(*Interval.*)

(*After Lunch.*)

Females and males form members of the joint family. Some of them are called co-parceners and other members of the joint Hindu family. Both males and females are members of the joint Hindu family and the co-parceners are limited to the males. The normal state of Hindu society is that of living under the system called joint family system. The joining is in three respects in food, worship and estate. Srinivasa Iyangar in his Edition of Hindu Law Chapter 8 page 337 says " the joint and undivided family is the normal condition of Hindu society. An undivided Hindu family is ordinarily joint not only in estate but in food and worship." That is correct. On page 373 he says under section 293 " The normal state of every Hindu family is joint. Presumably every such family is joint in food, worship and estate. In the absence of proof of division such is the legal Presumption. But the members of the family may sever in all or any of these three things " and he gives that quotation from the Privy Council judgment in the case of *Neelkistideb* vs. *Beershunder* 12 M.I. A.540. That quotation refers to the division of a joint Hindu family. That is a well known method of dividing up the members of the family. Members of the co-parcenary are the persons entitled to demand partition. That is sometimes called a division and that can be done amicably or by an action in court. If there are four brothers and if they are divided they get into four divisions, each brother sons and grandsons of each brother form one family. They therefore become four separate families. If *A* and *B* were two brothers and constituted the coparcenary members of a joint family and if *A* and *B* are divided *A* and his wife and sons and family would form one joint family and *B* and his wife and family would form one joint family. The Head of the family is the Kartha and he acts in the name of the family. The quotation given in Moores Indian Appeals has been repeatedly quoted as the basis for all later editions. Normally the members of the joint family live together and often in the same house. There is no presumption that a joint family owns any property. There may be a joint family without any property but it is hardly conceivable that they do not have anything like even household utensils. Though a joint family consisting of a number of members may have joint family property individual members of that family could have their separate property acquired either by personal exertion or otherwise but it must be without detriment to the family property and it may also be by gift to them individually. Regarding the separate property the owner of that property can deal with that property as he likes. A person may also get separate property by partition when there are no other members living.

Does such property lose its joint property characteristic ?

No. It does not lose the character of the property as the joint family property. But in respect of such property I would make an exception regarding the right of disposal.

Regarding the joint property of a family how is it enjoyed ?—It is enjoyed in common that is every person entitled to participate in the income thereof whatever he needs for his requirement by way of good clothing etc. The granting of this is not left to the discretion of the Kartha, he is bound to do these things. He may be partial in giving one party more than another but he is bound to give maintenance to all. Every member of the family male and female has the right to be maintained. Every member of a joint Hindu family is entitled to be maintained out of the joint family property. In respect of ownership who will be the owner or owners of the joint property ?—The conception in Hindu law is that ownership vests in the family as such and every member is entitled to its enjoyment. The famous case that initiated that principle is well known in the Indian courts as *Approvars* case 11 M.I.A. page 75 at page 80. (Counsel reads from " According " to the words undivided family.) That quotation is good law up to date. That quotation is followed up by all text books writers and I think the Privy Council has also followed it. Sir George Rankin has done so in A.I.R. 1941 Privy Council p. 120 at p. 126. Counsel reads passage from the words " Before partition the rights of brothers sons or nephews of the Kartha . . . misappropriate " I agree with that. The Kartha has certain special rights of acting on behalf of the family but apart from acting as head of the family for the family his rights are the same as the other members. The right to be maintained applies to male members and female members and the head of the family equally—that is so far as maintenance goes. An idle member is entitled to the same rights of maintenance out of the family income as a working member who might be adding to the wealth of the family. A man who has four daughters will be entitled to have each daughter married out of the family property as a man who has one daughter, that is the man with one daughter will not get four times as much. The amount given will not necessarily be the same, it will depend on the exigencies of the situation and on discretion. For instance if a son pursues an expensive professional career he may be maintained on a larger portion of the income than another son. In other words the family spends according to the needs of each and with regard to the need that is left to the discretion of the Kartha. This is of course subject to some extent to the decision of the courts if there is any large divergence of opinion as regards the discretion used.

Apart from the right of maintenance there is the right to demand a partition which is confined to the coparceners.

In the case of daughters as soon as they are married they go out of the family, those expenses will also be met. Daughters are entitled to their jewels and marriage expenses.

The right to demand a partition rests only in the coparcenary members of the family. Female members and other male members do not have the right except as to the rights which are now granted by the Hindu Womens

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Right to Property Act. In 1937 there was an act passed by the Legislature called the Hindu Womens Right to Property Act which conferred on widows certain rights more than what they held under the law previously and one of them is the right to demand partition which the husband had. When a partition is demanded the joint family gets divided—the joint family and property gets divided into different parts into which the family gets divided and each group becomes a family and the property becomes the property of that family—it becomes the joint property of that separated family subject to the exception where the dividing members is the only male member. The coparcener who is called the head of the family is generally the eldest member of the family unless he is incapacitated in which event the next senior member takes his place. The Kartha holds a peculiar position in the Hindu family. He has the right of managing the properties belonging to the family for and on behalf of the family. He represents the family in any litigation. In regard to the spending of the family income he has a discretion. But subject to that he cannot alienate or give property ? He cannot alienate property unless it is for the necessity of the family—something like in the case of marriages of the girls where he has to raise money or where taxes have to be paid—in such cases he can alienate property for those purposes. Except for such purposes he cannot alienate property. Such alienation is not binding on the other members. Mayne has one full chapter on the question of alienation. He discusses there the history of the law and the differences between the different schools. Dealing with the rights of a managing member in respect of a joint family under the Vitakshara witness draws attention to page 463 section 355 and the following sections.) I accept what Mayne says here on that subject as correct law today. The position is set out again in section 355 and following sections representing the correct law today as far as the father's power of disposal in respect of joint family property and also in respect of movables. The father or managing member of the Joint Hindu family cannot alienate joint Hindu family property except for certain purposes mentioned in the text which are for family necessities, pious purposes or for family benefit. The same position is taken up in another portion of Mayne under section 361 at page 469. The powers of a manager of a Hindu family were considered by the Privy Council in a case which has been referred to as settling the law on the subject, the case of Hanuman Prasad. For purposes recognised by the Hindu Law if a father or managing member alienates joint Hindu family property that alienation binds all the members of the joint family major or minor. Apart from these recognised purposes the father has no right to alienate joint family property. There is also another doctrine which is to the effect that the son is bound to discharge the father's debts provided they are not immoral or illegal debts. So that if the father incurs debts which are not immoral or illegal and he alienates property for that purpose it may be binding on the sons—not on the brother's sons, because it is the duty laid upon sons to discharge the father's debts.

Has any coparcener member other than father or managing member the right to alienate joint family property ?—Yes, so long as the alienation is for value. Any member other than the father or managing member cannot alienate for value the joint family property acting for the family. Even if that alienation is for the benefit of the family he cannot do so because he cannot represent the family. Whatever the ancient law may

have been on the point the modern law does not recognise such an act. Any member of the family with the consent of all the members of the family can alienate. It must be in the first place with the consent of all who are adults. If there are minor members it is open to them to say that their consent was not binding because the family necessity for the alienation was not established. That is they can repudiate it. If all adult members consented of course it will be fairly good evidence that the alienation was made for necessity . If it was not an alienation for necessity but only considered good business to sell a certain property at that stage that would not be recognised. There was an instance where a person thought a certain land unproductive and wanted to sell it and take some other property the courts did not recognise it—that is a case where the other members did not give their consent. Female members have no right of dealing with property at all. Their consent is not necessary. It is sufficient if the coparceners only agree—except that if by such improper alienation the right to maintenance is affected they had the right to come to Court for redress. Male members and the coparcenary cannot alienate joint family property to the detriment of female members. Females can stop the alienation by bringing an action for an injunction restraining alienation or follow the property in the hands of the purchaser provided he is not a bona fide purchaser for value. That is to say if it was just a gift or if the consideration was not adequate or if it had some such infirmity. That is the law laid down in section 39 of the Transfer of Property Act.

With regard to the gifting of property by the father or managing member or coparcenary members, no member of the family can give any portion of the property to strangers or to any member of the family as such except in the case of marriage. If a daughter gets married and he gives two acres of say a hundred acres as a sort of provision that would be accepted. The father can give small portions of properties like that to daughters but not to the sons. (Counsel reads Mayne at page 464.) I accept that passage in Mayne subject to what I have stated with regard to the restriction of rights of female members. This right was recognised in the case of *Ramalingam* vs. *Narayanan* 49 Indian Appeals 168.

All cases of this kind arose in respect of gifts to daughters or female members of the family. The father or managing member cannot give to a stranger at all.

Baba vs. *Thimma* I.L.R. 7 Madras Cases 357. That is quoted by Mayne on page 464. That is correct. He refers to pious purposes where gifts are made to officiating priests and so on—that is allowed. Apart from the father's rights to give in special cases to a daughter etc. the other members of the coparcenary have no right to give to themselves or to strangers—female members had no right to gift whatsoever.

With regard to the category regarding the rights of the father or managing member to dispose of joint property by will, they cannot do so because the property has to pass to others and there is nothing to give.

Mayne devotes a separate chapter to the question—Chapter 21 page 376. Today wills are part of the Indian Law in respect of properties which they can give. There is the Hindu Wills Act which says how a will should be made and executed. It deals with that aspect rather than the question

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of capacity. Page 883 of Mayne deals with the power to bequeath by will. It says " A Hindu may bequeath by will whatever property he or she is entitled to give away during life." Mayne says " The rule is however not universal and though a manager can dispose of a small portion of the family property in favour of the female members of the family by gift *inter vivos* he cannot do so by will." I agree with that view. That applies to female members. (Counsel reads section 749.) I agree with the view expressed in that section. (Counsel reads from section 749.) " A will made by a Hindu father who was joint with his infant son bequeathing certain family properties to his widow for her maintenance was held to be invalid as against the son although it would have been a proper provision if made by the father during his lifetime. Explaining this case as one where a father who is a co-sharer with his minor son cannot give consent on behalf of the latter the Privy Council held in *Lakshmi Chand* vs. *Anandi* 53 I.A. 123 that as it is open to a coparcener with the consent of his cosharers to charge for his own separate purposes the share of the joint family property which would come to him on a partition a will made by one coparcener with the consent of the other coparceners where they are adults will be valid not as a will but as an agreement operative to transfer the property to the donee or legatee." The Privy Council had held that in 53 Indian Appeals 123. That is on the basis not of a will but by arrangement between the coparceners. In other words apart from consent or arrangement among coparceners neither the managing member or the father or any other coparcener member can bequeath by will joint family property. It follows that female members have no right at all to dispose of by will. A difference is to be drawn between a coparcener member transferring joint family property and a coparcener member transferring his share of the joint family property. According to Hindu Law pure and simple a coparcener member cannot alienate his share of the property, he cannot do so as his share is unpredictable. According to the authorities already quoted he has no definite share until a partition is made. But there have been cases where coparcener members have transferred their shares of the joint family property for consideration.

How have the courts dealt with such cases ?—While recognising that they are not entitled to alienate even their shares still from the point of view of the purchaser courts have held in modern days that there is an equity in favour of the purchaser who can stand in the shoes of the vendor and claim a partition of the joint family property. It is only recognised as equity in his favour and no more.

How can that right be affected by the fact that the vendor has a family of his own ?—If he had a family of his own his son will not be bound by it and therefore that portion of the share which goes to the son will not go to the purchaser. Therefore it must be ascertained what his share will be if a partition takes place—the whole property has to be divided and that share which will be allotted to him will go to the purchaser. If it is shown that the purchaser knew that the property was Hindu family property or had reason to know it ? Then in such a case the man has paid value and he must be given some sort of consideration for that. In other words the transfer is recognised to give equitable rights to the transferee. No share is really vested in the purchaser he has only the

right in equity to ask the court to make a division of the property and give whatever the vendor is entitled to the purchaser. The question is dealt with by Mayne on sections 385 and 386 on pages 497 and 498. " Where the transfer is of an undivided interest in the whole of the family property the transferee will get whatever may be allotted to the transferor's share in a suit for partition. A coparcener may alienate either his undivided share in the whole of the family property or his undivided share in certain specific family property or the whole of a specific item of the family property etc. (Counsel reads the whole of section 386.) In other words it says that courts do not want a purchaser for value to be a loser they would give him anything at the expense of the coparcener or vendor to him but not to the detriment of the other members of the family. Courts will not allow the purchaser to have anything at the expense of the other members of the family or at the expense of the family : if there are debts of the family to be paid or other obligations of the family and are all provided for sometimes it happens the purchaser gets nothing. Whatever the vendor can get out of the family property without detriment to the rest of the members the court will allow to the vendee by virtue of the right of equity. Supposing a member does after such a sale and there is an increase in the share the alienee is not entitled to the increased share. As to whether the vendor would have the right to be maintained out of the family property is now settled. Being a member of the family it is presumed he will be maintained out of the family property and if further property is acquired he will be entitled to a share in that property as well. The vendor stands to gain because he can take the money he has received and has to be maintained out of the family property and he stands to gain on the accretions to the family which may take place. If a vendor transfers an undivided interest in the joint family property the vendee's right to be allotted that in equity is subject to the rights of the family. A vendee's action for partition is different from a coparcener's right for partition. What are the rights of a mortgagee of the joint family property a mortgage by the father or head of the family or other coparcener members ? If the father who is head mortgages any property it is binding on the other members if the mortgage was given for the family necessity or benefit in which case the mortgagee will be entitled to enforce the charge against the property mortgaged.

If it is not for any such purpose the mortgage is not binding on the members of the family and their shares are not affected. Even the father's share will not be affected.

What is the position of a mortgage by other coparcener members ? There also they are not entitled to mortgage the mortgagee will have to enforce the charge in a court of law and ask for a general partition for the purpose of getting the property sold in the action. In other words the mortgagee of a coparcener member will be in a similar position to the alienee or vendee of a coparcener member, except only that the mortgagee will have to go through the process of law to have his rights ascertained. These rights of a mortgagee or vendee were brought into Hindu law during the British times. It goes without saying that female members cannot mortgage any portion of the joint family property.

There is a further exception that has been recognised in the courts that is a coparcener may divide in status from his other coparcener members

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and thereafter dispose of by will what would become his share. He can divide himself off from the other members by declaring his intention to separate—not a separation by metes and bounds—but a separation in status in which case he becomes a separate member and he has qualified himself for dealing with that property as he likes and even there he cannot do it unless he is the only member. He cannot do it to the detriment of the members of his family. If a partition in status takes place that gives the right to him to deal with the property as he likes but subject to the disability I just mentioned. A division in status is effected by a declaration on the part of a member saying he wants to be divided and by communicating that to the other members. The law recognises a separation in status apart from the actual division of the property. Alienation by coparceners does not put an end to the coparcenary—section 389 page 501.

Further hearing tomorrow.

(Sgd.) . . . A.D.J.

5th October 1948.

37/T. 5.10.48.

Appearances as before.

K. BHASHYAM. Affd. Recalled. (Exn. in chief contd.)

Yesterday I referred to the interruption in my career as a lawyer. I was in the Ministry for one year. For two years I was in jail as a Congress worker. I have also been President of the Madras Advocates' Association for some years.

The right of a purchaser from a coparcener has been the subject of many decisions in Madras. Contrary views have been taken. But now the law is settled as to what the view is. The earlier view was that a coparcener has a vested interest in respect of his share of the joint family property and that vested share passed on to the transferee. That was the expression of opinion by one of the Judges, reported in I.L.R., 25 Madras. That view has been definitely dissented from and overruled. It has been held that that view was an *obiter*.

Q. The present view is that a coparcener has no vested interest and the transferee gets no vested interest in the coparcener's share of the joint family property ?—*A.* That is so.

Q. But that the Courts can work out an equitable principle in favour of the purchaser ?—*A.* Yes.

Q. I.L.R. 25 Madras expressed the opposite point of view which you say is no longer law ?—*A.* Yes. The view that the coparcener's share is a vested interest was expressed by Justice Bhashyam Iyenger in 25 Madras 690, at page 716—*Aiyyagiri* v. *Aiyyagiri.* (Mr. Chelvanayagam reads) : That view I say is not the law. See also footnote W at page 498 of Mayne.

Q. The contrary view which you say is the law today has been taken in cases decided subsequently ?—*A.* Quite so. I refer to the case of *Nanyaya* v. *Shanmugamudali* referred to in 1914 A.I.R. Madras p. 440

(also in 38 Madras 684). I refer to the judgment at page 441 (Mr. Chelvanayagam reads): The view which you read now is the law today. It is repeated in A.I.R. Madras 1915, p. 453 (also in 39 Madras 265)— *Maharajah of Bobbili* v. *Venkataramayajulu.* This was a case in which a purchaser from a coparcener sued for mesne profits and for possession. It was held that a purchaser had no vested interest and he had no right to obtain mesne profits. The purchaser's rights were only equitable rights to be worked out in a suit for partition. This case makes reference to the judgment in *Aiyyagiri* v. *Aiyyagiri* in 25 Madras and follows the decision in *Nanajayamudali* v. *Shanmugamudali* already referred to. (Mr. Chelvanayagam reads page 454): They are inclined to the view taken in *Nanjayamudali* v. *Shanmugamudali* that the right of the alienee to enforce partition does not rest on any text of the Hindu Law but on the equitable dictum that a purchaser for value should be allowed to stand in the vendor's shoes and work out his rights by a partition; also that it need not be extended beyond what is absolutely necessary to enable the vendee to work out his rights. In the suit for the partition which may be filed by the alienee, it might be that the property conveyed to him falls to some other coparcener, and it is difficult to see how this fact could be reconciled with the theory that by purchase he becomes entitled to a vested interest in the share of his coparcener in the property alienated as from the date alienation. At page 455 the Judges who decided this case say that the *obiter dicta* in *Aiyyagiri* v. *Aiyyagiri* are difficult to reconcile with the decision of the Privy Council in certain cases, and referred to the decision of the Privy Council in those cases (Mr. Chelvanayagam reads the decision). In the last judgment in A.I.R. 1915 Madras they use the term " tenant in common."

Q. Coparceners' rights in the joint Hindu family property are not understood as the rights of tenants in common ?—*A.* In fact it is said the word " coparcener " used there is not correct, even under the English sense. It is used because of the want of a word exactly describing the position of affairs or relationship of parties. Joint tenancy is not known in Hindu Law except with reference to the Hindu joint family. There are of course joint owners of property.

The Privy Council decisions referred to in A.I.R. 1915 Madras are reported in 6 Indian Appeals, 11 Indian Appeals and 40 Indian Appeals.

Taking the case of 11 Indian Appeals, p. 26 (also reported in I.L.R. 10 Calcutta 626). This is a case of an execution purchaser against a father who was a coparcener and the remaining coparceners of the family. The remaining coparceners wanted to eject the execution purchaser who had got into possession of the father's share. The execution purchaser appealed to the Privy Council and the Privy Council decreed that there might be a partition. See 11 Indian Appeals at page 29. This case had been decided by the Privy Council in 1883 long before the 25 Madras Case was decided. Also see p. 30. The High Court in that case effected a partition and gave the share that the father would have got in the partition to the execution purchaser. There was an appeal to the Privy Council and it was held that he had got more than he should have got. In other words according to 11 Indian Appeals 26, the position of an execution purchaser of the share of a coparcener of a joint Hindu family is that he is not entitled

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to any portion of the property or even any share, but is only entitled to a declaration that he can ask for a partition which his vendor could have asked. That was the decision in 4 Indian Appeals 247. That was in 1887. This is a case between a purchaser of a coparcener's interest and the rest of the coparcenary. It is also reported in I.L.R. 3 Calcutta page 198. In this case the remaining coparceners sued for possession and obtained possession from the Indian Court from the execution purchaser. In the High Court the coparcener who was not the judgment debtor sued for possession from the judgment debtor coparcener's purchaser and obtained a decree for possession. See 4 Indian Appeals at page 255 (Mr. Chelvanayagam reads). In other words the purchaser from a judgment debtor coparcener who appealed to the Privy Council from a decree ousting him from possession of the joint family property did not get possession from the Privy Council. He only got a declaration that he might work out his rights in a properly constituted partition proceedings. The case in 4 Indian Appeals and the other case in 11 Indian Appeals had been decided before 25 Madras was decided. So that the law today is the purchaser of a coparcener's share is only entitled to work out his equitable rights in a properly constituted proceedings. They decided accordingly in A.I.R. 1915 Madras. Mayne at page 502 sums up the position as contained in the judgments now referred to by me and other judgments of the Privy Council in Section 390 (p. 502). I say that that is the correct view and accords with the principles of Hindu Law.

Q. Are there other High Courts which do not recognise even this equity ?—*A.* Yes, I think Bombay and another High Court. But the law as far as these parties are concerned is the law of the Madras High Court. I also refer to similar dicta in subsequent cases, viz. 1922 Madras (A.I.R.) page 112 : " A purchaser has only an equity as against the other members of the coparcenary to work out his interests by a suit for a general partition . . . ." That sets out the law correctly. I also refer to the judgment in A.I.R. 1927 Madras p. 471 (Full Bench) ; also in A.I.R. Madras 1933, p. 158, in which it was decided that alienation of a coparcener's share is inconsistent with Hindu Law. On a principle of equity the alienee is given a right limited to compelling the partition which his debtor might have compelled had he been so minded before the alienation of his share took place.

(*To Court :*)

In Bombay (see Mayne p. 502 bottom) an execution purchaser from a coparcener is in a slightly better position. I refer to Rule 3 at page 503 of Mayne, but that is not the correct view as it is contrary to the rule laid down by the Privy Council in the cases I have already referred to.

Q. We go to a development of this principle further when we consider the position of a purchaser's purchase of a coparcener's share ?—*A.* They refuse to develop it. I refer to the case reported in A.I.R. 1921 Madras ; p. 384—*Dhada Sahib* v. *Mohamed Sultan Sahib.* In this case a coparcener had sold a land belonging to a joint family to one of the defendants in the case. Subsequent to that sale there had been a partition amongst the members of the joint family and this land was not allotted to the vendor coparcener. The 1st defendant sold to the plaintiff that land which he

had purchased from the coparcener. In this case the court refused to extend the equity in favour of the purchaser's purchase. When a coparcener alienates the property he does not alienate the share, but certainly he is given a warranty of title and there is a personal obligation in his favour which he has to work out. But this warranty of title is not really available to the purchaser's purchaser.

(*To Court :*)

But cannot that obligation to warrant and defend title be worked back ?—*A*. So far as equity is concerned, it cannot run with the land or person concerned. If the coparcener had vested interest in the property sold, a purchaser's purchase would have got that. So far as the execution purchaser is concerned in such a partition as this, if the property bought by him is not really allotted to his own judgment debtor, he may be in difficulty in getting any substituted property. In the case of an execution purchaser he may even lose his rights under the sale in which he bought, in the case I mentioned. Authority for this proposition is p. 499 of Mayne, para. 387. The correct view is what was decided in the case, not what Mr. Srinivasa Iyengar says. See top page 500. What Mayne says at page 500 correctly sums up the law, that no coparcener has any vested title in the joint family property or in any particular property belonging to the joint family estate. In fact the question of alienation is foreign to the theory of joint family. According to the strict principles applicable to Hindu Law no person is entitled to alienate his share of any item of property of joint family property, because he has no ascertained share in the property nor can he say that any item belongs to him in any sole proprietory right. But the Courts recognise a right in equity for the purchaser in the case I have already mentioned. It is in recognition of the incompetence of the coparcener to alienate his share of any portion of the property that they resort to the device of equity, as a sort of mitigation of hardship. The fact that they recognise an equity establishes the principles more strongly.

I refer to a case relating to the gifts by a coparcener where the gift fail even in respect of the coparcener's share—1917 A.I.R. (P.C.) p, 128. The headnote does not bring the point out. There a person purported to give properties to his mistress and his mistress' daughter. The question was raised that he was entitled to do so because it was his own self-acquired property. The plea on the other side was that they were all thrown to the common stock, therefore they had become joint family property. On the question of the fact the Privy Council came to the conclusion that there had been a blending and all property had become impressed with the character of joint Hindu family property. I refer to what is stated at the end of the judgment : " All the properties conveyed to the respondents were joint family property which the donor could not dispose of and the Appellants are entitled to recover them from the Respondents, i.e. the donees . . . ."

I said in a joint family there are male members and female members. There is a difference between the rights of male and female members.

Q. A question has arisen as to whether women are members of the joint family at all. Possibly the Crown contends that women are not

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members of the joint Hindu family. *A.* Women are members, because as was said already women are born into the family and also inducted into the family by marriage, and they are members of the joint Hindu family ; they have certain interests in the joint property of the family.

Q. They of course cannot ask for a partition ?—*A.* They cannot, except in cases under the Hindu Woman's Right to Property Act. In Northern India a share is allotted to female members also even now. That is outside Madras. A mother was allotted a 1/3 share in a Calcutta case.

Q. What was the ancient law regarding women in the family ?— *A.* Women also had a share and were entitled to a share in the family properties just as males.

That was not the position when Vignaneshwar wrote the Methakshara ; that has been considerably modified.

I think there is a case in the Indian Law Reports ; see Mayne at page 527 where reference is made to the whole position of women.

Q. In that page Mayne deals with the results of a partition, that when partition takes place provision may be made for females ?—*A.* See earlier at page 339 : " A Hindu joint family consists of males and females . . . constituting a sort of corporation, some of the members of which are co-parceners, that is persons who on partition would be entitled to demand a share, while others are only entitled to maintenance." I say that is the correct position.

In a case reported in I.L.R. 53 Madras, 1914, p. 84 at p. 97 quotations from the original text are given relating to women's share ; Justice Ramesh says as follows : " The text of Manu quoted at p. 294 in Coldbrooke's Digest, Vol. II, shows that $\frac{3}{4}$ of the whole is taken by the brothers and $\frac{1}{4}$ is taken by the sisters, though it is expressed in a roundabout form. Then there is another text of Kathyayana . . . Therefore the right of the daughters in the father's life time, however much it cannot be enforced by the partition, must still be described as a right or interest in the property." Justice Ramesh has revised Mullah's Hindu Law ; he was a Judge of the High Court.

There are certain observations in regard to the present case at 3 Indian Appeals p. 154 at p. 191. It deals with the right of adoption by a widow with or without the husband's consent, and the observations of the Privy Council in regard to women : " The Hindu wife upon her marriage passes into and becomes member of that family ; it is upon that family that as a widow she has a claim for maintenance ; it is in the members of that family that she must presumably find such counsellers and protectors as the law make requisite for her . . ." Under Hindu Law this applies to Madras. Option to adopt a son can be exercised whether with the authority of the husband if he has given one in his lifetime or with the consent of the kinsmen of the family. This was a case from the Madras High Court.

In fact they have gone to the extent of holding that there can be a joint Hindu family consisting of females only. I refer to the case decided by the Allahabad High Court—A.I.R. 1945 Allahabad p. 286. That was an income tax case. There were earlier cases decided in the Indian

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High Courts where they came to the view that there could not be a joint Hindu Family consisting of females only. One such case is found in I.L.R. 14 Bombay. That view has been overruled and one of the overruling cases is the A.I.R. 1945 Allahabad case cited: "It is however argued by the learned Counsel for the department that there cannot be an undivided Hindu family consisting of only females and that the existence of at least one male member is essential to the constitution of a Hindu undivided family. In support of this contention the learned counsel has placed reliance on 14 Bombay 463 and A.I.R. 1930. In this case there are observations that support the contention that there can be no joint Hindu family consisting of females only. The decision in 14 Bombay 463 was noticed by their Lordships of the Privy Council in 1943 Allahabad Law Journal 574 and was not approved. But apart from this, for the reasons to be presently stated we are not prepared to subscribe to the proposition that the existence of at least one male member is essential to the constitution of an undivided Hindu family." They decide in that case that there can be a joint Hindu family consisting of females only. On principle also it must be so because the women's right to maintenance depends on the fact that they are members of the family, and that maintenance must come from the joint family property existing. The Allahabad Law Journal case reported in A.I.R. 1943 (P.C.) p. 196. Supposing the last male member dies, a suit is brought in that case by the widow of another coparcener for maintenance against the widow in possession of the joint family property, how can the suit be maintained? One widow can sue the widow that remains in possession of joint family property for maintenance. There is authority for it. See 2 Indian Appeals . . .

The opposite view is referred to in I.L.R. 14 Bombay 471, where we see the extent to which the opposite view can be taken. There was a father Krishnar and his two sons, members of an undivided Hindu family. The first son *B* died leaving a widow to whom he had in his lifetime given authority to adopt a son. Then the father Krishnar died, and lastly the brother *N* died leaving his widow Gojarbai, the defendant, who got possession of the family property on her husband's death. Subsequent to this *B's* widow adopted the plaintiff who now brought this suit to recover the property from the defendant, as such adopted son. It was contended that by the death of the father and of the first son there was only one male member, and he and his wife did not form members of a joint Hindu family, so that on his death by adoption a person can be affiliated to that family. Dealing with the question Their Lordships say here that "when the inheritance devolved upon the son *N* and his widow Gojarbai, it devolved not by succession as an undivided Hindu family, but strictly by inheritance as if *N* had been a separate householder. Strictly speaking, according to the view taken by our courts there was at *N's* death no undivided family remaining into which an adopted son could be admitted by virtue of his adoption, and therefore, even assuming that the view which is expressed in West and Buhlers Digest can be upheld . . . the case now before the Court does not fall within the limits stated in the Digest . . . Questions may arise as to the right of Gojarbai herself hereafter to make adoption without the leave of the plaintiff, and so to the rights of such adopted son." The principle of the decision was that as at the time the adoption was made there was no joint Hindu family, there could not be an adoption. They go even further to say that even during the lifetime of the last male holder

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of the property, that is *N*, there was no family property because he had no male member living with him. In that view they held that this adoption is invalid. But this view was upset by the Privy Council in A.I.R. 1943 (P.C.) 196.

It might be contended that by the death of the last surviving coparcener the Family comes to an end. But I say it does not come to an end until there is no potential mother to adopt a son into the family. A mother cannot adopt without the consent of her husband ; if he is alive he will do it himself. In Madras an adoption can be made by the widow of a member of the family whether with the consent of her husband previously given to her, and if that consent is not forthcoming, at least with the consent of the kinsmen of the family ; with the result that at the death of the last surviving coparcener of a family there may be such widows who are potential mothers either by nature or by law. The joint family does not become extinct till then. That was also decided in A.I.R. 1943 (P.C.) case which overruled the I.L.R. 14 Bombay view.

I have in mind particularly the facts of the case before this court now. Arunachalam Chettiar Jnr. died in 1934 leaving a widow. Arunachalam Snr. died leaving two widows. Arunachalam Chettiar Snr. gave authority by this Will to the widows to adopt ; he had given authority in the Will to the daughter-in-law also to adopt. In the case of the daughter-in-law he was the kinsman. If the other members of the family do not consent to the adoption it depends on the nearness of the relationship. The father-in-law here will be the primary person to give consent. If there is authority of the husband there is no need for consent.

According to my opinion of the Hindu Law the death of Arunachalam Chettiar Snr. did not bring to an end the joint family. There were three widows who were potential mothers. That was the decision in 1943 A.I.R. (P.C.) 196.

Q. What would be the position if they had no authority to adopt ?—
A. There would be other kinsmen who are members of the original family who could consent.

Adoption when made takes effect in law from the date of the death of the person to whom the adoption is made, with the result that the adoption by the daughter-in-law would take effect from 1934 ; adoption of the widows of Arunachalam Chettiar Snr. would take effect from the date of his death.

The 1943 P.C. judgment was delivered by Sir John Rankin, once member of the Calcutta High Court : " At the death of the coparceners leaving widows who have no adoption the property might go to certain persons when adoption takes place later ; the property will revert to the adopted sons. The power of a Hindu widow to adopt does not come to an end on the death of the sole surviving coparcener. Neither does it depend upon the vesting or divesting of the estate, nor can the right to adopt be deviated by partition between the coparceners. On the death of the sole surviving coparcener a Hindu joint family cannot be finally brought to an end while it is possible in nature or law to add a male member to it. The family cannot be at an end while there is still a potential mother, if that mother in the way of nature or in the way of law brings in a new male member. The adopted son is the continustor of the adopted

father's line exactly as an 'Aurasa' (born of the loins) and where the continuity of the line is concerned the adoption has retrospective effect. When ever the adoption may be there is no hiatus in the continuity of the line. When therefore after the death of a sole surviving coparcener dying unmarried and issueless his mother widow adopts a son validly, such an adoption takes effect upon the property which shall belong to the joint family. The fact that the property has vested in the meantime in the heir of the sole surviving coparcener is not of itself a reason why it will not be vested in and pass to the adopted son."

That is the law that applies throughout the Madras Province in respect of the continuation of the family. In respect of this same family in the Federal Court Justice Vardachariar expressed an opinion to that effect, when the daughter-in-law widow, son and the two other widows of Arunachalam Chettiar Snr. claimed shares under the new Hindu Women's Right to Property Act. The case was taken to the Federal Court, it is now finally settled and it is reported in A.I.R. 1945 (Federal Court) p. 25 at p. 32. The question that Justice Varadachariar was discussing was whether the property that Arunachalam Chettiar Snr. had in his hands was separate property or joint property. He said as long as there were possibilities of adoption it was separate property—see p. 32. He holds that the property that was left by Arunachalam Chettiar Snr. was joint family property and not separate property because the widows were widows capable of adoption.

A sole surviving coparcener can lawfully alienate property. As to what a lawful alienation is it is difficult to say now. If a person legally disposes of family property in the way of enjoyment it may be lawful alienation.

Q. Supposing it is a lawful alienation and there is an adoption subsequently?—*A.* The property taken by the adopted son after lawful alienation is the property that is left.

(Sgd.) N. SINNETAMBY,
A.D.J.

(*Interval.*)

(*After lunch.*)

K. BHASHYAM. (affd.)

I also refer to the same passage in 46 Indian Appeal Case 97 at page 107 where the following passage occurs " an adoption so far as the continuity of the line is concerned has a retrospective effect; whenever the adoption may be made there is no hiatus in the continuity of the line. In fact as Messrs West and Buhler point out in their learned treatise on Hindu law the Hindu lawyers do not regard the male issue to be extinct or a Hindu to have died without male issue until the death of the widow renders the continuation of the line by adoption impossible." That decision is correct law.

I have seen the admissions recorded in these two cases. (Witness is asked to read admissions 1, 2, 3, 4, 5, 6 and 7.) It is clear from the admissions that before the death of Arunachalam Jnr. the father and son

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formed the coparcenary of a joint Hindu family and from the evidence I know that when the father and son were both alive there was the father's stepmother, father's wives and son and his wife and certain daughters.

Is it your opinion that all these ladies were members of that joint Hindu family ?—Yes, of that family of which father and son were coparceners.

And further it is apparent when the father and son were alive all their property was treated as property of a joint Hindu family and the admissions are on the basis that the property belonged to the joint family.

Was there then any difference in the character of that property which was stated to be the property of the undivided family on the death of Arunachalam Jr. ?—There cannot be any difference. On the death of Arunachalam Jr. the same family continued with Arunachalam Sr. the father and all the other remaining members. I am aware that at that time when the son died there was in Ceylon the Estate Duty Ordinance No. 8 of 1919 which levied a duty upon the value of all the property which passes on the death of such a person and section 8 states what property shall be deemed to be included in the property that passes. I have read that section. Section 8 (1) (*a*) says property of which the deceased was at the time of his death competent to dispose of. Arunachalam Jr. according to Hindu law was not competent to dispose of the joint family property at the time of his death, as a junior member of the family he was not so competent.

If he was a senior member ?—Then he could as manager—he could have done it for necessary purposes.

You have already stated in detail your opinion as to the competency to dispose of joint family property by the various members ?—Yes, and now I say in particular that Arunachalam Jr. was not competent to dispose of the joint family property. I include within that category of competency to dispose alienation for value, gift and disposition by will. Arunachalam Jr. was not competent to do any of those three things in respect of the joint family property.

The wording of the admission is that "the property assessed for payment of estate duty on the estate of Arunachalam Jr. was the joint property of a Hindu undivided family of which he and his father were members at the time of his death." The inference from that is that Arunachalam Jr. and his father were not divided at the time of Arunachalam Jr.'s death.

Q. You have already stated that from the time of the death of Arunachalam Jr. his widow had the potentiality of adopting a son to Arunachalam Jr. ?—Yes, that is so. I have already explained the circumstances in which that can be done.

(Section 8 (1) (*b*) read). My opinion is that Arunachalam Jr. had some interest in the joint family property and that that interest ceased on his death. I have already stated the nature of that interest which Arunachalam Jr. had, that is merely to be maintained out of the joint family estate.

Under the Hindu Law when Arunachalam Jr. died his interests ceases, did his interest go by succession to anybody ? No, his interests ceased and was extinguished and nothing passed from him on account of his death to any other person. Under the Hindu law there is no such thing as succession of property. The joint members of the family take whatever they take by survivorship, in fact there is no question of taking, they had the right, that is they had what they had before the death.

To Court :

Text writers use the expression " succession by survivorship " for want of a better word but they also laid down that when a member died whatever interest he had dies with him and no man takes his place in respect of the interests he died possessed of.

(Witness is asked to give the authority for that. Witness refers to page 339 of Mayne on Hindu Law.)

Srinivasa Iyengar last words in that section is that the joint family property continues to remain in the members of the family for the time being by survivorship and not by succession.

Section 8 (1) (*b*) of the Ordinance of 1919 refers to the "ceasing of an interest to the extent to which benefit accrues or arises on the cesser of such interest." In the circumstances of this family did any benefit arise to anybody or accrue to anybody by the death of Arunachalam Jr. ?— Nothing at all, because the benefit derived by the other members of the family by the death of Arunachalam Jr. is practically nothing because their right to be maintained by the family funds is still there, neither increased or diminished and therefore no benefit accrues to anybody. As to whether the maintenance increases when a member of the family dies that is in case there has been any rationing. If there has been rationing there may be the possibility of the ration increasing on the death of a person, that is the only benefit but if the property is so large no such incident arises. But I know as a matter of fact that the estate on the date of Arunachalam Jr.'s death was large enough to maintain all the members of the family in affluence. These may be relative terms and the relativity in this instance was a sum of Rs.50/– left to his widow by Arunachalam Sr. in his Will. That is because these Nattukottai Chetties are very frugal people and the widow dresses only in white cotton however rich they may be. On the death of Arunachalam Jr. no benefit accrued to any person by a cessor of his interests in the joint family. Supposing there was a charitable institution with unlimited funds feeding beggars and there were 100 beggars being fed would it make a difference to the remaining beggars if 10 of them died ? There would not be any benefit at all because they cannot eat more than what they had been previously getting. Roughly that would be the position in this family at the death of one man.

(*Admission 7 read :*)

Taking that admission as it stands I say there was no difference in the character or nature of the property assessed for estate duty by reason of the death in 1934 of Arunachalam Jr. My opinion is that if the property

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was joint property had the father and son been alive in February 1934 it would still have been joint property in spite of the son's death and it would still have been joint property in February 1938 in spite of the son's prior death. It is in my opinion that prior to the death of Arunachalam Jr. the property assessed for payment of estate duty was the joint property of the family of which Arunachalam Sr. was a member with his step-mother two wives and daughter-in-law and daughter. At the time of the death of Arunachalam Jr. the taxing law in force is Chapter 187 and section 73 says that where a member of the Hindu undivided family dies no estate duty shall be payable on any property proved to the satisfaction of the commissioner to be the joint property of that Hindu undivided family. In the light of the admission and the evidence in the case it is certainly my opinion that Arunachalam Sr. was a member of a Hindu undivided family and that family consisted of himself and the female members already mentioned, of which the daughter-in-law had the right to adopt a son for her deceased husband.

To Court :

She could adopt with the consent of her father-in-law. When the father-in-law died with the consent of a distant relation. In this case we do not know whether there was any distant relation alive. If she did not get the consent of her husband she could have got the consent of her father-in-law when her husband died.

Prior to the death of Arunachalam Sr. the daughter-in-law could have adopted a son and that son would have become a member of the family. She could have adopted the son with his consent or she could have got the consent of her husband when he was alive. Before Arunachalam Sr. died he could have adopted sons for each one of his wives. That is simultaneous adoption allowed among the Nattukottai Chetties although it is not so allowed in the case of other Hindus. That custom of Nattukottai Chetties is recognised by the law and there are decisions of the courts on that point. It is a custom that has been recognised and has received judicial sanction. Therefore under section 73 Arunachalam Sr. was a member of a Hindu undivided family at the time of his death and on the evidence and on the admissions the property that was assessed for payment of estate duty was the joint property of that undivided Hindu family.

To Court :

What would have been the position when Arunachalam died and the female members had no authority to adopt a son or sons, was there anybody who could have given such consent?—Unless there is an escheat there would be somebody to do that and if there is no kinsman there are Bandus, that is daughters sons or some male members. The principle is that the Hindu line must be continued because it is considered by them that if there is no son that person goes to hell after death.

The evidence in the case is that Arunachalam Sr. appointed as executors to his Will two of these agnatic relations who are in the pedigree filed in the case. One an agnatic relation and the other a son in law. The agnatic relation was Sunderesa Chettiar son of Ar. Ar. Sm. The Will

of Arunachalam Sr. gives his authority and consent to the adoption by the widows of a son each. On the question whether this property just before Arunachalam Sr.'s death was joint property or separate property there is a relevant passage on Mulla Principles of Hindu Law.

(Counsel produces principles of Hindu Law by Sir B. M. Mulla 9th ed. 1940 section 230.) This section gives a list of what can be called separate property. Under Subsection 6 it mentions share on partition and that is mentioned as separate property. That does not apply to this case because there is no evidence of partition between the father and son.

Section 7 says properties held by the sole surviving coparcenary. In the case of such property it says when there is no widow in existence who has the power to adopt. That is separate property in those circumstances. In the case Arunachalam Sr. that would not be separate property because there is a widow with power to adopt. Justice Waradachariya has commented on Subsections 6 and 7 of 1945 A.I.R. (Federal Court) at page 25. He specifically refers to those two subsections. In relation to this very estate he has referred to it, and in that judgment he holds that the property left by Arunachalam Sr. was joint family property.

As against the authorities referred to in support of my opinion there are one or two authorities which require consideration because they at first sight appear to be against my view. One is the Privy Council case reported in 1937 A.I.R. page 36. That is a well known case. In that case there was a sole surviving coparcener and it was contended by the Commissioner of Income Tax that the income of that sole surviving coparcener was his sole property and by the person who was taxed that it was joint family property. The Privy Council held that it was individual income. I had considered that case also before giving my opinion in this case. If that judgment is understood in the way I want it construed there is nothing in it which would go against the contention I have already given. Firstly that property relates not to ancestral property or property got by division from the joint Hindu family it relates to properties which were given as gifts by the father to the son that property being the self acquired property of the father. The question whether such property is ancestral in the hands of the son or is his own separate property has been considered by the High Courts in India and there is a difference of opinion regarding it. In the Privy Council they originally said they did not want to decide it but when they came to decide regarding the income from the property they have taken that fact into consideration and applied the personal law of the assessee. Under the personal law he would be a person governed by the Benaris School of Hindu Law and subject to the jurisdiction of Allahabad and that view was to take the property as being his own separate property and not ancestral property. That was the view taken by the Privy Council.

(Counsel reads from the judgment of the Privy Council.)

The Privy Council applied the personal law of the assessee and held that that personal law treated the property as individual property of the assessee and the income as his individual income. The Benaris School is a sub school of the Methakshara. The Privy Council in that judgment was not dealing with ancestral property and restricted their conclusion

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" to property obtained by a man from his father." The property that yielded the income in that case was a property gifted by the father to the son. There were conflicting views whether such properties were ancestral or not and that conflicting view is set out in section 279 of Mayne. The Madras High Court took one view and the Bombay High Court another view. Property gifted by the father to the son will according to the law be his separate property. That Privy Council judgment was followed by the Madras High Court in relation to the income. Reported in 1945 A.I.R. Madras 122. The income in the hands of Arunachalam Sr. had been taken by the Madras High Court to be the income of an individual and as against that there is the Federal Court holding that the bulk of the property was joint family property. My opinion is that the property that has been assessed here for estate duty is the joint Hindu family property of which family Arunachalam Sr. was a member. The Federal Court which is the higher court held that the property was joint family property.

(Witness refers to page 123 of A.I.R. 1945.)

I have taken all these judgments into consideration in giving my opinion in this case.

The adoption by the daughter-in-law of a son takes effect in law as from the death of Arunachalam in the result Arunachalam Sr. is deemed to have had a grandson in 1934 according to law.

In view of the question put by Court about the term succession by survivorship I produce the Hindu Women's Right to Property Act of 1937 passed by the central Legislature. The validity of the Act was contested between the Government of India representatives on one side and the Provincial Governments representatives on the other side. The Advocate General of the Govt. of India appeared on one side and the Advocate General of the Provinces on the other. The Federal Court held in 1941 A.I.R. page 72 that survivorship came under the category succession.

Further hearing tomorrow.

(Sgd.) N. SINNETAMBY,
A.D.J.

6th October 1948.

6th October 1948.

No.

Counsel as before.

Errors in the proceedings of the previous day are corrected. With reference to the sentence on page 10 of the proceedings of 4th October reading " it becomes the joint property of that separate family subject to the exception where the divided members is the only male member," Counsel desires to alter the words " subject to the exception where the dividing members is the only male member."

Mr. Weerasuriya objects except to the alteration of the word " if " to " is ". Let this be explained by the witness.

K. BHASHYAM (Affd.)

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On page 10 of the evidence given by me on the 4th October I have stated the result of partition of a joint Hindu family property. I stated that a joint family property gets divided into different parts into which the family gets divided and each group becomes a family and the property becomes the property of that family. Then you are recorded to have stated an exception, there is some dispute as to how you put that exception ? The exception being that each dividing member is the sole member.

That is if at the division one dividing member has other female members of his family then the share of the property that falls to his lot will still be joint family property ?—Yes and also of the other female members. You stated yesterday what the character of the property is that is held by a sole surviving coparcener who has other female members of his family ? They form a family by themselves and the property belongs to that family consisting of the male members and female members. The property is called the joint family property. Will that fall within the category of section 73 of the Ordinance ?—Yes.

You gave evidence on page 14 of the record regarding the rights of a member to dispose of joint property by will you said that they cannot do so and you are recorded to have stated the reason for it as because the property has passed to others and there is nothing to give ?—It is a mishearing of what I said, I meant to say that there is nothing to pass because there is nothing " to give ".

On page 16 you gave evidence regarding the position of a purchaser from a coparcener and said in such a case the man has paid consideration and he must be given some sort of consideration for that ?—When I used the word consideration in the first part of that sentence I meant value. Dealing with our Estate Duty Ordinance one of 1919 and the other of 1939 they both speak of property that passed at the death of a coparcener member, it is not so whatever interest he has dies with him and is extinguished. In that connection I refer in particular to the judgment reported in 1 Allahabad 105 at pages 110 and 113. Yesterday I said that the custom among Nattukottai chetties whereby more than one widow adopts each a son has been recognised by the Courts. I produce a certified copy of the judgment of the Madras High Court delivered on 24.2.44 confirming such a custom. That is not a reported case.

(Mr. Chelvanayagam marks the judgment A68 in both cases.)

In that case in the original court evidence of custom was led and many instances were cited running over many years. The trial Judge upheld the existence of the custom and the High Court of two judges upheld that judgment. The term joint property in Hindu law is used to contrast it with separate property. It is a mutually exclusive term. If property is not joint property it must be separate property. Could it be said if it is not separate property it must be joint property ?—Yes, the two terms mutually exclude each other.

Cross-examination.

XXD.

I had been an Advocate of the High Court since 1906. For a long time I was interested in congress. I first took an active part in Congress

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in 1916 and since then I have to be actively interested in politics so long as it is possible to combine it with my profession. As a member of the Legislative Assembly we get Rs.150/- a month. That is supposed to cover the travelling expenses of the member to and from his constituency. Such duties do take up a lot of my time. I was a member of the Parakasam Government for one year. I have not given evidence in a court of law before this—I had not that fortune or misfortune.

In my examination in chief I have dealt extensively with the different schools of Hindu Law.

Q. It would be correct to say, I suppose, that all systems of law at least living law constantly change ?—They are changed by judge made laws.

And I suppose there is no exception in the case of Hindu Law ?—Except that there is more conservatism in Hindu Laws than in other laws.

(Counsel reads a passage from Rajavachariya on Hindu Law 1947 Ed. page 14.) I would agree with that passage generally. I agree with the view that " decisions of the Judicial Committee and all High Courts in India have practically superceded or thrown into the shade the Nikadas or commentaries " in some cases not at all.

(Counsel reads a passage) " The large body of law relating to adoption the limiting of the pious duty to pay the father's debts to the actual ancestral assets in his hands to the extension of that duty even during the father's lifetime the recognition in some of the provinces of a power in a coparcener to alienate his share in the joint family property prior to partition the absolute powers of the father and brother under Dayabbage in respect of ancestral property and the restricted definition of Shridhanam and the curtailment of women's rights are some of the numerous instances where the judges in administering the Hindu Law either modified altered or added to it either due to ignorance of Sanskrit or by the application of the principles of analogy and the rules of equity and good conscience "—*A.* I do not quarrel with that passage, I would quarrel with one of the enumerations, but generally I agree with it.

Q. So that I suppose today great authoritative value is necessarily given to the decisions of the Privy Council and of the High Courts of Madras and the Federal Court even where there is a conflict in those decisions as between those decisions and the text books ?—The actual decisions of the Privy Council on mere questions of law have to be given effect to but there are instances when you have to look into the old law for further guidance. If there are decisions you are bound by them and if there are extensions about which you have any doubt you have to go to the text and find out how far that decision is justified.

Q. You stated in dealing with the four schools of Hindu law that the Methakshara law supplied ?—Yes. It applied in portions of Bombay and Bangalore and the United Provinces.

Q. Is there any substantial difference in the Methakshara law as administered in Bangalore or Benaris ?—Yes, there are slight differences but not making any material alterations the main principle may be the

same—small differences there may be in minor matters. *A*. Generally the Methakshara law would be the same in whatever part of India it is applied and there are certain other texts and commentaries on Hindu Law which have special significance in parts of India and when there is any ambiguity in the Methakshara law those legal commentaries are referred to and given effect to.

(Counsel reads from Mayne page 60—middle paragraph.)

I would agree with the words that " the variances between the several divisions are comparatively few and slight."

(Counsel refers to page 61)

I agree with what is stated there if you take it with the qualifications mentioned later. That is subject to those qualifications I agree with that passage.

Q. You have already stated that Mayne is an authoritative book on Hindu Law ?—Yes.

Q. And statements contained in this edition of Mayne you would regard as correct ?—Not always. I would take it with great consideration.

From what instances would you take upon yourself to say that any particular proposition in Mayne is wrong ?—I have already given them. I mentioned the instance of the execution purchaser where Mayne took a view which was narrow and I did not agree with that view. In fact Mayne disagreed with the decision in those cases.

Q. The observations you have made regarding the authoritativeness of Mayne would also apply to Mullah ?—I would place Mayne first and Mullah second.

Q. Can you give a reason for adopting that order ?—Because it is the earliest text book on the subject and he had been a person who was conversant with the Hindu laws from the earliest times. He was also a practitioner in Madras.

Q. It really comes to this that where there is a divergence among the authorities between Mayne and Mullah the question would arise for consideration whether the reasons given by each particular author are to be accepted in toto or not ?—If any particular question is submitted for decision and there are the views of various text book writers on the subject available they are all considered in the light of the reasoning adopted and then a decision come to. The decision will depend on the value which the person judging attaches to them.

Q. But where you have the *ipse dixit* of either author or authors you would prefer to rely on the statement of Mayne as having more authoritative value ?—If it agrees with my conclusion on a reasoning of it. Would you accept any statement in Mayne as an authority unless it is supported by any decision ?—There are two ways of looking at it if I am to make an independent opinion of the subject matter. There is the text and other matters to be considered and if they agree with my view I would accept it as correct if it does not I would not hesitate to say Mayne is wrong but very often I would take Mayne as correct.

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You refer in your evidence to a concept of joint family in Hindu law as something in the nature of a corporation can you amplify that statement ? —A united family is an entity and the members thereof are the constituent units and if one dies the family lives and goes on. A corporation is acquired by a family as such and not for any single member. If property is sold by the Managing member representing the family it is a loss to the family as such. How does a joint family come into existence ?—The family consists of father, son and father's wife they would form the joint family.

Not necessarily owning property ?—Yes.

Q. Would the converse also be correct can there be joint property without a joint family ?—If two members of a family come together and manage a joint property and do some business for instance, there is a joint property in that sense. Can there be joint property in the sense in which it is understood by Hindu law without a joint family ?—It can be if two persons join together and acquire property it is their joint property. Would that be joint property of joint family ?—If they are members of the same family and put their earnings into the common stock it is joint property. Can one person constitute a joint family ?—He can if he has ancestral property in his hands and if there is the possibility of his getting a son, then it becomes family property. Even where the contingency had not happened it is joint family ?—That is so. Where a person inherits property from his ancestor and is in possession and he has no other members at the time living and he is the sole member it becomes joint family property because there is the possibility of his begetting a son and then the son will have a right. That is before the contingency you speak of arises the property in his hands would be joint property of the family ?—*A.* That is the conception given to us by the authorities and the latest Privy Council case of 1943 A.I.R. 1943 (P.C.) 196. Does that case put forward a new view or does that case confirm the view of the law you had ?—I think it confirms my view ; that is if a person inherits property or property descends on him from his father he gets that property as property of his family which is to be born to him. Some text books say you must conserve the property for the children not yet born.

To Court :

But it is subject to his right to deal with the property as he likes. The right of disposal is different. What I mean is the nature of the property is there.

It is joint family property with a certain right of disposal which he would not have if there was any other members of the family ?—Yes. That is why I said that the nature of the property remains, the power of disposal may vary from time to time. If he had no sons he may be able to alienate property but the property is joint family property.

Then it follows from what you say that every Indian Bachelor governed by Mitackshara law who had inherited property is holding joint family property ?—Yes. Although he has no wife no daughter or sons ?—Yes. Or even if he did not have the intention of marrying ?—That is if he were an ascetic it may be different—that is a case I have not considered. Take the case of a bachelor if he had no wife and no sons you say the property

he inherits is joint family property ?—Yes that is joint family property that he received from his father. If he had acquired it that is a different matter. In a case like that can he convert that joint family property into his separate property ?—For what purpose, if for the purpose of disposal he has the right.

Under the Hindu Law is it open to every coparcenery to convert this possession into separate properties ?—Yes.

Provided there is no family of his. In the case of the instance I gave you where a person is holding in his hands joint family property how can he make it his separate property ?—To my mind he cannot.

Then your proposition is in the case contemplated by you above there would be no possibility of the holder of that joint property changing it into separate property ?—Yes. That is a right, he cannot change its character. So far as the question of disposal is concerned he can give title to the purchaser : that is a different matter : as to the character of the property, so long as it is in his hands it is joint family property, that is it possesses that character. A person holding joint family property cannot affect a change in the nature of that property but he can always dispose of it or give it away or gift it notwithstanding that it is joint family property ?—Yes.

Where do you draw the line between separate property and joint family property ?—If it is not inherited but property got by his own exertions or property given to him or inherited by him as a collateral in such cases the character of the property is not joint family property but separate property.

Would it be correct to say that the fundamental distinction between joint family property and separate property is the right in the case of separate property to dispose of it by gift or by will whereas in the case of joint property there is no such right ?—I would not accept your proposition because there is what is called impartible estates that is to say in a family or corporation the property descends to one member of the family, to the eldest in the line, the others have no common enjoyment in that and he is entitled to sell it and deal with it but it has been held that it is still joint family property and retains its character.

Q. Ordinarily joint family property would not be impartible ?—It is partible. Any ordinary joint family property is partible. Apart from this special case of impartible estate would it be correct to say that the fundamental distinction between joint family property and separate property is that in the case of joint family property there can be no gifting or giving by will ?—That is so, but there may be other exceptions. That is because by custom inalienability is attached to it.

Q. In the case of impartible property where the eldest son takes it by primogenitor what would happen where he has an only son ?—In the case where there is only one son that is where the son succeeded to the property he is in possession of it. As regards the nature of that property in his hands it is joint family property and it has been held to be so because as joint family property succession to it after the death of that holder would be the same way in joint Hindu family under the Hindu Law. If there

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are no heirs there will be an escheat, but that does not happen because the heirship goes down to the 40th degree of relationship. So that to go back to the original proposition you laid down inherited property is joint family property ?—Yes.

Q. Can it ever change its status as joint family property ?—*A.* No. it can never change its status.

Q. And it therefore follows that if property at any time was joint family property it will always continue to be that ?—*A.* So long as it is held by a member of a joint family ?

Q. The only exception would be in what case ?—When it passes out of his hands and gets into the hands of a purchaser it is not joint family property. He can alienate for value or no value and then it goes out to a person who can take it as his own property. He can give it by will and the legatee will take it as his. In every other case it continues to remain as joint family property so long as it remains in his hands.

To Court :

Q. In regard to the proposition where he gifts or alienates I think you said yesterday that the joint family can follow it ?—Yes if there is a joint family but here I am dealing with a case of an individual. Take this case where an individual has gifted the joint property to a stranger and marries and has a son ?—The son will take what is left as joint family property along with his father. He will be entitled to the joint property left after the gift.

Q. That is he cannot proceed against the property which has been gifted. He cannot if the father had made a will ?—*A.* In case he executes it today and gets a son tomorrow the will will not take effect because by that time the family has come into being and the will will not take effect

Q. Then what is the essential feature of a joint family property which is held by an individual before he gets a son ?—*A.* If he gifts it and a son is born he cannot question the validity of that gift.

Q. In the case of an ordinary joint family one of the coparcenary gifts a share that gift would be invalid ?—Yes.

Q. And the other coparcenary can question the gift and get it back ? —Yes. In what way would there be a difference in a case like that and the case I gave you where a son was born ?—*A.* At the time when he made the gift there was no other member of the family to question about it and therefore it goes unquestioned. Notwithstanding the fact that the property throughout retained its character of joint family property ?— Yes.

To Court :

Q. Would it be correct to say that all members of a joint family can dispose of it ?—Yes, that is all consenting. The principle is that all members of the family alive must join in the gift.

An individual can gift away the entirety of that property before a child is born ?—Yes.

While he as individual would not constitute the joint family ?—Yes, there is no family to constitute.

Notwithstanding that the property he possesses will be joint family property ?—Yes it would retain that character. If *A* has property which has descended to him and he has property which he has acquired and a son is born to him he (the son) can claim a right to the properties which descended to his father, he cannot claim the same right in the acquired property. Therefore that distinction of character in the property is retained.

Q. He would have been entirely free to gift away the whole of that property before the birth of a son ?—Yes.

Q. And the son born subsequently cannot question it ?—Yes.

Notwithstanding that it was joint family property at one time ?—Yes.

That is at some time before the birth of the son ?—The subsequent members of that family cannot question it.

Q. For whose benefit do you say he holds this joint property ?—For the benefit of all potential members, such as sons unbegotten.

Can you refer to any of the text books which support your present propositions ?—*A.* Question in that form never arises in India.

Q. You admitted a little while ago that every bachelor governed by the Hindu Law who has inherited property would hold it as joint family property ?—Yes.

Q. Can you give any text book reference or Mayne which supports that view ?—It is so simple that no authority is necessary and there is none, but I will look into it. It is so simple that it is difficult to get an authority.

Q. Would you be able to refer to any authority in the original Sanskrit books ?—I have one of mine. I will try to get at it in the afternoon.

Q. What you state then amounts to this, that a person continues to hold this joint family property on behalf of the family which may come into existence but having no obligation to preserve his property for that family ?—Yes, that is what happens. I can give an instance where a person has got inherited property and acquired property, a son is born and is given different rights in each of those properties.

Q. You stated in chief that according to the Methakshara law that even prior to the old law there was no power given to alienate ?—Yes, I agree with that that alienation was unknown. An individual who holds joint family property now has the right to dispose of it by will or for value if he is the sole member of that family.

Or if there is no family ?—He can give it away or sell it or will it before he dies if no son is born to him. If he gets a daughter or daughters they are entitled to maintenance and to the extent that it affects their maintenance they can say it is not binding on them.

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Q. To take the matter a step further what would happen to that property where the individual dies before the birth of a son ?—There is a series of heirs with regard to the order in which they take it. If he is unmarried his uncle may take it or uncle's son or mother or father may take it. His relations who are not members of the joint family may take it. In their hands would it remain as joint family property ?—*A.* No, because it comes to them by way of succession or inheritance, and it is not ancestral.

Q. Who is a coparcener ?—The members of a coparcenary are a son, son's son, and son's son's son.

Q. Although he represents a group within the joint family would you say the rights of the coparcenary are the same as the rights of any other member of the joint family ?—*A.* They are not the same.

Q. Are the obligations the same ?—That is too big a question to answer yes or no to. What sort of obligations.

Q. Who is the person on whom lies the obligation to maintain the members of a joint family ?—Kartha or head of the family.

Q. As regards the rights of the coparcener in what way are the rights different from the rights of any other member ?—*A.* He has the right to demand partition and divide himself away. That is one difference and there is also the rights of survivorship.

Q. So that you recognise in a coparcener that he has a certain right other than the right to be maintained by the family ?—He has the right to demand a partition and right of survivorship. It is not a right in him it is the right in the character of the property.

Q. These are the three rights by which you distinguish him from any other member of the joint family. The right to demand a partition would you describe that as a proprietary right ?—That right is not a proprietary right. It is a right to work out his right as a member of the family. It is not a proprietary right ; it is a right to partition. He has to give notice to other members, he has no specific share and no proprietary interest.

When he exercises the right to demand a partition is he not exercising a proprietary right ?—No, he is not, he is exercising the right to acquire proprietary interest. It may be the attempt on his part to acquire the interest. Would you say he is exercising a right involving property. Ultimately he may get something but directly he does not. He is exercising a right which may have the effect of involving right to property. When he exercises the right what you say is he can never visualise what proprietary advantage will accrue to him by that ?—He can by mental calculation get to know what he may get on a partition. He may be right or wrong. So he is exercising not a proprietary right but a process to get some interest in the property later on.

Q. Let us take a simple case of two coparceners enjoying an estate which had no liabilities at all when one demands a partition is he not exercising a proprietary right ?—No. But as a result of the demand a division in status takes place and when it is finally worked out he may get something or nothing. In that particular instance he may get a

proprietary right in property later on. Would you say that this right to demand a partition has any pecuniary value?—It is so difficult to say that he is entitled to a share or what share he will get or what property would become his by means of the partition. Therefore it is difficult to say what would be his interest. If he demands a partition it is therefore a sort of privilege unconnected with property. In theory and in law and on the principles of Hindu law what I have just said is correct. There is no proprietary interest when a person demands a partition.

Q. You said that a family is a corporation?—Yes and the members of the corporation are the unit.

Q. Members of a joint family cannot be described as owning property?—Except in a general way. A man may well be excused if he says this is my share of the property, but it has no meaning at all.

Q. Would you describe him as the owner of that property?—In a very weak sense. Because he has the right to be maintained there his interest in that property is kept intact for him.

Q. However large may be the property in the joint family the man himself is a pauper who is entitled to maintenance?—It is something like the heir apparent of a very large estate.

Q. But before that arises he is a pauper?—He is not the owner of the property in the sense I mentioned but he has the right to be maintained and his interest in the property will be kept intact.

Arunachalam Jrn. had no proprietary interest in the property at the time of his death.

Q. Did he own the property?—*A.* What do you mean by own.

Q. In no sense is he the owner of the property?—In the sense that he is entitled to be maintained luxuriously he is the owner.

Q. You said a while ago that the right to be maintained among the different members of the family are the same?—Yes.

Q. Everyone has the right to be maintained?—Yes. And every member of the joint family would be owners of the property in that sense?—Yes in that sense only.

Q. You tried to introduce another sense namely in the sense of an heir apparent?—I give that as an illustration to show that there is no right at all there is only the expectancy.

Q. Take the case of two coparceners forming the whole undivided family when one of them dies what happens?—*A.* One mouth less to feed. It is the law that whatever right he had died with him.

Q. Is there any change which takes place in the rights of the surviving coparcener as regards that property?—Not by the death of the other coparcener. The survivor continues to hold it as joint family property with all the obligations that were there before.

Q. But he would be entitled to gift away the whole of it before another member is born?—If he is the sole member he can gift but not to the detriment or prejudice of the other members of the family.

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Q. The death of the one coparcener does not affect the rights of the surviving coparcener ?—The nature of the property is not changed it still continues as joint family property and as regards his rights in the property he can sell, mortgage or gift it.

Q. Prior to the death of the coparcener he could not gift it or sell it but subsequent to the death he could have sold. If there were only two members by the death of one coparcener no corresponding benefit accrued to him then ?—His right of disposition is enlarged that is all. That is the benefit that accrued to him.

Q. So that his power of disposal being enlarged he had that benefit ? —Wherever the right of disposal is enlarged I admit that is a benefit.

(*Luncheon interval.*)

(Sgd.) N. SINNETAMBY, D.J.

37/T 6.10.48

(*After lunch.*)

K. BHASHYAM : Affd. Recalled.

(*XXN contd.*)

Q. In the course of your examination this morning you gave expression to the following propositions :—

(1) Every Hindu bachelor who has ancestral property in his hands holds it as joint family property notwithstanding that he is not a member of the joint family ?—*A.* Yes.

(2) No coparcenary member of a joint family can be regarded as the owner of a coparcenary property except in the sense that he is entitled to maintenance therefrom ?—*A.* Yes.

(3) In the case illustrated in proposition No. 1, the holder of these joint family properties, so called, is in no sense the owner of them except in so far as he is entitled to maintenance therefrom ?—*A.* Before I answered the question I think I asked you for elucidation of what you mean by owner. I would put it this way : In the case of a bachelor holding ancestral property, which holder is in no sense owner of the property, except in so far as he is entitled to maintenance therefrom and has also the right of disposal because there are no other members of the family. In other words, in the case of a bachelor who is not a member of an undivided family who holds ancestral property he while holding it as joint family property is the owner of it for purposes of maintenance, with the right of disposal till some other member comes into existence in the family.—That is correct.

Q. The fourth proposition you gave expression to was :

(4) Where one of the two coparceners who are the only members of an undivided family dies the surviving coparcener continues to hold the

property as joint family property, but in no sense is he the owner of it except in so far as he is entitled to maintenance therefrom ?—*A*. And I would also add :—

(4) (B) Where one of two coparceners who are the only members of a joint family dies, the surviving member who continues to hold the property as joint family property is in no sense the owner of the property except in so far as he is entitled to maintenance therefrom, which surviving member is entitled to alienate joint family property as long as there is no other coparcener in existence—the reason being that there is no other coparcener whose consent he has to take in respect of alienation. I agree there.

Q. You stated a little while ago that the coparceners of a Hindu undivided family or any of the other members cannot be regarded as the owners of a property ?—*A*. No, if the owner means under any fee simple of property.

Q. No coparcener or other member of a Hindu undivided family is in any sense the owner of the coparcenary property except in so far as he is entitled to maintenance therefrom ?—*A*. That is correct.

Q. Can a person in any sense be regarded as the owner of coparcenary property ? *A*. No, if the owner means under fee simple of property.

Q. What are the other meanings ?—*A*. Owner in the sense that he is entitled to maintenance out of the property and in certain circumstances he may sell or alienate the property for certain purposes. On certain occasions he is entitled to dispose of the property subject to various considerations which I have already referred to. In the case of some persons there is the power of disposal, such as the Kartha, the father.

Q. Would you regard him as the owner because for example he has the right of possession ?—*A*. He has community of possession along with the others.

Q. Has he got the right of being in occupation of the property ?—*A*. He only has community of possession, that is to say, he has got the right to enjoy the profits of the property in common with the rest ; but he has no right to take physical possession of property to the exclusion of the others, even the manager. For instance no coparcener can go to a piece of land and ask the tenant to pay the rent due upon that land to him because he is not entitled to that piece of property as his own. If he collects it by the authority of the Kartha or manager he must bring it to the common chest for distribution.

Q. Would you say that a coparcener in common with the other coparceners would be entitled to possession of the coparcenary property ?—*A*. The right of possession which he has got is community of possession along with the rest of the members of the family for the purpose of participation in the profits of the family but otherwise he cannot take physical possession of any specific property ; he can do so along with the others. For instance in the family house he can occupy a room.

Q. I gave you the further illustration of two coparceners who are the sole members of an undivided family, one dies, and you agreed that the

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surviving coparcener, although he holds it as joint family property, would have a right to alienate that property or gift it, or any specific portion of it ? —*A*. And I also added the reason for it.

Q. That was a right which he did not possess as long as the other coparcener was alive—that is alienate or gift it ?—*A*. If he is the surviving member or managing member he has the right of disposal, for purposes of the family, for necessity.

Q. But apart from that he did not have an unlimited right of alienation for value or to gift it ?—*A*. That is right. After death he may alienate property even without justifying necessity because there is no family to provide for.

Q. He may, unhampered by the requirements of necessity, alienate the property or gift it, as he wills ?—*A*. Yes, because there are no such requirements.

Q. Are you agreed that to an extent a benefit has arisen to him by the death of the other coparcener ?—*A*. Legally anything which he derives is not by the death ; it is because of the law which says that there are no other members of the family.

Q. And such property which he can alienate, gift or bequeath by will, you say still remains joint property ?—*A*. That is so. It still remains joint family property ; the character is there.

Q. What are the rights which the sole coparcener does not possess in that case which he would have possessed had the property been his own separate property ?—*A*. It is not separate property in the sense of any other separate property. Self-acquired property is property over which he has the right to alienate dispose of. The property which you are speaking of is property which is liable, in certain contingencies, to be clogged with the fact that it is joint family property.

Q. Let us not consider what may happen in the event of those contingencies ?—*A*. As a lawyer I must distinguish between the two classes.

Q. As long as he remains the sole coparcener of that property are there any rights which he would have had in addition to the rights mentioned had he been the absolute owner of that property ? Can you conceive of a person in respect of his separate property having any larger quantum of rights than the rights which the sole coparcener possesses in the illustration I gave ?—*A*. If there are no children and no other family to provide for. So far as that is concerned I will illustrate it this way : When property is given to *A* subject to defeasance by some contingency happening later on, this property he enjoys till the time of defeasance. There is a difference between such property and property owned absolutely.

Q. Take the case of a person who has a life interest. On the death of the person holding it the life interest is extinguished. Would you say in this case there is a corresponding benefit ?—*A*. In such a case there is a sole benefit in the sense that the person who died when he did might have lived longer. The life might have been prolonged which came to an end at the time he died.

Q. Similarly in this present case you admitted that the sole surviving coparcener had benefitted to the extent that by the death of the other coparcener he was able to gift it or bequeath by will ?—*A.* It is not by the death but by the consequence of the law supervening; the death occurs, the law operates, the benefit accrues.

Q. The benefit has taken place consisting of the right to alienate, the right to donate, the right to bequeath by will. From where did that benefit arise ?—*A.* The Hindu law gives him the right.

Q. You said you had read the original text in Sanskrit ?—*A.* Yes, but I really refer to it when questions come up for consideration; I studied it as a text book for examinations.

Q. From what source has the law relating to the rights of survivorship in Hindu law been taken ?—*A.* From the Methakshara.

Q. I refer you to what Mayne says on the subject at p. 339, bottom para.: " For according to the principles of Hindu law there is coparcenership between the different members of a united family and survivorship follows upon it. There is community of interest and unity of possesion between all the members and upon the death of anyone of them the others take by survivorship that in which they had during the deceased's lifetime a common interest and a common possession. The right of survivorship rests upon the text of Nanda and is recognised in Methakshara . . ." There are two co-owners in that. First of all Nanda speaks of a division being made of the property of the person who dies childless or becomes an ascetic. What do you mean by that ?—*A.* See the earlier paragraph in p. 339.

Q. Let us take the plain words of that paragraph. It says the others shall " divide his property."—*A.* If there is any property.

Q. Do you say in this text the property referred to is separate property ?—*A.* Property of any kind. It refers to persons who take by survivorship that which does not go by succession to any other person. If there were two or three brothers, and one dies, the ordinary law of succession is that the widow should succeed if it is a question of his own property. Another text says widows shall not take but brothers shall take, meaning thereby that the ordinary law of succession does not apply but the law of survival shall apply.

Q. So that there is property left by him to which the other coparceners will succeed. In other words survivorship exists to the exclusion of the widows. So that it is quite clear that the text deals with the division of the deceased's property in the joint family and it also speaks of the heirs to the exclusion of the widows, and heirs and coparceners succeeding to the coparcenary property. This text speaks of division of his property which includes coparcenary property as well. It has been taken to mean that survivorship exists in the members of the family and the widows are excluded from succeeding to the property. Survivorship as known in Hindu law is that when a person dies whatever interests he has dies with him.

Q. Anyway the text as it stands does suggest that the deceased coparcener had property which he left, the property being the coparcenary property ?—*A.* It suggests that.

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Q. It also suggests that what happens on the death of a coparcener is that there is a succession by the other coparceners to his rights?—*A.* The text does not say it; it is all what the writer says.

Q. In other words where the heirs and widows would have succeeded by inheritance, they are excluded and the coparcener succeeds?—*A.* I would like to see the original text which is not available to me at the moment, to see whether " his " in line 3 is correct.

Q. May I refer you to the footnote " I ." It speaks of possession of something and that something is described as " his " property passing by survivorship to the other coparcener.—It is difficult to put into English the conception in the original text. The sense of it has been taken. however, in a series of decisions.

Q. See Mullah 10th edition, p. 255, Sec. 229—Devolution of deceased's coparcenary interest. When one coparcener dies whatever interest he has passes?—*A.* The interest I spoke of, of maintenance from the family property, etc. It " passes " in the modern way of putting it. I think Mullah was not quite following the Privy Council's views, because whatever interest a coparcener has ceases on his death. The words of their Lordships of the Privy Council are that the right of a coparcener is extinguished at his death. I can give the exact reference later.

Q. Now, a coparcener has among other rights a right to maintenance; obviously there is no question of that passing on his death. He has a right to demand a partition; that too there is no question of its passing at death. Then if this language is correct is not based on the concept that on the death of a coparcener there is some property right other than these rights which passes to the other coparceners?—*A.* It looks like it from the words contained there.

Q. Would it be correct language to say that when a coparcener dies the other coparceners take by survivorship?—*A.* That is inconsistent with what I remember was held in the Privy Council case which is that his interest dies with him. There is an enlargement which has no connection with the death.

Q. Would it be incorrect to say that when the coparcener dies the other coparceners take by survivorship?—*A.* There is nothing to take. There is no predictable share he is entitled to. Therefore I think " take by survivorship " would not be correct. Loose language might permit it, but legally it is not correct.

Q. See 9 Moore's Indian Appeals, judgment commencing at p. 543, at 611 (reprint), (615 original) " It is therefore on the principles of survivorship that the widows . . . The foundation therefore of a right to take such property by survivorship fails." ?—*A.* When you are dealing with that point may I read from the same text " according to the principles of Hindu Law . . . others may well take by survivorship that (' that ' means the whole property) in which they had during his lifetime a common interest and common possession." It looks as if they take over again the common property in which they had a common interest and common possession. In that share which they take also they had a common interest and common possession. Even in the so called property of the deceased there was already common interest and common possession. The language here says that and that is all I say.

Q. Despite that do you maintain that on the death of a coparcener his right becomes extinguished and there is some enlargement taking place of the coparcenary rights?—*A.* The Privy Council says they take that in which they had already an interest during the lifetime of the deceased.

Q. Take 43 Allahabad I.L.R. 228 at p. 243. Take the ordinary case of a member of a joint family under the Methakshara law and what happens if he dies. His right accresses to the other members by survivorship. Do you agree with the wording of that?—*A.* That is as the result of the operation of law whereby the shares of the other members are increased if they want a partition as on that date; but they may not want it. Here they consider the meaning of "coparcener" in English law and in Indian law. So far as the English law is concerned it goes to the others, the heirs. In the case of coparcener in Hindu law his share (in one sense) survives to the other members of the family, accresses to them. In one case it goes in the other it merely attaches itself.

Q. So that you say this language is correct?—*A.* In the sense in which I understand it, it is correct. That is to say, it indicates an accretion to the rights of other members while in the English case it goes from one to the other.

Q. The dead member's right accresses to the other members. Do you say that language is inconsistent with your view?—*A.* With the explanation I gave it is correct. I want to explain further: on the death of a coparcener of a joint Hindu family there may be an accretion to the shares of the other members, accretion in the sense meant by their Lordships. In calculating the share, from $\frac{1}{4}$ it may be $\frac{1}{3}$. But if you really divide the properties into metes and bounds and give the property allottable to him under the new altered circumstances, altered by the death of a person, that is $\frac{1}{3}$ instead of $\frac{1}{4}$, he may actually stand to lose. For instance if the person who wants to divide had four daughters to marry and the other member had one or two daughters only, if he had continued joint he could have got all his daughters married at the expense of the common fund. But if he divides himself he will have to meet the expenses out of the $\frac{1}{3}$ he gets on division on that date. Again in a case where a person lives, if he continues in the Family along with the others he will get a further increase in his share. That is why generally during the lifetime of the father nobody divides: because if one divides himself away the father's share which he would otherwise get would go to the other brothers and not to him. I use the word "accretion" if it means accretion in the ultimate benefit one gets.

To Court:

If he decided on a division before death he would get less than if he decided on a division after death. The death of the party by itself does not give him a benefit unless he wanted to take advantage of it by his positive act. It is not death that gives him the benefit, it is the act of his giving notice to the others "I want to be divided from you today." If he decided to divide before death he would get a smaller share than if he decided to divide after death. But it depends not upon the death of

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the person but upon his volition to act. If it is disadvantageous to divide before death it will be disadvantageous after death also, though to a lesser extent. My illustration presupposes no division prior to his death.

Q. Do you modify your earlier statement that on death there is an enlargement of the share of the coparceners ?—*A.* That depends upon the determination or volition to take advantage of the death and ask for division.

Q. I think you stated that the right to demand a partition is not a proprietary right ?—*A.* That is so.

Q. Take the Hindu Women's Right to Property Act. Would it be correct to say that this Act among other things deals with the law of survivorship ?—*A.* Yes.

Q. And one of the rights given to Hindu women would be to demand a partition where the husband would have been in a position to demand one ?—*A.* Quite so.

Q. Then would you say that the title of this Act is not correct ?—*A.* I draw a distinction between a proprietary right and other rights. This may be some kind of right ultimately affecting property, but I maintain it by itself is not a proprietary right though it may ultimately result in affecting property. If we conceive a case where there is no family property at all, still it may get divided because one may wish to go away and set up in business himself.

Q. You said that a coparcener cannot be regarded as the owner of the coparcenary property except in the respects mentioned by me, that is except in so far as he got the right to alienate in certain cases ?—*A.* I said " owner " in the sense of the right to maintenance out of joint family funds and in certain cases right of disposal.

Q. Take the case of a sole surviving coparcener who alienates his property. On alienation that property passes to the alienee, and that person of the joint family property is alienated to the transferee. So that he has parted with property by reason of the alienation. Is that not so ?—*A.* Yes.

Q. Do you still maintain, notwithstanding that, that he is not the owner of property which he has parted with ?—*A.* I told you that " owner " in such a wide sense must take into consideration many things. Therefore I said he is the owner to the extent I mentioned. To the extent that he can dispose of the property he is the owner. Only when he tries to dispose of the property the question of ownership comes. The latent ownership is in him. He can transfer that right to the other person by a sale.

Q. So that although the fact that he is the sole owner, there being no daughter, no son, no other coparcener in the family, notwithstanding all that he is not owner of the property ?

(*Adjourned till* 7.10.48 *at this stage.*)

(Sgd.) N. SINNETAMBY,
A.D.J.

7.10.48.

In the District Court, Colombo.

37/T.

Appearances as before.

Errors in proceedings of 5.10.48 corrected by consent.

Original Appellants' Expert Evidence.

K. BHASHYAM, Affd. Recalled.

No. 18. K. Bhashyam, 7th October 1948. Cross-examination.

(*XXN contd.*)

Q. Yesterday I put to you a text from Nanda, and I believe you said that the translation as reproduced gives a suggestion that there was some property that would be left by a coparcener which would be divided among the other coparceners, and you expressed some doubt as to whether it was correct ?—*A.* Yes, that part of the text.

The propositions I assented to after lunch on 6.10.48 as recorded were put to me in the language of learned counsel for the Crown. They are not in my own language.

Q. When we adjourned yesterday I had put to you the question that your view is that a sole surviving coparcener, although he can alienate property, still the property in his hands is what is described as joint family property ?—*A.* Yes, assuming there are no other members of the family.

Q. I questioned you as to how it is that he can by alienation convey title to the alienee ?—*A.* The theory is that such a coparcener is holding joint family property only, and the character of the property is not changed. If he is the sole member of the family he has the right to dispose of it as representing the family, because he is the only member representing it, and he can give title to the person to whom it is alienated, because in theory all members of the family have consented, he being the only member.

Q. What you want to stress is that by being sole surviving coparcener he still can do what he could have done as one of the coparceners with the consent of the others?—*A.* He could sell joint family property with the consent of the other surviving coparceners ; in this case he himself being in theory the other coparceners, it is regarded as having been conveyed with the consent of the family.

Q. But is that not a mere fiction ?—*A.* If you want to consider the theory of the law, the principles of the law, this is the position. From a practical point of view there may not be any difference.

Q. Can you refer to any text in Mayne or Mullah or any reported case which sets the law down in the form which you have given ?—*A.* I refer to case reported in 1941 A.I.R. (P.C.)120. The holder of an impartible estate, that is to say, by custom the character of impartibility has been impressed upon the property, that is with the descent only to a single heir in the line of primogenitor—the other members of the family are limited only to maintaining it by custom, otherwise there is no unity of possession ; this property was sought to be taxed on the basis that he was the owner of the property. Dealing with that under that section Their Lordships state as at p. 122 (right). I would draw attention to the words " . . . However difficult it might be in some cases to apply the simple and ordinary phrase ' owner of property ' to the facts, it is not permissible to substitute a form which has a dubious and noticeably different meaning. Again the distinction between the property owned by an individual Hindu and

In the District Court, Colombo.

Original Appellants' Expert Evidence.

No. 18. K. Bhashyam, 7th October 1948, Cross-examination, *continued.*

property owned by a Hindu undivided family may be made by applying the Hindu Law and the distinction in certain cases being somewhat final and difficult to draw, it is all the more necessary to keep close to the Hindu Law." I would also invite attention to what is stated later which makes the point clear.

Q. What is the effect of that judgment ?—*A.* There are two distinctions and one must always apply them. One is property owned by an individual Hindu and the other property owned by a Hindu of an undivided family. They sought to make one person liable as the owner in that case. Ultimately it was held however that the income derived from these properties was individual income which may be taxed as individual property, because they held that though property in corpus is joint family property the income is one to which he has a right ; therefore this may be taxed as his own individual property, but the other cannot be taxed as it was the property of the joint family. They held that the income can be taxed under another section, not by the fact that he was the owner but because he was entitled to the income. The owner is taxable under Section 9 and the holder of the income under I think Section 55 of the Indian Income Tax Act.

I also refer to the passage at p. 123 where it states that " Co-ownership of joint family members may be in a sense only, carrying no present right to possession. If the question be whether the Hindu undivided family or the present holder is the owner of the estate, the answer of the Hindu Law is that it is the joint family property. The assessee as an individual cannot therefore be charged under Section 9 of the Act.

Q. Whether the estate is impartible or partible, what is the position of the other members of that family ?—*A.* The nature of impartible estate is this : no other member of the family can ask for the partition of that property. In some cases by custom maintenance is allowed to some members of the family out of the impartible estate, but the family of which he is a member continues joint. There is no community of possession and no right to demand partition.

Impartible estate can be sold by the holder without consent. That has since been changed in Madras by an Act.

Q. When a sole coparcener transfers or makes an alienation, it is presumed that he did so with the consent of the family which at that time was not in existence or was in existence only in theory. But I ask you to point out anything in the text book which shows that in the case put to you the alienation—to confer title in the alienee—is regarded as one to which the family has consented ?—*A.* Their Lordships have drawn a distinction between the property of the joint Hindu family and the individual property of certain members of the coparcenary. In the case of the sole coparcener the whole family is in law represented by him. That is my view no doubt but it is confirmed by what is stated in the cases cited.

Q. In the case of the holder of the impartible estate, is it not correct to say that the basis on which he is entitled to alienate is that the other members of the family have no community of possession. Is that not the only basis ?—*A.* I do not know if it is the only basis. The character of impartibility carries with it the right to keep it undivided in the hands of the holder.

In the District Court, Colombo.

Original Appellants' Expert Evidence.

No. 18.
K. Bhashyam, 7th October 1948.
Cross-examination, *continued.*

Q. Would it be correct to say that in the case of impartible estate the other members of the family have no community of possession ?—*A.* No, he is the sole possessor and they cannot demand a partition by the very nature of the estate.

Q. Is there a right to survivorship ?—*A.* Yes, because it is joint family property there is.

Q. When the holder alienates it there is no question of his obtaining the consent of the other members of the family ?—*A.* It does not arise, by the very nature of the impartible estate.

Q. How is that case analogous to the case that when a sole surviving coparcener alienates he must be presumed to alienate with consent ? *A.* The three characteristics are there, viz. : There is no community of possession and there is no right to call for partition on any member of the family ; the holder has power of disposal ; he has received property descended to him from his ancestors, the property being joint family property. Though he has the power of disposal he cannot be said to be the owner in the case of impartible estate. When a single person is in possession of the property it corresponds to that state of affairs.

Q. So that that is merely an example of a case where a person, though not the owner of the estate, can alienate it ?—*A.* I say the analogy applies even to this. As a matter of fact the sole surviving member is not the owner, but he has the right of disposal.

Q. You have distinguished it from the cases mentioned because you have added that he must be presumed to have alienated it with the consent of the family ?—*A.* Because it is partible property that consent must be presumed.

Q. Can coparceners gift coparcenary property ?—*A.* No man can give away joint family property or bequeath by will. If all consent the gift may be valid, when the persons affected are all consenting parties to the gift. If all the members consent then the family consents. In the case of a will the law is no coparcener can make a will because by death survivorship goes and there is no property on which the will can operate. But I once came across a case in my experience where a coparcener made a will to which all the others agreed, and they construed it as a division between the two parties.

Q. In the case of the sole coparcener there is no limitation at all to his giving the property by will ?—*A.* He can leave by will, but if a child were to be born that would be invalid. His power to gift is unlimited.

Q. In the case of Arunachalam Chettiar, Jnr., the son, you were referred to Section 8 of the Estate Duty Ordinance No. 8 of 1919. In regard to Section (1) (*a*) you have stated that in this particular case of Arunachalam Chettiar, Jnr., he was not at the time of death competent to dispose of whatever interest he had in the coparcenary ?—*A.* Yes.

(Sgd.) SINNETAMBY,
A.D.J

(*Interval.*)

In the District Court, Colombo.

Original Appellants' Expert Evidence.

No. 18.
K. Bhashyam, 7th October 1948, Cross-examination, *continued.*

(*After Lunch.*)

K. BHASHYAM, Affd.

(Witness is shown the Estate Duty Ordinance No. 8 of 1919 section 8.) It was suggested to me yesterday that on the death of one of the coparceners his interests passed to the surviving coparcener, but I say there is no interest passing. I also stick to the view that the rights of a coparcener to demand a partition is not a proprietary right.

(Counsel refers to subsection 2 and section 3.) I say he had no interest in the property and I deny that it is a proprietary interest. With regard to the words " his widow shall have in the property the same interest " I do not quarrel with that language but I say that the interest referred to in the subsection 3 would be right to demand a partition also.

Q. What you say then is that on the death of one coparcener his interest is extinguished ?—Yes but his right of common possession is still there. That is his rights which extends over the whole property is still there if the community of ownership continued.

Q. Does any change take place in the right ? There will be the right of exercising his privilege of demanding a partition but it is not at the death that he gets that right. Because Arunachalam, Jr., at the time of his death had not the right to dispose of his property but by his death Arunachalam, Sr.'s, powers of disposal are enlarged. The junior member had not the right of disposal but something has happened to make that power bigger—it is not a power that passed from the junior to the senior because junior did not have the power of disposal at all. Whatever he had passed to the other person but whatever he had he had not the power of disposal to pass to him. Arunachalam, Sr., had the power of disposal as managing member while junior was alive, when he became sole surviving coparcener apart from his position as a managing member he was the surviving coparcener and as that he can dispose the property.

Q. Do you deny that that was a benefit ?—Yes, there is that benefit, but what I say that he has got it not by the cesser or death of the other person but because of the law bearing on the point that gave him the larger right.

Q. But you admit that a benefit accrued to Arunachalam, Sr.—*A.* Yes, there was some benefit.

Q. What was the nature of that benefit ?—The right to maintenance which he was enjoying is no longer there because to make the other person benefit to a greater extent there was not sufficient property to feed both. Apart from the maintenance there is no other benefit that I can see.

Q. Is it not a benefit that he was able to dispose of the entire property ? —*A.* Because he was the sole member of the family he got that right not because of cesser.

Q. He becomes the sole member by reason of the death and therefore he was able to alienate the entirety of the property ?—From a practical point of view it is one thing and from principles of Hindu law it is another thing. It is not because of the death that he gets that benefit but because he becomes the sole member of the family and represents the family.

In the District Court, Colombo.

Original Appellants' Expert Evidence.

No. 18.
K. Bhashyam, 7th October 1948.
Cross-examination, *continued.*

Q. Your evidence then is that there is a benefit and that merely consists of the right to maintenance ?—Yes.

To Court :

Q. And the right to get the consent of a lesser number of people ? Yes in that sense too. He is able to alienate the property without seeking the consent of anybody ? There was nobody to get the consent of. He is able to gift it ? He can also will it away subject to what I have stated.

Q. Supposing Arunachalam, Sr., had apart from coparcenary property a house which was his self-acquisition in what way would his powers of disposal in respect of the coparcenary property differ from the power of disposal in the other property ?—The right to dispose of the property is there because of the joint Hindu family but a contingency may happen by which that right may diminish.

(Shown 1941 A.I.R. Federal Court p. 74) I agree with that passage. (Shown the second paragraph in the second colum on page 77.) (Counsel also reads page 78.)

Q. This argument merely is a repetition of your view of the matter that on the death of the coparcener there is an extinction of rights and further that extinction is of such a nature as not to include the expression devolution and succession ?—It accepts my argument that there is extinguishment of the right and that the deceased person's interest does not pass to another. That argument has been accepted and under the heading devolution and succession they further discuss the matter and they say that those words in a wider sense may cover it. That has been accepted and accepting that fact they went on to answer that by showing some consideration which makes these cases also come under the wide sense of devolution and succession because there is no other item under which they can bring it.

(Counsel reads the next para. up to the words " extinction or lapse ".)

Q. Do you say that the Federal court has accepted the argument of extinction ?—I say they accepted the argument which I have given you but they say that there are exceptions to that rule.

Q. I put it to you that in this judgment they have considered the arguments which is represented by your view namely the theory of extinction of the right and that they specificially rejected it ?—I do not agree with that. I accept it in this form. The principles of law which I stated before you have been accepted by them but they say in respect of these matters they may be exceptions in some cases and because of that we will bring them in under succession or devolution.

In that very case they dealt with the case of an attachment at page 78. As a statement of the law I accept what they have said namely that " if a creditor obtains a decree against a member of a joint family and during the latter's lifetime attaches his undivided interest the creditor can proceed against that interest to the extent necessary for the satisfaction of his claim," but that does not touch the point which we are considering now, whether by survivorship anything passes or whether there has been a benefit arising out of the death.

In the District Court, Colombo.

Original Appellants' Expert Evidence.

No. 18.
K. Bhashyam, 7th October 1948.
Cross-examination, *continued.*

Q. What happened in the Federal Court judgment was they considered this case as coming within Central Registration under the heading wills intestacy and succession and in that connection they were considering what was the process that takes place when a death occurred in the undivided family and they came to the conclusion that it was not an extinction of rights but a passing ?—*A.* I do not agree.

(Counsel reads page 77.) They deal here with the 4th contention with regard to the meaning of the word succession and what is devolution. The question raised was whether these words meant a passing of interest from one person to another and can include the change which takes place under the Mitackshara law ?—As I read it they recognise under the Hindu law there is an extinction and lapse and in respect of that there are other factors to be considered whether such a change under the Hindu law can be brought under the words succession or devolution. (Witness draws attention to the earlier passage.) They accepted the position as common ground and on that basis they give a further argument and state that there are exceptions to be considered and come to the conclusion that in such a case as this you may under a wide sense of the words bring it under the terms devolution or succession.

Q. That is a statement of the argument ?—It is not a statement of the argument it is a statement of the law.

(Counsel refers to A.I.R. 1943 Madras page 149.) This passage is correct, it is what I have stated before.

Q. The words to be emphasised are " and the debtor died pending attachment a valid charge is created in favour of the Plaintiff and this prevents accrual to the other coparceners of the right to survivorship." When a person dies do you agree or not that there is an accrual to the other coparceners ?—It is a word used in some other connection and I say that the use of that word there is incorrect. So far as this case is concerned as I have already explained a coparcener can create a mortgage or charge on any part of the coparcenal property but the mortgagee will have to work out his right in equity by a separate partition. This says that if the debt is a personal debt no charge had been created by attaching the property, it is tantamount to giving the creditor a charge over that for the amount of the debt, therefore he has the right to go on it, that is made clearer still because if there was no attachment during his lifetime he could not attach the property. (Vide Mayne page 445.) (Witness is shown the case reported in 1946 A.I.R. page 503 Madras.) They considered a special statute of the enactment where the words used there were wide enough to include a case like this and they held that those words sufficiently described the increase that took place in the coparcenal property on the death of the one of the other coparceners. Section 28 (4) of the Insolvency Act provides that the official receiver is entitled to property which is acquired by or devolves on the insolvent. The official receiver gets the share of the insolvent and if there is a diminution of the share by addition to the family they said it does not diminution it, but there is an increase because there are the words " acquired by ".

They treat it as a sort of alienation. Attachment and insolvency are all put on a par with alienation. (Counsel refers to 1947 2 Madras L.J. p. 509 at 510.)

Q. Is this again a case of loose language " It is not in dispute that when family property or a share of one member thereof is attached and the member dies nevertheless the survivors become entitled to his share " ? —They have used language which is not quite accurate there. The words are loosely used because that was not the point for decision in that case.

(Counsel refers to A.I.R. 1926 Madras page 72.) Here again the words used are " prevention of accrual " and I say the language is not correctly used. They were not carefully expressing themselves there because it was not necessary.

(Evidence given by the witness on pages 19 and 20 read.)

Q. What is the present view of the law ?—The earlier view was that a coparcener had a vested interest in respect of the share of joint family property and that vested share passes to the transferee but the present view is it is not a vested right. No person can predicate any share or any item of joint family property as his own. That is to say he does not get any share in the property, all that he is entitled to is in equity to work out his right. What I have stated in my evidence on pages 19 and 20 is a quotation from 35 Madras. Where a coparcener transfers for value would you regard that as a legal transfer ?—It is a lawful transaction. Would it be a transfer of property ?—No specific property.

Q. Is it a lawful alienation ?—There is no property passing.

Q. What is it then ?—Equity for getting his rights worked out. The equity is if a person transfers property which he cannot give title to the purchase he can keep his word with the purchaser and transfer the equity. There is no transfer of property it is a transfer of equity.

Q. Is the transferring of property or not ?—It is not the transferring of property.

Q. Would you regard it as a transfer within the meaning of the Transfer of Property Act ?—I say there is no property to transfer—no specific property to transfer. There is some sort of right transferred that is all.

(Counsel refers to the Full Bench decision in Vol. 53 I.L.R. Madras page 1. Reads from bottom of page 12) " What the alienee obtains is no more than the right to claim a partition as against the other coparceners . . . the alienee's right would be no more than the right to stand in the shoes of his alienor . . . The alienee is held entitled not merely to claim a partition but to claim to be given the alienors interest not at the time of partition but at the time of alienation . . . It follows that the alienor had at that time something to sell, not merely the right to claim a partition but some real and definite interest in the property which can be the subject of legal transfer of property . . . it is an interest in the property undefined from the point of view that it may fluctuate in extent . . . " (witness says) the matter decided there is something different. (Witness reads the head note.) The head note shows the main point decided. The passage read out is *obiter* and I do not agree with that. It is not a transfer of property within the meaning of the Hindu Law. I cannot say whether it is within the meaning of the Transfer of Property Act. There is a transfer of property act in India. It is applicable to the Madras Presidency. I am acquainted with the provisions of that act.

In the District Court, Colombo.

Original Appellants' Expert Evidence.

No. 18. K. Bhashyam, 7th October 1948, Cross-examination, *continued.*

Q. Do you say that the transfer of a coparcener's interests is a transfer of property within the meaning of that Act ?—*A.* Yes, some equitable interest is transferred.

Q. Is the transfer of property within the meaning of that Act ?—I am giving the answer in a modified form. It is a transfer of equitable interest in the property.

Q. Does that transfer of property Act apply to Hindus ?—It does. And to all persons governed by the Hindu Law.

Q. Is the alienation of coparcener's property one which requires to be registered ? Yes.

Q. And provision for registration is in the Act ? Yes.

Q. For the purposes of that Act it may be a transfer of property ? —Yes, for the purpose of having a writing. (Counsel refers to Mayne page 595) " The Methackshara law of inheritance therefore applies exclusively to the property which was held in absolute severality by its last owner and such property will include self acquisitions of the last male owner, property inherited from him or his collateral mother or maternal grandfather etc. etc." (witness says) That has been modified by the Privy Council case of 1943.

Q. Until it was modified that was a statement of the law ?—No. It is not a correct statement of the law. There was a difference of opinion prior to that Privy Council judgment.

Q. Take the case of Arunachalam Senior he left two widows and they adopted only in 1945, prior to the adoption how did the widows take the estate was it by survivorship or inheritance ?—By succession. They took it as joint family property. That character was not taken away from it because the rights of the other female members for maintenance is still against that property.

(Counsel reads Mayne from bottom of page 364—section 285) " Ultimately property vested in the last surviving male member . . . will be separate property subject to its becoming at any moment coparcenal property." (Witness says) it merely speaks of a tendency that it may become coparcenal property.

Q. Ultimately property vested in the last surviving male member will become his separate property. Taking that statement as it is would you say that all that though the widows had inherited that property it is still joint family property ?—That is the character of the property. There is no question of the character changing.

Q. Then Mayne is wrong when he says that such property will be his separate property ?—Mayne is not quite correct in that. I would modify it by saying joint family property in his hands of which he has a disposing power. Right through it will be joint family property. (Counsel reads 1945 Federal Court judgment p. 18.)

Q. This is a case which has changed the legal position set out in Mayne. In view of the position set out in the case referred to at the top of that page ?

In the District Court, Colombo.

Original Appellants' Expert Evidence.

No. 18.
K. Bhashyam, 7th October 1948.
Cross-examination, *continued.*

Q. " It is an interest liable to fluctuate both during his lifetime and even after his death. According to the observation of the Nagpur High Court the property held by a person who is sole surviving coparcener is potential of becoming joint family property at any moment so long as there is a widow able to have a male member of the family by adoption." It has the potentiality of becoming joint family property. Though it has that potentiality it would not be joint property at that time ?—It changes character from joint family property.

Q. I say the language implies that ?—It seems to my mind to be not quite right because the Privy Council has said that the joint family does not come to an end if there is a mother alive. The joint family is there because there is still a widow.

Q. You do not accept the interpretation that till that potentiality has been realised it was separate property ?—I cannot accept that.

Q. And does not Mayne say the same thing on page 365 ?—He has not correctly stated the decision in the Privy Council case of 1943.

Q. Is not the language used in the Federal Court judgment and the language used in Mayne the same ?—They are not the same. My opinion as a lawyer is it is joint family property and if it is being held by a member of the joint family it must continue in character to be joint family property. The Privy Council case of 1943 does postulate the existence of a joint family estate and the decision in that case is that the joint family continues so long as there is a potential mother and if that is in existence and there is the property which is held by the joint family I cannot see how the character of the property can be changed. If the property in the hands of the last owner is subject to obligations of maintaining the female members of the family so long as that right exists the character of this property must remain the same.

Q. Will you draw a distinction between the coparcenal property and joint family property ?—There may be some difference. I say so because one is property held by a narrow body. The first ancestor owns some property of his own then say there are four generations and they get the property as originally owned, but if members of that family earn money and puts that into that will be joint family property and not coparcenal property. It will be the joint family property of that particular family. It is therefore impossible to regard joint family property as being the same as coparcenary property.

Q. If there is a father, son and grandson owning coparcenal property can that family apart from that coparcenal property own also joint family property ?—No.

Q. Is there any difference between joint property of an undivided family and property of an undivided family ?—It means the same thing to my mind. (Counsel reads from the words " The difference between the position of a person owning self acquired property and that of a person who happens to be the owner of property as sole surviving coparcener . . . predeceased coparcener's widow."

(Witness says) that is the same thing as is stated later in the judgment.

In the District Court, Colombo.

Original Appellants' Expert Evidence.

No. 18. K. Bhashyam, 7th October 1948. Cross-examination, *continued.*

Q. You say that therefore in the case of Arunachalam's widows they inherited the property but the property continued to be joint family property ?—That is my view and that is borne out by the fact that the maintenance continued.

Q. However long they may defer the act of adoption till the adoption is made they would have the property as their's ?—*A.* Yes, holding it as theirs. The property would belong to Arunachalam and his family. They take that property as heirs of Arunachalam Chetty. They would not have absolute right over the property and they cannot alienate it except for necessities. When they take the property what are their rights ? —That is to enjoy it till their death and on their death it will pass to other persons.

Q. Would the daughter-in-law get anything ?—She has been made an heir recently.

Q. Before the adoption was made would the daughter-in-law have taken any portion of that estate ?—It will go to the two widows who will hold it jointly for their joint life and on the death of one it will go to the other. They will have no power of alienation.

Further hearing tomorrow.

(Sgd.) N. SINNETAMBY,
D.J.

8th October 1948.

37T. 8.10.48

Appearances as before.

K. BHASHYAM : Affd.

(*XXN. contd.*)

Q. In a joint family, regarding the joint family as owning property, would there be any property which the joint family owned other than coparcenary property ?—*A.* Yes, there may be gifted property which may not be coparcenary if it is given to the larger family.

Q. Take a case where there is coparcenary property and without any property having been gifted to the joint family, as such, could you think of any other instance where there is property outside the coparcenary property which the family would own ?—*A.* Supposing *A's* property is ancestral in his hands, that is, it is held by him, his son, his son's son and his grandson's son.—Any property other than that may be property given to him for the benefit of the whole family, not alone for the three generations ; or it may be a case of one outside this narrow body acquiring property and throwing it to the whole stock for the benefit of the whole family.

Q. What happens when a division of that coparcenary property takes place ?—*A.* The family would divide into a number of groups and each of those groups would be represented by the head of that group who would necessarily be a male.

In the District Court, Colombo.

Original Appellants' Expert Evidence.

No. 18.
K. Bhashyam, 8th October 1948, Cross-examination. *continued.*

Q. If each separate group is constituted by a different male, each of them having a separate family of his own, the divided property attaching to that individual member would be the joint property of that family?—*A.* Yes, of that family branch.

Q. You go further and state that even if the individual male who gets a divided portion has no family, still the property is joint property ?—*A.* Yes, it has the character of joint family property.

To Court :

Q. Is there a distinction between joint family property and property having the character of joint family property ?—*A.* There is no distinction except that of people being born and not being born. Such a person can dispose of the property, but it carries with it the legal consequences of a son being born. That is why I say it has the character of joint family property.

Q. Take the case of an individual male member of a certain joint family, in the case of that family dividing or ceasing to exist by death of their members there is no joint family attaching to him. Do you say the property he gets by the division in his hands is joint family property ?—*A.* Yes.

Q. I put to you this passage in Mullah (Mr. Weerasooriya reads at page 241, sub-para. 4—shares allotted on partition). Is that correct ?—*A.* The words " separate property " there I cannot accept. It might be joint family property ; it is not separate in the sense that the property has the character of being able to be disposed of by him at his will during his life time. As I explained yesterday it is separate property only if there are no prospective mothers.

Q. Coming back to the individual who has got this divided property, you say notwithstanding he has no joint family of his own, no sons born to him, he holds it as joint family property ?—*A.* Yes, it is joint family property.

Q. You stated definitely earlier that the character of that property will never change until he should alienate it to a stranger or it is inherited by a collateral ?—*A.* In the hands of the collateral it becomes separate property.

Q. If he gifts it to his son ?—*A.* In that case there is a difference of opinion with regard to what it is.

Q. In Benares you have pointed out that it would be regarded as separate property whereas in Madras there is a difference of opinion as to what it is ?—*A.* What is stated is, when a person makes a gift, a father to his son, unless it is indicated that it is separate property it is ancestral property in Madras. In the other place unless it is indicated that it is ancestral property it is a separate property.

Q. If it is to his sister it is his own property which she can deal with as she likes without any limitation ?—*A.* Yes.

Q. And if it is to his wife again it is his own separate property which she can dispose of without any limitation ?—*A.* Yes.

In the District Court, Colombo.

Original Appellants' Expert Evidence.

No. 18. K. Bhashyam, 8th October 1948. Cross-examination, *continued.*

Q. Take the case of a man dying without any son, in the state in which he was when he got that property into his hands, and the property goes to the collateral. In their hands would it be separate property ?—*A.* In the hands of that collateral person it would be separate property.

Q. Take the case of a man who has inherited property and has no issue, would he be free to dispose of that property by will ? Take the very case I gave of an individual who has property coming to him on division, he is the sole male member, there are no females, could he dispose of that property by will ?—*A.* The will takes effect from the date of his death, but it would be of no value, the moment he has a child.

Q. If it is effective what is the character of the property in the hands of the devisee ?—*A.* In the hands of the devisee it would be separate property.

Q. Then supposing he had a wife, he had married, but no male issue ; he leaves the property to his wife by will and dies without any alteration in his family ?—*A.* She is in the same position as any other legatee otherwise. That is she gets it as her separate property.

Q. You have considered what happens on partition : a family ceases to exist by division, by the family getting divided, which division also involves a division of the coparcenary estate. It may cease to exist by the death of all the members ?—*A.* Yes.

Q. You say Arunachalam Chettiar, Jnr., had no right to alienate his property as one of two coparceners, for value ?—*A.* Yes, especially the junior.

I refer you to Mayne, p. 491, Sec. 379, 2nd para. (Mr. Weerasuriya reads.) Do you agree ?—*A.* I agree with that ; he may dispose of it.

Q. You regard it as alienation of interest ?—*A.* He purports to alienate his share. Strictly speaking he has no legal right to alienate his share. He purports to alienate his share which by operation of equitable principles gives the purchaser the right to get that share allotted to him in a partition suit brought before the Courts. Legally there is a definite bar to alienation by one coparcener of his own interest for value.

Q. Can he gift ?—*A.* Not at all. That makes the difference, because the equitable principle that applies to the first case does not apply to this.

Q. Can he devise by will ?—*A.* Oh no.

Q. Definitely in the case of one of several coparceners legally he cannot alienate and legally he cannot bequeath by will ?—*A.* Yes.

Q. You are speaking Methakshare law applicable to Hindus in the Madras Province ?—*A.* Yes.

Q. I would refer you to note A in that same paragraph. (Mr. Weerasuriya reads.) So that according to Mayne the right of alienation, whether you call it legal or not, has been recognised from 1813 onwards in the Madras Province ?—*A.* The equitable principle was sought to be applied even as early as 1813.

Q. As a general proposition of law, would it not be correct to say that equity steps in only when there is a conflict between two legal rights ?—*A.* As a general proposition that is correct.

Q. If the law does not authorise an alienation would not the position be that the alienation does not confer any legal rights on anybody ?—*A.* I say it does not.

Q. Therefore if it does not confer any rights on any person what is the need to invoke equity ?—*A.* The judges in those days enforced it in good conscience out of a sense of equity, because the purchaser had paid hard cash.

Q. May I put it in this way : if the law prohibits a man from selling ganja, and a person buys ganja and parts with good money, none the less the law will recognise the right of the vendee who has parted with good money and give him some equitable relief ?—*A.* If it is against public policy it will not be legally recognised ; if it is not against public policy the Court may recognise the equitable principle. I remember there was such a case, of a person making an illegal contract—taking a partner which is not recognised by law or statute.

Q. Your position is Arunachalam Chettiar Jnr. had no right to alienate his property, therefore he does not come under the section of the Estate Duty Ordinance No. 8 of 1919 which speaks of property which a person was competent to dispose of ?—*A.* Yes that he did not die possessed of property which he was competent to dispose of.

In expressing my opinion that Arunachalam Chettiar Jnr. did not die possessed of property which he was competent to dispose of, I did not give consideration to the definition of the expression " property which a person is competent to dispose of " contained in the Ordinance.

To Court :

Q. Were you aware of the fact that the words " competent to dispose of " are defined in the Ordinance ?—*A.* I was not aware of that.

Q. You took it in the ordinary sense ?—*A.* Yes, in the general sense.

Q. In connection with Arunachalam Chettiar Snr. it is necessary to consider the case of the sole surviving coparcener ? —*A.* Yes.

Q. You have already stated that the sole surviving coparcener may alienate ?—*A.* Yes.

Q. That is a legal right ?—*A.* Yes.

Q. Whereas the so-called alienation by a coparcener of the right which he has in the common property while the others are alive is not a legal right, in the case of a sole surviving coparcener he can alienate it and there is no legal impediment ?—*A.* Yes.

Q. And the alienee receives the property as his own separate property ? —*A.* As his property. " Separate " has a certain significance in Hindu Law. I would say he receives it as his absolute property.

In the District Court, Colombo.

Original Appellants' Expert Evidence.

No. 18. K. Bhashyam, 8th October 1948. Cross-examination, *continued.*

Q. Arunachalam Chettiar Snr. could have gifted property without any legal impediment ?—*A.* He may do so subject to this impediment, that he must provide for the maintenance of that family if there are female members ; it is subject to that duty.

Q. Supposing he does alienate property without providing for maintenance, does the alienee get a good title ?—*A.* If it is subject to the obligation of the alienor which it was under, if the alienee gets it for good consideration, he may escape from this obligation under Section 39 of the Transfer of Property Act. I am not quite sure of the section.

Q. He could have willed it ?—*A.* Oh yes, subject to this obligation again, to maintain.

Q. If the obligation is unfulfilled, to what extent would the alienee's title be affected ?—*A.* The legatee would get a good title, but he would be saddled with the obligation to maintain. He would get legal title subject to that ; it is a title less than full ownership.

Q. When you contrast the rights which the senior had with the rights the junior had, there are these differences. I want you to say if you agree :—

The junior had no legal right to alienate ; the senior had the right to alienate ?—Yes.

The junior had no right to gift or bequeath by will, while the senior had, subject to this obligation to maintain ?—Yes.

While the junior was alive, obligations on the joint family property remained ?—Yes, the obligation was on the property, not on the person.

Q. While Arunachalam Chettiar Jnr. was alive, Arunachalam Chettiar Snr's rights were also the same as the junior's ?—*A.* Quite right, subject to one qualification, that as Kartha the senior had a special right. Subject to that, he could not alienate for value, or gift or bequeath.

Q. Now the only event which brought about the difference in the corpus of rights which the senior had as the sole surviving coparcener was the death of Arunachalam Chettiar the Junior ?—*A.* Yes, that is a thing which follows on the death of the junior.

Q. At the conclusion of your examination in chief you said there were one or two cases which may appear to be against the propositions which you have laid down in the evidence, and you said one of those cases was 1937 A.I.R. (P.C.) p. 36. You said it was a well known case, and therefore I take it you had occasion to read the judgment more than once ?—*A.* Yes, I am fully acquainted with the facts of the case and the reasoning.

Q. I believe the reasons for the dispute was that in the Hindu Act the rate of tax applicable to a member of a joint family was less than that of an individual ? (Mr. Weerasuriya refers to witness' evidence at page 39.) —*A.* Yes.

Q. When you categorically say that the property there relates not to ancestral property, that statement is not quite correct in view of the division of opinion in Madras Courts ?—*A.* I mean by " ancestral " property, property inherited from an ancestor.

Q. You make the statement that that property which the father gave to the son is self-acquired property ?—*A.* The property that was given by the father to the son is self-acquired by the father.

Q. The difference of opinion is as regards the application of the law under the Methakshara school ?—*A.* Yes.

Q. What do you mean by saying they applied the " personal law of the assessee " ?—*A.* The Privy Council itself says that applying the personal law of the assessee the property would be his own separate property—they speak of the personal law applicable to him according to the school into which he was born.

Q. Are you suggesting there that the Privy Council took the view that the property was his separate property and not ancestral property ?—*A.* I said so earlier also. The Privy Council in the 1937 A.I.R. case took the view that the gift which the father had made to the son was separate property of the son and not ancestral property.

Q. And it was on that view that they held that the income from the property was the income of the individual ?—*A.* Yes.

Q. Shall I put to you what the Privy Council held (Mr. Weerasuriya reads from page 37). The genealogy shows that there was one Moolji who was one of two dividing brothers, he had 3 sons, Kanji, Sewdas and another. Moolji made gifts of capital (certain shares) to his sons Kanji and Sewdas ; after that he and these two sons carried on business with two other strangers as partners. Then when it came to assessment of the income derived from the partnership the income of all of them was assessed as that of individuals. Now Moolji claimed, by reason of the fact that he had a daughter and a wife living, the income in his hands represented the joint income of the joint family of which he, his wife and daughter were members. The tax authorities rejected that and assessed him as an individual. The matter was taken up to the Privy Council, Moolji was the donor. In this case both he and Kanji appealed ?—*A.* Yes, this was the case of a person governed by the Benares School of Law appealing from Calcutta.

Q. According to the Benares School a gift from father to the son would be separate property in the son's hands. If that contention was accepted it meant that Kanji had no case whatever ?—*A.* Yes, and he was assessed as an individual, the reason being that his sons, by reason of their birth, would not get any portion of that property.

Q. In view of the conflicting authorities which existed in India, they said let us assume for the purpose of argument that his property was ancestral property ?—*A.* I do not accept as correct the suggestion that the Privy Council went on the supposition that the property which Moolji gave to Kanji and Sewadas was ancestral property.

I do not agree that even on the assumption that it was ancestral property in the hands of Kanji, still the existence of his wife and mother as members of his undivided family did not make that property the property of the joint family. I do not accept your suggestions at all. (Mr. Weerasuriya reads from page 37.) You must take those observations along with the Hindu Law.

In the District Court, Colombo.

Original Appellants' Expert Evidence.

No. 18. K. Bhashyam, 8th October 1948. Cross-examination, *continued.*

Q. It would be entirely incorrect to say that in this case the income was decided to be the income of an individual because a gift by a father to a son was regarded as separate property of the son ?—*A.* I do not think so.

Q. So that the Income Tax Act applies to all Hindus, whatever the School under which they are governed, and it is quite incorrect to say that this case was decided on the footing that the view prevalent in the Benares School was that it was separate property from the father to the son ?—*A.* I don't agree for the following reasons. One is that if that was so, if your suggestion is right, they need not have referred in the latter portion of the judgment to the personal law of the person concerned. They say " if in spite of all this personal law regards him as the owner and the property as his property . . . by reason of having a wife and daughter." They apply the personal law of the Benares School. I would draw the Court's attention to what appears 6 lines earlier : " The relevant meaning in the present cases is the ordinary meaning in Hindu Law according to the Benares School." If they said so it does not apply to all persons but to persons who come under the Benares School. That is one indication as to what they applied. The next thing is that all the other things make it joint family property, but in spite of all this " if his personal law regards him as . . ." etc. They are very careful to point out that while in the earlier cases they assume for purposes of argument all these things, when they come to the actual decision of this case, in the particular circumstances which arose before them, they bring it down to the meaning which is arrived at according to the Benares School, and they restrict that actual decision also to the case of properties gifted by the father to the son and not others. Therefore I submit that what I stated is correct.

Q. The personal law in this case that governed Kanji would have been the law administered by the Benares School ?—*A.* It is so ; they say so.

Q. According to the Benares School clearly the gift would have been separate property ?—*A.* Yes.

Q. If that is so it would have been an end of the matter and it was unnecessary for their Lordships to consider the further question as to what would happen by reason of the fact that Kanji had a wife and daughter ? —*A.* As they go on to say something more we are put to this difficulty.

Q. In view of the conflicting views taken by the different Presidencies the Privy Council says let us assume that this is ancestral property and not separate property ?—*A.* In considering the facts of the present case they narrow themselves down to the Benares School of Hindu Law.

Q. Take page 37 again (A.I.R., P.C. 1937) (Mr. Weerasuriya reads from the middle " The High Court might well have answered the second question in the negative and said of the first that it did not arise." They dispose of the other four cases in the first instance because it is self-acquired property and no question of joint property arises. Kanji's case could also have been disposed of without difficulty according to your interpretation, why did the Privy Council not do so ?—*A.* It is my respect for the institution that makes me decline to comment.

Q. I put to you this further case which also relates to the present Appellant, 1945 A.I.R. Madras p. 122, at p. 123, para. 6 (1). In the Federal Court judgment referred to (45—8 Federal Law Journal—A.I.R. 1945 (Federal Court) p. 25) at p. 34 what their Lordships held was that it was separate property within the meaning of Sec. 3 (1) of the Hindu Women's Property Act; that is the effect of that decision and nothing more; see the last paragraph of p. 34. It is in this very case that their Lordships dealt with the nature of the property held by the sole coparcener. You said yesterday that the language does not bear the meaning I gave it. " The property held by a person who is the sole surviving coparcener has a potentiality " and it says " till that potentiality takes effect it is not joint family property " ?—*A.* What you say is not correct because the ultimate judgment was it was not separate property and therefore it was joint family property in which he has no interest.

Q. May I refer you to the Hindu Women's Property Act. (Mr. Weerasuriya quotes from Mayne, p. 711) I pointed out to you that in that judgment it was held that the property was not separate property within the meaning of Section 3 (1) ?—*A.* Yes.

Q. I believe my learned friend relies on that judgment as a ruling that it is joint property of an undivided family. Will you look at Section 3 (2) and Sec. 4. Arunachalam Chettiar Jnr. died in 1934, before the commencement of this Act, therefore his widow could not take advantage of this sub-section. Only the other two widows would have been entitled to take under that section ?—*A.* Yes.

Q. Would not the result have been that it was not necessary to consider section 3 (1) at all but to have decided the case on the footing of 3 (2) ?—*A.* No. He said it was only separate property that she could take under that section, but this was not separate property. What was intended to be dealt with under sub-section (1) was " any property "; therefore they wanted to say, as a matter of fact it includes all properties. She wanted to come under sub-section (1) on the basis that property there includes all property, but they held that it was only separate property that she could have, and this was not separate property.

Q. If this was regarded as joint family property could they not have decided under Section 3 (2) ?—*A.* But that is what they decided.

Q. Would not the two widows exclude the daughter-in-law under Section 3 (2) ?—*A.* Yes, it would.

To Court :

Q. You said sub-section (1) was invoked ?—*A.* Because the father-in-law died after 1937 the daughter-in-law sought to come under 3 (1) as an heir of the father-in-law, but they said " any property " means separate property, but this is not separate property. She would have come under sub-section 3 (1) if there was separate property.

Q. I refer you to another case, I.L.R. 52 Madras p. 398 at p. 414, headnote (Mr. Weerasuriya reads) ?—*A.* I do not agree with the word " full owner " in the headnote; he has the power to alienate the property.

In the District Court, Colombo.

Original Appellants' Expert Evidence.

No. 18.
K. Bhashyam, 8th October 1948.
Cross-examination, *continued.*

Q. Has this ruling not been approved by the subsequent judgment of the Privy Council ?—*A.* At the time the alienation took place in this case there was only one male member. Therefore it gives full title to the person concerned despite the fact that the son's widow had an unexercised power of adoption. As a justification I refer to the fact that thereafter a person takes only the property left in the family after the alienation.

To Court :

(You expressed it as your opinion that when adoption takes place it relates back to the date of death ?—*A.* If a partition had taken place before the adoption between the coparceners a fresh partition can be asked for. If there is an alienation he is bound by a lawful alienation.)

Q. The three adopted sons, did they take under the will or did they take as adopted sons ?—*A.* As adopted sons.

Q. Thus the 3 children adopted in 1945 take as adopted sons as from the date of death subject to alienation made ?—*A.* Yes.

Q. (Mr. Weerasuriya reads 52 Madras at p. 414, followed up by the Privy Council in A.I.R. 1943 (P.C.) 199.) When I put to you the language in 52 Madras p. 414 you said it was not correct ?—*A.* Yes.

Q. See page 199 of A.I.R. 1943 P.C. They refer to 52 Madras and use the same language and approve of the judgment in 52 Madras ?— *A.* These words are used somewhat loosely ; they call it again " family property."

Q. I refer you again to A.I.R. 48 Allahabad p. 81 at p. 89. Supposing a father who is the sole surviving coparcener gifts by will the estate to his widow, either absolutely or only a life interest in it, together with the power of adoption, and he dies. On exercise of the power of adoption by the widow what is the position as regards that estate given to the widow under the will ?—*A.* An intriguing problem. Logically what will happen is this : If the legatee has taken the property, he has taken the property and the adopted son cannot question that. It is all based upon the representation of the family at the time. That is to say, if the person that represents the family at the time is a single member he can do what he likes ; in the case of a number of coparceners they all can join in alienation ; in a case where the coparcener is one person he represents the family himself, therefore if he gives the property to a person the family is supposed to have given it.

(Sgd.) N. SINNETAMBY,
A.D.J.

Interval.

(*After Lunch.*)

K. BHASHYAM. Affirmed.

(The witness is shown pages 81 and 89 of 1948 A.I.R. Allahabad). Witness says he agrees with that passage except the word " absolute " in the sentence " who had an absolute right to transfer it being the sole surviving member of the joint family." I modify it by saying subject to the rights of maintenance of the female members of the family.

Q. In the case of Arunachalam Snr. you will concede this that Arunachalam Chettiar was a person at the time of his death possessed of property which he was competent to dispose of ?—If you will give me the meaning of the word dispose of I will answer that question. To dispose of means to give the subsequent owner the fullest rights possible without any obligations.

Q. I think you said that the obligations attached to the land ?—Yes, to the property. So far as the transferor is concerned he can dispose of or divest himself completely of the property but the property itself being subject to the maintenance of the family.

Q. If I had property which is subject to a mortgage and I dispose of that property do you say that there is any difference between that case and the case of Arunachalam estate with the power to dispose of it ?—In the one case the charge is definite in the other case it is indefinite, indefinite because of the right to maintenance.

(Counsel reads section 73 page 602.)

Q. What you say is that Arunachalam's property which was in his hands was joint family property. I put it to you that whatever property that may have been it was not joint property of a Hindu undivided family ?—I do not agree.

(With regard to a coparcener's right to bequeath by will counsel reads Mullah page 449 section 358.)

Q. According to Mullah no coparcener not even the father can dispose of by will his undivided coparcenary interest even if the other coparceners consented, do you agree with that ?—As a matter of law I agree. Mullah is here dealing with the rights of one of several coparceners. In the case of Arunachalam Chettiar has made a will which has taken effect because the adoption was made in 1945 sometime after the will was made.

(Reads Mayne at page 287, Section 217) " There is no particular kind of evidence required to prove an adoption. Those who rely on it must establish it like any other fact whether they are plaintiffs or defendants."

(Counsel refers to Mullah page 583 section 513 relating to onus of proof.) " No special rules to establish adoption but evidence in support of it must be specific . . . a very grave and serious onus rests on any person who seeks to displace the natural succession by adoption." Mayne says " Any person who seeks to displace the natural succession of property by alleging an adoption must discharge the burden that lies upon him by proof of the factum of adoption and the performance of any necessary ceremonies as well as all such facts as are necessary to constitute a valid adoption."

Q. Adoption is to whom ?—To the husband of the lady who adopts.

Q. There is no question of any other kind of adoption ?—*A.* There are no exceptions to that.

Can a widow adopt to herself ?—It is never done.

Q. Can she do it ?—No she cannot.

In the District Court, Colombo.

Original Appellants' Expert Evidence.

No. 18. K. Bhashyam, 8th October 1948. Cross-examination, *continued.*

Q. Certain directions have been given in the will as to how the adoption should be made and those requirements have to be strictly complied with ?—Yes.

Q. Would you agree with this proposition that even if the authority to adopt is illegal notwithstanding that if the widow is going to exercise that authority she must exercise it in the illegal way in which that authority had been given ?—*A.* It must be in the express terms of the authority if legal. She can make the adoption and if she does so it must be in terms of the authority.

Q. If the husband gives the widow authority to adopt while his son is alive that would be bad ?—Yes.

Q. That authority would not enable the widow to adopt after the death of the son ?—I cannot remember that case.

(Counsel reads from page 216 of Mayne) " A direction to a widow to adopt a boy along with a living son, which was illegal and could not be carried out, did not authorise her to adopt after the death of that son." (Witness states) what you stated before is different to what you state now. The effect of that is that the widow would have no power of adoption at all.

(Counsel reads the will) " Choose satisfactory boys and cause a boy to be adopted to Lakshimi one boy, to Natichire one boy etc." To be adopted to so and so is a Tamil expression which means to cause a thing to be done. (Witness is asked to read the Tamil). The translation is literally correct.

Q. You said a little while ago that a widow could not adopt to herself I will cite Mayne page 208 section 145. " For the same reason she can adopt to no one but her husband not even to herself." That is correct.

Q. I put it to you that the language in the will is not merely an error by the testator for he says according to custom. Just as you said there was a custom, in the Nattukottai Chetty community regarding simultaneous adoption. Arunachalam must have been having in mind a custom in his community by which a widow can adopt to herself ?—The executors are asked to choose a boy in consultation with certain persons and get it done, it does not mean that she adopts to herself. So far as I know there is no such custom that Arunachalam Chettiar speaks of. The proper meaning of that speaking as an Indian Lawyer is that the executors shall after consulting with the widows select satisfactory boys and cause those boys to be adopted by the respective widows. To means by there and nothing else. The literal translation of the Tamil is " to " but it means " by." I have read the evidence of Alagappa Chettiar as to the manner in which it was carried out. On page 15 he says the adoption of three children by the widows took place on the same day at the same time at the same house and so on. It is clear the adoption was a simultaneous one.

Q. The universal rule is that a simultaneous adoption is bad—reads Mayne page 23 ?—I agree that ordinarily simultaneous adoptions are not correct. That rule will apply to the adoption made by the two widows and not to the adoption made by the daughter-in-law. Because the daughter-in-law makes only one heir whereas the widows make two.

In the District Court, Colombo.

Original Appellants' Expert Evidence.

No. 18. K. Bhashyam, 8th October 1948. Cross-examination, *continued.*

Q. It is for the widow who makes the adoption to select who should be adopted ?—If it is left to her discretion because it is open to the husband to indicate the person to be adopted. In the absence of a special person designated by the husband the widow can exercise the discretion according to the instructions given. To the daughter-in-law it is the father-in-law who gave the consent as I understand the will.

Q. The husband can select a boy to be adopted to him can a person other than the husband, the father-in-law select a boy ?—With the approval of her he can select.

Q. Can he select by himself ?—No because he cannot force it upon the lady to adopt.

In the case of his wife he can but he cannot compel her to adopt either. The daughter-in-law does not want authority but only the consent of the father-in-law.

Q. Can the father-in-law direct the daughter-in-law to adopt a particular person ?—I do not think so.

Q. Can he authorise the daughter-in-law to adopt in a particular way ?—He can say—please consult us and see before you make up your mind.

Should she disregard it the adoption may be good and the direction may be bad, that is the direction may be illegal.

(Counsel reads from Gower 3rd Ed. page 397 para. 772) " It is illegal to authorise any person other than the son to make an adoption since the power is exercisable by the widow alone although restrictions may be placed upon her choice of a boy."

Q. I put it to you in this case a reasonable construction of the will is that the executors are the people who are given the power to choose the boy and not the widow ?—It is after consultation to be held by the executors and the widows. The language used is the executors shall cause the boys to be adopted.

Q. That is that they should have the principal say in the adoption of the boys ?—You are putting it too narrow—too narrow a construction on it. You must legally construe it because of the anxiety on the part of the man to have his family perpetuated. I admit that Mayne says on page 215 that it should be literally construed, but that is not on the question of proof but on the construction of the authority.

(Counsel reads page 214 of Mayne) " The authority given must be strictly pursued and can neither be varied nor extended ". (Witness says) I agree with that. In this case there was simultaneous adoption how would you seek to make that valid or good ?—By custom.

Q. What is the custom you refer to ?—Among Nattukottai Chettiars there is a custom that widows of deceased persons can adopt each a boy to their husbands. That is the custom. The custom cannot be extended once established. You must follow the custom strictly.

In the District Court, Colombo.

Original Appellants' Expert Evidence.

No. 18.
K. Bhashyam, 8th October 1948.
Cross-examination, *continued.*

Q. Is there a custom as regards the powers of the daughter to adopt along with the mother-in-law simultaneously ?—The adoption may not have been at the same time.

The custom you referred to only extends to simultaneous adoption by widows ?—Yes.

I cannot answer the question whether there is such a custom that the daughter-in-law and mother-in-law could adopt simultaneously.

(Refers to page 238.) This refers to a custom.

Q. For that limited purpose only the Courts recognise that custom ?—Yes.

(Footnote J. read) " It may be doubted whether a custom would be reasonable and valid by which the mother-in-law claims to make an adoption after an adoption by the daughter-in-law ? "—As regards custom I cannot say anything about that passage. I could only speak about the general law.

Q. Would you say therefore that in this case there is any evidence of custom among Nattukottai Chettiars by which widows could make the simultaneous adoption ?—There is no oral evidence to prove such a custom.

Re-examination.

Rexd.

Dealing with the last question of custom Arunachalam Jnr. is not a son of the surviving widows of Arunachalam Sr. He is their step son. He is the son of a predeceased wife. Arunachalam Jnr. left only one widow. Do you want any custom to allow her to adopt a son for her husband ?—No. The law allows it but she must have the consent of the father only. The case referred to in Mayne at page 238 was the case of a mother-in-law and daughter-in-law. That is the mother and the son's widow. That case has no application to the facts of this case. There is the idea not only of the adoptive father but of the adoptive mother. Where there is plurality of widows the first to adopt is supposed to be the natural mother. The senior is given the preference. The custom I have given among Nattukottai Chettiars relates to plurality of widows each adopting a son both adopting the same father but different mothers. A widow cannot have more than one adopted son. Where the custom is not recognised as law only one of the widows could adopt. Where the custom is recognised every widow can adopt. There is the admission that the property that Arunachalam Senior had would have been joint property at his death if his son was alive. At the source the property is joint.

On such an event on whom is the burden of proving he who asserts it is joint property or he who asserts it has become separate property ?—If any one wants to prove it is not joint family property he must prove it. Mullah does not classify the property of Arunachalam Sr. as being separate property.

(Reads Mullah page 251 category 7). He considers under classes of separate properties property taken by a surviving coparcener only in certain events. In other words he does not classify as separate property

the property held by a sole surviving coparcener if there is a lady with power to adopt. That particular quotation was referred to in the Federal Court in 45 A.I.R. when he discussed the question whether Arunachalam Sn.'s property was separate property or joint family property. (At page 32 column I of the report) Mullah has taken the precaution to add certain qualifying words in respect of items 6 and 7. The unrestricted power of disposition of property is always a conclusive test, it is one of the tests we apply. The same parallel occurs in respect of impartible estates the holder at the time being has unrestricted powers of disposal none the less the property is not his separate property but the property of the joint family. I have already referred to the Privy Council decision on that subject. The sections of the Hindu Women's Right to Property Act which the Federal Court was construing came into force in 1937 and was in operation when the father died. It was not in operation when the son died. The action that went before the Federal Court was an action by the daughter-in-law asking for among other remedies a separation of the assets on the ground that she was entitled to half share of the estate under section 3 (1) " When a Hindu governed by any other school of law or any customary law dies intestate leaving separate property his widow shall be entitled in respect of property in respect of which he dies intestate to the same share as the son." Mitackshara law is governed by that sub-section. With the result that if Arunachalam Senior had separate property the widow could have taken half share. But the Federal Court's finding is that the estate was not separate property and dismissed the suit. But they sent it back for inquiry as to whether there was any other separate law reserving to the daughter-in-law the right to prove under that separate law. The decree reserved the right to maintenance.

Section 3 (2) of the Hindu Women's Right to Property Act deals with joint family property and under that the daughter-in-law got nothing. The ultimate decision therefore of the Federal Court is that the property that Arunachalam Sr. held at the time of his death was not separate property but the joint property, but in arriving at that decision the judges discussed the difference between separate property and joint property in the hands of Arunachalam Sr. There is no necessity for the purposes of this inquiry to hold that the property that was held by Arunachalam Sr. prior to his death was separate property or not. If it was not separate property it should be joint family property. The corresponding Federal Court held in 1945 A.I.R. Madras that property in the hands of Arunachalam Sr. was separate property and held that the daughter-in-law was entitled to half the estate because the property in the hands of Arunachalam Sr. was separate property and that section 3 (1) of the Hindu Women's Right to Property Act applied. The judgment in 1944 A.I.R. Madras 340 was set aside by the Federal Court's judgment in 1945 A.I.R. 25. The income in the hands of Arunachalam Sr. had been decided to be his individual income by the Madras High Court in 1945. But there again the income being the income of an individual is not the conclusive test that decided whether the property is joint property or not. The fact that the income may belong to an individual does not necessarily decide that the property belongs to that individual. For example in the case of an impartible estate the income of the impartible

In the District Court, Colombo.

Original Appellants' Expert Evidence.

No. 18.
K. Bhashyam, 8th October 1948.
Re-examination, *continued.*

estate is that of the individual the owner of the estate for the time being but the estate itself belongs to the joint family to which he belongs and when he dies without disposing of that estate it goes according to the joint family law. A Zamindar and his younger brother may form a joint Hindu family, the Zamindar's elder brother may be the holder for the time being and when he dies without disposing of that estate the brother takes it by a survivorship and becomes the Zamindar for the time being. The elder brother took the income when he was Zamindar and the younger brother took the income when he was Zamindar. Though the 1937 Privy Council case bears out the interpretation submitted by the Crown that the income was the income of the individual it does not follow that the property from which the income comes is that of the individual. Gupte deals with the same subject—Gupte on Hindu Law 1945 at page 95 and following pages—and at page 98 he says " that joint family property in the hands of the sole surviving parcener in separate property is strictly speaking not correct. (Counsel reads up to the words " clearly shows that it is not separate property but may be dealt with or devolve as if it were separate property.") I agree with that view. In fact I would put it stronger than that. In the result I say that the property that was in the hands of Arunachalam Sr. was joint property if his son was alive and by his son's death it had not changed that character although Arunachalam Sr. could have done a number of things with it as if it were his separate property. On the question of maintenance the members of the family were entitled to maintenance before Jr. died and that same right was there when Sr. had the property in his hands the character did not change.

Q. There was a question put to you by Crown Counsel as to whether there was a bar to alienation by a coparcener in respect of the joint family property. Is it a question of bar or prohibition by the law or is it a disability that arises by nature of the interests held in the property ?— The property is joint family property and the owners are a joint family and if there is proper representation anyone can deal with the property and it is possible if all members consent to give the purchaser good title. Therefore in these cases it is a question of proper representation. There is no such thing as prohibition. Only if it is not properly done it will not convey proper title to the purchaser. It is the case of a man not being able to transfer what he has not and if he does he will not give good title.

On the question of the increase of alienating powers of the sole surviving coparcener on his becoming the sole surviving coparcener the proper way to look at the whole question is to have in mind that the property is owned by the family. Before Arunachalam Jr. died the whole family could have alienated property, that is the whole family if it consisted of one member had the same power of alienation.

Q. A number of judgments were put to you where the term a share of the coparcener was used, you said that the term in that particular judgment did not affect the ultimate decision ?—Yes.

But in a case like this where the nature of the interests of a coparcener has to be considered you have to use more accurate language. This particular question of what was the share or not the share was not present in the mind of the judge in deciding these particular cases. I refer to the

judgment of the Privy Council relating to this matter reported in 1941 A.I.R. Privy Council p. 48. That was a case where a coparcener sold 1/10 share of the joint family property and it was held in that case to be not a sale but " pretence of a sale." You have to examine the language in the context to see whether any idea was intended to be conveyed by the use of that particular language. Regarding the share of a coparcener he can sell I have already given my view as to the exact effect given to such sales by the courts.

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I have here in Court the 1937 statute of the Ord. I have brought it from India, I had not been given a copy of the 1919 Ord. I was told the sections are practically the same in both. The interpretation section of the 1919 Ord. which is section 2 (2) seeks to interpret the competency to dispose of. This does not affect my view stated earlier.

(Counsel reads section 8 (1) (*b*) of Ordinance of 1918.)

Q. " Property in which the deceased or any other person had an interest arising on the death of the deceased . . . by the cesser of such interest." The question was put to you whether on the death of Arunachalam Jr. any benefit arises or accrues?—Yes and I said that some increased powers arose in favour of the Arunachalam Sr. That did not arise by reason of the cesser at all. The increased powers arose by reason of the family continuing as only one member after that. When one died there was only one other left and he was left with the same rights of disposal as represented by that one. It is not the passing of a right or interest from one person to another.

(Shown 1937 A.I.R. R.P.C. 36.) The *ratio decidendi* in that case is as stated by me. I intended to add that this is the view taken by Mayne in his latest Edition on page 362. Again on page 339 he quotes the case in 56 Madras. He does not say that there is any inconsistency between the two.

(Sgd.) N. SINNETAMBY,
A.D.J.

Further hearing on 1, 2, 3, 6 and 7th December.

D.C.37/T Special. 1st December 1948.

1st December 1948.

Appearance as before.

Errors in previous day's proceedings corrected.

Mr. Chelvanayagam states that the answer appearing at page 74 in proceedings evidence given by Bhashyam reading " his power to give is unlimited " is wrong and what the witness said was " his power to give is not unlimited."

Mr. Weerasooriya does not agree and states that what the witness stated was that it was unlimited subject to what the witness stated earlier in the same answer, namely, that if a child were to be born the gift would be invalid.

In view of the inability of Counsel to agree I leave the record uncorrected.

In the District Court, Colombo.

Original Respondent's Expert Evidence.

No. 19. K. Raja Aiyer. 1st December 1948, Examination.

ORIGINAL RESPONDENT'S EXPERT EVIDENCE.

No. 19.

K. Raja Aiyer.

Mr. Weerasooriya calls :

K. RAJA AIYER. Affirmed. Advocate General, Madras.

I have held that office since 1945. I have been a member of the Madras Bar since 1912. I was Chairman of a Committee appointed by Government to consider the question of the separation of the executive from the Judiciary.

In this Court I have given evidence before on questions of Hindu Law —that is in District Court, Colombo 10 Special. Since I was called to the Bar in 1912 I have been practising uninterruptedly. In the course of that practice I have come to be well acquainted with questions of Hindu Law. My practice was not confined to the Madras Province; I have been appearing in Mysore, Puddukottai, Travancore and Cochin also. I have also a good knowledge of the Hindu Law as far as it applies to the particular community which we are concerned with in this case. I have had a lot of Nattukottai Chetty work in the course of my practice. I was apprenticed to Mr. Srinivasa Iyengar and was associated with him till he gave up practising for politics. He was a distinguished lawyer. He has practically re-edited the book Mayne's Hindu Law. That is a very well known authority and is regarded as a classic. Mullah on Hindu Law is a recognised authority and is consequently cited in Indian Courts.

Q. What do you mean by the expression of the Hindu undivided family or Hindu joint family ? First of all I want to ask you whether there is a distinction between the two ?—*A.* I do not think there is any distinction between Hindu undivided family and Hindu joint family. I would define a Hindu joint family as a group of persons lineally descendant from a common ancestor and includes the wives and unmarried daughters.

Q. Would you include the wives of sons who are married ?— *A.* Certainly. Therefore as I said all the members lineal descendants with their wives and also their unmarried daughters and it must also include the widows of deceased coparceners.

Q. Having regard to the nature of the expression undivided or joint Hindu Family can one person alone constitute a Hindu joint family ?— *A.* No. I do not think one person can constitute a Hindu joint family because a family at least requires two.

Q. In view of the evidence given by Mr. Bhashyam evidence where he appears to suggest that even in the case of a Hindu bachelor he represents a family which may come into existence . . . ?—*A.* I would not regard a Hindu bachelor who has neither wife, daughter or mother as constituting all by himself a joint Hindu family. He may be a person who may bring into being a family but he cannot be regarded as a Hindu family.

Q. Would you agree with the evidence given by Mr. Bhashyam that a joint family may exist consisting only of widows of deceased male coparceners ?—*A.* The recent trend of decisions is to say that even females by themselves can constitute a joint family. The decision of the Allahabad Court has taken that view, A.I.R. (1945) Allahabad 286.

Q. What do you mean by a coparcener ?—*A.* Coparceners consist of a narrower body within the joint family which owns the property of the joint family. It is limited to persons who acquire by birth an interest in joint family property.

Q. It is a narrower body which owns the property of the joint family ?—*A.* Yes. The joint family property and coparcenary property are synonymous. I refer to Mullah's Hindu Law, 10th Edition, page 242 which puts it thus: "The term joint family property is synonymous with coparcenary property" and lower down in the same page in small letters this is what is stated: "Joint family property is purely a creation of Hindu Law and those who own it are called coparceners." Sections 220 and 221.

Q. You say the coparceners are the persons who own the property ?—Yes. The joint family itself consists of persons who are more than three degrees removed from the common ancestor or from the last holder. They would be members of the joint family. Female members also would be members of the joint family but the property itself is owned by those who are not more than three degrees removed from the common ancestor not by the female members. It is owned by the body called the coparceners only. When the common ancestor dies then his place is taken by others in the group or from the last holder. I am excluding himself because three degrees removed means son, grandson, and great grandson. Persons outside this limit who might be said to be on the fringe as it were consisting of either female members or those more distantly related they do not acquire any interests in that property by birth and therefore the coparceners own the property.

Q. To make the point clear you said the joint family and coparcenary property mean the same thing ?—*A.* Yes.

Q. When you speak of joint property of a Hindu undivided family does the use of such expression imply that any member of a joint family other than a coparcener has an interest in the property ?—*A.* Nobody other than a coparcener has an interest in the property because as I said the ownership of the property is only in the coparcenary.

To Court:

Q. When you say an interest it may be less than ownership—for instance the right to maintenance ?—*A.* I would not call it an interest.

Q. A coparcener himself would have a right to maintenance along with other members ?—*A.* Oh yes.

Q. The same right to maintenance as other members of the family ?—*A.* In the sense he has got a mouth to feed and that other people have a mouth to feed that would be so; but the legal incidents are of course different.

In the District Court, Colombo.

Original Respondent's Expert Evidence.

No. 19.
K. Raja Aiyer, 1st December 1948.
Examination, *continued.*

Q. When you speak of interest in property of a coparcener you speak of an interest other than a right to maintenance ?—*A.* I speak of a real interest in property or proprietary interest in property.

Q. You do not include in that the coparceners right to maintenance ?—*A.* The coparceners right to maintenance is included in the ownership of property. It is not absolute. The coparcener according to accepted notions has both what is called a unity ownership and a unity of possession. It is upon this unity of ownership and unity of possession that is rested the right to maintenance of himself as well. In the case of females as non-coparcener members the right to maintenance is not an interest in property ?—*A.* No.

Q. Is there any difference between that right to maintenance and the coparceners right to maintenance ?—*A.* There is every difference between one and the other. In the case of a coparcener it is right on account of ownership ; in the case of a non-coparcener member it does not depend on ownership and in fact they have no ownership of property.

Q. Would it be a correct expression to use that joint family is a sort of corporation ?—*A.* It would be very misleading to call a joint family a corporation and to apply the incidence of a corporation but if it is loosely called a sort of corporation I cannot quarrel with you because judges have used that expression and text writers have used that expression but I certainly do not think it would at all be legally correct to call a joint family a corporation. I have read Mr. Bhashyam's evidence.

Q. The analogy he sought to draw was that a joint family there is a legal person in existence representing a family quite different from the individual members ?—*A.* I do not accept that conception. A joint family is not a corporation in the sense that as a unit it possesses property apart from the coparceners who constitute the coparcenary. I might possibly put it in this manner. A partnership called a firm is not a legal persona it consists of a group of individuals. A limited company is a legal persona. So in the case of a corporation the corporation as such is a legal persona having a personality apart from the individuals who compose it. That would not be the case in the case of a joint family.

Q. Just to take one illustration in a company composed of individual shareholders even when it may be reduced to one shareholder there would be a legal persona as represented by the company apart from that one shareholder ?—*A.* Yes.

Q. In the case of a coparcenary or joint family when the members are reduced to one would there be a joint family or coparcenary in existence ?—*A.* As I said when there is only one single member he does not form either a joint family nor would the property in his hands be coparcenary property.

Q. May I refer you to I.L.R. 28 Madras 344 at page 345. " It was urged on behalf of the Plaintiff Appellant that Kandasamy did not dissolve the partnership but this cannot be upheld. It is scarcely necessary to state that a joint Hindu family although at times is spoken of by judges as a corporation cannot as contended for the Plaintiff be taken as a legal

person in the strict sense of the term so as to constitute a partnership "—this is a judgment of the Madras High Court ?—*A*. I would adopt that language used by the learned judges at this page.

Would you say there is any difference between joint family property and coparcenary property ?—*A*. I answered that.

I think Mayne discountenances in his book this theory of a corporation. That is at page 326 Mayne—Srinivasa Iyengar's Edition. At the end of section 254 after tracing the development of a joint family from the patriarchal system he concludes by saying the joint family then ceased to be a corporation with perpetual succession and became a coparcenary terminable at will. Then you say there is no difference between joint family property and coparcenary property ?—*A*. Yes.

Q. Mr. Bhashyam in his evidence has suggested that there is some difference at page 84 of his evidence. Having made certain observations he made categorically this statement later, viz., " It is therefore impossible to regard joint family property as being the same as coparcenary property " ? —*A*. I would take the law as correctly set out in Mullah viz., that the two are synonymous.

Q. Will you kindly give the particular passage from Mullah ?—*A*. Page 242 which I have already given.

Q. One sole surviving coparcener among others cannot constitute a coparcener ?—*A*. No.

Q. In the hands of that coparcener what is the nature of the property which was coparcenary property while the other coparceners were alive ?—*A*. I would call it separate property. In my opinion there is no distinction between property which a coparcener obtains on partition and property which he has as sole surviving coparcener. I would call it separate property. In one case by a voluntary act of his he takes the property in the other case by involuntary causes the others drop out they die—the legal incidence is the same.

Q. When you say it is separate property this must necessarily exclude the property being joint family property or coparcenary property thereafter ?—*A*. The property may become joint property.

Q. While he is in that position ?—*A*. No.

While he remains the sole coparcener it remains his own property and he can do what he likes in the same manner as his ordinary property which comes to him on partition.

Q. Would it be correct to say that under the Hindu law he is regarded as the real owner of that property ?—*A*. Yes.

With unlimited right to dispose of it for value, by way of gift or by will ?—*A*. By will, by way of gift and by transfer for consideration.

Q. Is the position any different by reason of the fact that although he is the sole surviving coparcener there are other new coparcenary members of the joint family in existence, that is those who have only the right to maintenance ?—*A*. My answer is no.

In the District Court, Colombo.

Original Respondent's Expert Evidence.

No. 19.
K. Raja Aiyer, 1st December 1948.
Examination, *continued.*

To Court :

Q. In such a case he is entitled to gift away the entirety of this property—make himself totally destitute ?—Subject to section 39 of the Transfer of Property Act he can do so. There may also be one other distinction if he gives away the whole of the property to somebody else then just like a universal donee who is liable to debts the liability to maintenance may attach to the hands of that donee.

Q. That is to say that gift can be set aside ?—*A.* The gift cannot be set aside. The other person can have maintenance claimed in respect of the property.

Q. If a person owes money to another and gifts his property to a third party the third person will get absolute right subject to the liability to have the deed set aside as a fraudulent deed ?—That is right. This is how it is stated in Mullah at page 621 section 569 " The claim even of a widow for maintenance is not a charge upon the estate of the deceased husband whether joint or separate until it is fixed and charged upon the estate. Therefore the widow's right is liable to be defeated by a transfer of the husband's property to a bona fide purchaser for value without notice of the widow's claim for maintenance. It is also liable to be defeated by a transfer to a purchaser for value even with notice of the claim unless the transfer was made with the intention of defeating the widow's right and the purchaser had notice of such intention. In fact the widow's right to receive maintenance is one of an indefinite character which unless made a charge upon the property is enforceable only like any other liability in respect of which no charge exists." The expression which I have just now referred to, is mentioned in section 571 of Mullah. " A Hindu cannot dispose of his entire property by gift or by will so as to defeat the right of the widow to maintenance. If he does so the donee or devisee must hold it subject to the widow's right to maintenance. The widow may enforce her right against him."

Q. Would it be correct to say that the gift is valid ?—Yes.

To Court :

Q. It will be a charge on that property in favour of the widow ?—*A.* Yes.

Q. To that extent it will not be absolute ownership ?—*A.* Till a charge is fastened upon the property the claim for maintenance stands on the same footing as the claim of a creditor.

Q. You think the claim for maintenance of a Hindu widow is the same as the right of a creditor ?—*A.* Yes until it is fixed by a charge.

Q. The right of a creditor would depend on various factors it must be fraudulent transfer, it must be intended to defeat the rights of creditors ? —*A.* That is what is stated earlier. Even if it is intended to defeat the rights of the widow she will not be entitled to have a charge over the property.

Q. In the case of a gift the creditor's rights are much less than the rights of a Hindu widow ?—*A.* In the case of a universal donee. That is the person to whom all the property is given he takes it subject to payment of debts.

Q. Section 39 is substantive law which altered the Hindu law as it stood ?—*A.* It did not change the law. It only consolidated Section 39 is quoted at page 623.

Q. That refers to all immovable property whether coparcenary or not ?—*A.* Certainly.

Q. Would you say this in the case of self acquired property where there is no coparcenary property in the hands of a husband while he is alive has the wife a right to maintenance ?—*A.* Yes. Even in the case of self acquired property of the husband the wife during the husband's lifetime has only a personal right against the husband not against the property. When the property is taken by somebody else then she has got a right to look to that person who takes the property for providing her with maintenance but that is a liability which is fastened upon the person who takes the property. It is not, you cannot call it a right to maintenance of the holder in respect of that property. The subject has been explained in a decision of the Privy Council. Mr. Bhashyam has referred to that decision. It is in 1941 Privy Council page 120 at page 127. " The Hindu Law is familiar not only with persons such as wife, unmarried daughters and minor children for whose maintenance a Hindu has a personal liability whether he have any property or none, but also with cases in which liability arises by reason of the inheritance of property and is a liability to provide maintenance out of such property. It applies to persons whom the late owner was bound to maintain." Then in the next para. " Unity of ownership unaccompanied by joint ownership on the part of sons or by any right of possession would not seem to affect the character in which the income is received. Income is not jointly enjoyed by the party, entitled to maintenance and the party chargeable." A man inheriting property may carry with it an obligation to maintain out of the income of that property certain persons but the income is his. That is what is stated here. So what I would say is that the coparcener may be under an obligation to maintain certain persons but those persons themselves are neither the owners of the property nor have they any real rights in the property which remains the absolute property of the coparceners. If it is more than an individual it will be coparcenary.

Q. The Court put to you the question of separate property that as long as the husband is alive the wife has no charge for maintenance on the separate property of the husband ?—*A.* No.

Q. Is that correct ?—*A.* Yes.

Q. Will you kindly refer to Mayne at page 843 ?—*A.* Mayne says at para. 705.

Q. Are you aware of any extension of that ?—*A.* I do not follow the question.

Q. Do you know of any case where the principle set out in para. 705 of Mayne viz. that a Hindu widow entitled to maintenance can sue to have it secured and made a specific charge of the property has been extended even to cases of a wife with the husband living in respect of self acquired property ?—*A.* No, it is a personal right.

In the District Court, Colombo.

Original Respondent's Expert Evidence.

No. 19. K. Raja Aiyer. 1st December 1948. Examination, *continued.*

Q. Supposing the wife is deserted by the husband and the husband is preparing to alienate all the self acquired property which constitutes all his possessions—what remedy has the wife under section 39—has she got a remedy ?—*A.* Of course section 39 of the Transfer of Property Act refers to immovable property and is not restricted to immovable property of a coparcenary nature. It is general.

Q. In the case of immovable property which is not coparcenary property but which would come under section 39 that is the widow the person entitled to maintenance is given a certain right of having a charge on that property ?—*A.* Yes.

Q. Even in such cases the self acquired property will remain the property of the husband ?—*A.* Yes.

Q. Even where under the Transfer of Property Act the person entitled to maintenance are given a charge of the property ; still the ownership vests in the holder of the property not in the person entitled to maintenance ? —*A.* Ownership vests in the holder of the property.

Q. The right to maintenance in respect of property has not the effect of converting that property into joint property ?—*A.* No.

Q. I want you to consider the right of one of several coparceners in the coparcenary property—how do you describe that right—what is the nature of the right that one coparcener has in the coparcenary property ? —*A.* I would call it a share in the coparcenary property. I would call it a proprietary interest in coparcenary property and in that sense property.

Q. Every coparcener has a proprietary interest in the property ?— *A.* Yes.

Q. Mr. Bhashyam seems to take the view that coparceners have no proprietary interest in the coparcenary property ? Would you therefore say that view is not correct ?—*A.* Personally I consider that Mr. Bhashyam's view is very far fetched and opposed to all authorities so far as I can see namely that his right and the right of every coparcener is only a right of maintenance the property itself being owned by the unit called the joint family. On the other hand I would say that the legal position is that the property is vested in the coparceners as individuals each having with the others a unity of ownership and unity of possession. With the others mean with the other coparceners. I might immediately refer to the very case which Mr. Bhashyam referred to namely the 1941 Privy Council case 120 and the observations at page 126 itself as authority for what I am stating. (The witness reads the passage.) One sentence in the right hand side at page 126 I shall refer to. " The right of a co-sharer to enjoy his share and to live upon his own property by way of joint possession." The right of a co-sharer is a right to share and that right to enjoy his share is talked of as his own property earlier to the passage which I am referring to also makes it clear. (Witness reads the passage.) This is the passage which Mr. Bhashyam referred to but if you read that passage along with what precedes at page 124 and that passage which I just now read it makes it clear that the individual

coparceners have property in the coparcenary property each having a share. In fact at page 124 in the right hand column we find these expressions " but it was restated that a right of a junior member to maintenance was not of the nature of a real right as he was not a person who was in some way an actual co-owner of the estate. I also refer to Mayne at page 335 section 262, under the heading interest of coparcener in his share says this (witness reads). If I may explain the position in my own words I would say that the fallacy of Mr. Bhashyam's theory arises from thinking or reading the leading judgment of the Privy Council in Appovier's case 11 Moore's Indian Appeals at page 75 as laying down that an individual coparcener has during the continuance of the joint family no share in joint family property. I for one do not think that is a correct way of reading that judgment nor has it been so understood. I read that case only as saying that because the very essence of the interest of a coparcener in Mitakshare family is a fluctuating interest, it is impossible to predicate that at any particular point of time he has a particular share. The emphasis is upon the particular share and the contrast is between the Mitakshara and the Dayabhage. Even in 9 Moore's Indian Appeals 539 at page 611 the Privy Council pointed out that " according to the principles of Hindu Law there is coparcenership between the different members of a united family and survivorship following upon it. There is community of interest and unity of possession between all the members of the family and upon the death of anyone of them the others may well take by survivorship that in which they had during the deceased's lifetime a common interest and a common possession." In Appovier's case the passage is at page 89 and runs as follows : " according to the true notion of an undivided family in Hindu Law no individual member of that family while it remains undivided can predicate the joint and undivided property that he (that particular member) has a certain definite share. It is clear that the Privy Council in all Moore's Indian Appeal was dealing with a Mithakshara family and therefore the reference to Hindu Law must be understood as a reference to the Mithakshara school of Hindu Law and therefore they say that while according to Dayabhange law it would be possible to predicate even during the continuance of the joint family that a coparcener has a certain definite share such a thing is impossible according to the Mithakshara Law. It is impossible according to me to think that the Privy Council decided that during the continuance of the joint family the coparcener has no share in the property as such as opposed to the joint family which as corporation owns the property. 9 Moore's Indian Appeals as well as 11 Moore's Indian Appeals have both been referred to in the 1941 A.I.R. (Allahabad) 120 and the language used therein leave no room whatever for doubt that their Lordships never intended to lay down any such startling proposition. Their Lordships have only held right throughout that in a Mithakshara family during the continuance of the joint family the interests of the coparceners is necessarily a fluctuating interest. The fluctuation is a characteristic of a Mithakashara joint family but despite that fluctuation the coparcener has what might be called a real interest in the property which persons entitled to maintenance have not. In fact I regard the decision of the Madras High Court in I.L.R. 53 Madras page 1 Full Bench as clearing up any doubt which might exist on the point because I say in that case this identical argument of a corporation and the observations in *Appovier* v. *Rama Subayer* have been placed in

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the very forefront by K. S. Krishna Swamy Iyenger who argued the case for the appellant. That argument was not adopted. In that case it was held that the coparcener has a real and definite interest in the property which could be the subject of a legal transfer of property. That is at page 13 and again at page 15 after a full discussion this is what is stated : " I do not think that the conclusion can be resisted that as the law stands it involves the proposition that a coparcener possesses and can transfer something much nearer to real property than a mere claim to partition. It is an interest in property indefinite from the point of view that it may fluctuate in extent from time to time but definite and ascertainable at any particular point of the time and actually made definite and ascertainable by the act of the coparcener seizing and using it for his benefit." Then at page 16 " The nett result of the law as it stands seems to be this that each member of the joint family has at any definite period of time a present vested interest in the fractional share which would be his if a partition was then and there made and which would by a partition at his will and pleasure be converted into a separate interest."

Q. It would follow from what you have stated that a coparcener at any time has no right to any specific portion of any income from the coparcener property ?—He has no right to claim any specific portion of the property as his or any portion of the income as his but he is entitled to be in possession of any portion of the property and he cannot be excluded from such rights.

To Court :

Q. His rights are similar to that of a co-owner ?—*A.* Yes.

Q. Will you refer to 25 I.L.R. Madras ?—*A.* That is the judgment of Mr. Bhashyam Iyengar 25 Madras 690 at page 716. According to the theory of an undivided Hindu family each member has a present vested interest which by a partition at his will and pleasure can be converted into a separate interest. The judicial decisions have recognised that such interest is transferable either in whole or part for value and that the transferee therefore takes a vested present interest. What is transferred to him is thus a present vested interest and not a future contingent interest uncertain and fluctuating until the transferee actually effects a partition. The transfer in question operates upon the vested interests which the transferor had in the family property just before the alienation.

Q. From what you have been stating a coparcener has at every stage a proprietary interest in the coparcenary property, I want you to consider certain circumstances for example where a coparcener gives notice of an intended partition—notice of a unilateral declaration to partition—as from the date of the communication of that notice to the parties, does his interests in that coparcenary property get fixed ?—Yes.

Q. And even if subsequent to that event if there are fresh coparceners born into the family, does the share of this coparcener get diminished or increased ?—*A.* The fluctuation ceases the moment notice is given of an intention to divide. A unilateral declaration of an intention to become divided operates even against the wishes of the other coparceners and has the effect of fixing his share free from that fluctuation.

Q. Is not the reason for that the fact that at every stage the coparcener has a proprietary interest in the coparcenary property ?—*A.* I take it that the reason is the demand for partition which is really based upon the possession of existing proprietory interests in the property has the effect of converting him if one might use that expression from a joint tenant into a tenant in common.

To Court :

You use the words " unilateral declaration of an intention " ?—*A.* Yes.

Q. Has that declaration to be communicated to the other coparceners ?—*A.* Yes.

Q. Once it is communicated it operates even if the other members are against the partition ?—*A.* Yes.

Q. The others may continue to be united or even may be against this division, notwithstanding, the unilateral declaration would operate in favour of the person giving notice ?—*A.* Yes.

Q. The right to give such a notice and to divide after giving the notice would that be a right in the property ?—*A.* I would say that. I think that is what is gatherable from 53 Madras page 1 observations at pages 14 and 15 that a right to claim partition is not a mere right arising in persons but is connected with a right to property.

Q. Take the case of a coparcener who becomes a convert ?—*A.* If a coparcener becomes a convert to another religion not only does he cease to be a member of the joint family and coparcenary but he also takes his share of the property as at that time—Mullah 334 page 427.

Q. Take the case of insolvency. If a coparcener becomes insolvent at any stage when he is a coparcener what are the legal consequences ?—*A.* His share in the coparcenary property vests in the official receiver. That is when he is adjudicated.

Q. If the correct conception is that all that a coparcener has is a right to maintenance would that be consistent with the share of the property of the insolvent vesting in the receiver ?—*A.* It would be inconsistent. In fact it is property which vests in the official receiver and the coparceners share which vests in the official receiver.

Q. They have referred to that matter in 53 Madras ?—*A.* Yes.

Q. Is this the result of legislation ?—*A.* Insolvency itself is the result of legislation. The property of the insolvent is taken. What is the property of the insolvent. His property is his share ; it vests. In fact so far as the insolvent's share is concerned it was settled long ago that a creditor can seize his share in execution of a money decree. Then there was voluntary alienation ; then insolvency.

Q. Under the Insolvency Act the property that vests in the receiver is the property of the insolvent ?—*A.* Yes.

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Q. It is only on that provision of the insolvency act that the property of the coparcener vests ?—*A.* Yes. It is stated as property. The Insolvency Act does not make any provision that coparcenary property shall vest. It merely states property. The ancient Hindu law was no doubt in favour of keeping the property undivided and not alienating. But this right of alienation the right to demand partition has been always recognised as part of Hindu law.

Q. Take the case of an attachment of a coparcener's share, what is the legal position ?—*A.* The attachment of a coparcener's share in execution of a money decree has been treated as creating as it were a lien upon the share of the coparcener in the joint family property. A lien which is worked out by means of giving the purchaser in execution on the sale a declaration that he has purchased that share of the coparcener in the joint family properties and leaving it to him to work out his rights by means of suit for partition.

Q. Would it be a correct proposition of law that attachment can take place only of property ?—*A.* Yes.

Q. If a coparcener's interest in the coparcenary is merely a right to maintenance and is not a proprietary right can there be an attachment of such a right ?—*A.* I would say no.

To Court :

Q. You cannot attach a right to maintenance ?—*A.* No.

Q. Then also take the case of alienation because a good portion of Mr. Bhashyam's examination in chief was devoted to that. What is your view of the legal position ?—*A.* The right of private alienation has been conceded in some provinces but in other provinces a coparcener is not entitled to alienate under any circumstances but whether the right of alienation is there or is not there my view is that even in those provinces in which there is no right to alienate the coparcener has certainly a share in property. A coparcener has proprietary interests in property and that proprietary interest is taken by the other members upon his death. In those provinces, for example, Madras, in which the right of alienation has been recognised it is restricted to alienation for value and where such an alienation takes place within the permissible limits it is property which is transferred—it is the share which is transferred. Opinions have differed as to the quantum that is so transferred whether it is determined at the time of alienation or at the time of suit. The way in which that right is worked out has also been described as a working out in equity but I do not think that it would be correct to say that what is transferred in such cases or what is purchased in such cases is a right in equity.

Q. Would there be any room for equity to operate except where there is a conflict between legal rights ?—*A.* Equity operates only when there is a conflict of legal rights. And the conflict would be the right of the alienator and the other members of the family who hold the property by right of survivorship. That is worked out by equity.

Q. Can a coparcener at any time release in favour of the other coparceners his interests in the property ?—*A.* He can.

Q. Would that be a release of property ?—*A.* It would be a release of his share in the joint family property.

Q. I want to question you on what happens to those rights on the death of one of several coparceners—what is the change that takes place in respect of the coparcenary property ?—*A.* His share is taken by the other coparceners by survivorship by the operation of the law of survivorship.

Q. You use the word " taken " ?—*A.* Yes.

Q. You say there is a definite nexus between the death and the enlargement of the share of the surviving coparceners ?—*A.* Yes.

Q. The nexus takes place by operation of law ?—*A.* Yes. I think this is how it has been put in one case. If a man dies leaving separate property then that property is taken by his sons. If a man dies leaving coparcenary property the same process takes place but in favour of the larger body of persons who constitute the coparcenary.

Q. I think the case Mr. Bhashyam relied on was 1 Allahabad ?—*A.* I think 1 Allahabad uses the word " lapses ". There are other places which indicate that the shares of the others are augmented. At page 110 of 1 Allahabad the sentence previous to the sentence which contains the word " lapses " we find the sentence (witness reads the sentence). " Lapses " means lapses in favour of the other coparceners and thereby enlarges their shares ?—*A.* Will you also refer to Mayne page 339 and to the footnote and the top of page 340.

Q. This passage was put to Mr. Bhashyam while admitting that if the translation is correct it appears to support the position that there is property taken by the survivor ?—*A.* Yes.

Q. The translation of the text reproduced in Mayne we find the same translation given at page 512 (2) I.L.R. Bombay page 498 at page 512. There again the conception is that on the person dying leaving property this is to be divided among the survivors ?—*A.* Yes.

Q. That which passes to the other coparceners by survivorship would be definitely a benefit ?—*A.* Certainly.

Q. Benefit in what sense ?—*A.* Benefit in the sense that their shares are enlarged.

Q. Mr. Bhashyam has said that on the death of one of the coparceners the only benefit the surviving coparceners get is that there is only one mouth less to feed ?—*A.* As I said I am not counting a coparcener's rights merely in terms of rationing or mouths to feed.

Q. If of course there is not enough income to feed all the coparceners the death of one will be a benefit to the others ?—*A.* Yes.

Q. But is that the only benefit ?—*A.* No. If I am right in what I have been saying, namely that a coparcener has a share in property even though that share may be a fluctuating share the answer to this question must necessarily be that something happens to this share. That share

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gets distributed among the other persons who remain. Therefore if ten persons owned the property and one dies then nine persons own the property. What would have been a 1/10th share becomes enlarged into a 1/9th share.

Q. Let us take the case of a person holding a life interest. On his death the interest is extinguished or lapses. Is not there a benefit to the person to whom the property would revert?—*A.* Undoubtedly there would be an immediate benefit because the death brings about the change.

Q. Regarded then as a benefit would you find any distinction in that case and in the case of one of several coparceners dying in the case of coparcenary property?—*A.* I regard the case of a coparcenary as standing on a higher footing because the coparcener has better rights than a life tenant.

Q. The benefit that accrues to the survivors is greater than in the case of a person who dies who has only a life interest?—*A.* In both cases the result will be the same. That is something, some property, vesting in somebody else disappears consequent upon death and that interest is taken by those who remain. In the case of a coparcener that interest is taken by the others as well and therefore the benefit is greater.

Q. Would you refer to Mullah at page 255—section 229. What does Mullah say on that point?

(Witness reads.) (Witness also reads page 272, section 235, sub-section 8.)

Q. You have read for the purposes of this case the relevant Ceylon Ordinances the Estate Duty Ordinance 8 of 1919 and section 8 (1) (*a*) is in these terms. In the case of one of several coparceners would you say that his interest in the coparcenary was property which he was competent to dispose—I am not dealing with those cases where alienation is not permitted?—*A.* I would say that it is property first and I would say that it is property which he was competent to dispose read along with the definition in sub-section 2 (*a*) because though he cannot dispose it by means of gift or by will but he can dispose for value.

Q. In any case would you regard it as property which comes under section 8 (1)?—*A.* Yes. It is property in which the deceased had an interest. That interest ceased on his death and by reason of that cesser there was a benefit which accrued to the other members of the coparcenary.

Q. In the case of one of several coparceners who dies how then would you assess the extent of that benefit or the value of that benefit?—*A.* If one of three persons died or if there was a partition what is the share that each member would get would be a 1/3rd; on the death of one it would be a half if there are three coparceners. If there was a partition earlier it would be a 1/3rd; in the other case it would be half.

Q. A.I.R. (1943) Madras page 149. What does that judgment say?—*A.* This case decides that an attachment has the effect of preventing the accrual of survivorship to the other coparceners. The language which is used is " A valid charge is created in favour of the plaintiff and this prevents the accrual to the other coparceners of the right of survivorship."

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Q. On attachment of a coparcener's share and on his subsequent death there is no accrual of his share to the other coparceners ?—*A.* That benefit accrues to the creditor and does not accrue to the other coparceners.

Q. Then take the case of insolvency—Under the Insolvency Act the provision is that on insolvency all property both possessed before and acquired by the insolvent subsequent to the insolvency would vest in the receiver—I take the case where a coparcener becomes insolvent would his share of the coparcenary vest in the receiver ?—*A.* It does.

Q. Subsequently when one of the other coparceners dies and the share of the insolvent coparcener gets enlarged has it been held that that share also vests in the receiver because it is property acquired by the insolvent ? —*A.* It has been held that is property acquired. The insolvent who despite his insolvency remains a member of the coparcenary gets the benefit of an increase in his share. The share that first vests in the official receiver is the original share but by reason of his continuance as a member of the joint family and the death occurring therefore his share becomes enlarged and that share is treated as a share which is acquired by him and therefore will vest in the official receiver.

Q. That is section 28 of the Provincial Insolvency Act which prescribes that all property which is acquired by or devolves on the insolvent shall vest in the assignee—A.I.R. (1946) Madras page 503 ?—*A.* They treat it as acquired by or devolving upon him.

Q. So that the effect of the judgment is that on one of the coparceners dying the other coparceners acquire something ?—*A.* Yes.

(Sgd.) . . . A.D.J.

(Intld.) . . . A.D.J.

(*Court adjourned for lunch.*)

(*After lunch.*)

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(The witness is shown the judgment in 3 Calcutta page 198 at page 209.) This was one of the group of cases in which the right of a creditor to seize a coparcener's share in execution of a decree was established. That whether the right of private alienation was allowed or not the right of an execution creditor was recognised. On pages 208 and 209 the Privy Council points out that the declaration which is granted to the purchaser of a share of the coparcenary is that as purchaser he has acquired a share and interest of the coparcenary in the property, that is that he is entitled to have such proceedings as he shall be advised to have that share and interest ascertained by partition. The interest of the coparcenary is talked of as his share. It is also pointed out in that judgment that the fact that voluntary alienation is not allowed in certain provinces cannot make a difference and support for that proposition is found in the analogy of a partnership.

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On page 209 the Privy Council observes " The partner could not himself have sold his share so as to introduce a stranger into the firm without the consent of his co-partners but the purchaser at the execution sale acquires the interest sold with the right to have the partnership accounts taken in order to ascertain and realise its value. Therefore they liken the coparcener's interest to a partner's interest in a partnership. A creditor can attach and sell the partner's interest or share in the partnership and equally so a creditor can attach and sell the share and interest of the coparcener in the coparcenary property.

(Shown I.L.R. 5 Calcutta 148 at page 157.) The same view has been restated in this case. (Witness reads page 174.) This states that it is to be observed that the court by which that decision was passed does not seem to have recognised the disposal character of an undivided share in joint property but it has since been established by the judgment in the case already referred to in 3 Calcutta. (Shown I.L.R. 10 Calcutta page 626.) This is another decision of the Privy Council. At page 637 it lays down the form of the decree which is granted in such cases and follows the 3 Calcutta and 5 Calcutta cases. That is that the purchaser at the execution sale acquires the share and interest of the coparcenary and is entitled to have that share ascertained by partition. This case has been referred to by Mr. Bhashyam in connection with the nature of a coparcener's rights in the joint family property but as I read the passages which I have just now referred to I understand these cases to lay down categorical terms that coparcener has a disposable share in joint family property which is transferred to an execution purchaser. In Madras a coparcener's right to alienate for value has been recognised but that is not so in the other provinces. I am emphasising this as laying down that whether the right of alienation is allowed or not in each case some question of equity may come in. Even where it is unrecognised the coparcener has got a disposable share and that is why I referred to the dictum in 3 Calcutta and referred to the analogy of a partnership. It may be an incident of partnership property that the partner cannot voluntarily alienate it but nevertheless it is property and the creditor can take it. Therefore it may be an incident of coparcenary property that one coparcener cannot alienate. But the question has to be answered whether it is property or a share in property or real interest in property or as stated by Mr. Bhashyam it is nothing more than a right to maintenance. I say that these cases decide that it is really a share in property.

Q. Would the cases which you have referred to apply and would the share in the insolvent vest in the receiver even where the right of alienation is not recognised ?—*A.* Yes.

Q. Where there is an agreement to sell by a coparcener and he dies without executing the sale document, what is the position ?—*A.* It can be specifically enforced. Mullah section 261 refers to that in illustration 7. In sub-section 4 of the same section Mullah says the same thing. It has been decided by the full bench in 35 Madras 47 that he is entitled to the share to which the vendor was entitled at the time of the alienation.

Q. So that the subsequent diminishing or enlargement of the share does not affect it ?—*A.* Yes.

Therefore it is recognised that even before the death of a coparcener his proprietory interest can be the subject of alienation. In the 35 Madras case page 47 the nature of the interest of a coparcener has been dealt with and at page 58 in the bottom of the page it is pointed out that an alienee purchaser's interest is not a fluctuating interest. The interest will no doubt fluctuate if there is no alienation that is incident of coparcenary property. The very fact of alienation puts an end to the fluctuating character of the property alienated. It must be understood as referring to the fluctuating character and it is that which is pointed out here that fluctuating is an incident of coparcenary property but the purchaser when he purchases so far as he is concerned acquires the share of the coparcener as at that date. It is in respect of that matter that there was previously conflict of opinion in the Madras High Courts but it has now been settled by this decision.

Q. In the case of one of several coparceners can he gift any share of the coparcenary property ?—*A.* He cannot.

Q. Can he devise it by will ?—*A.* No. At least in the case of a gift I think he can do it with the consent of all the coparceners but not in the case of a will. In the case of a will there was one case where all consented to it and it was regarded not as a will but as an agreement—that is 48 Allahabad.

Q. You stated earlier that the expression coparcenary joint family, undivided family all these connote the existence of more than one person ? —*A.* Yes.

Q. Taking the coparcener himself apart from the members of the family where the coparcenary members become reduced to one can there be a coparcenary ?—*A.* There cannot be a coparcenary though there can be a joint family. There can be a joint family so long as there is more than one person.

Q. If there are three joint family members and two coparceners and one of the two coparceners dies leaving one coparcener as sole coparcener will the coparcenary come to an end and the joint family also come to an end ?—*A.* There is no coparcenary then because the fundamental conception of coparcenary is united ownership and possession and where that is not there it has no meaning to talk of coparcenary.

If there is one coparcener and two joint family members and one of them dies leaving one joint family member and the coparcener then the joint family would not come to an end. If there is one member who is also sole coparcener then both come to an end, that is the coparcenary as well as the joint family come to an end. It is only the coparceners who own the joint property therefore when the number of coparceners is reduced to one and the coparcenary ceases to exist the property in the hands of the surviving person would be separate property. He becomes the full owner of that property with no disabilities or restrictions as are attached to joint family property. He would have an unlimited right of disposition. All such rights are fully set out in the case reported in I.L.R. 52 Madras 398. " The last surviving male member of a joint family is full owner of the

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joint property . . . property absolutely." The matter is specifically dealt with under three aspects at page 405 (1) as affecting inheritance (2) as regards the doctrine of relation back (3) as affecting alienation. At page 414 it is stated that the sole surviving coparcener has always been regarded as the owner of coparcenal property. At page 420 it is stated that if the law were otherwise the sole surviving coparcener would be in a position of disadvantage compared with any ordinary coparcener who can compel partition of his share by making a unilateral declaration and demand a partition and thereby convert what was joint family property with its limitations and restrictions into separate property, which if he had no sons of his own he can deal with at pleasure, therefore their Lordships say that in spite of the fact that there may be a widow who can exercise the power of adoption the sole surviving coparcener must be treated as the full owner in the same way in which at a partition the member can get his share there being no other coparceners along with them. (Mullah section 257 read.) This recognised the right ot the sole surviving coparcener to dispose of property as if it were his separate property, he may sell mortgage it without legal necessity or he may make gifts of it as if it were his separate property.

Q. Do these words convey anything in the sense that it is not separate property ?—*A.* No, it is separate property.

Q. In the case of one of several coparceners succession is by survivorship ?—*A.* Yes.

Q. Where there is one surviving " coparcener " how would succession be ?—*A.* Succession is by devolution, by inheritance.

Q. Or it could devolve by will ?—*A.* Yes. It passes by succession either testate or intestate.

(Mullah section 24 read.) This states that the rule of survivorship applies to joint family property. Rules of succession apply to property held in absolute severality by the last owner. (Section 34 read.) This states the same thing.

Q. Would the fact that there are non-coparcener members of the joint family who are entitled to maintenance make any difference as regards the making of the property which was coparcenary property at one time ?—*A.* It will not and that point has been conclusively settled by the decision of the Privy Council in A.I.R. 1937, 36.

My answer to the question on this point differing from Mr. Bahshyam is rested upon two principles, namely that in the case of joint family or co-parcenary property I regard the unity of ownership as one of the fundamentals and secondly I regard the principle of survivorship as one which is applicable to such property. Where therefore there is neither it is difficult for me to say that property held by a sole surviving co-parcener so long as he continues to be sole remaining co-parcener is either joint property or joint family property. The question whether if there are female members who are entitled to maintenace will make any difference has been considered in the Income Tax case which I just now referred to. But apart from any case law it seems to my mind to follow that a person

may be entitled as a member of an undivided family to receive maintenance but the person who has got to pay that maintenance is not a co-sharer with the person who is entitled to receive the maintenance. This was stated in 1941 Privy Council the case referred to this morning. The question as to whether the person who pays the maintenance is a qualified owner or absolute owner of the property depends upon the personal law in Madras as well as in other provinces and this is now accepted by the Privy Council in its latest case, that so far as sole surviving coparceners are concerned they are full owners of the property because he or they can do whatever he as full owner likes. Therefore I regard the fact that there are persons who may receive portions of the income as full owner of property which he holds as full owner if there are such persons in existence, it does not take away from the character of the property in his hands. In an early report as 20 Weekly Reporter page 189 in a case which dealt with sole surviving coparcener it was pointed out that the distinction between joint and separate property under the Mithakshara law is of temporary and not an abiding character and that property is joint when it belongs to all the members of a joint family and separate if it belongs only to one member. It has also been pointed out that so long as it is separate and in the condition of self-acquired property the holder has no one to consult in regard to the disposal of it except himself but the moment it passes into the hands of someone in the next generation it becomes joint family property and continues to go on by descent. All my statements are therefore confined to the period of time that the sole surviving coparcener remains as such a single individual and there is no coparcenary. As pointed out in the 20 Weekly Reporter case the question whether any particular property is joint property or separate property depends upon the point of time at which the question arises. Separate property has the potentiality to become joint property and joint property has the potentiality to become separate property, therefore I am not dealing with potentialities but expressing my opinion in regard to a case in which at a given point of time there was only one coparcener whom in a loose sense we call sole surviving coparcener because there is no coparcenary in existence at that time. As to whether it is joint property in his hands or separate property I say that it is separate property. The distinction between joint and separate property is of temporary and not abiding character. Therefore I am emphatically of opinion that during that period of time when there is no coparcenary in existence the property in the possession of a single surviving member of a coparcenary is in the same position as separate property which he would obtain at a partition and as I said whatever doubts there may be upon this question must be taken to be finally settled in the 1937 decision of the Privy Council which stands unaffected by anything said subsequently and that case has not been in any way distinguished or adversely commented upon. Then in 29 Madras again the question arose in connection with the property of a sole surviving coparcener. That is the case reported in I.L.R. 29 Madras 437 at 447. The question arose in this way if a person is adopted to another family he does not lose his interests in separate property of his own but he takes that interest with him to the adopted family, but if it is interest in a joint family property he loses that interest. The question arose of a sole surviving coparcener when he was adopted to another family he had a mother who had the right to maintenance whether the property in his

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hands can be regarded as joint family property in which case he cannot take it to the adopted family or whether it is separate property which is not joint but which he would carry in spite of the fact that he is adopted to another and the question was answered by saying it is not joint family property. The matter is dealt with at page 447. It is distinctly stated at the end of the paragraph on page 447 " The estate was not self-acquired property . . . nor was it at the time of adoption coparcenary property in which any other person had a share." I adopt what is on that page as containing the neatest exposition of the position of a sole surviving coparcener. It is this view which has been accepted in 52 Madras and followed by the Privy Council and I am not aware of any authority contra. Therefore it is stated here that the property vested in him solely and absolutely and I take this as meaning " full owner " because he was the only surviving member of the joint family to which he previously belonged.

Q. On the adoption of the person into the new family would his mother who was the widow have had the power of adopting a new heir ?—*A.* The power to adopt is different.

Q. Although she had the power of adoption still that property was not joint property ?—*A.* I do not want to complicate this question with questions on adoption. Because it has never been held that the power of adoption has anything to do with vesting property in persons. That power is exercised by one independently of possession of property or vesting of property. That is the same position in Arunachalam Sr's case. Supposing the mother has the power of adoption I say the power to adopt makes no difference. In A.I.R. 1937 Privy Council the question arose under section 55 of the Income Tax Act. In that case also there was a person who had certain property which for the purpose was assumed to be joint family property. There was a widow and daughter in that case and the question is specifically dealt with at page 37 in the paragraph which begins with the words " There remains . . ." Their Lordships assumed when deciding that case that it was ancestral property. That assumption was made because of the conflict of opinion between the courts as to whether a gift by the father in favour of the son makes it ancestral property or self acquired property. If it was taken as self acquired property the matter could have been decided, the question arises because it was assumed to be ancestral property. Thus the obligations increased but the ownership is not divested or divided. The ownership is full ownership and absolute ownership so long as sons have not been born. That is why I emphasise my remarks by saying all the answers which I am giving are referable only to the particular point of time at which the question arises. (Witness reads page 38—right hand side) " A man's property may legally be divested wholly or in part on the happening of a particular event . . . by reason of his having a wife and daughters." It regards him as owner because in 52 Madras it has been said he is owner. Mayne puts it in the same way as in the Privy Council judgment. (Refers to Mayne page 595 para. 481) " Separate property will include property which vested in an individual exclusively as the last surviving coparcener " Mayne puts it next to property allotted to him for his share at a partition with his coparceners—therefore both are put in the same category. It also says " in respect of this kind of property the Mitakshara law applies exclusively to property which was held in absolute severality by its last

owner. This merely states that where the sole surviving coparcener dies leaving certain property it is the law of inheritance which applies and not the law of survivorship.

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(Shown page 366 of Mayne section 285.) This states the same thing. In other words till these events mentioned have taken place the position is that it is separate property which he owns in absolute severality and which descends according to the law of inheritance and succession. The test would be how the personal law regards him whether it regards him as owner or not. That is the position recognised in I.L.R. 52 Madras page 398. As well as in 29 Madras referred to. In 52 Madras he is referred to as full owner.

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Q. Page 98 of evidence read—Mr. Bhashyam said he does not agree with the word full owner—with the head note " Full owner " in 52 Madras ? —*A.* As I said I think the expression used in 29 Madras " vested solely and absolute in him " brings out the meaning quite clearly.

In the 1943 Privy Council case the actual decision was in regard to the widow's power to make an adoption and the observations which were made were only in connection with the consideration of such a question. One view was that the widow's power to make an adoption was at an end when the joint family came to an end. Another view was that the power came to an end when the coparcenary came to an end. There was a lot of conflict regarding this question in the Indian Courts and the decisions of the Privy Council were also hotly debated in the Indian Courts. Their Lordships in that case approved in its entirety 52 Madras and then came on to the point that if the sole surviving coparcener's interest can be cut down during his lifetime by means of adoption equally so even after his death an adoption can be made and that son might take the property referred to, therefore it cannot be said that the widow's power to adopt comes to an end merely because the property is vested in a sole surviving coparcener. Their Lordships say " what does it matter, it is not as if it is impossible to conceive of persons born into a family by means of adoption. There are potential mothers who can bring into existence other heirs so long as there are such persons how can you say that because the property is given to the sole surviving coparcener it puts an end to the power." I remember there are observations in that case which expressly state that just as the right of the sole surviving coparcener could be cut down by reason of a son coming into existence similarly the widow can also adopt. It is in that connection that they were referring to the potentiality of a coparcenary. Refers to page 199 the matter is dealt with here at the bottom of the left-hand column and the right-hand column, also on page 200. I do not understand this 1943 case as deciding in any portion of its judgment that the property in the hands of the last surviving coparcener is coparcenary property. That the property is coparcenary property has not been decided in that case. In 1945 A.I.R. Madras that is the income tax case is in regard to this estate, page 122. I say that the 1937 Calcutta Privy Council case has been correctly understood and applied to the facts of this case by the Chief Justice and Justice Rao and they hold that the property in the hands of Arunachalam Sr must be treated as the property of an individual and not as the head of an undivided Hindu family.

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Q. He could only be assessed as an individual only if the property in his hands was separate property ?—*A.* Yes. I say that the 1937 Calcutta case has been correctly applied to the facts of the present case and it has been correctly held that the property in the hands of Arunachalam Sr should not be treated as joint family property.

Further hearing to-morrow.

(Sgd.) . . . District Judge.

No. 37/Spl. 2.12.48.

Counsel as before.

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(Shown 1943 A.I.R. P.C. 146.) (Witness is also referred to pages 27 to 31 of the evidence and the cross-examination at page 48) I do not agree with the evidence of Mr. Bhashyam given on page 48. I think he is wrong due to a misreading of the 1943 P.C. case. The 1943 case in its application to the present case would only mean that (1) Arunachalam Sr. was the full owner of the property during his lifetime and after his son died (according to 52 Madras). In spite of the fact that the property provisionally vested in somebody else the widows would have had the power to adopt and on that adoption the son would take the property. The 1943 Privy Council case first of all establishes these propositions (1) if there is a joint family consisting of a son and mother the son as the surviving coparcener is full owner (2) on his death when the property is vested in the mother there is no coparcenary that is when it goes by succession (3) When the property goes to the mother it is taken by her as inheritance and succession but it is liable to be displaced by the adopted son coming into existence. The facts in that case were that Keshav was the sole surviving coparcener. His mother was Gangabhai. Keshav's property was taken on his death by a collateral the defendant in that action. Then Gangabhai adopted the Plaintiff and two questions arose, whether the adoption was valid and secondly whether the adopted son displaced the Defendant. At the bottom of page 199 left-hand column this passage occurs : " Keshav's right to deal with the family property as his own would not be impaired by the mere possibility of an adoption (compare 52 Madras 388)." I read that as confirming 52 Madras and holding that Keshav the last surviving coparcener in spite of his having a mother was full owner with the right to deal with the property as his own and secondly in the beginning of that paragraph occurs this sentence " if then the Plaintiff's adoption was valid can it be held that that it does not take effect upon the property which had belonged to the joint family because there was no coparcenary in existence at the date of the adoption." I understand that sentence to mean that when the family was represented by a single individual, namely, the mother there was no coparcenary because the argument itself was that the adopted son does not take the property because there is no coparcenary. Then on page 200 in the left-hand column there is this sentence : " It must vest the family property in the adopted son on the same principle displacing any title based merely on inheritance from the last surviving

coparcener." I understand that to mean that on the death of the last surviving coparcener namely Keshav the Defendant in that case a distant collateral took the property merely by inheritance. Therefore far from this 1943 P.C. case supporting Mr. Bhashyam I think that it just lays down the contrary. And as I have said applying it to the facts of the case in hand Arunachalam Sr. was the sole surviving coparcenary and on his death the property devolved on his executors by virtue of the will executed by him but that title was liable to be displaced. Reading Mr. Bhashyam's evidence on this part of the case I would with all respect to him venture to make the observation that a good deal of confusion arises on account of the indiscriminate use of the expressions joint family, joint family property and coparcenary property. Because as I said yesterday there might be a joint family, females might belong to the joint family but what we are concerned with is joint family property or coparcenary property to be more accurate. There is also this the 1943 P.C. case did not decide that Keshav during his lifetime enjoyed the property as joint family property nor did it lay down that Keshav was not the full owner but on the other hand they laid down the contrary.

Q. The other case that Mr. Bhashyam relied on very strongly was the Federal Court case 1945 A.I.R. page 25. That was the case which dealt with this very Estate ?—*A.* Yes.

Q. Will you tell the Court what exactly was decided in that case ?—*A.* That case decided that separate property as contemplated in section 3 of the Hindu Womens Right to Property Act was self-acquired property that is property in which if a son were born he would not acquire any right. That is the act dealt only with a particular kind of separate property and section 3 under which the daughter-in-law claimed would not apply to the property of the sole surviving coparcener in which a son would acquire rights. There is one thing however which I might confidently say in connection with Mr. Bhashyam's evidence, the Federal Court has not decided in that case that the property in the hands of Arunachalam Sr. was joint property or joint family property or coparcenary property whatever else that case might have decided or might not have decided. Whether that case has been rightly or wrongly decided I am not saying anything but after carefully reading the decision and every part of it I am of opinion that that case is no authority for the proposition that property in the hands of Arunachalam Sr. was joint family property. The Federal Court judgment on the other hand does contain certain observations which I shall refer to which makes it clear that the decision was just the other way, namely that till the contingency happened Arunachalam Senior's rights were those of a full owner as laid down in 52 Madras. Their Lordships only replied to the contention that this property which was owned by Arunachalam Sr. could be called separate property within the meaning of section 3 (1). The passages which I have in mind are at pages 32, 33, 34, 46 and 47. At page 33 in particular occurs this sentence : " The difference between the position of a person owning self-acquired property and that of a person who happens to be the holder of a property as a sole surviving coparcener for the time being is shown by the fact that in the latter case his right as full owner will be reduced to that of a coparcener the moment an adoption is made by a predeceased

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coparcener's widow. I understand this language as indicating that till that moment arises their Lordships say his right is that of a full owner and is reduced to that of a coparcener only when that contingency happens as mentioned. They emphasise the distinction between that property and self-acquired property because in the case of self-acquired property even if the contingency happens the man remains full owner. They go on further to say " the property held by a person who is a sole surviving coparcener has the potentiality of becoming joint family property at any moment so long as there is a widow entitled to add a male member to the family by adoption. I read that again as emphasising the fact that it is a potentiality, the potentiality is of becoming joint family property. These words would have no meaning if the property is already joint family property. The discussion in the other pages to which I have given reference will show that rightly or wrongly their Lordships took the view that the scope of section 3 (i) was to give statutory relief only in cases where the property was separate property in the strict sense that is self-acquired property. Therefore it is that after holding at page 34 left-hand column in these words : " I am accordingly of opinion that property held by Arunachalam as the last surviving coparcener of a joint family cannot be regarded as separate property within the meaning of section 3 (i) of Act 18 of 1937 and that the Plaintiff is therefore not entitled to claim the benefits of the Act." Their Lordships at pages 46 and 47 give a declaration that Plaintiff is entitled to so much of the property of Arunachalam Sr. as may be found to have been his separate property in the narrow sense and remitted it to the court for determining whether there are separate property and what they are before the final decree is passed. Therefore I say that I cannot read this judgment of the Federal Court either as having overruled the decision of the Privy Council in the 1937 A.I.R. P.C. case to which they do not make a reference or the income tax case in 1945 Madras relating to this very estate which I referred to where 1937 P.C. A.I.R. case was followed. At page 33 in that judgment there is a reference to 1943 Privy Council. Therefore reading all the cases the 1937 P.C. 1943 Madras and the 1945 Federal Court case I cannot find in any of these cases anything to support the view that the property in the hands of Arunachalam Sr. must be regarded in law as coparcenary property or joint family property. Mr. Bhashyam in referring to this case at three separate places has categorically said that the judgment held that the property of Arunachalam Sr. was joint family property on page 31 of his evidence and 38 and 40 of his evidence. That is not correct. I have no hesitation in stating that Mr. Bhashyam's statements according to these pages of his evidence namely 31, 38 and 40 are incorrect.

(Shown I.L.R. 56 Madras page 1.) I regard this case also as an authority for the proposition that where there is a joint family which consists of one male (coparcener) and another female entitled to maintenance the male person does not hold the property as a member of an undivided family. In that case there was a lady who was entitled to maintenance as a member of the joint family and the other male member was her husband's brother's son. The learned judge held in that case that it might be said that what was received by the widow was as a member of a joint Hindu family, but that the same thing cannot be said of the income of the property received by the male member. At page 6 the

contention that the sole male member now holding the joint family property that is the sole surviving coparcener would himself be exempt from any taxation is referred to and their Lordships say that he cannot be said to receive the income of the estate as a member of an undivided family. I take that to mean that so far as he is concerned he is the owner according to 52 Madras and received the income of the property as owner and as an individual and passed out of such income a maintenance to another person namely the widow as a member of the undivided family.

Q. Mr. Bhashyam also relied on a passage in A.I.R. 1941 P.C. p. 220 ?—*A.* That is the case I referred to yesterday. I may refer to the observations in the right-hand column on page 127 where their Lordships point out that the income is received by the holder on his own account and they go on to say that the Hindu law is familiar not only with persons such as wives unmarried daughters and minor children for whose maintenance a Hindu has a personal liability whether he has any property or not but also with cases where the liability arises by reason of inheritance of property and is liable to provide maintenance out of such property and they follow up by saying " that income is not jointly enjoyed by the party entitled to maintenance and the party chargeable." In fact I may say that this really emphasises the fact that one person is the owner of the property and of the income and another person has the right to receive a portion out of that income as maintenance. To illustrate my meaning I might say that if an owner creates a mortgage or a charge over his property in favour of another it only emphasises the fact that the ownership of the property is in one but that some other right over that property belongs to somebody else. Similarly I would say that the right of a person who received maintenance in the case of a joint family is either a personal right in some cases or a right referable to property but is not referable to any ownership of property. The true nature of that right has been more fully explained in a recent decision of the Privy Council in 1947 R.P.C. at page 8. The particular portion of the judgment where this is dealt with is on pages 13 and 14. At page 14 the Privy Council approves of the remarks by Mr. Justice Feard in 8 Bang. Law Reports 285 which were quoted by Mr. Justice West in I.L.R. 2 Bombay 494. I refer in particular to the portions in small letters in the left-hand column at page 14 and to the concluding portion of the same para. 5 where their Lordships in their own words state the true meaning of Hindu law. They point out that the right of a widow for maintenance is not a charge upon any property until it is made such by an agreement or a decree of court and that if she should refrain from making it a charge she leaves to the coparceners an unlimited estate to deal with at their discretion and they say also that it cannot be any existing proprietary right. It is in this case that they say it is a moral obligation. There is another case of the Privy Council reported in the same volume at page 143 where also the nature of the widow's right is dealt with in almost the same language.

Q. Mr. Bhashyam also relied on a passage from Mullah for the proposition that in Arunachalam's hands the property was joint property and he referred to section 230 para. 7 ?—*A.* I would not take that to be a correct statement of the law because I have been endeavouring to show that the statement of the law will be accurate only if it were rendered in the following manner, until an adoption is made by a widow duly authorised

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in that behalf. I would say the position is set out correctly in Mayne at page 365. I would say that Mayne's statement of the law at that page is absolutely correct when he says that " family property vested in the last surviving male member or coparcener will be his separate property subject to its becoming at any moment coparcenary property when he has male issue or when adoption is made to him or to a predeceased coparcener in the family."

Q. Mr. Bhashyam's theory seems to be that the surviving coparcener is a sort of representative of a family that may come into existence or that may be in existence. He was relying on the fiction that he was the representative of a certain family that may be brought into existence but at the moment is the only person concerned with the family and with the consent of the family he could make alienations etc. Is that correct ?—*A.* I cannot say that any such theory would be right. In the first place there is no authority so far as I have been able to see for any such theory secondly that theory cannot be right having regard to the argument adopted by their Lordships in I.L.R. 52 Madras. At page 420 his Lordship points out that the sole surviving coparcener cannot obtain partition and thereby obtain the benefits which a separating coparcener can obtain. That means that the sole surviving coparcener must be placed in the same position as regards his powers of alienation as a separating coparcener who obtains property for his share. It would be unmeaning to say that in the case of such separating coparcener who has obtained exclusive title to certain property he represents somebody else. So also I would take it to mean that in the case of a sole surviving coparcener just as a separating coparcener deals with the property as his own irrespective of anybody's consent the sole surviving coparcener also deals with it by virtue of his own right. It is also difficult for me to conceive of a sole surviving coparcener as representing the spirits of a deceased coparcener or the spirits of unborn and unadopted coparceners. I can only regard both in legal theory as well as in actual fact as dealing only with himself in relation to himself and with reference to his own property without any fetters which the law imposes in respect of joint family.

Q. Is not that theory also quite inconsistent with the sole surviving coparcener's right to dispose by will ?—*A.* Yes.

Q. Because in the case of several coparceners they cannot dispose of by will even if all the coparceners consent ?—*A.* Yes that is so. There is no dispute about that proposition. That one coparcener cannot even with the consent of all the coparceners will any property so as to give title under the will.

(Mullah section 368 read.) This says that " no coparcener not even a father can dispose of by will his undivided coparcenal interest even if the other coparceners consent to the disposition." It also says that " the sole surviving coparcener may however bequeath the joint family property as if it were his separate property " and in 1926 48 I.L.R. page 313 was so held.

Q. When it is said a sole surviving coparcener can dispose of by will it is because he can deal with the property as sole owner ?—*A.* Yes. Because he can deal with the property as if it were his separate property.

I have read the will of Arunachalam Sr.

Q. What is the effect of that will so far as vesting of any property is concerned ?—*A.* It vests the property in the executors, as executors and trustees and they remain in possession under that title until they are displaced by a validly adopted son or sons coming into existence.

Q. Will you please refer in this connection to 1946 A.I.R. Nag. 203 ?—*A.* This case follows the well-known decision of the Privy Council in 60 Mad. 508 and gives effect to the principle that a subsequently adopted son cannot dispute disposals made by the will which has been given effect to before he was adopted. That is another way of stating that the rights of a son subsequently adopted by the widow spring into existence from the time of the adoption and as stated in 52 Madras whatever dispositions might have been made by the intermediate holder prior to his adoption would be valid. The adopted son would also take the property subject to any dispositions which might have been made by the will of the last holder.

Q. Applying that case to the case of Arunachalam Sr.'s case what would be the position as regards estate duty that may have accrued on the death of Arunachalam Sr. ?—*A.* If the liability of the estate duty is to be determined with reference to the point of time at which the death took place I would say that the liability attaches in the hands of the executors and that the adopted son can take the estate subject to the obligation.

Q. Assuming that the liability is not as stated by you that the son would not take it subject to the liability what would be the position if the widow had never adopted ?—*A.* I take it that estate duty is on the same footing as other duties and taxes payable in respect of an estate. I am not very familiar with the estate duty because it is not introduced into India yet. (Section 8 of Ordinance No. 8 of 1919 read.) In the case of Arunachalam Jr. the position would be similar as regards any son adopted to him in 1945. Any son adopted subsequently by a widow is retrospectively back only for the purpose of continuity of the line. Their Lordships also emphasised the fact that any title based merely upon inheritance is liable to be displaced. In fact in the 1943 Privy Council case at page 200 occurs these words " displacing any title based merely on inheritance " and I find in the *Nagpur* case reported in A.I.R. 1946 at page 205 this quotation is quoted and the words used " based merely upon inheritance" is put in italics for the purpose of emphasising that where the title rests upon a will apart from inheritance as such such title is not intended to be displaced seeing the policy has been to give effect to this retrospective portion so far as the Privy Council has gone.

Q. For the purpose of estate duty would it be correct to say that there should be a passing of property at death and after the property has passed the duty accrues ?—*A.* Yes.

Q. When Arunachalam Jr. died there was a passing of the property by survivorship to Arunachalam Sr. ?—*A.* That is one of the questions in which myself and Mr. Bhashyam have given contradictory answers. I have stated that if Arunachalam Jr. had a share in the joint family property that share passed on his death and is taken by the surviving

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members of the coparcenary. On that view there is a passing of property from one to another. There was the passing of property by survivorship to Arunachalam Sr. From Arunachalam Sr. the title passed by the will to the executors and if Arunachalam Sr. had died without executing a will it would have passed to his widows by succession. In fact that is the point I emphasised yesterday for the purpose of showing that the property in his hands must be treated as his own property because it is only a man's own property or separate property that can devolve according to the rules of intestate succession in case there is no will and to the executors if there is a will. From the time of Arunachalam Jr.'s death up to the death of Arunachalam Sr. it was not the joint property of a joint undivided family.

(*Luncheon Interval.*)

(Sgd.) . . . District Judge.

2nd December 1948.

K. RAJA AIYER. Affirmed. (Re-called.)

Q. Before I come to the final topic I put to you two or three cases which I omitted viz. 1941 A.I.R. Federal Court page 72. According to Mr. Bhashyam he says on the death of one coparcener there is an extinction or lapsing of an interest without anything passing to the coparcener, that theory has been rejected by the Federal Court ?—*A.* Yes. The question in this case was whether the Hindu Women's Right to Property Act 1937 was *intra vires* or *ultra vires* and in that connection there is a discussion as to the nature of passing property by survivorship. One argument was that what really happens when one coparcener died was only an extinction of the deceased person's interest and as the other shares of the survivors with pre-existing interests extend over the whole property it cannot be said that shares are augmented nor can it be said that the deceased's share passes. This argument is specifically referred to at page 78 and negatived. The argument was that the words like " devolution and succession " cannot include cases where the deceased person's interests does not pass to another but is merely extinguished or lapses. They examined the contention and say that that theory of extinction does not describe the position which arises on the death of a member of the Mithakshara joint family and they say that the process is one by which as the result of the rule of survivorship a benefit accrues to the remaining coparceners. This is the language used at page 74 right-hand column. At page 78 the language used is the accession of the right which takes place on the death of one member of a Mithakshara joint family.

Q. You also referred to I.L.R. 43 Allahabad page 228 ?—*A.* Their Lordships of the Privy Council in I.L.R. 43 Allahabad page 228 at page 243 put the question as to what happens when a member of the joint family under the Mithakshara dies. They say that his right accrues to the other members by survivorship and contrasts with it the position of an ordinary co-owner who if he dies his right does not accrue to the other coparceners but goes to his or her own heirs. There they are referring to an ordinary co-owner by using the expression coparcener.

Q. You also referred to 9 Moore's Indian Appeals commencing at page 529 at page 611. Similar language has been used by the Privy Council "and upon the death of any one of them the others may well take by survivorship that in which they had during the deceased's lifetime a common ownership and a common possession" ?—*A.* That is the earliest case where the position of a coparcener was stated and that has been accepted till to-day.

Q. Now to deal with the question of adoption I refer you first of all to the text—Mullah section 507. Will you kindly read out what Mullah has to say ?—*A.* Mullah at page 570 section 507 refers to the point of time from which an adopted son's rights date and it is stated that the rights of an adopted son arise for the first time on his adoption even where the adoption is made by a widow his rights do not relate back as was supposed to at one time to the date of the adoptive father.

Q. Mayne also section 206 page 277 ?—*A.* Mayne at page 277 section 206 states the law in the same terms thus "the rights of the boy as adopted son can arise only from the date of the adoption in the sense that he is bound by such acts of the widow as would bind the heirs of the husband after her."

Q. I also referred to I.L.R. 50 Madras page 508 ?—*A.* I.L.R. 508 at page 525 states that if there is a disposition by will and the adoption is subsequently made by the widow, who has been given power to adopt on the will operates at the death of the testator and property is carried away before the adoption takes place the will and the disposition thereunder would be effective as against the adopted son." All these laid down the proposition that an adopted son's rights are not carried back retrospectively so as to place the position of affairs in exactly the same manner in which they would be if he had been in existence on the date of the death of his adoptive father.

Q. The next case I referred to is I.L.R. 52 Madras 398 ? This was a case where a son died leaving a widow whom he had authorised to make an adoption and his father was also alive, the father being the sole surviving coparcener. On the death of the son the father made a gift of the coparcenary estate in favour of the daughter and a few days after that the son's widow by virtue of the authority given by her husband made an adoption. It was held that the adoption did not have the effect of divesting the daughter of the gift made by the father ?—*A.* Yes. Because the sole surviving coparcener had power to make a gift of the property and the gift was valid at the time it was made. The subsequently adopted son could not claim to have been in existence as a coparcener entitled to impeach the validity of the gift.

Q. To what extent if any does the theory of retrospective effect apply on adoption ?—*A.* Retrospective effect has been stated to be given in the language of the Privy Council I think in 43 Bombay page 778 at page 792 : "So far as the continuity of the line is conserved so that whenever the adoption may be made there is no hiatus in the continuity of the line." Retrospective effect has also been given for the purpose of displacing intermediate title based merely upon inheritance as stated by the Privy Council in 1943 Privy Council page 196.

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Q. On whom is the burden of proving an adoption ?—*A.* Undoubtedly on the person who alleges an adoption because the effect of an adoption is to displace the natural succession. It has been stated that the burden of proving an adoption is heavy. That is in A.I.R. 1948 Privy Council 114. I have not got the book here. " A very grave and serious onus rests upon any person who asserts adoption." I think the language used there is what is used by Mullah at 583 section 512. " The evidence in support of an adoption must be sufficient to satisfy the very grave and serious onus that rests upon any person who seeks to displace the natural succession by alleging an adoption."

Q. To whom is an adoption made ?—*A.* An adoption is always made to a male.

Q. Can an adoption be made to a deceased where he has already left a son ?—*A.* No.

To Court :

Q. After the son's death ?—*A.* Oh, yes.

Q. Take a case where a person gives his widow the power to adopt after the death of his son where the son has no male issue ?—*A.* In such a case it can be done.

Q. Even if a husband prior to death while his son is alive gives his widow the power to adopt after his death while the son is alive it has been held that such a power to adopt inasmuch as it is given while the son is alive is illegal and an adoption made after the death of the son is not a legal adoption ?—*A.* That is the husband's authority must be strict followed and if it is an illegal authority it cannot be acted upon.

To Court :

Q. If the husband has male issue and gives the wife the power to adopt in the event of his son dying would such an authority be invalid ?—*A.* Such an adoption if made after the son's death is valid.

Q. Can there be simultaneous adoption by two widows of a dead man of two sons ?—*A.* Not normally under the Hindu law. It is illegal to do such a thing and neither adoption will be valid. In the case of simultaneous adoption one cannot be recognised as the adopted son and not the other. It two boys are adopted then both adoptions are invalid. The Court will recognise neither. Page 202 section 141 Mayne. The simultaneous adoption of two or more persons is invalid as to all. At the bottom of 214 also the same thing is stated in section 150.

Q. So that in the absence of custom recognising the validity of simultaneous adoption such adoption would be bad ?—*A.* Yes.

Q. The Appellant relies on document A68 a judgment of the Madras High Court ?—*A.* Yes.

Q. It refers to simultaneous adoption by two widows ?—*A.* If I remember right I think it is three. The burden of proving a custom is on the party who asserts it.

Q. The adoptions made were simultaneous adoptions by two of the widows of Arunachalam Chettiar Senior and by his daughter-in-law. Would you consider that the custom recognised by the Madras High Court judgment would give validity to a simultaneous adoption by two widows and a daughter-in-law regarded purely as a custom ?—*A.* No. Any custom must be strictly proved and one custom which is proved cannot be relied upon for the purpose of proving an extension of that custom. I believe that has been what has been held by the Madras High Court. The case which I am referring to is reported in 57 Madras Law Journal 817. Their Lordships say " the custom cannot be enlarged by parity of reason. Customs may be similar or contradictory, probable or improbable and the existence of one custom is no evidence of the existence of another. The only proof of custom is the evidence of that custom and no other evidence that given certain data certain results will follow with the force of law." That also related to a Nattukottai Chettiar custom I believe.

Q. Would the existence of a grandson be a ban against the adoption by the mother-in-law of a son ?—*A.* Certainly.

Q. In this case had Arunachalam Chetty Junior left a son would an adoption by Sr. Arunachalam Chettiar's widows have been bad ?—*A.* It would have been bad.

Q. Who is the person or persons who can give a person in adoption ?—*A.* The natural father or the natural mother.

Q. Suppose a person is an orphan can he be adopted ?—*A.* No. Not in the absence of custom.

Q. Will you refer to Mullah page 566 section 489 ?—*A.* At page 566. A physical act in giving and receiving is absolutely necessary for the validity of an adoption. This is so not only in the case of twice born classes but also in the case of sudras. Paragraph 2 same section at page 566. The power or the right to give a son in adoption cannot be delegated to any person but the father or the mother may authorise any person to perform the physical act of giving a son in adoption to a named person and can delegate someone to accept the child for adoption on his or on her behalf.

Q. Will you also refer to Mayne section 172 ?—*A.* " No other relation but the father or mother can give away a boy." That is at page 240. Nor can the paternal grandfather or any other person nor can the person delegate that authority to any other person for instance a son so as to enable him after the death to give away his brother in adoption for the act when done must have parental sanction. It goes on to say that an orphan cannot be given away in adoption because he cannot be given or received in adoption.

Q. In this scale the evidence as to adoption consists of the evidence of one witness only Ulagappah Chetty ?—*A.* Yes.

Q. According to the evidence of Ulagappah Chetty the adopted boys were given by their respective uncles ?—*A.* Yes.

Q. First of all they could not have done so in pursuance of a delegation from the parents because the parents cannot delegate ?—*A.* Yes.

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Q. They may have given away in pursuance of an authority to hand over ?—*A.* Yes.

Q. In the absence of any evidence is there any presumption in Hindu law when adoption is proved that there was an authority to do the physical act of handing over ?—*A.* I do not think there are any presumptions in favour of adoption. At any rate in the case of recent adoption. I would state that the rule of law undoubtedly is that everything which is necessary to constitute a valid adoption must be proved whether that consists in the authority or power or in the ceremonies necessary for an adoption or any of the other acts which are necessary to constitute a valid adoption. There must also be evidence of the proper giving and there must be evidence that the father or mother exercised that discretion either to part physically or by deputising in the act of giving.

Q. You read the will the document A ?—*A.* Yes.

Q. According to the paragraph of the will which provides for the authority it reads this way : " whereas there are no male heirs in my family and whereas there are my two wives and a daughter-in-law it is necessary to perpetuate my lineage with good understanding . . . "

Q. The word used there is " to " and the original was placed before Mr. Bhashyam and he said the translation was correct ?—*A.* Yes.

Q. It has been held where an authority has been given to a widow to adopt to herself is bad ? Such a thing is unknown to Hindu law. French law permits that I think.

Q. Section 145 Mayne page 208 ?—*A.* I believe in French India it is done. She cannot adopt to herself.

Q. The executant could not have made an adoption ?—*A.* Yes.

Q. In the case of the daughter-in-law of Arunachalam Snr. consent would be the consent of a kinsman ?—*A.* Yes.

Q. What are the rules regulating the circumstances in which the consent of a kinsman may be given ? In giving that consent what should be done ?—*A.* The propriety of the act and the continuance of the line, the desirability of continuing the line are matters which are considered by the sarpinders who form the family council or by the father-in-law. The father-in-law if he is alive is stated to be the most important person. If the father-in-law is not there then the sarpinders consent. That is the kinsmen who are related in the male line. Here it will be the father-in-law's consent.

Q. The father-in-law would have to consider the desirability of continuing his line and give his consent ?—*A.* Yes.

Q. Would he also have to consider the suitability of the person to be adopted ?—*A.* No.

Q. Who would consider that ?—*A.* That is for the adoptive mother.

Q. Even Mullah has this reference a widow cannot adopt to herself and the Privy Council stated so in 12 Moores Indian Appeals page 350 at page 356 ?—*A.* That is so. There cannot be an adoption to herself. The section in Mullah is 449.

To Court :

Q. I suppose when a widow cannot adopt to herself even if she does the child will have no legal right ?—*A.* Yes. The child will have no legal right. The adoption is invalid. That is what is stated at page 536 of Mullah (Witness reads the passage). The Privy Council there observes to this effect. " Of course there is no doubt, indeed it was freely admitted, that adoption might be made by a widow under an authority conferred upon her for that purpose . . . and as the adoption is for the husband's benefit, the child must be adopted to him nor can adoption by the widow alone give the adopted child even after her death any inherited interest by her from her husband ?——*A.* Yes.

Cross-examination :

Q. I do not at all question your competence to give evidence on Hindu law—but you do not purport to be an expert on Ceylon law ?—*A.* I know very little of Ceylon law.

Cross-examination.

Q. You do not purport to give an interpretation to any particular section of the Ceylon Legislative Ordinance ?—*A.* No.

Q. That is the proper function of the Courts ?—*A.* Yes.

Q. The evidence you gave yesterday and to-day is your opinion on the questions that were put to you ?—*A.* As far as I have read and understand law according to fundamental principles.

Q. You have come as an opinion witness ?—*A.* Yes. A witness giving his opinions.

Q. Repeatedly yesterday you said " this is how I read such and such a case " meaning thereby that in many of those cases Mr. Bhashyam read in a different way ?—*A.* Yes.

Q. And you also gave references to a number of passages in judgments in support of some of your statements of opinions ?—*A.* Naturally.

Q. In the case of a judgment of the High Court its decision is binding between the parties—the actual matter that was decided is binding on the parties ?—*A.* It has that effect in addition to other effects as well.

Q. When it comes to other effects as well as containing a statement of law we have to get at the *ratio decidendi* in that case ?—*A.* Yes.

Q. It is the *ratio decidendi* of the judgment that has value and effect as stating a principle ?—*A.* As much as the principle actually stated in it. If a principle is actually stated in a judgment it has more value than the *ratio decidendi.*

Q. Certain principles will be stated in a judgment as *obiter dicta* ?—*A.* Might.

Q. In that event that has no contribution to make as building up the body of law ?—*A.* After all so far as judge-made law is concerned it may differ from province to province, high court to high court, an *obiter dictum* coming from one judge carries a higher weight, which is not given to

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obiter dictum from another judge. It is all relative. I am talking in particular as it has been interpreted and expounded in Madras to which the parties belong and where the matter would be decided primarily. Therefore I regard the authority of the Privy Council first as supreme, second the authority of the Federal Court, third the authority of the Madras High Court and failing all these authorities, the authorities of any other Courts and failing everything else, such assistance as we can derive from what we conceive to be fundamental notions of Hindu law and common sense.

Q. Often your High Courts have quoted judgments of the Privy Council in a way which the Privy Council stated had been quoted wrongly ?—*A.* That is an everyday occurrence where there is a hierarchy of Courts.

Q. I will give you a passage from the judgment of the Privy Council relating to the manner in which some of your High Courts have quoted their own judgments. I am referring to Law Reports 51 Indian Appeals ?—*A.* May I know the name of the case.

Q. Page 157 *Abid Hassim Khan* vs. *Fatima* (Counsel reads the passage). " To understand and apply decisions of the Board or any Court it is necessary to see what the facts of the case on which the decision was given and what was the point which was decided " and thereafter they refer to all those cases relied on by the High Court and state what actually in their opinion those cases decided ?—*A.* Yes.

Q. With the result even a judgment of the Privy Council if it is to be cited as an authority has to conform I put it to you to the limitation put down by the Privy Council in this judgment viz. " to understand and apply a decision of the Board or any Court it is necessary to see what were the facts of the case in which the decision was given and what was the point which had to be decided " ?—*A.* Certainly. It is very often because that is not done that a great deal of trouble arises.

Q. I want to give you a number of judgments of the Privy Council where they have used the words in a loose sense because they were not dealing with that point ?—*A.* So far as the evidence which I have given I am willing to stand any test, test of reason, test of common sense, test of logic.

Q. The term " co-ownership " is not normally applied by Hindu lawyers and judges to the property held by the members of a joint Hindu family ?—*A.* You are right. It does not correspond to either joint tenancy, nor does it pertain to co-tenants as known to English law.

Q. But in spite of that the term co-ownership has been repeatedly used in the judgments referring to what you call members of the joint family ?—*A.* Might have been used. There are two reasons for it.

Q. I will give you one case which you yourself have repeatedly cited yesterday and to-day 1941 A.I.R. Privy Council 120 at pages 122 and 123. First of all I refer you to page 123 column one about the middle of it. " That the co-ownership may be " etc. He uses the word " co-ownership " ? —*A.* Yes.

Q. The case itself dealt with not merely on impartible property but also certain house property which was really joint family property ?—*A.* I should like to see in what connection it was used. So far as the house property was concerned they had to apply a section which contained the words " of which he is the owner " and the Privy Council held in that case he was not the owner of that house property because it was only joint family and it was joint family property.

Q. In respect of that house property which was joint family property of which this man was a coparcener the Privy Council in that judgment has been using the word co-owner ?—*A.* Coparcener is co-owner.

Q. Although the term co-ownership has a very different connotation in Hindu law to co-ownership in Roman law or English law ?—*A.* Yes. Certain incidents of co-ownership, co-tenancy, joint tenancy are present in the Hindu joint family. Therefore you cannot avoid using those expressions. No. 2 the Hindu law itself is being applied to persons who are familiar with English notions and English systems and therefore again you cannot avoid the use of expressions which are to be found in the English text law on the subject and English property law.

Q. But in spite of that there has been an attempt to avoid the word " co-ownership " ?—*A.* Wherever it was necessary to prevent misconception careful language has been used.

Q. In the whole of your evidence yesterday you used the word coparcener or coparcenary rather than the word " co-owner " ?—*A.* The words coparcener and coparcenary are the words commonly used in connection with Hindu joint family.

Q. It is used in contradistinction to the words " co-owners ." Among co-owners there is no joint tenancy ?—*A.* No.

Q. Among coparceners there is a type of joint tenancy ?—*A.* Yes.

Q. With the result that the term coparcenership is nearer the conception of Hindu law than the term co-ownership ?—*A.* Do I understand you to mean co-tenancy as you talk of co-ownership ?

Q. Yes.—*A.* There is all the difference between co-tenants and a joint family member because there is the essential element of survivorship.

Q. In the Hindu family idea of tenant when you are using the word co-tenant you are taking that term from the English law ?—*A.* Yes.

Q. I put it to you subject to correction by the Court co-tenant is very unusually used in Ceylon where we use the word co-ownership ?

Q. In India in Hindu law you have got an idea of co-ownership or co-tenancy as separate from coparcenership ?—*A.* Yes.

Q. That is two or more persons hold the property in equal shares without any right of survivorship among themselves ?—*A.* Yes. That will be co-tenancy. To be co-tenants, they need not be members of one family. They need not be of one religion. In a joint Hindu family the

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idea is as I say a family descended from a common ancestor. There is therefore a tie of relationship which binds together certain persons and who own certain property with certain incidents. Some of those incidents may be co-tenancy, some of those incidents may be co-tenancy incidents. The Mitakshara and Dayabagha differ there. The Dayabagha which is in Bengal each coparcener has got a defined interest. The position there would be more analogous to that of a co-tenancy.

Q. Even the conception of joint tenancy known to the English law does not exactly represent the form under which members of a joint family hold a property ?—*A.* That does not exactly represent. There are distinctions between the English system of joint tenancy and the Hindu joint family.

Q. In point of fact a certain amount of confusion has arisen by the use of the English terms of law to what are Hindu law conception ?—*A.* Might have.

Q. With the result it is very necessary in reading a judgment not merely to look at the words that are used but to get the idea behind the words ?—*A.* Yes.

Q. You will agree that a word or a term is only used to convey a bundle of ideas ?—*A.* Yes.

Q. And what we have got to get at is the incidence of what is termed in Hindu law as the thing by which the member of a joint Hindu family holds the property ?—*A.* Yes.

Q. There is also a certain amount of difficulty that has arisen by reason of the conflict of opposing theories ? Often a case has to be decided that does not conform to either of two conflicting theories—it might fall between them. Now you will agree with Sir George Rankin when he used this passage in 1941 A.I.R. P.C. at page 125. There he deals with a case that falls between two conflicting theories. Column 2 (Counsel reads): "A general consideration of the theory have their proper place but impartibility and primogeniture when introduced into Mitakshara involve competition and compromise between different lines of theory. If the doctrine that there is no coparcenary may be pushed too far in one direction the doctrine that the junior members are in a sense co-owners may be pushed too far in another. A special incidence of joint family which is impartibility being overlaid in other cases by a rigid theory "—there Sir George Rankin was discussing the case of an impartible estate ?—*A.* He was discussing various theories. The Privy Council in 1941 was trying to reconcile previous pronouncements some of which were contradictory in regard to impartible estate.

Q. In this particular case Sir George Rankin was dealing with the case of an impartible estate ?—*A.* Yes.

Q. The impartible estate for certain purposes is described as joint family property ?—*A.* Yes.

Q. But it has not got all the incidents of joint family property ?—*A.* Yes.

Q. It has some of the incidents of joint family property ?—*A.* Yes.

Q. It has certain other incidents which were encroachments of the theory of Mithakahara regarding joint family property ?—*A.* Impartibility itself is a matter of custom.

Q. And to that extent an encroachment on the older law ?—*A.* Yes.

Q. With the result they had to decide the case between two rigid theories ?—*A.* If there were no fresh theories then there would be an end to lawyers. Theories are propounded. For the time being as I told you I accept the law as stated by the Privy Council and we are building on it.

Q. You also stated that you would not concede the idea of the family as owner ?—*A.* No. The family as a legal entity as such. The family is the owner.

Q. In fact the family as the owner of property in contradiction to the individual constituting the family as owners of the property is well recognised idea ?—*A.* If you mean that an individual is not the owner of property in the sense of individual ownership in the whole properly undoubtedly it is a distinct idea.

Q. In your text-books and in your judgments the family as owner is very frequently used whatever the meaning may be ?—*A.* The family is the owner.

Q. Would you say that is a loose sense ?—*A.* I will not say. But when we try to find out whether *A* owns the property or *B* or *C* I say the coparceners own the property not the persons outside nor the widows.

Q. Referring to the coparceners owning the property you use the term family owns the property ?—*A.* The family owns the property, the property is vested in the coparceners.

Q. Or would you say the coparceners own the property for the family ? —*A.* Because the person who get an interest by birth are the owners of the property. A member obtains an interest by birth. In what does he get an interest by birth. The property in respect of which he gets an interest by birth call it what you will coparcenary property or joint family property.

Q. You will enlarge on your definition that the family ownership is not confined to members getting rights by birth alone ? Members can get rights in the joint family property even otherwise than by birth ?— *A.* How ?

Q. By adoption—*A.* Yes, but that is birth.

Q. That is not birth ?—*A.* For all purposes that is regarded as birth. In law it is a birth.

Q. So for the birth there must be a father and mother ?—*A.* Yes.

Q. So the law regards when an adoption is made the law requires an adoptive father and adoptive mother ?—*A.* Certainly.

Q. So in a loose sense you can use the word " adopted " to a widow when you mean adopted with her as mother and her deceased husband as father ?—*A.* Yes.

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No. 19. K. Raja Aiyer, 2nd December 1948. Cross-examination, *continued.*

Q. The 1941 A.I.R. Privy Council p. 120 the judgment was delivered by Sir George Rankin he was the Chief Justice of Calcutta High Court ?—*A.* I think he was.

Q. Thereafter he became a member of the Privy Council and he is even now a member of the Privy Council ?—*A.* That I do not know.

Q. The Privy Council has not yet been abolished as the ultimate Court in India ?—*A.* It may be in a few months.

Q. In the case you referred more to the latter portion of that judgment ?—*A.* I referred to such portions of that judgment as related to joint family.

Q. The latter portion of that judgment deals with the question of the income whether it belonged to one man or to more than one man ?—*A.* Yes.

Q. The earlier portion of the judgment dealt with the question of ownership of a house ?—*A.* Yes.

Q. The house itself as a part of an impartible estate ?—*A.* I do not know that. I think it is dealt with separately and with separate incidents. I do not know if it is part of the impartible estate.

Q. While discussing the question of ownership also he discusses the question whether the house is owned by the zamindar or by the joint family of which he is a member ?—*A.* Yes.

Q. That is the ownership of individuals in contradistinction to the ownership of the family ?—*A.* Yes.

Q. And decides that the house is owned by the family at page 122 column 2. The learned judge of the High Court have rejected the claim of the Commissioner to tax the assessee as an individual upon the income of the house property under section 9 of the Act. The ground of the decision is that the owner of the buildings and lands appurtenant to it is not the assessee but the Hindu undivided family. With this reasoning their Lordships agreed ?—*A.* Yes.

Q. They upheld the finding that the owner of the house and lands appurtenant thereto is the family and not—— ?—*A.* That is apart from impartibility unless I am very much mistaken. Otherwise the question could not have arisen.

Q. I am going on the other question they decided the house and lands appurtenant thereto as part of the impartible estate ?—*A.* It belonged to the joint family and not to the individual. That is what they say at page 123 though the passage which you just now read " that the co-ownership of the joint members in a sense . . . the answer is that it is joint family property." The assessee as an individual would not therefore be charged in respect of it under section 9.

(Sgd.) . . . Addl. District Judge.

Further hearing to-morrow.

(Intld.) . . . A. D. J.

D.C.37/T Special. 3rd December, 1948.

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Appearances as before.

Errors in previous day's proceedings corrected.

Original Respondent's Expert Evidence.

K. RAJA AIYER. Affirmed.

No. 19. K. Raja Aiyer, 3rd December 1948, Cross-examination.

There are certain passages in Dr. Sarvadhikari's books upon Inheritance regarding the nature of coparcenary rights and survivorship which I would like to mention. Dr. Sarvadhihari is a reputed Hindu Law scholar and delivered Tagore Law Lectures on the principles of Hindu Law of Inheritance. In his book at page 887 he says " Proprietary right is created by birth according to Mitakshara " and at page 736 he says " the members of a joint family have a right to participate in every portion of the joint property." These two passages refer to the nature of the interest of a coparcener according to the Mitakshara. The same author refers to the doctrine of survivorship and the effect of survivorship in these terms at pages 737, 748 and 749.

At page 737 he says " Survivors take by survivorship, and they hold the property, which they take by survivorship legally and equitably for themselves ; the deceased's heirs have no interest, either legally or equitably, in the share which passes by survivorship to the surviving co-sharers."

At page 748 he says " the principle of survivorship provides, that, in an undivided family, the descent—if such a term could be used at all—is in coparcenary, and the ordinary rules of succession which govern the devolution of separate property cannot be applied in determining the mutual rights of coparceners in a joint family. On the death of a coparcener, his interest is merged, as it were, in the common interest, and no single person is, but all the survivors are, benefited by the lapse of the deceased's share in the undivided property. The participation is not individual, but communistic. The interest of the deceased does not go to one individual but to the different classes of individuals composing the family. The different classes of individuals again take the interest not in order of their proximity to the deceased but simply in right of their being members of the same joint undivided family. Thus the rule of survivorship overrides the ordinary rules of succession, and all the surviving coparceners are, as it were, the heirs of the deceased.

Another mistake also should be guarded against. The share of the deceased in the joint property belongs wholly, both legally and equitably, to all the survivors, it is true ; but it should be distinctly understood that the survivors do not take the interest *per capita.*"

Again at page 740 the learned author says " Inheritance assumes separate property. In a joint family, as I said, before, there is ' community of interest and unity of possession between all the members of the family ' and the law of inheritance has nothing whatever to do with a coparcenership."

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Original Respondent's Expert Evidence.

No. 19.
K. Raja Aiyer, 3rd December 1948, Cross-examination. *continued.*

Cross-examination (continued).

Q. With all respect to Dr. Sarvadhikari he has not said anything new ?—*A.* If that is accepted I am content.

Q. We will go back to the case we were considering when the Court adjourned 1941 A.I.R. Privy Council page 120, was an Income Tax case ?—*A.* Yes.

Q. It was super tax ?—*A.* Yes.

Q. The question was under what section of the Income Tax Act of India the assessee was taxable ?—*A.* Yes.

Q. That was one question ?—*A.* Yes.

Q. Section 9 of the Income Tax Act of India made an assessee liable for income from property of which he was the owner—I will give you the Act ?—*A.* It is quoted here.

Q. Under that section the Privy Council held that that Zamindar in question was not taxable in respect of house property because he was not the owner ? I will go step by step. I will come to the question whether the house was part of an impartible property or not—*A.* It was part of an impartible estate.

Q. The appeal to the Privy Council was from a judgment of the Lahore Court which is reported in 1940 A.I.R. Lahore at page 113 ? I brought it in order to make it clear whether the house property was part of the impartible estate or not ?—*A.* I looked into it. It did not make any difference but I looked into it.

Q. The first portion of the judgment says that the income from the house property was not taxable under section 9 of the Income Tax Act because the assessee was not the owner of that property but that the owner of the property was the joint Hindu family of which he was a member ?—*A.* Under section 9 the tax has to be paid by the assessee under the head property only if he could be described as the owner of the property. The Privy Council held that in law the property belonged to the joint family and as such section 9 was not applicable.

Q. What you have stated now is the first portion of the judgment of the Privy Council related to income from house property ?—*A.* Yes.

Q. Then the latter portion of the judgment of the Privy Council dealt with other income which consisted of interest and other items arising out of the impartible estate ?—*A.* Yes.

Q. And it considered the question whether that income was the income of the individual zamindar or joint family to which he belonged ?—*A.* Yes.

Q. And decided that the income was the income of the individual zamindar ?—*A.* Yes.

Q. They took the view that it was taxable under another section of the Income Tax Ordinance ?—*A.* Yes, sections 8 and 12.

In the District Court, Colombo.

Original Respondent's Expert Evidence.

No. 19. K. Raja Aiyer, 3rd December 1948. Cross-examination, *continued.*

Q. They said this: " The income of an impartible estate is not income of the undivided family but is the income of the present holder notwithstanding that he has sons from whom he is not divided " ?—*A.* Yes.

Q. That case throws some light on the distinction between the ownership of property being in a plurality of persons and the income being in a single person ?—*A.* Yes.

Q. You will kindly help me in that connection with some incidence of the nature of an impartible estate. I will help you by reference to a judgment that deals with the matter ?—*A.* I may say that so far as this case was concerned the observations which I was referring to were of their Lordships in relation to partible property, because at page 126 they talk of partible property.

Q. A zamindari or an impartible estate may be either joint family property or may be separate property ?—*A.* Yes.

Q. If it is separate property it follows the rules of succession applicable to other separate property known in Hindu law ?—*A.* Yes.

Q. If it is joint family property it has some characteristics of joint family property but not all the characteristics of the joint family property in Hindu law ?—*A.* Generally in regard to succession it has the characteristics of the joint family property in that the next heir is chosen according to the rules of survivorship.

Q. Applicable to joint family property ?—*A.* Partible joint family property.

Q. The distinction between joint family property generally and impartible property which may be joint family property is to some extent indicated in this judgment which I put to you 1932 A.I.R. Privy Council page 216 at page 222 ?—*A.* Yes.

Q. Counsel reads page 222, the learned judge says this : " Impartibility is essentially a creature of custom. In the case of ordinary joint family property the members of the family have (1) the right of partition (2) the right to restrain alienation by the head of the family except for necessity (3) the right of maintenance and (4) the right of survivorship. The first of these rights cannot exist in the case of an impartible estate though ancestral from the very nature of the estate. The second is incompatible with the custom of impartibility as laying down in *Sathi Raj Kumari's* case and *Rama Krishna* vs. *Vengada Kumari* and so also the (3) as held in *Gangadara* vs. *Raja of Pitta.* To this extent the general law of Mithakshara has been superseded by custom and though the impartibility of the estate though ancestral is clothed with the incidents of self-acquired and separate property. But the right of survivorship is not inconsistent with the custom of impartibility." You do not agree with that passage ?—*A.* I certainly agree.

Q. A further two more sentences. " This right therefore still remains and this is what was held in *Bajanab's* case. To this extent the estate still retains its character of joint family property and its devolution is covered by the general Mithakshara law applicable to such property " ?—*A.* Yes.

In the District Court, Colombo.

Original Respondent's Expert Evidence.

No. 19. K. Raja Aiyer, 3rd December 1948. Cross-examination, *continued.*

Q. With the result in the case of an impartible estate which is joint family property you have got a species of property retaining only some of the characteristics of joint family property ?—*A.* Yes. Impartibility is a matter of custom with certain incidents.

Q. And would it be correct to say that an impartible estate which is joint family property or ancestral property is held only by one person ?—*A.* It is the essence of impartibility.

Q. So that in an impartible estate you come across a species of property which is joint family but which is not held in coparcenary ?—*A.* Yes.

Q. In fact Sir George Rankin says so in 1943 A.I.R. Privy Council 196 at page 201—" Now an impartible estate is not held in coparcenary though it may be joint family property "—that sentence would be correct ?—*A.* I take my stand upon all the Privy Council cases. I take every sentence in every Privy Council case as correct.

Q. In the context that I am using it, it would be correct to say that Sir George Rankin has stated ?—*A.* Yes, certainly.

Q. With the result that by custom or as a result of some other factors you often come across property in Hindu law which has lost some of the characteristics of joint family property and yet may retain some characteristics of Hindu joint family property ?—*A.* Will you tell me some of the section. Even in the case of impartible estate whether it was joint family property was regarded as a very doubtful question till this 1941 Income Tax case came in. On a review of all the authorities it was held that it was joint family property. In the earlier cases it was laid down that the other coparceners had an interest which they could renounce. Then the matter was further examined and in this latest case the precise incidents of an impartible estate and its nature as joint family property has been considered and the law laid down.

Q. I referred yesterday to certain passages in the judgment where the fact that joint family as owner is used ? Now the term suggests that the joint family is the owner of the property is used even in Legislative Enactments ?—*A.* I should like to see the particular enactments.

Q. You said yesterday or earlier in your evidence that the use of the term " that the joint family owns the property " would be used in a loose sense ?—*A.* If the joint family is supposed to own the property as a legal entity then I say it is an absolutely fallacious assumption. If by joint family you mean that the body of coparceners own the property it is an accurate conception.

Q. In spite of the fallacy that you refer to Judges have used the language to say that joint family property is vested in the family as a unit ?—*A.* I should like to see the cases because I cannot answer the question without reference to the cases themselves.

Q. One of your reputed past judges of the Madras High Court is Justice Muthusamy Iyer ?—*A.* Yes.

Q. In fact in the High Court his statue is built ?—*A.* Yes.

Q. I will show you the language of Mr. Justice Muthusamy Iyer uses with reference to the family as a unit. I.L.R. 17 Madras 316 at 326. I will read the earlier portion in order to lead up to it. " It is also a controlling or dominant right for the reason that according to Hindu theory coparcenary property belongs to the coparcenary family. Though those coparceners are tenants in common they have no specific property but only an interest which may ripen to specific property on partition and that if the existing coparceners die without male issue they are to be treated as if they had never been born and as if the partible property actually belonged to the body of coparceners who are alive at the time of the partition. When therefore partible property belongs to a coparcenary family and when a coparcener dies without male issue leaving one uterine brother and one half brother surviving him, the half brother is entitled to the share of the property equally with the uterine brother at the time of partition, the deceased brother being considered as if he never had been born and the property being treated as always vested in the family as a unit and as never absolutely vested for purposes of inheritance in anyone of the coparceners in preference to another, how muchsoever the family may change as to the number of coparceners from time to time during coparcenary "—*A.* My answer will be this. Mr. Muthusamy Iyer was one of the very great judges of Hindu law and I can never regard Mr. Muthusamy Iyer who knew something about the fundamental principles of joint family and suvivorship to have been guilty of a statement to the effect that a joint family owned the property in the sense in which it is sought to be made out, namely, that it is a kind of legal persona as a company apart from the individuals who owned it. The observations which have been referred to have to be understood in connection with the context. It is for the purpose of saying that on an individual coparcener's death his heirs did not take the property. A conception which is very well explained in Sarvadhikari's book which I have already cited and the discussion in which book begins at page 735 and is continued in the pages which follow. In the first place I might say that every word in it cannot be read literally because in one place the well-known judge says " though coparceners are tenants in common." That sentence is open to the criticism that literally understood it is wrong. The learned judge in that paragraph is only referring to the fact that the shares of the coparceners has to be determined finally only at the time of partition. The joint family up to the time of partition has a continuity of existence. Some members are born some members die. And if a person dies he does not transmit his interests to his heirs therefore it is as if he had never been born. The learned judge never meant to say that a coparcener in a joint family has no right of property or has no proprietary right. Such proprietary right has been recognised even by the Mitsakshara as stated in Sarvadhikari's book.

Q. You see it is nobody's case that the joint family is identical with a joint stock company with all its incidents ?—*A.* It is nobody's case.

Q. No judge of the Indian High Court or the Privy Council has said that because the very idea of a joint stock is known only to modern law ?—*A.* Yes.

Q. Even in the West the conception of a joint stock company being a legal person is rather recent ?—*A.* Yes.

In the District Court, Colombo.

Original Respondent's Expert Evidence.

No. 19. K. Raja Aiyer, 3rd December 1948. Cross-examination, *continued.*

Q. With the result that judges have used the word that the joint family is a sort of corporation ?—*A.* Yes they have used the expression sort of corporation and I would say it is a sort of unit.

Q. Excepting that in the case of Muthusamy Iyer he has used the word " unit " without the qualifying words " sort of " ?—*A.* Yes.

Q. The Ceylon law that we are considering also uses the term—section 73 Chapter 187—" the joint property of that Hindu undivided family." Would you say that it is a loose way of saying it ?—*A.* As you said yesterday I know nothing of Ceylon law. It will be for this Court to interpret the Ceylon Ordinances and the law. All I know is about the Hindu joint family and notions relating to it.

Q. If in an Indian enactment the terms were as this " the joint property of that Hindu undivided family " you would consider that language as having been used in a loose sense ?—*A.* In my opinion I would have no hesitation in answering that it is coparcenary property of the joint family.

Q. Would you say that the language is inaccurate ?—*A.* I would say that the language is appropriate to convey the idea. You might use the expression coparcenary property, joint family property. All of them mean the same thing according to me.

Q. You say that it would be loose to speak of the joint property of a joint Hindu family ?—*A.* In the sense if it is thereby intended to imply that every member of a joint family has a proprietary right in the joint family property it would be loose. Expressions are undoubtedly used for the purpose of saying joint family property. We use the expression joint family property. We use the expression joint family. It would be a loose language to say that the joint family property is owned by every member who constitutes the joint family. There is no ambiguity in what I am saying. We will take an illustration. Ten people are members of a coparcenary that is who have rights by birth in property. There are ten others including five females who are members of the family and who are entitled to maintenance and the joint family consists of those twenty persons. The property of the joint family is however owned only by the ten persons who constitute the coparcenary. The joint property of the joint family would according to my opinion consist of such coparcenary property because the five females and the five persons outside the fringe have no joint interest in that property.

Q. In your examination in chief you reiterated joint family property is property held in coparcenary ?—*A.* Yes.

Q. To-day I have given you one instance of what is called joint family property which is not held in coparcenary, viz. impartible property ?—*A.* That property has one of the incidents of coparcenary property.

Q. I have given you one instance of what is called joint family property which is not held in coparcenary. I have used the terms very carefully ?—*A.* I will not admit that.

Q. I think you said a little while ago that after a long series of cases where the question was in doubt in 1941 A.I.R. (P.C.) 120 Sir George Rankin decided that impartible property is joint family property but is not held in coparcenary ?—*A.* I would understand it to mean that it is not held in coparcenary with all the incidents of ordinary impartible coparcenary property.

Q. With the result therefore the term joint family property is used for property which is not held in coparcenary as is normally understood?—*A.* It is difficult to answer a question like that without knowing exactly what you mean by coparcenary. If you mean ordinary coparcenary property that is partible property of a joint family I agree. But if you say that in no sense has it any resemblance to coparcenary property I say no because there is a common feature between ordinary partible property and impartible property namely the incidents of survivorship.

Q. Would you call impartible property which has the incidents of survivorship as property held in coparcenary—Sir George Rankin says "No" ?—*A.* In these words Sir George Rankin in 1941 Privy Council: "it may be excessive to say there is no coparcenary but it is certain there is no joint possession." That is at page 126.

Q. Let us have your opinion. Would you say that is property held in coparcenary or not ?—*A.* I cannot answer that question in that form.

Q. Coming to the case of a sole surviving coparcener—*A* and *B* were coparceners entitled to joint family property *A* dies leaving *B* and female members of the family. *B* and the female members form the joint Hindu family ?—*A.* They do.

Q. It has now been established that when *B* dies the remaining female members may form the joint Hindu family ?—*A.* There is some difference of opinion among the High Courts but it is possible they may be members of a joint Hindu family.

Q. Some High Courts have definitely held so ?—*A.* Yes, there is a difference of opinion on that point.

Q. One High Court has held so—do you disagree ?—*A.* When a High Court has held it why should I take upon myself the responsibility of differing from that.

Q. In the hands of *B* what was joint family property becomes separate property in the hands of *B* ?—*A.* Yes, and has all the incidents of separate property.

Q. It has some of the incidents, it has certainly incidents which separate property never has ?—*A.* I should like to know what those incidents are.

Q. It has a potentiality of passing from *B* by right of survivorship ?—*A.* Here again to avoid confusion, the very confusion that has been referred to by the Federal Court, I should like to know by separate property whether it is meant self-acquired property or separate property.

Q. What was the joint property when *A* and *B* were alive in the hands of *B* has not all the incidents of separate property ? I gave one instance to show the distinction between that property and separate property ?—*A.* It has not all the incidents of self-acquired property but it has all the incidents which comes to one coparcener at a partition.

In the District Court, Colombo.

Original Respondent's Expert Evidence.

No. 19. K. Raja Aiyer, 3rd December 1948. Cross-examination, *continued.*

Q. In other words you make a distinction between self-acquired property and separate property ?—*A.* I did. The Federal Court has done it and I follow it.

Q. The separate property is a term which is not co-terminous with say self-acquired property ?—*A.* That is so.

Q. In fact one may use the term separate property in such a large sense as to include in it joint property ?—*A.* I would not do so and I do not think any Court has done so.

Q. What was joint property which gets into the hands of a sole surviving coparcener was held not to be separate property in one sense by the Federal Court ?—*A.* Yes.

Q. And excepting the statement of Mullah which I shall refer to have you got any other authority to say that the joint property which so gets into the hands of a sole surviving coparcener is separate property in all events ?—*A.* I did not say that it has not got the potentiality of becoming joint family property. On the other hand I have conceded this : character of separate property can only remain up to a point of time till a coparcener comes in as a result of birth or adoption. Therefore it has the character of becoming joint property and I refer to 20 Weekly Reporter 181.

Q. The character of becoming joint property is inherent in itself ?—*A.* Without any voluntary act of the owner. It is contained in the property which is ancestral.

Q. We are dealing with ancestral property ?—*A.* In ancestral property it is there.

Q. I narrowed down the illustration in order that the answers may be narrowed down ?—*A.* Yes.

Q. By using the term ancestral you mean property which was joint property in the hands of *A* and *B* but comes to the hands of *B* the sole surviving parcener that property has in itself a dominant character of becoming joint family property ?—*A.* It has.

Q. In that respect it is distinct from self-acquired property in the hands of *B* ?—*A.* It is distinct. Certainly.

Q. Distinction No. 2 between self-acquired property in the hands of *B* and what was joint property and which has come into the hands of *B* that women members of *B's* family can restrain *B* from committing waste in respect of what was joint family property and which had come into the hands of *B* as sole surviving coparcener ?—*A.* Who can restrain ?

Q. Female members of the family.—*A.* I do not know if they can restrain the sole surviving parcener from alienating property by means of sales or by means of gifts. I do not think they can restrain even from committing waste.

Q. The female members have you said a right of maintenance against the sole surviving coparcener which they can convert into an attachment on the property that has come into his hands as joint family property ? —*A.* They can convert it into a charge.

Q. Such a conversion into a charge can be made by female members of a family that consists of sole surviving coparceners and female members ?—*A.* For the matter of that I might say I think it has been held that even in the case of self-acquired property a wife can claim maintenance against her husband and seek to have it made a charge on the property.

Q. In respect of the female members of a family consisting of sole surviving coparcener and themselves the female members can create a charge in respect of what was coparcenary property ?—*A.* There is certainly a right possessed by a widow who is entitled to maintenance out of the joint family property to have a charge secured for her.

(Sgd.) . . . Addl. District Judge.

Court adjourned for lunch.

(Sgd.) . . . Addl. District Judge.

(*After lunch.*)

K. RAJA AIYER. Affirmed.

(The witness is shown Mayne at page 843 section 705.)

I agree with what is stated in that section. That would apply to a Hindu widow and the father with sons as coparceners or a Hindu widow or brother with another brother as sole surviving coparceners.

Q. In what manner does the widow sue to have it secured and made a specific charge on the joint family property ?—*A.* She files a suit for the specific purpose of declaring the right of maintenance, settling the amount of maintenance and making it a charge on portions of the family property.

Q. And if the person who was sued was the sole surviving coparcener the charge would be on the joint family property because he becomes the sole surviving coparcener ?—*A.* Yes.

Q. So that what was joint family property and had come into the hands of the sole surviving coparcener still retains the liability to have such a charge placed on it ?—*A.* Yes. The right to maintenance arises out of the fact that the person in possession has taken the share which the widow's husband during his lifetime possessed in the joint family property.

Q. Such a charge as is referred to in that section cannot be made over self-acquired property of the sole surviving coparcenary ?—*A.* It can even in respect of self-acquired property the wife can file a suit and have a charge secured against her husband. I think that is well established by the Madras High Court.

Q. Such a charge as is referred to in section 705 by a widow cannot be made against the sole surviving coparcener on his separate property ? —*A.* No. On the self-acquired property of a sole surviving coparcener the widows of a deceased coparcener have no claim.

In the District Court, Colombo.

Original Respondent's Expert Evidence.

No. 19. K. Raja Aiyer, 3rd December 1948. Cross-examination, *continued.*

Q. That would be another incidental difference between what was joint family property and self-acquired property that came into the hands of the sole surviving coparcener?—*A.* Yes. *Q.* Yet a third difference is that the ancestral house would be joint family property and the family ancestral house will be joint family property in the hands of the sole surviving coparcener?—*A.* It would belong to the same category as other property.

Q. From the ancestral house the sole surviving coparcener cannot eject his father's widow?—*A.* They have a right of residence? *Q.* A sole surviving coparcener cannot eject the deceased coparcener's widows?—*A.* Possibly not.

Q. If the sole surviving coparcener sells an ancestral house the purchaser cannot eject the widows of the deceased coparceners?—*A.* If the sole surviving coparcener sells the house in discharge of debts due by the family I do not know whether the same rule will hold good. I will have to look it up and tell you.

Q. According to you a sole surviving coparcener has the right to alienate property that was joint family property before he became sole surviving coparcener?—*A.* Yes.

Q. In other words he can alienate it at his will and pleasure?—*A.* Yes.

Q. If the sole surviving coparcener alienates the ancestral house not for the payment of family debts but for his satisfaction the purchaser cannot eject from that house the widows of the deceased coparcener?—*A.* He may not.

(Witness reads section 703 of Mayne.) I agree with this section as being correct.

It is correct to say that "it is now settled that a private sale by the sole surviving sole coparcener which is not for family necessity or an execution sale held for a decree debt not arising out of a family necessity will not entitle the purchaser to oust the widows of deceased coparceners including a widowed mother as the latter are entitled to reside in the family house till at any rate other adequate provision is made for their residence."

Q. In respect of this property which the sole surviving coparcener takes but which before he became sole surviving coparcener was joint family property there are certain restrictions on the power of alienation that he had?—*A.* Yes.

Q. If at the time he became sole surviving coparcener there are obligations attached to the property he takes it subject to those obligations?—*A.* Yes.

Q. Some of the obligations are the obligations towards the widows of deceased coparceners?—*A.* Yes and equally if there is a mortgage created over the property by the coparcener he takes it subject to that. That is why I said whatever obligations exist he takes it subject to those obligations.

In the District Court, Colombo.

Original Respondent's Expert Evidence.

No. 19.
K. Raja Aiyer, 3rd December 1948.
Cross-examination, *continued.*

Q. But there is a distinction between the two, a mortgage is a private act and the other is a right acquired by birth and marriage ?—*A.* I do not think there is any distinction on the class of charges it may be it arises out of statute or personal relationship or out of acts of the person all of them are liabilities which attach.

Q. In other words you call the right of the widows of deceased coparceners to live in the house obligations and liabilities on the property ?—*A.* Not on the property because even then according to the passage you have just now read other residences can be found. Residence is part of maintenance but having regard to the nature of that right and to the fact that they had been living for a long time in that house it is placed upon a slightly higher footing. The rule is not an absolute rule when a residence can be found, and in that event the family house is not sacrosanct.

Q. Supposing another residence cannot be found the widow of a deceased coparcener has the right to live in the ancestral house which has come into the hands of the sole surviving coparcener ?—*A.* Yes.

Q. Would you call that a real right ?—*A.* I would call it a real right.

Q. In law how would you define a real right ?—*A.* As a right on property. Right to a res.

Q. The right of a widow of a deceased coparcener to reside in the ancestral house is that a right in respect of the thing called the house ?—*A.* I would not call in a real right but if it had been held to be a right I would accept it. Speaking for myself I would not call it a real right.

Q. What was the joint property of two coparceners coming into the hands of a sole surviving coparcener has certain obligations and liabilities attached to it if there were widows of deceased coparceners ?—*A.* Yes.

Q. It has the potentiality of becoming coparcenary property in certain cases ?—*A.* Yes.

Q. In respect of these two matters it is different from self acquired property of the sole surviving coparcener ?—*A.* Yes.

Q. (Counsel refers to section 230 (7) of Mullah). Mullah does not treat all property held by a sole surviving coparcener which was joint property before he became sole surviving coparcener as separate property when there is a widow in existence who has the power to adopt ?—*A.* Yes.

Q. Mullah does not treat all property that comes into the hands of the sole surviving coparcener but which was joint family property before him, to be separate property but only treats a portion of it as separate property ?—*A.* I do not see where you get that. He says property held by a sole surviving coparcener when there is no widow in existence who has the power to adopt, that is all. He does not say separate property.

Q. That distinction which is contained in section 230 (7) of Mullah has found judicial sanction in the hands of Justice Varducharia in 1940 ?—*A.* I do not know what you mean by judicial sanction, it has been referred to by the Judge. I would not say with approval. He quotes it as an authority in A.I.R. 1945 Federal Court p. 25 at page 32. Justice Varduchariya was a judge of the Madras High Court and a practitioner in the Madras

In the District Court, Colombo.

Original Respondent's Expert Evidence.

No. 19. K. Raja Aiyer, 3rd December 1948. Cross-examination, *continued.*

Bar before he became a judge. Thereafter for a term of years he was judge of the Federal Court when that Court was first constituted. He has now retired. He was a judge very well conversant with Hindu Law and the Mithakshara school of law.

Q. He was dealing in this case with the very property that this court is dealing with ?—*A.* Yes.

Q. He says " in cases governed by the Mithakshara school of Hindu law the expression separate property has been used in a limited sense to denote what is known as self acquired property " and there he refers to Mullah para. 230 ?—*A.* Yes.

(Witness reads page 32). *Q.* I put it to you that the judge in that judgment is dealing with the very case that we are considering now ?—*A.* Yes, it was not self acquired property.

The judge is considering section 230 (7) of Mullah and he refers to item 6 as well.

Q. But the particular limitation that the judge has to consider for decision of that case is item 7 ?—*A.* I do not agree with your reading of it.

Q. Do you agree that the judge is dealing with the case of sole surviving coparcener who had widows with the power to adopt ?—*A.* Yes he was.

Q. Do you agree that item 7 of Mullah section 230 deals with the sole surviving coparceners with widows in existence who had the power to adopt ?—*A.* Yes.

Q. According to Mullah the property which was in the hands of Arunachalam Sr. in this case does not fall within the category of separate property enumerated in section 230 ? According to Mullah it is not separate property ?—*A.* I have read what Mullah says but I said that unless and until the widows exercised the power it will be separate property (Shown Mayne section 285). Mayne gives four categories of separate property. Category 2 is separate property of which there is no doubt. Category 3 Mayne says " property which a man takes at a partition will be his separate property as regards those from whom he has severed but will be ancestral property as regards his own issue."

Q. Therefore what a man takes at a partition is called separate property in a relative sense ?—*A.* I do not understand the expression relative sense.

Q. That is it is separate from those who have divided off and gone away but not separate in relation to the man who takes the property and has descendants ? Supposing he has no issue, that he is a bachelor ?—*A.* In the case of a person who has children it is not separate property so far as regards his children are concerned but in the case of a person who separates from the family and has no children until he gets children it is his separate property.

Q. I put it to you that that sentence in Mayne does not support your last statement. He has used separate property in a relative sense ?—*A.* As regards other people when they come into existence . . .

Q. Mayne does not classify what a man takes at a partition as absolutely separate property for all purposes?—*A.* How can he because it is not. *Q.* Therefore I put it to you that it is not separate even at the moment of partition when a man has no son?—*A.* When a man has no son it is separate property.

Q. I put it to you that Mayne does not say that?—*A.* He says "as regards his own issue" and I take that to mean that he had issue at that time. Mayne says "it will be ancestral property as regards his own issue" and that means he has issue.

Q. The phrase relates to his having issue as well as his getting issue hereafter, the language is wide enough to catch up both?—*A.* I cannot read it like that knowing Hindu law.

Q. What a man takes at a partition is not separate property if he has a son?—*A.* Yes. It is not separate property.

Q. You say it is separate property if he has no son until he gets a son?—*A.* Yes. It is separate property as regards those from whom he has separated.

Q. As regards those from whom he has separated it is always separate at all points of time?—*A.* Yes.

Q. Therefore there is a time limitation as regards the issue, if there is issue it is ancestral and if there is no issue to pass it to it is separate until the issue comes?—*A.* Yes.

Q. When a man takes at a partition he is liable to maintenance charges of his wife?—*A.* Not of his wife.

Q. Of his father's wife?—*A.* Yes.

Q. To the residence charge of his father's wife to the ancestral house?—*A.* Yes.

Q. So in respect of those two questions instances when a man takes at a partition it is different from what a man has got by self acquisition?—*A.* Yes.

Q. And there is the potentiality of it becoming a coparcenary property as soon as a son is born?—*A.* Yes. Self acquired property has also a potentiality it retains the character of self acquired property so long as he keeps it in his hands he might throw it into the joint family and he might take it on descent and become joint family property.

Q. Could you say by a voluntary act or involuntary act?—*A.* It is an involuntary act when the property is taken by his son it becomes in their hands joint family property. The case of throwing it in is a voluntary act.

Q. Let us take the case of sole surviving coparcener disposing of property which was joint family property which has got into his hands as sole surviving coparcener. Supposing Blackacre was joint family property in the hands of *A* and *B* and has now got into the hands of *B* as sole surviving coparcener. *B* sells it for a lac of rupees and keeps the money in his safe. A son is born to *B*. Will he take an interest in the lac of rupees?—*A.* Of course he will.

In the District Court, Colombo.

Original Respondent's Expert Evidence.

No. 19. K. Raja Aiyer, 3rd December 1948. Cross-examination, *continued.*

Q. In the same illustration *B* owns Whiteacre which is self acquired property by him. He sells it for a lac and keeps that money in the safe and a son is born to him will he take an interest in it ?—*A.* Of course no.

Q. The illustration I have of Blackacre which was owned by *A* and *B* as joint family property in the hands of *B* as sole surviving coparcener is sold by *B* to an Englishman in Madras, the money is with *B* and you have said what happens to the proceeds of sale, in the hands of the Englishman that property can never be joint family property or become joint family property ?—*A.* Yes that is so.

Q. If it had not been sold the property would have the quality of becoming coparcenary property on the birth of a son ?—*A.* Yes.

Q. So until the sale of Blackacre by *B* the final incident of it ever becoming joint property is gone ?—*A.* Yes.

Q. You were giving evidence in this court in another case and you gave this as the characteristic of separate property that " sons have no interest in it by birth " and at the foot of that page you have said " By separate property I mean property which belongs to him in his own right without the interests of anybody else attaching to it by birth in which there are no registered rights of other persons " ?—*A.* I was referring there to self-acquired property.

Q. Have you used the word separate property in both these sentences ? —*A.* Yes, because the question that arose was as between self-acquired property and joint property. I said that sons had no interest in it by birth and also I said if it is separate property he can dispose it in his life etc. the earlier paragraph makes it clear. That evidence was given on a question between self-acquired property and joint property.

Q. In those two passages you attempted to define " separate property " ?—*A.* There was no question of a definition.

Q. You have not referred there to really self-acquired property but separate property in the language used ?—*A.* Yes.

Q. But you say you must have referred to self-acquired property ?— *A.* Yes. I say so because you should read the context, that whole page.

Q. The property taken by the sole surviving coparcener that is Arunachalam, Sr., in this case with widows in existence who had powers to adopt has never been called separate property in any judgment of the court ?—*A.* I think I have referred to a judgment where it was. (Witness calls for 20 Weekly Reporter.) In this case at page 191 it called separate property.

Q. This deals with property which belonged to one member as self-acquired property and not with what was joint property which has got into the hands of a sole surviving coparcener ?—*A.* It is so—page 198.

Q. They are dealing with the history of it, it does not deal with property that has descended to a sole surviving coparcener from ancestral property ? —*A.* I do not agree.

Q. I still maintain that the passage you referred to does not deal with ancestral property in the hands of a sole surviving coparcener ?—*A.* It does.

Q. Any other authority ?—*A.* 29 Madras. I should also like to refer to 1937 P.C. A.I.R. 239.

Q. That case held that the income of the sole surviving coparcener is his sole income ?—*A.* Yes.

Q. The case in 1937 P.C. 239 was an income tax case ?—*A.* Yes.

Q. I am conceding that the gist of those authorities is that the income of a sole surviving coparcener is his sole income but I am not conceding that the property is his own property and I am asking for authority that the property is his own separate property ?—*A.* 52 Madras 398.

Further hearing on 6th.

(Intld.) . . . Addl. District Judge.

D.C. 37/T Special 6th December, 1948.

6th December 1948.

Appearances as before.

Corrections in previous day's proceedings are made.

K. RAJA AIYER—Affirmed.

Cross-examination (Continued):

Q. We differed on the last date regarding the facts of the case reported in 20 Weekly Reports at page 189. It was my contention that it did not deal with the case of a sole surviving coparcener. The question for decision in the case was whether an encumbrance created by the father when he was joined with his son was binding on the son after the death of the father ?—*A.* Yes.

Q. The decision in the case was that it was not binding on the son in the circumstances of that case because it was not for a family necessity ? —*A.* Yes.

Q. At page 192 one but the last paragraph says this: " It appears to me then on the facts with which we have to deal that we must take the property which is the subject of the suit to have been the ancestral property which descended with the joint family in the ordinary way subject to the effect of an established custom in regard to its partibility amongst the existing joint members of the family. And in this view of the facts it is evident that the father had no power against his son who was unquestionably joined with him as regards this property to alienate or encumber the estate excepting upon a justification of family necessity. The result to my mind is that the Plaintiff is entitled to have it declared that the two deeds had the effect of placing an encumbrance on the estate and that the Plaintiff was entitled to have possession of the property at the time of his father's death free from that encumbrance ?—*A.* Yes.

In the District Court, Colombo.

Original Respondent's Expert Evidence.

No. 19. K. Raja Aiyer, 6th December 1948, Cross-examination. *continued.*

Q. That is the decision in that case. Therefore I put it to you that the case was not dealing with the property in the hands of a sole surviving coparcener at any point of time ?—*A.* On the facts it was not a case of the sole surviving coparcener but the observations made on page 191 which I have referred to make it quite clear that in the course of that judgment their Lordships were making observations as to what was separate property and what was joint property and there is this statement at page 191 : " Property is separate when it belongs only to one member of a joint family alone and not to the others jointly with him."

Q. That statement there would be *obiter dictum* ?—*A.* It is not *obiter dictum.*

Q. The property that the Court was dealing with in that case was at no material point of time the property of one individual ?—*A.* No.

Q. It was not necessary to consider the circumstances of a property held by any one man alone at any particular time to come to that decision ?—*A.* They had to consider it and that is why they considered it.

Q. They were dealing with property which was held jointly by father and son at the time of the encumbrance ?—*A.* They were dealing with the incidents of joint property and separate property at a time when the law was uncertain and required elucidation and in the course of that judgment they discussed the incidents of joint family and separate property and that is why I say it is not *obiter.*

Q. But in point of fact the property was at all material stages joint property ?—*A.* I have said so.

Q. I want you to refer to every authority that you rely on for the statement that the property in the hands of a sole surviving coparcener which was ancestral in origin is called separate property ?—*A.* I do not know whether it is called separate property or not but every one of the authorities which I have referred to makes it clear that it is his property and I regard the position as unarguable after the decision of the Privy Council in 1937 A.I.R. (P.C.) 36 and more so after the later decision in the same volume reported at page 239 in which the decision of the Bombay High Court in 1935 Bombay 412 was reserved.

Q. A.I.R. 1937 (P.C.) page 36 is an income tax case?—*A.* I do not regard the fact that it is an income tax case makes any difference because they are considering Hindu Law. It is an income tax case.

Q. The question at issue was whether the income was the income of an individual or the income of more than one person ?—*A.* Yes.

Q. The real decision in the case was that the income was the income of the individual—I am conceding that the income of a sole surviving coparcener is his income ?—*A.* Their Lordships decided that and something more.

Q. The result of that case was, that their Lordships decided that question ?—*A.* Yes.

Q. They have decided the same point in 1941 Privy Council 120 ?—*A.* Every income tax case can only deal with income.

In the District Court, Colombo.

Original Respondent's Expert Evidence.

No. 19.
K. Raja Aiyer, 6th December 1948.
Cross-examination, *continued.*

Q. I have already questioned you and you have admitted that in the 1941 Privy Council page 120 the distinction between income of an individual and ownership of property not being in the individual did arise ?—*A.* It did arise.

Q. The 1937 A.I.R. Privy Council 239 is also an income tax case and the question that was decided was that the income received by right of survivorship by the sole surviving male member of a Hindu family can be taxed as his own individual income for the purpose of assessing under section 55 of the Act. Now in point of fact the income in the hands of Arunachalam Chettiar, Senior, in this particular case has been held by the Madras High Court to be the income of an individual ?—*A.* Yes.

Q. While at the same time the property held by Arunachalam Chettiar, Senior, prior to the death has been held not to be separate property under the Hindu Women's Right to Property Act ?—*A.* Yes.

Q. I want to just put a few questions as to the Hindu Women's Right to Property Act ? The Act is at page 682, Appendix II. It came into force on 14.4.1937. Section 3 sub-section 1 of the Main Act has the following portion referring to Mithakshara family " When a Hindu governed by any other school of Hindu Law or by customary law dies leaving several properties his widow or if there is more than one widow all his widows together shall subject to the provisions of section 3 shall be entitled . . . to the same share as a son." That applies to the Mithakshara school ?—*A.* Yes.

Q. " Provided that the widow of a predeceased son shall inherit in like manner as a son if there is no son surviving such predeceased son and shall inherit in like manner as a son's son if there is a surviving son or son's son of such predeceased son " ?—*A.* Yes.

Q. Section 3 sub-section 2 refers to an interest in a joint family property ?—*A.* Yes.

Q. And relates to the Mithakshara school ?—*A.* Yes.

Q. And states how the widow of a Hindu dying will take in respect of the property of which the dying man had an interest in the joint family property ?—*A.* Yes.

Q. The term separate property that is used in section 3 sub-section 1 has no qualifying words ?—*A.* I do not understand the question.

Q. It does not qualify separate property by any other words ?—*A.* No.

Q. The widow of Arunachalam, Jr., in this particular case claimed under section 3, sub-section 1 of the proviso a share of the estate left by Arunachalam, Snr., on the footing that the property left by Arunachalam, Senior, was separate property within the meaning of the Act ?—*A.* Yes.

Q. The High Court decided for the widow of Arunachalam Chettiar on the footing that the property left by Arunachalam Chettiar, Senior, was separate property within the meaning of the Act ?—*A.* Yes.

Q. The Federal Court decided that the property left by Arunachalam Senior, was not separate property within the meaning of the Act ?—*A.* Yes.

In the District Court, Colombo.

Original Respondent's Expert Evidence.

No. 19.
K. Raja Aiyer, 6th December 1948. Cross-examination, *continued.*

Q. You made reference the other day to a case of sole surviving coparcener being adopted into another family takes away with him into the new family the ancestral property that he held as sole surviving coparcener of his original family ?—*A.* Yes.

Q. Suppose *A* was the sole surviving coparcener of his own original family and he got adopted into another family what you say is that he would take away his original family property with him into the new family ?—*A.* He will not take it as joint family property to the new family. He will take it as his own property.

Q. Would *A's* mother after *A* had gone be entitled to adopt another son for her deceased husband because she had lost her son ?—*A.* Yes.

Q. And on *A's* mother adopting it would have to be on the basis that *A* had ceased to exist in relation to his original family ?—*A.* Yes.

Q. Therefore *A's* mother can adopt another son ?—*A.* Yes.

Q. On adoption by *A's* mother of a son what would happen to the joint family property which went to *A* ?—*A.* The question has not been decided but having regard to the latest decision of the Privy Council the answer has to be the adopted son may take it.

Q. That is the property that had gone with *A* ?—*A.* Yes.

(Sgd.) . . . Addtl. District Judge.

(*After lunch.*)

K. RAJA AIYER. Affirmed.

Cross-examination (*continued*).

(Counsel refers to case reported in 1948 A.I.R. P.C. 166.)

Q. This was a case of two widows *A* and *B* of two coparceners of whom *A* had succeeded to the property of the family on the death of her son who was the last surviving coparcener. Some years later *A* adopted a son and 28 years later the other widow adopted a son and *B's* adopted son brought an action for partition against *A's* adopted son and the Court in India held against the right to demand a partition and *A's* adopted son succeeded to the property ?—*A.* I believe that case is as you have stated it. I remember the case. The Privy Council reversed the decree of the lower Court.

Q. They followed the decision in 1943 P.C. 196 ?—*A.* Yes.

Q. You have stated earlier in your evidence about the rights of alienation of a coparcener in respect of his interests in the coparcenary property, I will put to you a few illustrations and get your opinion on them. If *A* and *B* were coparceners of coparcenary property and *A* sold his interests and brought the proceeds of sale and kept them with the family assets would the proceeds of sale be joint family property ?— *A.* On the facts stated by you the proceeds will be joint family property.

Q. *A* and *B* were coparceners and the coparcenary property consisted of many lands one of them Blackacre if *A* sells half of Blackacre does that half vest in the vendee ?—*A.* No.

In the District Court, Colombo.

Original Respondent's Expert Evidence.

No. 19. K. Raja Aiyer, 6th December 1948, Cross-examination, *continued.*

To Court :

Q. You emphasised the fact that when *A* sold the proceeds were kept with the family Assets ?—*A.* Yes.

Q. Would it have made any difference if he did not keep it with the family assets ? He is bound to keep it with the family assets, if he did not it would not form part of the joint family because he deals with his share ?—*A.* In Madras *A* has the right to sell his share for value and the value does not step into the place of the original estate. If he sells as his own it will be taken out as if he had taken a portion of the property. It is never gifted, that is prohibited as well as disposing by will.

Q. If you can sell and keep the proceeds you might as well gift, what is the principle underlying it ?—*A.* He cannot gift it because in strict theory and according to the original law, not sell even. The right to sell for value was later developed and has been settled in certain provinces and recognised in those provinces. Originally the principle was that the property could be sold only for family necessities here we are dealing with the right of a coparcener to sell his share.

Q. The vendee exercises his right in respect of what he bought by bringing a suit for partition ?—*A.* Yes.

Q. Bringing a partition suit and getting allotted to him what the vendor would have been allotted had he brought the suit for partition ? —*A.* Yes.

Q. That is how the Courts worked out the right ?—*A.* What the Courts said was that they were working it in equity between the vendee and the rest of the family ; the vendee has paid money and he has to be recompensed as much as possible. It is a conflict between two legal rights the right of the family to keep it intact and the other a legal right of the purchaser who has purchased his share in the property.

Q. Originally it was not a legal right at all because the vendor had no right to sell ?—*A.* Yes.

Q. That is where the courts intervened on behalf of the man who had no legal right but who had parted with his money ?—*A.* First of all as I said the right was there of the execution purchaser to seize the share of the coparcener. This was recognised and has always been recognised even in provinces where the right of alienation was not recognised. Then as a corollary to that of the execution purchaser there could equally be a transfer for value by a coparcener. When that right was recognised the Courts had to give effect to that right and it gave effect to that by working out the purchaser's rights in a suit for partition and adjustment of equities. In fact what happens in a regular suit for partition itself is an adjustment of equities between the coparceners and similarly the equity is worked out in favour of the purchaser by compelling him to bring a suit for partition in which his right as alienating coparcener and the rights of other members of the joint family would be adjusted. The execution creditor's rights take effect on the coparcenary after attachment before that if the judgment debtor dies the execution creditor is left without remedy as regards the coparcenary property.

In the District Court, Colombo.

Original Respondent's Expert Evidence.

No. 19. K. Raja Aiyer, 6th December 1948. Cross-examination, *continued.*

Q. For certain purposes the joint family has been treated as if it were a legal person, for example in A.I.R. 1934 Allahabad 553 they considered a joint family to be a juristic person on whose behalf contracts are entered into by the head of the family as representing the family ? —*A.* Contracts are entered into by the head of the family as representing the family but the family is not a legal entity.

Q. On that point the Judge of the Allahabad court seems to differ from you, the judge says " a joint Hindu family has always been treated as a juristic person on whose behalf contracts can be entered into and enforced " (at page 556) ?—*A.* That observation has to be read in its context that is where an agent appointed by the Kartha of the joint family ceased to be the agent on the death of the Kartha.

Q. The Judge holds he does not cease to be the agent on the death of the Kartha ?—*A.* Yes because he is regarded as the agent of the joint family and the joint family continues.

Q. And the joint family was functioning through a Kartha as its representative ?—*A.* Yes.

Q. In that connection courts in India draw a distinction between the Kartha as representative of the joint family and as agent of the joint family ?—*A.* He is the representative of the joint family.

Q. A Joint family can sue and be sued in the name of the Kartha ? —*A.* Yes.

Q. In India a partner can sue and be sued in the name of the firm ? —*A.* Yes that is under order 30 of the Civil Procedure Code of 1908.

Q. (Counsel reads Mullah at page 284 section 251.)

" Where the manager of a joint family having power to do so entered into a transaction in his own name on behalf of the family whether it be a contract or sale he can sue or be sued in respect of that transaction and the other coparceners are not necessary parties to that suit" ?—*A.* I agree with that but the other thing which I have stated is also stated on page 285 in that same section " In a suit by the manager where it is necessary in order to safeguard the interests of the defendants . . . the other members of the family the defendants may apply to bring them in."

Q. In a partnership of persons *A*, *B* and *C*, if *A* has signed a promissory note by putting his name only he alone can be sued ?—*A.* Yes.

Q. But if he has put the firm name it is equivalent to his having signed the name of all the members of the firm ?—*A.* Yes.

Q. In the case of that partnership a partner who signed on behalf of the firm is taken to be the agent of the other partners ?—*A.* Yes.

Q. The Kartha of a joint family when he signs a note in respect of a family transaction or necessity signs the note not as agent of the family but as principal ?—*A.* As representing the family.

Q. He is as if it were the executive officer of the family ?—*A.* Yes.

(Counsel refers to A.I.R. 1922 Alla. 116.) I agree with that passage as I said he is the representative of the family.

Q. A similar decision is contained in A.I.R. 1937 Patna page 455 at 456—(Counsel reads the head note from the words " The managing member of a joint Hindu family can in that capacity execute notes etc. up to the words " is included in the term a person "). I agree with that. 1922 A.I.R. Allahabad is cited in that case.

Q. You were saying that the son Arunachalam had a share in the property of the joint family of which he and his father were coparceners and you cited Sarvadhikari. The same book at page 736 has the following passage : " Thus where joint property of an undivided family is enjoyed in its entirety by the whole family, and not in separate shares by the members, one member has not such an interest therein as is capable of being inherited by his heirs. The members of a joint family have a right to participate in every portion of the joint property, but inasmuch as he could not point, during his lifetime, to a particular share which was exclusively his own, he had no property, properly speaking, which his heirs might claim as their heritage." Lord Westbury's *dictum* in *Appuvi's* case is still being followed in the Privy Council as being the true principle ? —*A.* That is absolutely correct.

Q. In 1941 A.I.R. P.C. 48 at page 51 Sir George Rankin says this : " Even a member of the Kitakshara family may sometimes be forgiven for speaking of ' his one third ' share instead of using the more accurate but more elaborate expression the share which in a partition would take place today would be 1/3rd " ?—*A.* That is a correct statement.

Q. With the result when speaking of a fractional share of the coparcenary in the joint family property that is an inaccurate term ?—*A.* I do not agree with you, I say it is perfectly accurate. It is a share in the joint family property. If a coparcener does not possess a share I do not know who does.

Q. Thus one coparcener out of many coparceners cannot sue for his share of the profits of the joint family estate while the family is in a state of non division ?—*A.* Of course not.

Q. Because it is not a divided share ?—*A.* Because he has not partitioned it.

Q. I will put to you the reason of the judge where this point came up for decision in 14 Calcutta 493 " a member of a joint Hindu family cannot sue for a share of the profits of the joint family estate as he has no definite share until partition . . . and then he is entitled to an accounting ?—*A.* That is exactly what I said because he has not partitioned he cannot get it.

Q. Because he has not partition he has no definite share of the property or of the profits ?—*A.* I have already answered the question.

Q. Supposing *A* and *B* two English residing in Madras bought Blackacre between them. *B* was in possession and took the mesne profits could *A* sue for half share of the profits of Blackacre from *B* ?—*A.* Yes.

In the District Court, Colombo.

Original Respondent's Expert Evidence.

No. 19. K. Raja Aiyer, 6th December 1948. Cross-examination, *continued.*

Q. But if they were Hindus then *A* cannot sue *B* ?—*A.* Yes, *A* cannot sue if they were Hindus, and members of a joint family. If they were Hindus but were not members of a joint Hindu family, they can sue. It is an incident of joint family property but that does not mean that *A* has no share and *B* has no share.

Q. *A* the father of the joint Hindu family has three sons any one son can sue for a partition of the joint family property ?—*A.* Yes.

Q. If the sons were minors and had separate property which they had inherited from other sources a guardian can be appointed over the separate property in the courts ?—*A.* Yes. 10

Q. But in respect of what you call share in the joint family property no guardian can be appointed ?—*A.* No. In respect of minors the courts have jurisdiction to appoint what is called guardians of the property.

Q. In fact in the 20 Weekly Reported case you cited and which was referred to there is another case on page 194 where occurs the following passage by the same Judge Phear who delivered the judgment at page 189. Counsel reads from the words " It is now by reason of the Full Bench decision " up to the words " by the Kartha alone " ?—*A.* I see that paragraph. That is quite consistent. According to that school of law an individual coparcener cannot alienate. That is a Bengal case governed 20 by Methala School. At page 183 of the same volume it says " belongs to the school of Hindu law in which alienation was not permitted " and I do not think it is even now permitted, in some provinces. In some provinces alienation by a coparcener of his share is permitted as in Madras. In other provinces it is not permitted and in the case they are dealing with is a case where alienation was not permitted. The province I am referring to is Calcutta. In that case given on page 183 parties belonged to the Methila School of law. The Midura school is a sub school of the Mitakshara school.

Q. It is a sub school within the larger school of Mitakshara ?—*A.* Yes. 30

At page 193 column 2 there is the passage referred to " Members of the family as a joint Hindu family living and enjoying the property according to the terms of Mitakshara law." (Witness refers to Mayne section 380.) There reference is made to that very case. Those observations were made in connection with the question in a Bengal school where no coparcener can alienate his share.

Q. The case that I am referring to that is the 20 Weekly Rep. 192 decided that the father could not encumber property because there was no family necessity ?—*A.* Yes.

Q. Even in the Calcutta school the father could alienate and encumber 40 property for family necessity ?—*A.* Yes he can.

Q. The question of any difference in the right of alienation under the Mathila school did not enter for the consideration of the judge when he pronounced the opinion which I quoted at page 192 ?—*A.* Of course it did, there is no doubt about it.

Q. The passage at page 194 which I have read to you is a general statement applying to the whole Mitakshara school ?—*A.* It is not.

In the District Court, Colombo.

Original Respondent's Expert Evidence.

No. 19.
K. Raja Aiyer, 6th December 1948.
Cross-examination, *continued.*

Q. That passage which I quoted at page 194, 20 Weekly Rep. shows that under the school that that judge was referring to no member of the family has a separate proprietary right which he can alienate or encumber ?—*A.* I do not understand the Judge saying any such thing. I take my law from 1937 Privy Council and from 53 Madras as the latest exposition of the law upon the subject and properly understood the 20 Weekly Reporter case does not lay down any different thing. The observations were made in connection with the right of a coparcener to alienate his property or his share which according to the Bengal school he had no right.

Q. He had no right in the Bengal school to do that because he had no share ?—*A.* He had a share but he cannot alienate it.

Q. In spite of the judge's statement that he had no share ?—*A.* He had no share which he could alienate that is what the judge says.

Q. In the case before us the son Arunachalam could not have made a will affecting his share of the joint family property ?—*A.* No.

Q. He left no estate which can be the subject of administration ?—*A.* No.

Q. In fact that question was decided in A.I.R. 1939 Madras 562 ?—*A.* Yes.

Q. In fact no letters of administration could have been taken out for that estate left by the son ?—*A.* Yes.

Q. In 1943 A.I.R. (P.C.) 196 at page 199 Column 2 this is said: "A female member of the family does not represent" etc. The case referred to there is *Appuvi's* case.

Q. The 1936 A.I.R. (P.C.) 95 case is a case which dealt with a case where a son died without leaving a widow or a son as the son who died was the sole surviving coparcener his mother who was a widow was held entitled to an adopted son to her deceased husband and the adopted son got the property ?—*A.* Yes, that is so.

Q. If the widow has authority to adopt and she adopts a son and that is found to be invalid because she had not gone through the proper formalities she can adopt again ?—*A.* Yes.

Q. She has to go through the formalities again ?—*A.* Yes.

Q. When Arunachalam, Sr.'s widow could have adopted a son, the adoption by Arunachalam, Jr.'s widow of a son to her husband would be unaffected by the adoption of Arunachalam, Sr.'s widow ?—*A.* Yes.

Q. Under section 14 of the Indian Income Tax Act the widow is exempt from taxation ?—*A.* Yes.

Q. By a Full Bench of the Madras Court it was decided in A.I.R. 1932 Madras 753 that a widow who gets maintenance from the sole surviving coparcener was entitled to the same exemption ?—*A.* Yes.

In the District Court, Colombo.

Original Respondent's Expert Evidence.

No. 19. K. Raja Aiyer, 6th December 1948, Cross-examination, *continued.*

Q. The second position that you referred to as decided in that case was only a contention considered by the judge and not a matter which was decided on page 734 ?—*A.* It is a matter of decision. Please read the last paragraph.

Q. The only question in that case was the question of maintenance paid to a widow and two other questions arose out of that matter but only one question was answered ?—*A.* Nevertheless I say they dealt with the other question as a matter for decision and they decided it.

Q. Sakasastri's book on Hindu law is an old book. Book 5 page 123 gives the translation of a sanscrit text. (Counsel reads the passage.) This is the ancient conception of property acquired by the father. He is referring there to acquisition by the father in relation to unborn children.

(Counsel refers to I. L.R. 5 Bombay 48 P.C. Reads from the words " The doctrine of alienability " up to the words " should not be extended in the above matter beyond the decided cases.")

Q. Would it be correct to say that ?—*A.* That is so. That is a decision of the Privy Council.

Q. The ancient Hindu law did not allow alienation of coparcenary property by any member of the coparcenary ?—*A.* No.

Q. The decisions have recognised alienation to the extent that the decisions go ?—*A.* Yes.

Re-examination.

Further hearing tomorrow.

(Sgd.) . . . District Judge.

7th December 1948.

D.C. 37/T Special 7th December, 1948.

Appearances as before.

Corrections in previous day's proceedings are made.

K. RAJA AIYER—Affirmed.

Re-examination.

Re-examination.

Q. Mr. Chelvanayagam in the course of his cross-examination referred you to the Privy Council decision in A.I.R. 1941 P.C. 120 as a case where property could be joint property though not held in coparcenary ?—*A.* Yes.

Q. That case referred to a case of impartible property ?—*A.* Yes, it relates to an impartible estate.

Q. Would that case and other cases relating to impartible estates be applicable to the case that we have to consider in these two appeals ?—*A.* There are passages in the 1941 Privy Council case which deal with

partible property. Similarly also in other cases dealing with impartible property there might be observations which deal with partible property. I would regard the observations made with regard to partible property in the 1941 Privy Council as well as in other similar cases relating to impartible estates as being of considerable relevancy and weight in the consideration of questions which arise in this case. But my view is that any analogy sought to be drawn from incidents relating to impartible estates would be as misleading as the analogy sought to be drawn from a corporation. The impartible estate is a creature of custom and requires special consideration as even a bare perusal of the relevant chapters either in Mayne's Hindu Law or Mullah's Hindu Law would show.

Q. That case although Mr. Chelvanayagam relied on it is also an income tax case ?—*A.* Yes.

Q. Even in the 1941 case the main question that arose was a question of income tax ?—*A.* The 1941 case also related to income tax but as I told Mr. Chelvanayagam there is no magic or peculiarity relating to income tax cases because in every one of these cases which have come up for discussion either in the course of Mr. Bhashyam's evidence or my evidence though the cases themselves relate to the Income Tax Act, they have been decided statedly with reference to the principles of Hindu Law.

Q. Would it be correct to say that the principles as enunciated in those cases would be extremely relevant to the present case ?—*A.* I would regard them as extremely relevant because the Bombay High Court in 1935 A.I.R. (Bombay) purported to decide the Income Tax case on what it thought to be fundamental principles of Hindu Law and that decision was reversed by the Privy Council in A.I.R. 1937 Privy Council 239. The earlier case in 1937 Privy Council 36 also dealt with the question with reference to the principles of Hindu Law.

Q. Would it be correct to say that in the A.I.R. 1937 Privy Council case page 36 the decision that the income was the separate income of the assessee proceeded on the basis that the property was the separate property of the assessee he being a sole surviving coparcener ?—*A.* The expressed decision in that case was that the assessee's personal law regarded him as owner of the property and income therefrom as his income and therefore it is chargeable to income tax as his, as the income of an individual. I wish to add that the same case also decides in one trenchant sentence that so far as property is concerned there is no ownership in the family as distinct from the individual. The sentence which I have in mind runs thus " It does not follow that in the eye of the Hindu Law it belongs save in certain circumstances to the family as distinct from the individual." In 1935 Bombay the Bombay High Court referred to four circumstances (1) the right of the widow of a deceased coparcener to maintenance (2) the right to residence (3) the right to interdict alienation and (4) the possibility of adoption and the consequent introduction of a coparcener as constituting circumstances which would make the property joint family property according to the fundamental principles of Hindu Law. This decision of the Bombay High Court was adverted to and criticised by the Privy Council in the earlier decision in A.I.R. 1937 P.C. 36, and the decision itself was expressly overruled in the case reported at page 239.

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Q. In the 1937 Privy Council reported at page 36 at page 38 there is this passage in the second column on that page " By reason of its origin a man's property may be liable to be divested solely or in part on the happening of a particular event." There the Privy Council was dealing with what may happen on adoption ; what effect adoption would have on the property not on the income ?—*A.* In the passage which you read the reference is expressly to property being divested.

Q. There they are referring to the property ; they consider the nature of the property and then they consider the nature of the income ?—*A.* Yes.

Q. If they were concerned only with the question of income quite apart from the source of that income all these questions of the nature of property would not have arisen ?—*A.* I do not know whether it was possible to decide it or not but the fact remains they have decided the question of income on the basis of ownership of property.

Q. It was also put to you in cross-examination that property in the hands of a sole surviving coparcener being property, which, in the event of an adoption being made, would be converted into coparcenary property it is therefore different from self-acquired property in the hands of a coparcener—the suggestion being that self-acquired property can never become joint family or coparcenary property. Do you agree with that ?—*A.* My recollection is even in answer to Mr. Chelvanayagam's questions I have stated that self-acquired property has equally the potentiality of becoming joint family property either by being blended with joint family and thrown into the common structure or by its taking a descent when it again becomes joint family property.

Q. If the father has self-acquired property in his hands then the property goes to his sons as ancestral or joint family property ?—*A.* That is so.

Q. Take the case of property which a member obtains on partition of the joint family property. Do you see any difference between that property and the property in the hands of a sole surviving coparcener ?—*A.* I see no difference between the two and the incidents are alike.

Q. Would in each case the property be separate property in the hands of either the sole surviving coparcener or the remaining member ?—*A.* It would and I have said that Mayne's book stated the law correctly and classifies the two properties correctly, viz. the property obtained on partition and property obtained as a result of the other coparceners dying and one coparcener alone remaining as the sole surviving coparcener. What applies to the one applies to the other.

Q. While that property is in the hands of such a person notwithstanding it, it is subject to the same potentiality of being coparcenary property ?—*A.* The potentiality is there and is the same. That potentiality is there. The liability for maintenance may be there.

Q. But still would you consider till those events should happen which are mentioned in Mayne that property to be the separate property of the person holding it ?—*A.* It is separate property and will devolve as separate property after his death, and I put the case of the bachelor as completely illustrating the position.

Q. How ?—*A.* A bachelor who obtains property on partition completely illustrates the position.

Q. Even if his mother is alive and entitled to maintenance ?—*A.* Yes. The law is that on partition of the entire family that liability will be fastened to his share of the property and that therefore in his hands the property will be subject to the liability for maintenance and it is also subject to the potentiality of his marrying and begetting children and thereby the property becoming joint family property.

Q. Till those events take place it is his own property ?—*A.* I have said so.

Q. Then as regards maintenance you mentioned, I think, in cross-examination that the right of a widow, a female member to maintenance can in certain cases be made a charge even on self-acquired property and you said there were certain cases ?—*A.* I think the decision is in 1929 A.I.R. Madras at page 47.

Q. I think what was held in that case was there was no difference between the right of a widow to maintenance and the right of a wife to maintenance while the husband was alive ?—*A.* Yes. The objection there taken was that the right of a wife is only a right against the husband personally and there can be no charge given against the family property and this contention was negatived.

Q. Even a personal obligation can be made the subject of a charge on self acquired property ?—*A.* I do not see any difficulty in its being done perhaps where the Court thinks that it is a proper case in which such a charge should be made.

Q. Notwithstanding that the self acquired property is therefore subject to such a charge being fixed to it the man who owns the self acquired property continues to be the owner of that property ?—*A.* Yes.

Q. His rights as owner are not affected ?—*A.* No.

Q. Take the case a step further, a man owning coparcenary property and where there is a widow entitled to maintenance ; suppose he donates it, in the hands of the donee that property may be liable to a charge ? —*A.* Yes. I have referred to it.

Q. But does the donee nonetheless cease to be the owner of that property ?—*A.* The donee is the owner of that property Mullah section 571 (Counsel reads). Whether it is in the hands of a coparcener or in the hands of a donee the person holding the property holds the property as absolute owners notwithstanding the contingency that a charge may be fixed on it ?—*A.* That is what I have said.

Q. The case was put to you of a specific portion of coparcenary property described as Blackacre being sold by a sole surviving coparcener to an Englishman ?—*A.* Yes.

Q. The sole surviving coparcener having sold Blackacre gets a lac of rupees ?—*A.* Yes.

Q. He put it to you that as far as the Englishman is concerned he would be the sole owner of that property ?—*A.* Yes.

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Re-examination, *continued.*

Q. Can the coparcener vendor have conveyed to the Englishman a better title than the coparcener had ?—*A.* I take it to be an elementary principle of conveyance of property that no person can convey a better title than he himself has.

Q. If the Englishman had absolute title to that property is it because the coparcener himself was the absolute owner of it ?—*A.* According to me the Englishman is as much the owner of Blackacre as the coparcener would be of the lac of rupees which took the place of Blackacre.

Q. Of Blackacre before it was transferred ?—*A.* Yes.

To Court.

Q. The Englishman would be in no different position to an Indian who takes it under a sale ?—*A.* Yes.

Q. It was pointed out to you that in certain instances a coparcener cannot obtain a declaration or file a suit for mesne profits ?—*A.* Yes.

Q. Are there other instances where the right of a coparcener to file an action for mesne profits has been recognised ?—*A.* My answer to Mr. Chelvanayagam's question was that during the continuity of the joint family no coparcener can claim any portion of the income as profits due to him but if they were to be excluded from joint family property then it has been held that he is entitled to recover mesne profits.

Q. Will you kindly refer to Mullah section 305 page 392. "A coparcener who is entirely excluded from the enjoyment of family property is entitled to an account of the income derived from the family property and to have his share of the income ascertained and paid to him, in other words he is entitled to what are called mesne profits" ?—*A.* Yes.

Q. And also Mayne section 417 page 530 ?—*A.* Mayne states to the same effect at page 530 bottom, section 417.

Q. Will you also refer to Privy Council case reported in 5 I.L.R. Madras page 236 which is referred to both in Mayne and Mullah in the passage which I have just quoted ? I believe in that case mesne profits were awarded long anterior to the date of partition ?—*A.* In this case it related to a partible zamindari and mesne profits were awarded from the time of disposition.

Q. That would be before the suit for partition ?—*A.* Yes.

Q. And also 7 Madras page 564. That also relates to the exclusion and claim for mesne profits before a suit for partition was brought ?—*A.* The suit was for partition ; mesne profits were allowed, for a period anterior.

Q. Would it be correct to say that these cases recognised a right of a coparcener to property ? Otherwise it would not be possible to claim mesne profits during that period prior to partition ?—*A.* Yes, it is based upon the fact that a share is awarded at the time of the partition and in a case of exclusion the relief is carried back to an anterior period so as to hold that the Plaintiff in the action was entitled to that share and to the profits of that share even from the earlier period. Therefore he is entitled according to my view which I have been repeating to a share in coparcenary property

at all times though it is certainly true that as he is supposed to be in enjoyment of family property along with the others he cannot claim that so much of the property is his or the profits of that share is his.

Q. It was also pointed out by Mr. Chelvanayagam that in the case of a minor coparcener the Court would not appoint a guardian (I refer to the evidence at page 225 the second question from the bottom and the answer and also the subsequent questions and answers). What exactly do you mean there ?—*A.* It has been held that under the Guardian and Wards Act no guardian can be appointed in respect of a minor's share in joint family property but I say that at the same time it has been held that that is so only under the Guardians and Wards Act but that the High Court has inherent power to appoint a guardian even in such a case. I find it so stated in Mayne page 298 section 230. The reason is stated to be that under the Guardian & Wards Act the infant's interest must be of individual property but that apart from that Act the " High Court has inherent jurisdiction to appoint a guardian of the property of a minor who is a member of a joint Hindu family even though the minor's property is an undivided share of the family property unlike under the Guardian & Wards Act " and reference is given to a number of decisions. Mullah section 537 is also to the same effect. That is at page 579.

Q. Would it be correct to say that under the Guardian & Wards Act a guardian could be appointed only in respect of the individual property of the minor ?—*A.* Yes.

Q. Therefore they held that Act would not apply to coparcenary property held by minors ?—*A.* Yes.

Q. But Courts had recourse to their inherent power to appoint guardians ?—*A.* Yes, because the minor had property rights which had to be conserved. That is property rights in the undivided family property.

Q. Mr. Chelvanayagam also put to you certain cases where one might say it was recognised that a joint family must be regarded as a sort of corporation. Before you give your answer I want to refer to the evidence which you gave on this very point in examination-in-chief page 106 where you admitted that that was so ? (Counsel reads evidence page 106.)—*A.* I adhere to the answer which I gave in examination-in-chief in spite of the cases which were put to me during my cross-examination. I was aware even when I gave my answers in examination-in-chief that the expression " a sort of corporation " of the family as a person had been used in cases and by judges and I also felt that confusion was likely to arise by an imperfect appreciation of the circumstances in which such expressions were used in those cases. I regarded the question in this case as centering round the crucial fact whether in a joint family the joint family property is vested in the family as a legal person as a corporation apart from the individuals who compose the family. I can only answer that question in the words of the Privy Council in 1937 at page 37, a passage which I have quoted sometime previously and I still maintain that the joint family is not a corporation in the legal sense of the term as meaning a legal person with all the attributes incident to such status and that it does not own the joint family property as such legal person. The cases which were put to me are cases which relate to different topics and different subjects and in

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those cases they have used expressions to mean this peculiarity of the joint family which like a corporation has a kind of perpetual existence, members coming in by birth or adoption, members going out but nevertheless until partition the family continues as a unit. In my opinion it will be very dangerous to isolate those expressions from the context in which they have been used and argue or seek to deduce therefrom that an individual coparcener has no proprietary rights or property in coparcenary property.

Q. And shall I add this has the family as a separate legal person any such rights ?—*A.* I have said that.

Q. When expressions are used such as the property of the joint family what exactly do you mean ?—*A.* I repeat what I said in examination in chief that the joint family property is synonymous with coparcenary property and that it is owned by the coparceners as stated in Mullah's Hindu Law Section 220 and 221.

Q. What is the position of a karta as the representative of a family in an action in Court ?—*A.* The karta is the representative of the family. I find that his position has been very piquantly described in I.L.R. 7 Madras 564 at page 568 in these terms " The principles which arise as regards adult members living in commonalty with the manager as stated by Phear Justice the manager is merely the Chairman of a Committee of which the family are the members. They manage the property together and the karta or manager is but the mouthpiece of the body chosen and capable of being removed by them. Therefore unless something is shown to the contrary every adult member of an undivided Hindu family living in commonalty with the karta must be taken as between himself and the karta to be a participator and organiser of all that is from time to time done in the management of the joint property to this extent, viz., that he cannot without further cause call the karta to account for it." This is a quotation from the judgment of Justice Phear in 5 Bengal Law Reports 354 which is quoted with approval in I.L.R. 7 Madras.

Q. It was put to you that in an action against a partnership all the partners are made defendants in an action, against the joint family it is sufficient if the Karta alone represent the family in that action. What is the principle involved ?—*A.* As I said the karta is a representative of the family and in legal theory it is as if every member of the family was a nominee of a party to the suit. Section of the Civil Procedure Code dealing with *res judicata* viz. section 11 has an explanation 6 " where persons litigate bona fide in respect of a public right or a private right claimed in common for themselves and others all persons interested in such right shall for the purposes of this section be deemed to claim under the persons so litigating " and this explanation has been applied to the joint family, so that an action to which the karta alone is by name a party, treated as one to which not only he but all the members of the family are deemed to be parties.

Q. The Privy Council also has in the case cited in Mullah at section 251 drawn attention to the same thing which you have already stated in the case of a Hindu family where all have rights in *Lingangowda* v. *Basangowda* I.L.R. 51 Bombay 450 also 1927 A.I.R. (P.C.) page 56 their Lordships of

the Privy Council observed as follows: " In the case of a Hindu family where all have rights it is impossible to allow each member of the family to litigate the same point over and over again and each infant to wait till he becomes of age and bring an action or bring an action by his guardian before and in each of these cases therefore the Court looks to explanation 6, section 11 of the Code of Civil Procedure 1908 to see whether or not the leading member of the family has been appointed either or on behalf minors in their interests or if they are majors with the assent of the majors " ?—*A*. Yes.

Q. I think this case 1934 Allahabad was cited to you by Mr. Chelvanayagam. It was a case where a karta who had appointed an agent died. The question arose whether that appointment was good ?—*A*. Yes.

Q. It was held that the appointment continued to be valid against the agent representing not the karta but the members of the joint family who continued to exist ?—*A*. It follows within the principles which I have stated.

Q. To sum up the position then I want to refer at this to certain basic propositions which emerge from your examination in chief. First of all only the coparceners can be regarded as the owners of coparcenary or joint family property and not the other members of the joint family ?—*A*. Yes.

Q. No. 2. Until a partition of such property has been effected each coparcener has a fluctuating but nevertheless a proprietary interest in such property ?—*A*. Yes.

Q. No. 3. In the hands of a sole surviving coparcener such property ceases to be joint family property and becomes his separate property in the same way as property obtained by him on a partition and continue to retain that character so long as no other coparcener is brought into the family by birth or adoption ?—*A*. Yes.

Q. No. 4. That although the effect of the adoption of an heir is that he takes the property which has already devolved on others by inheritance nevertheless he takes it subject to all obligations which have already attached to the property prior to the date of adoption ?—*A*. Yes. I would only add subject to lawful dispositions, obligations and liabilities.

Q. Are there any cases which were put to you in cross-examination which have induced you in any way to modify your answers to these questions ?—*A*. Not in my opinion.

Q. On the other hand would it be correct to say that your answers to these questions are fully supported by the decision in A.I.R. 1937 Privy Council page 36 ?—*A*. I might say that even before I gave my evidence in this case I knew all the aspects which were put to me in cross-examination and I had considered them.

Q. When Arunachalam Chettiar, Senior, died what happened to his property as far as succession to it was concerned. Could the succession to the property remain in abeyance ?—*A*. The property went by testate succession under the will to the executor.

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Q. And when a son was adopted subsequently what would be his position under the Will ?—*A.* He would displace the executor.

Q. Alternatively if the property did not go by testate succession who would have inherited it ?—*A.* The two widows would have inherited it.

Q. Could it have been in abeyance till the adoption of a son ?—*A.* Succession to property can never be in abeyance. That is one of the principles of Hindu law. Section 484 of Mayne's page 509. " The right of succession under Hindu law is a right which vests immediately on the death of the owner of the property. It cannot in any circumstances remain in abeyance in expectation of birth of a preferable heir not conceived at the time of the owner's death."

Q. Mullah section 28 ?—*A.* He also says the same thing.

Q. You are giving evidence in this case as an expert on questions of Hindu law ?—*A.* Yes.

Q. What do you conceive to be your duty in giving evidence. Are you giving evidence as an advocate for one side or the other ?—*A.* I have given my opinion in the same manner as I would have given to the Madras Government or for that matter by any client of mine.

(Sgd.) . . . Addl. District Judge.

Addresses on 24th and 25th March and to be continued on 28th and 29th March.

(Sgd.) . . . Addl. District Judge.

No. 20.

ADDRESS OF COUNSEL for the Original Respondent.

In the District Court, Colombo.

No. 20. Address of Counsel for the Original Respondent, 24th March 1949.

D.C.37/T (Special). 24th March 1949.

Appearances as before.

Mr. Weerasuriya addresses Court.

Before dealing with the specific question of law that arises in this case Mr. Weerasuriya sets out in brief outline the history of the Estate Duty Law in Ceylon. It is not necessary to go back to a point of time anterior to the Estate Duty Ordinance No. 8 of 1919. This Ordinance came into operation on the 12th July 1919 ; it is still in operation except for certain sections which have been repealed by subsequent Estate Duty Ordinance.

Arunachalam Chettiar (Jr.) died in July 1934 and sections 1 to 17 of Ordinance No. 8 of 1919 would apply to this case. Estate Duty under this ordinance became payable in the case of the estate of any person dying after the 12th July 1919 and the position remained as stated until Ordinance No. 51 of 1935 which abolished estate duty. There was an interregnum of about 1½ years. Later Estate Duty Ordinance No. 1 of 1938 was introduced. Estate duty became payable out of the deceased's estate as from 1st October 1935. See Section 3.

The original Ordinance was No. 1 of 1938 ; the present Ordinance is Cap. 187. Section 79 of the original Ordinance is not reproduced in cap. 197. Sections 18 to 33 of the Ordinance No. 8 of 1919 are repealed by Section 79 of the 1938 Ordinance and section 81 in that Ordinance, is the present section 79 in Cap. 187. The legal position is that the old Estate Duty Ordinance is still in force as far as sections 1 to 17 are concerned. The provisions of Cap. 187 relating to assessment, payment, collection, refund of duty will apply in so far as they are not inconsistent with the provisions of sections 1 to 17. The charging sections are included in sections 1 to 17. In considering liability of the estate of Arunachalam Chettiar (Jr.) the payment of estate duty will have to be decided with reference to the old Ordinance. One of the contentions of the appellants will be that section 73 of the later Ordinance will have to be applied even in the case of considering the liability of Arunachalam Chettiar (Jr.) in paying estate duty ; that is one of the points at issue. If the submission that the liability of the estate in the case of Arunachalam Chettiar (Jr.) will have to be determined under the provisions of Ordinance No. 8 of 1919 is correct then it will have to be considered whether under the charging sections the estate became liable to duty, that is under sections 7 and 8. (Refers to the sections). Property passing on the death of the deceased is amplified in section 8 (1). In the case of Arunachalam Chettiar (Jr.) he will come both under (*a*) and (*b*) of section 8 (1) of that Ordinance. First of all he had property which he was competent to dispose of and he had property in which the deceased had an interest ceasing on death to the extent of the benefit which accrues on such death. As regards " competent to dispose " the expression is defined in section 2, sub-section (ii) (*a*).

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Arunachalam Chettiar (Jr.) had the power as coparcener to alienate his share of the coparcenary estate for value and certainly to that extent he had power to dispose of within the meaning of section 8 (i) (*a*) and the definition in section 2 (ii) (*a*). First of all therefore in order to decide whether this case comes under 8 (i) (*a*) and 8 (i) (*b*) it will have to be ascertained whether Arunachalam Chettiar (Jr.) as a coparcener had a share in the coparcenary property; secondly whether on his death there was a cessor of interest and a corresponding benefit accruing to certain other persons.

Experts have given evidence in this case. Unlike in other cases where there was agreement on a number of questions between the experts, in this case the evidence of one expert is different to the evidence given by the other. The position is what is the Hindu law on the subject; this the Court will have to decide on the evidence of experts.

Another question that has to be kept in mind is the burden of proof. These proceedings have been originated under cap. 187, section 39 and section 40. The appeal shall be deemed to be an action between the Appellant as Plaintiff and the Crown as the Defendant. The burden will rest on the Plaintiff because there is before court an assessment made by the Commissioner. In the absence of evidence to the contrary the Court will hold that that assessment is correct.

The position taken up by Mr. Bashyam is that a Hindu undivided family is in a sense a corporation or juristic person and that property belongs to that corporation or person; that the individual members of the coparcenary or individual members of the larger family called joint family, have no proprietary interest. He further says that the only right individual members have, whether they are coparcenary members or non-coparcenary members, is the right to maintenance. He also admits that in the case of a coparcenary member such member has a right to demand a partition but he maintains in respect of either of those rights it cannot be regarded as a proprietary interest; it is merely an interest which lapses on the death of the coparcenary. That sets out generally the position taken up by Mr. Bashyam. He therefore says in the case of Arunachalam Chettiar (Jr.) when he died all his interest lapsed and nothing passed to the survivors; he had no proprietary interest, he had no right to dispose of that property because he had no property in the first place and whatever interest he had, namely the right to maintain or the right to demand a partition, lapsed and no benefit accrued to the survivors. That was his evidence in examination-in-chief.

It will be seen to what extent Mr. Bashyam has qualified his position in cross-examination. He was ultimately driven to admit that even if there was no proprietary right which Arunachalam Chettiar (Jr.) had in exercising the right to demand a partition he would be acquiring a property ultimately. It is ultimately admitted that on his death there was a benefit accruing to the survivors and that that could be assessed in terms of money or in terms of property value.

Mr. Raja Iyer is equally emphatic that a coparcener has a definite share in the coparcenary property but it is not a static share, it is a fluctuating share, but nonetheless it is a definite share and he says it is

property; that share represents a proprietary right—it is an interest in the property. He also says that the coparcener in respect of his interest in the coparcenary property would become the owner of that property and he says that the coparcener is also competent to dispose of that property which he possessed.

Having regard to Mr. Bashyam's examination-in-chief and the position taken up by Mr. Raja Iyer they are diametrically opposite. Therefore it is necessary to discuss what exactly is the nature of the interest of a coparcener in the coparcenary property.

He cites Mayne (1938 edition) at page 491, Section 379, footnote k, also at page 493, section 381. There is reference to the text of Narada also as regards possession of a coparcener. Mayne page 339 section 264 (last 2 lines) clearly it is opposed to Mr. Bashyam's theory. Even originally in the Narada text it is contemplated on a person dying he leaves certain property which is divided by the survivors. This was put to Mr. Bashyam—pages 62 and 63 of his evidence. He was doubting the correctness of the translation as reproduced in Mayne.

Cites I.L.R. 2 Bombay 494 at 512. This contains the very text which is contained in Mayne.

The position then is even Mr. Bashyam had to admit that according to Narada text it does suggest that a deceased coparcener had property which he left and was taken by the survivors. Mr. Bashyam relied on the case reported in 11 Moore's Indian Appeals p. 75 to show that what he meant was correct, namely, that a coparcener has no particular share at any particular time in the coparcenary property. Actually that statement in *Apporia's* case was *obiter*. Even if it was *obiter dictum* the court will take that into consideration because it was pronounced in the Privy Council. The matter which arose for decision in that case was where there had been a formal division in status without division of property whether such a division put an end to the coparcenary. The contention there was that in order to effect a division of a coparcenary estate there must not only be a division, a declaration of intention to divide but there must be actual division by metes and bounds and the Privy Council held it was not necessary that there should be a division by metes and bounds, that the family stands divided when there is an agreement among them of formal division. (Refers to page 89 of the judgment.)

This is a judgment which was delivered in 1866. Even if that is the correct exposition of the law at that time, the law was developed much further and the position today is different. In this connection reference is invited to an earlier pronouncement of the Privy Council in 9 Moore's Indian Appeals p. 539 at 611. These observations clearly contemplate that there was some proprietary interest during the lifetime of a coparcener which may be enjoyed in common with the other coparceners but on the death of that coparcener the surviving coparceners take that by survivorship. In considering *Appooria's* case it is necessary to note that the same Privy Council in an earlier case made a certain pronouncement. This case has been cited with approval in later Privy Council cases—1941 A.I.R. (Privy Council) p. 120 at 126. Further there is a case reported in 1937 A.I.R. (Privy Council) p. 36 at 38. The Privy Council

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stated that property is not in the possession of the family as distinct from the individual, though there may be joint possession. In this connection please see evidence of Mr. Iyer p. 115 (para. 2) p. 16 (9 lines from bottom). At this stage see also the passage in Mayne p. 379, section 298. That is basis on which members of a family enjoy the property and that being correct while they remain undivided they cannot ask for mesne profits All that does not mean, as pointed out by Mr. Iyer, that he has no ownership of property or he has no certain definite share which by partition can crystallise and can be converted into separate property. The position has also been considered in I.L.R. 25 Madras page 690. This case was put to Mr. Bashyam, page 19 of his evidence para. 2. He says this has been overruled. Leaving aside the question whether the judgment has been overruled or not, it is an authority. Please see page 716 of the judgment. This very statement has been re-affirmed by a later case in 53 Madras page 1 at page 2 (full bench decision). There this very argument which Mr. Bashyam put forward was advanced by Counsel for the Appellant. The judgment of the Chief Justice is at page 5. Reference is particularly invited to the judgment of Justice Wallace at page 13. He considers the position of the coparcenary from three distinct angles, viz. alienation, attachment and insolvency. When therefore a coparcener becomes insolvent it has been held that his share in the coparcenary estate vests in the assignee and it must be only on the footing that there was a definite share of the property—a definite share which represents his property. Therefore if the matter is regarded in any other light it is difficult to understand to what extent the Madras Court has recognised a coparcener's share as vesting in the assignee. In that connection there is a particular case which held out not only that the property vests only at the date of the insolvency but notwithstanding the insolvency the coparcener continues to be a member of the joint family and if afterwards one of the coparceners dies and this insolvent's share is increased that increased share also vests in the assignee. A.I.R. 1946 Madras 503. There again the position is that a coparcener has at all time a definite share in the coparcenary property and that is what is pointed out by Justice Wallace in this case. Mr. Bashyam stated that these observations are mere *obiter dicta* when he was referring to this case. Submit they cannot be *obiter dicta* because of the arguments advanced by counsel for the Appellant. Even if they are mere observations they are conceptions which have been admitted as correct by the Madras Courts, namely, vesting of insolvent's coparcenary property in the assignee, the attachment by an execution creditor of a coparcener's share. These are all matters of ruling and they have all been referred to by Mr. Raja Iyer. Quite apart from the observations of Justice Wallace in 52 Madras there is this case (1947) 2 Madras Law Journal p. 509.

Even if the observations in the 52 Madras case are *obiter*, which are not, still there is the individual judgment dealing with cases where the rights of the execution creditor to attach have been recognised ; that the property of an insolvent coparcener vests in the assignee has been recognised. They are well recognised conceptions. They are quite inconsistent with the theory that a coparcener has no share in the coparcenary property. As regards insolvency there is the case reported in 1946 A.I.R. Madras 503. This case is referred to in the evidence of

Mr. Raja Iyer and was put to Mr. Bashyam—(see evidence at page 127). That is authority for both the propositions namely on insolvency a coparcener's share in the property vests in the assignee and subsequently where there is an increase of the share by the death of another coparcener that increased share also will vest in the assignee. Then with regard to what happens if a coparcener enters into an agreement to sell his share, again I say if such an agreement is recognised it is inconsistent with the position taken up by Mr. Bashyam that a coparcener has no share and on his death nothing passes.

Cites I.L.R. 35 Madras page 47. This is referred to at page 130 of Mr. Raja Iyer's evidence. Consider the same matter from the point of the terms of the declaration that is granted to a person who has purchased a coparcener's share. That is dealt with in I.L.R. 3 Calcutta page 196 at page 209. Whether it is a sale in execution or whether it is a voluntary alienation the position is the same. The alienee cannot come into the joint estate. He has no right there to go and ask possession of the creditor's share. He will be given a decree that he will be entitled to the share of the coparcener at the date of execution or the sale leaving it to him to get the benefit of the decree by subsequent action for partition.

(*Interval*)

(Sgd.) . . . A.D.J.

24th March 1949.

37/T (Special)

Appearances as before.

Mr. Weerasuriya continues his address.

The reference in page 126 by Mr. Iyer to A.I.R. 1943 Madras is correct. Mr. Weerasuriya refers to the judgment at page 150. He cites I.L.R. 3 Calcutta 196. The position would be the same whether it is execution purchaser or voluntary alienee. He gets no greater rights than the coparcener himself. Mr. Bashyam said it is a right in equity. He cites 14 I.L.R. Calcutta 493. It is referred to in Mr. Iyer's evidence at page 225. A member of a joint family cannot sue mesne profits.

That is a case where a person is in enjoyment as coparcener of coparcenary property. If by his voluntary act he goes to reside elsewhere and has therefore put himself in a position unable to derive any benefit from the common property he cannot afterwards complain and say I did not get the benefit of this estate and I want my share of the profits because the rights of coparceners are unity of possession. That is quite consistent with the position that a coparcener has a definite share in the coparcenary property. Notwithstanding this case it has been held that where a coparcener has been excluded by the Karta or the other members from the enjoyment of the property and subsequently brings a partition suit to vindicate his rights which have been denied to him, then he is allowed a share of the mesne profits from the day on which he was excluded. He cites I.L.R. 5 Madras 236 and 7 Madras 564. Both cases have been referred

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to by Mr. Iyer in his evidence at pages 235 and 236, particularly page 236. In both cases mesne profits were allowed retrospectively from the date of dispossession of the coparceners. Mr. Bashyam's evidence on this is at page 20 of the proceedings on 5th October. That would be a correct statement where the coparcener is in enjoyment of the property, the nature of his enjoyment being an enjoyment common with the others. He cannot ask for mesne profits afterwards. If he sells to somebody the alienee cannot say well give me the mesne profits accruing from the date of alienation. In cross-examination of Mr. Iyer it was put to him that in the case of a minor coparcener the courts will not appoint a guardian under the Guardian & Wards Act, because a minor as a coparcener has no property. I take it that the purport of the question was the Court will not appoint a guardian because a minor as coparcener has no property. He cites Mayne page 298 section 230 which makes the position clear. He refers to the next passage. There again minor coparcener has a share in the coparcenary property. Mr. Iyer has been questioned on that point on page 225 and 237. The question was put in order to make a submission that a minor coparcener had no share. It is not the correct position. He refers to evidence at page 237 (middle), and page 238. All these cases clearly conflict with Mr. Bashyam's theory that a coparcener has no share in the coparcenary property. A further question was put to Mr. Iyer in cross examination at page 223. This was not the subject of any evidence by Mr. Bashyam. The position of the Karta. He refers to page 239 of the evidence. Mr. Iyer also refers to Mullah which sets out the position clearly. Mr. Iyer has stated, when a coparcener becomes a convert, what the effect of conversion is on his share. That is dealt with by Mr. Iyer at page 119. Mr. Bashyam's theory is that a coparcener has certain rights and they are extinguished. He has no share. If that position is correct one would expect on his leaving the family, if he had no proprietary rights, that there would be nothing for him to take from the coparcenary property. That is not the position. Even though he ceased to be a coparcener he is entitled to a share. Mr. Iyer has been questioned 118 (middle) and 119. Various authorities have been submitted which have considered the matter from different angles, as to what the right a coparcener has in coparcenary property. What Mr. Iyer has stated in evidence supported as it is by all these various decisions represents the correct legal position. He refers to Mr. Iyer's evidence at pages 116 and 241 ; with regard to Mr. Bashyam's evidence at page 34 (top) ; see Mr. Iyer's evidence at page 125. He refers to section 2 (2) (*a*) of the Ordinance of 1919. It is not necessary that the holder should have the right of disposal by will. He refers to Mr. Iyer's evidence at page 129, and page 224. Merely because a witness is emphatic it is not a reason to accept it. Mr. Raja Iyer supported his evidence by reference to specific cases where the matter was considered. The position is indisputable that a coparcener has a definite share in the coparcenary property. Mr. Bashyam says that all a coparcener has is the right of maintenance. It is not capable of attachment. At page 121 it has been dealt with by Mr. Raja Iyer. Mr. Bashyam has admitted that a coparcener's interest, whatever it is, can be attached. If that interest is not property, how can it be attached ? At page 122 (middle) Mr. Iyer stated that coparcener can renounce his rights in the property. Mr. Bashyam's theory is that the ownership of property vests in the family as a sort of corporation—page 6 of his evidence. He refers to

28 I.L.R. Madras 344 ; 326 Mayne section 254 (end). The idea of corporation was an idea which existed in the very ancient times. Mr. Bashyam categorically said that a coparcener has not vested or proprietary right to property. His evidence on that point cannot be accepted. He refers to page 20 of Bashyam's evidence. Bashyam refers to a Madras case. He relies on a case which came to a certain decision on a certain footing and he tries to extract a general principle, which has no authority at all. He relies on this case for the proposition that a coparcener has no vested rights. In this particular case it was held that where a coparcener has common enjoyment he cannot bring a suit for mesne profits. This is not an authority but a general statement, if by vested interest is meant a definite share in the coparcenary property. He refers to page 9 of Bashyam's evidence and to page 54 (middle) cross examination. One must contrast that with his answer on page 55A (15th line from bottom). Earlier answer given by Bashyam is that it is a right connected with the property and not a right in him. Later he says it is a right unconnected with the property. He has given evidence on certain points which shows that to some extent he was influenced by the fact that he was called to give evidence before Court. Second paragraph of Bashyam's evidence at page 15 is not correct. The correct way of putting it is not that they are not entitled to alienate but that they are entitled to do so subject to two conflicting legal rights. He refers to Bashyam's evidence at page 58 (middle). There is authority which contradicts him. He cites I.L.R. 25 Madras at 720/721. Mr. Bashyam says this case has been overruled. All these observations cannot be regarded as overruled because there was a judgment subsequently which dissented from the principal matter decided. He refers to page 14 (bottom) of the evidence of Bashyam. He is speaking of Hindu Law which was originally there. That is a correct statement. After 1886 according to Mayne and Mullah right of alienation has been recognised. He refers to Bashyam's evidence at page 81 (middle). On a consideration of the matter the Court will have no hesitation in holding that a coparcener has a proprietary interest in the property at every stage while the coparcenary is in existence and that therefore he had a right to alienating that property for value and therefore it comes within section 8 of Ordinance of 1919. Not necessarily alternatively I say it also comes under section 8 (*b*). It is necessary in this case to refer to passages of Bashyam's evidence. He was quite definite in his examination in chief that there was no cesser of interest. He refers to page 35 (bottom) of Bashyam's evidence. If what he means is that a coparcener's right is only a right of maintenance he is quite correct. He refers to page 36 (middle). In cross examination at page 56 he admits it is a benefit. He refers to evidence at page 60. He says benefit does not arise by death but by law. We say it is death. Here also is an admission that there is a benefit which accrues to the survivor. He refers to page 75 of the evidence (middle). Again he emphasises that it is not on death that a right accrues. Our submission is that the father became sole member as a result of Arunachalam (Jr's) death. If there was another member of the coparcenary the position would not be different. Where there are three coparceners the share would be 1/3rd. Each case would have to be decided on the facts. Whether there are two surviving members or one member there is a right to dispose to the extent of the share of that particular member. In the case of a sole surviving member the right of disposal would be of the entirety of

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the property. In this case although estate duty was assessed only on ½ share of the estate for the purposes of duty, strictly speaking the whole of that estate would have been liable to estate duty. That question does not arise because only ½ of the estate has been assessed. Mr. Bashyam says that whatever interest a coparcener has, it lapses. He relies on 1 Allahabad 110, I ask the Court to consider the case of the Federal Court in 1941 A.I.R. 74 at page 78. This case would be authority for the contrary of what has been stated by Mr. Bashyam. He cites 43 Allahabad Privy Council case 232 at 243.

Further hearing tomorrow. (Sgd.) . . . A.D.J. 10

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Appearances as before.

Mr. Weerasuriya continues his address :

In the case of Arunachalam Jr., there is a question of Hindu law outstanding ; the effect of the adoption of a son by the widow. That adoption is a bad adoption and as a result of that so called ceremony which took place in 1945 it did not make that boy the adopted son of Arunachalam Jr. The evidence on the point is the evidence of Murugappah Chettiar, which evidence will be found in the record at page 14 (bottom) and page 15. The agreement referred to in cross-examination has not (?) produced in 20 this case. According to the authorities a boy can be given away only by his parents and an orphan cannot be adopted. That power cannot be delegated. The physical act of handing over the child may be done by somebody else. These are matters which have to be proved. There must be clear proof of adoption. In the evidence of Murugappah Chettiar there is nothing to show that either of the adopted sons had parents. Mr. Weerasuriya refers to the evidence of Mr. Raja Iyer at page 154 (middle), page 155 and page 156 (middle). All these are matters of evidence and there is no evidence to prove there. The Court will not act on that evidence as proving adoption of a son to Arunachalam Jr. or two sons to 30 Arunachalam Sr. As regards Arunachalam Jr's. case the position that there was his widow with a power to adopt after obtaining the authority of the family would not make a difference. In the case of Arunachalam Jr. the Appellants relied on the fact that there was actually an adoption of a son in 1945 and that the adoption must be given retrospective effect. Assuming that there was a valid adoption, to what extent should this retrospective effect be given ? Mr. Weerasuriya refers to the evidence of Mr. Iyer at page 148 (middle) ; A.I.R. Nagpur (1946) page 205 ; A.I.R. (1943) Privy Council page 196 at page 200 (middle of first column) Mullah page 558 section 507 puts it this way. The position is that if an adoption 40 is given retrospective effect it is only for the purpose of continuity of the line, and as regards any obligations, any liabilities, any alienations which have been incurred or made by the holder of the property prior to the adoption, on the adoption of the son he takes the property subject to all those liabilities and alienations. That is the legal position. Mr. Weerasuriya refers to Mayne page 277 section 206. The adopted son would be

found by the liability which had accrued in respect of taxes—estate duty. In the case of Arunachalam Sr. he came into the coparcenary property by virtue of his right of survival. He did not step into coparcenary property by inheritance. The order in which the events should be regarded is as follows : there would be the death of Arunachalam Jr. Arunachalam Sr. would become sole coparcener and sole owner of the estate. Estate Duty would have been liable on the property passing on the death of Arunachalam Jr. The adopted son would take the estate subject to all the liabilities that have been incurred up to that time. If Arunachalam Sr. had alienated the whole property, as he could have done ; adopted son would have nothing. Mr. Weerasuriya cites I.L.R. 52 Madras 319 at page 405. All the principles of adoption are enunciated here. This case was referred to by Mr. Iyer at page 152 and page 153 (middle) of the evidence. It is the legal position. The adoption was bad. Assuming that there was a valid adoption the adopted son in 1945 took the estate subject to all the liabilities. It is not open to him to take the property and repudiate the debts. There is another reason why adoption is bad. According to the will D2 the power given to the widow to adopt is bad. Mr. Iyer said so at page 158. Mr. Weerasuriya refers to page 208 of Mayne. Mr. Bashyam has also agreed on this point—page 101 of Mr. Bashyam's evidence. The particular passage in the will was put to him at page 103. He admitted that the original will had " to " and not " by." He must give that a reasonable interpretation. Adoption should be to the husband and not to the widow. If " to " must always in such a case be interpreted to mean " by," there would not have been occasion for a decision like the one mentioned in Mayne.

Arunachalam Jr., as a coparcener was a person who had a share in the property, a share which he was competent to dispose of and therefore falls under section 8 (1) (*a*) of the Estate Duty Ordinance of 1919. It would also come under section 8 (1) (*b*). Undoubtedly he had an interest in respect of that property and the result of that interest ceasing was that a benefit accrued to Arunachalam Sr. and Bashyam admitted that fact and the extent of the benefit was ½ share. If we take Mr. Bashyam's evidence as the real position, the benefit accrued to Arunachalam Sr. would be the whole estate. On the death of Arunachalam Jr. his rights became enlarged in respect of the whole estate and was in a position to alienate it, to gift it away and to dispose of it by will. If Bashyam's position is correct, estate duty would have been payable on the value of the whole estate. The position would be the same in the case of life interest. Under section 8 (1) (*b*) interest is extinguished and a benefit derives to the reversioner. This was put to Mr. Iyer at page 124 (middle). That the cesser of life interest would be property passing on death is quite clear under section 17 (6) of Ordinance 8 of 1919. If on a person's death property is settled on *X* subject to life interest in favour of *Y*, that property subject to the life interest in favour of *Y* would be property passing on death. Later when *Y* dies and possession reverts to *X*, then also there would be a cesser of interest and estate duty would be payable on the property passing on death. Mr. Weerasuriya cites 49 N.L.R. 517. The facts are at page 518. He also cites 38 N.L.R. 313. An appeal was taken against this finding by the Crown. He refers to page 318. There is a decision of the Supreme Court which held that where there are 3 coparceners

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and one of them dies there is property passing on the death of the deceased which is subject to estate duty and estate duty would be payable on 1/3rd of the estate. In this particular case in the appeal it was urged that first of all there was no evidence that this was a coparcenary. Second argument was even if there was a coparcenary the Karta as managing member had alienation over the whole property and therefore he had the right of disposition under section 8 (1) of the Estate Duty Ordinance. At page 318 Justice Soertsz has rejected it. The position was that the contention of the Crown was rejected. The present case is quite different. It is not claimed that in respect of Arunachalam Jr's power of alienation he had a power extending over the whole estate. The power of alienation was only in respect of his own share. Therefore this particular finding would not necessarily so against the submission that estate duty would be payable under both 8 (1) (*a*) and 8 (1) (*b*).

(This case is the authority for the proposition that in assessing the value of the interest that ceases on the cesser of interest the full value of the estate that passed is taken as the value of the interest, namely, in that case a 1/3rd share.)

Mr. Weerasuriya refers to the Issues. He refers to issues (1) and (2). He refers to the evidence at page 17 of Mr. Ramasamy Iyenger, one of the Appellants. He refers to page 21—cross-examination—second paragraph from the bottom. There is an admission that as receivers of Arunachalam, Sr., they are in possession of all the property including the property left by Arunachalam, Jr. He refers to page 53 (middle) of the evidence. That is the position in fact. They were in possession—if that is admitted the Appellants would be the persons liable to pay under section 25 of Chap. 187. He refers to section 25. The Crown relies on the words of the section as setting out the liability of the present appellants to pay estate duty. As to whether section 25 applies is the next question. It is section 19 under the old Ordinance. Section corresponding to section 25 is section 19. Section 19 comes under the heading " Liability Estate Duty." Section 19 has been repealed. He refers to section 79 of Chap. 187. Provision of section 25 would be provision relating to payment of duty or collection. If section 25 applied, clearly Appellants are liable. Section 25 applies thereon, section 19 of the old Ordinance has been repealed and section 79 makes 25 applicable.

Issues 3, 4, 5, 6, 7 raise questions of Hindu Law.

Issue 8—Contention of the Appellant is that if the estate is joint property then by virtue of section 73 the estate of Arunachalam, Jr., would be exempt from payment of estate duty. Section 73 cannot possibly apply because section 73 is an exempting section which exempts from liability to duty property which otherwise would have been really chargeable. It is only on that footing that the section was enacted. Clearly therefore under the relevant charging sections in Chap. 187 the property of Hindu undivided family would be liable to duty. He refers to Ordinance 8 of 1919. To apply section 73 and give exemption would be contrary to section 79. Other side's argument may be that section 73 has been enacted to clarify the position to make it quite clear that there is no such liability. Ordinarily it is because one had no other very good argument to put forward. I cannot understand why the legislature should have made

an exception or thought it necessary to say that Hindu undivided family is not subject to estate duty under Chap. 187 if Hindu undivided family property would really not have been liable under the charging sections.

(Mr. Chelvanayagam states that section 73 was introduced at the same time when under the Income Tax Ordinance Hindu undivided families were made subject to a higher rate of tax, etc., etc.)

Mr. Weerasuriya :

It is an additional reason for the supposition that when the rate of income tax increased the legislature thought some relief must be given to Hindu undivided family and therefore that liability which existed should be taken away for the corresponding liability under the Income Tax Ordinance. The charging sections are the same in both Ordinances. He refers to Section 7 of the old ordinance and to section 8. Corresponding section in the later ordinance is section 3. " Ceylon estate " is defined in section 77 (*a*). Property which passes on death is defined in section 6 of the later Ordinance. Section 8 (1) (*a*) of the 1919 Ordinance is the same as section 6 (*a*). 8 (1) (*b*) of the old ordinance is the same as 6 (*b*) ; 8 (1) (*c*) is the same as 6 (*d*) ; 8 (1) (*d*) corresponds with 6 (*e*), 8 (1) (*f*) corresponds with 6 (*g*) ; 8 (1) (*g*) corresponds with 6 (*h*). The only extra sub-paragraph in section 6 is paragraph (*c*). The other sections are the same. Then it must follow that if under Chap. 187 Hindu undivided family property was property which was liable to estate duty, the position is the same in the case of Ordinance 8 of 1919. To apply section 73 of the later ordinance now and say that duty would be exempt would be contrary to the provisions of Ordinance 8 of 1919, and more particularly sections 7 and 8. Issue (9A) and (9B)—It is agreed that 9A and 9B need not be now answered in view of the admissions.

Issue 10—Mr. Weerasuriya refers to the evidence at page 29 of Manickam Chettiar. It is said that this Rs.100,000 is included in the assessment. It is for the other side to prove the contrary. Evidence of Manickam Chettiar I also rely on as containing an admission that the Rs.100,000 represented a Ceylon asset at a certain stage up to 3.7.44. It has been included in the statement of assets after the date of Arunachalam, Jr.'s death. He refers to page 34 and page 35 where it has been admitted that this was originally an asset of the Ceylon business and that four days before the death it was sent out of Colombo to India. The Court will look upon the matter with some degree of suspicion and insist on strict proof that this was sent out of Colombo before and not after. If it was sent before 3rd July documentary evidence could have been produced. No such evidence was produced. The Court will act on the footing that it was a Ceylon asset and that there was no proof to the contrary. Why should Manickam Chettiar, who claims to be the man in charge of the business in Colombo, be ignorant of where the money is. It may have come back to Ceylon and formed part of the estate. That is one item which has been included in this issue. It is assumed that this particular item was included in the assessment. Actually no evidence was led. I have not yet consulted the estate duty officers who were in charge of this case. There is no evidence that it has been included. In A18 there is an item showing the interest. The actual amount is not shown.

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The evidence as regards this Rs.40,000 is at page 20, 22, 25 and 29. What the evidence discloses is that it was a simple contract debt of an unspecified amount. Liability of the firm had amounted to Rs.53,170/25. On 9th July Rs.40,120/25 was the liability of the firm. I do not know how this becomes an asset out of Ceylon. There is no evidence except the bare oral testimony of this witness in regard to these transactions. The Court will not accept the evidence unless the best evidence has been placed before Court. The liability is on the original debt. He cites Green on Death Duty 2nd Edition 1947 page 583. If it had been established that this is a debt which represents assets out of Ceylon, when this estate is assessed for the purpose of estate duty as between Arunachalam, Jr. and Sr. the position is that they are the owners of 1/2 and 1/2. For purposes of assessing estate duty liability one would regard it as a partnership consisting of two partners. The location of the assets seems to be immaterial. An half share of a specific asset is not sought to be assessed. He cites Dymond on Death Duties page 94 (10th Edition). There is an admission that it was originally Ceylon assets. There is nothing before Court that the assets have been taken out of Ceylon prior to the death of the deceased.

Issue 11.—The evidence on the point is at page 26. He refers to document R3. He refers to the evidence of Sirinivasan in cross-examination. Whether it is a mere reserve for income tax or whether it has been actually assessed for income tax, it is immaterial because only deductions permissible would be a deduction under section 17, of the Ordinance of 1919. He refers to section 17. This section has not been repealed and is still in operation. The deduction can be made only under section 17 (*b*) but that section does not allow a deduction in this case. Appellants must be relying on section 22 of Chap. 187. Even under section 22 no deduction is permissible but in any case section 22 does not apply. What is applicable would be section 17 and it does not come under section 17.

Issue 12.—This again involves some comparison of the provisions of the two ordinances. Deduction is claimed under section 20 (3). He refers to section 17 of the old Ordinance. There is no provision in section 17 of Ordinance 8 of 1919 corresponding to section 20 (3) to (5). Section 17 must be applied. Section 20 cannot be applied in any event.

(*Interval*).

(Intld.) . . . A.D.J.

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(*After Interval*).

Mr. Weerasuriya continues his address.

Issue No. 13 is on the question of liability to pay interest on the assessed duty. There are three assessments in this case which have been marked A15, A16 and A22. After the amount assessed is set out interest is added at 4% from 10.7.35 and that interest has been added on by virtue of section 46 of Cap. 187. That corresponds to section 21 (3) of the old Ordinance which was in the same terms but section 21 has been repealed and the provisions of section 46 will be applicable by virtue of section 79.

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With regard to issue 14, on the submissions already made that issue would be answered that property passed within the meaning of the Estate Duty Ordinance of 1919.

Issue 15 will necessary have to be answered in the negative that is if issue 14 is answered in the negative.

Issue 16 appears at page 23 of the proceedings. He refers to section 58. A15 is dated 31.10.38 and the assessment was Rs.215,000/–. A16 is dated 10.11.38. There was an additional assessment under A16. There were certain claims on the 2nd notice and in the final notice dated 29.4.42, that is after the appeal to the Commissioner, the assessment was maintained except for a certain share of a property, and the original assessment was reduced to Rs.221,743. The payment was made according to the evidence on the 22nd May 1942 (A25) a sum of Rs.200,000/–. Between the 22nd May and the 22nd August 1942 certain further small sums were paid by way of interest and also a balance of Rs.6,743/70 (A30). There seems to have been a further small balance outstanding which appears to have been settled on the 8th November (A35). (See evidence of Manickam p. 33). So that all the duty was paid after the appeal. Petition of appeal was filed by November 1942.

If section 58 applies then no claim has been made for any refund within the time provided. If on the other hand section 58 does not apply then there is no provision by which the Commissioner can be called upon to refund. The matter is rather academical because when the court holds that estate duty is not payable I doubt that the Crown will take up the position that the amount is not to be refunded in the absence of any statutory provision. There is this Court's judgment in Nachiappa Chettiar's case. The position would therefore be, first of all, the Commissioner in these proceedings cannot be called upon to refund. The present action is against the Attorney-General representing the Crown and in such an action it is not open to the Plaintiff to ask a declaration against a third party who is not represented. The Court will follow the decision in the previous case and merely say that this amount was not recoverable as estate duty and leave it at that if the court holds that the amount was not recoverable.

There remains one submission as regards issue 10. The Crown relies on the admissions contained in R2b that these were Ceylon assets. On those admissions the Court may also take into account their further statement that these assets subsequently went out of Ceylon but will attach less weight to the latter statement as it is self serving evidence.

He cites 48 N.L.R. p. 337.

Reference was made yesterday to the evidence given by Mr. Bashyam at page 58 where he was asked whether a coparcener can be regarded as the owner of the property and he said no, and reference was also made to the judgment in 25 Madras at 690 at 721. That is the judgment which has been overruled according to Mr. Bashyam ; it really has not been overruled. The passage at page 721 is contrary to Mr. Bashyam's evidence. Even in Mullah section 259 page 293 reference is made to this very case as authority for the proposition.

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No. 20. Address of Counsel for the Original Respondent, 25th March 1949, *continued.*

Bashyam has stated in his evidence (page 19) " the earlier view that a coparcener had a vested interest . . . that view has been expressly dissented from."

He cites Mayne at page 498 footnote w. 39 Madras Full Bench case is the same case reported in A.I.R. 1916 Madras p. 1170, at 1183 and 1184. The effect of this is that the coparcener has a definite share in the property which can be the subject of alienation. Mr. Bashyam again refers to this same judgment in a later portion of his evidence (page 80). That is apparently where he says the observations of Justice Iyangar have been overruled. Mr. Bashyam does not give the page in the 35 Madras. There is one judgment at page 47 which far from overruling the I.L.R. 25 Madras appears to have followed it and agreed with it. At page 60 reference is made to *Apporia's* case. It is quite incorrect to say that what a coparcener has is a mere right to maintenance and nothing else and that he has no vested interest in the coparcenary property.

These are the submissions in the case of Arunachalam Chettair (Jr.).

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In the case of Arunachalam Chettiar (Sr.) if the Court accepts the position that a coparcener has a certain share in the property and rejects Mr. Bashyam's evidence on the point then the questions which arise in Arunachalam Chettiar (Sr.) case will be not very difficult of solution because Mr. Bashyam's evidence as regard the position in the case of a sole surviving coparcener is really a corollary to what he has put forward as the legal position in the case of one of several coparceners. If the Court accepts the position that a coparcener has a share in the property then it must necessarily follow that as the number of coparceners get reduced to one and the property becomes concentrated in the hands of a sole survivor he becomes the sole owner of that property.

Mr. Iyer in his evidence at page 104 says what is meant by coparcener. According to Mr. Bashyam's theory in the case of ancestral property when a person obtains possession of that property whether it be by partition or it be the result of the property coming to him as sole surviving coparcener; he still owns that property as coparcenary property; that even if a coparcener under the law of partition gets a portion of the coparcenary property even if that person be a bachelor if in that family there are other persons who are entitled to maintenance in his hands that make it coparcenary property and it continues to remain coparcenary property until he dies and the property goes to a collateral. That seems to be the position that he takes up. In the background of that evidence what has Mr. Iyer said. He says that a coparcenary means the narrow body within the joint family which owns the property (see page 104). The position therefore will be that there is a distinction between joint family and coparcener. The coparcener consists of the narrow body, namely coparceners who own the property and when one speaks of joint property of a Hindu undivided family one means the property which is held by the coparceners who constitute the narrow body of persons within the joint family. That is the position that is set out in the evidence of Mr. Iyer. Mr. Bashyam does not differ from that except at one place where he has stated that there is necessarily a distinction between joint family property and coparcenary property. According to Mr. Iyer's evidence when one speaks of joint family

property one means coparcenary property and nothing else. Mr. Bashyam speaks of something else. See page 84 of Mr. Bashyam's evidence, where he tries to draw a distinction. But for that the position of Mr. Bashyam would be that there is no difference between joint family property and coparcenary property. Also see Mr. Bashyam's evidence at page 8 (about the middle). That evidence is completely opposed to the evidence given by Mr. Raja Iyer. He says if ancestral property is obtained on partition by a coparcenary that becomes separate property though it has the potentiality of again becoming joint family property. Till that happens the property obtained on partition is separate property which in the hands of the dividing member can be alienated for value or gifted away or disposed of by will. Mr. Iyer has also stated what the rights of the non-coparcenary members are: their rights are rights to maintenance from the property (see page 105). He stresses the difference in the right to maintenance which exists in a coparcenary and a non-coparcenary member. He says that in the case of a non-coparcenary member it is definitely not a proprietary right: the right to maintenance so possessed by a non-coparcenary member does not affect the separate nature of the property in the hands of a sole surviving coparcenary (see pages 108 and 109). He has said that a sole coparcenary is the sole owner of the property and his ownership of that property is not affected by the fact that there are other non-coparcenary members with rights to maintenance (see pages 232 and 233 little below the middle). It is his separate property but he admits there is the potentiality of that property becoming coparcenary property again in the case of a coparcener being born or adopted.

What is the right to maintenance? In the case of non-coparcenary members that does not involve the right in property. On the point of right of maintenance in respect of property in the hands of the sole surviving coparcener the authority is 1941 A.I.R. (P.C.) p. 120 at p. 127. Generally in an impartible estate there is no right to maintenance except where there is such a right given by custom. There is no right to maintenance in the case of the other members of the joint family. There is no joint possession because the very nature of the estate permits the holder to alienate it for value or as he pleases; but there is only one incident of a joint family in that there is survivorship, that is, who the holder of the property is determined by survivorship. In this particular case the holder was joint with his brother and four sons. As long as he was holding the property he had the right to alienate it, but if he dies without alienating the property goes to the next holder. In order to ascertain who the next holder is then one has recourse to the right of survivorship and in that event his eldest son becomes holder of the property. To that extent there are certain characteristics of joint family. As regards the income itself it was held that the property being property which the holder could alienate as long as he was holder thereof the income was his and the fact that there were members who may by reason of custom have had a right of maintenance did not make the income the joint income of the family and that it remained his separate income. That principle would apply to a case where the sole surviving coparcener has property in his hands out of which property certain other members have a right to be maintained. The fact that these members have a right to be maintained however would not convert that property into the joint property of the family.

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No. 20. Address of Counsel for the Original Respondent, 25th March 1949, *continued.*

The same position has been taken in 1937 A.I.R. p. 36 and in another judgment in the same edition at page 239.

Mr. Iyer also points out even in the case of self-acquired property a wife, in that particular case, had the right to maintenance and his evidence on the point is at page 203 (about the 2nd question from bottom). The case he has referred to is 1929 A.I.R. Madras p. 47 at p. 58. Also see evidence at page 233 (bottom). According to this judgment even a wife could obtain a charge in respect of maintenance on the family property of the husband. It is not known whether this judgment is really an authority for what is stated by Mr. Bashyam on Mr. Iyer. This deals only with the case of an abandoned wife who has been allowed to obtain a charge against the family property. Even in a case like that when a charge is made it does not convert that property from being separate property of holder into joint property. The way a person entitled to maintenance can enforce it is by creating a charge on that property. That person may create such a charge or may refrain from doing so in which case the holder of the property is free to deal with it. That appears in Mr. Iyer's evidence at page 110 (about the 3rd question from bottom). The court put the question because in view of the evidence given the Court thought that the mere fact that there is a right to maintenance would result in limited ownership of the property itself. Mr. Iyer says that is not the position and until the charge is fixed the claim for maintenance stands on the same footing as the claim of a creditor. See evidence of Mr. Iyer at page 234. His evidence is, a sole surviving coparcener is the owner of property which he holds in the same way as property which a coparcener obtains on partition : he can dispose of that property and his powers of disposition are unlimited but there is always the potentiality of that property becoming coparcenary property in the event of a son being born or another coparcener being adopted : that is, provided it is done before he parts with the property : if he has parted the adopted son will get what is left. Then there is a distinction between a coparcener's right to maintenance, which is a proprietary right, and the non-coparcenary member's right, and in the case of a non-coparcenary the fact that he has a right to maintenance would not alter the state of a property which remains the sole property of the sole surviving coparcener or, in the case of a partition, the sole property of the surviving member.

Mr. Bashyam on the other hand contends that that would not be the position. See page 50 of his evidence. It seems to be a rather startling statement and he has not been able to cite any authority in support of it. See also page 52 (about the middle). His theory clearly is that the sole coparcener holds the property as coparcenary property even for sons who are unbegotten ; while Mr. Iyer says while he is in that state as sole surviving coparcener that property is his and he is free to dispose of it, his rights are unlimited. Mr. Bashyam on the contrary seems to admit that the sole surviving coparcener can dispose of it, can alienate for value, can gift it but he says he does it with the consent of the family. If there be no other members of the family no consent would be obtained, he can do it on his own ; but he says despite those rights which he can exercise with the consent of the family so to say the property still remains coparcenary property. That seems to be the idea that he wishes to place before the

Court. But there are decisions that a sole surviving coparcener owns it as his separate property and can deal with it as he pleases. The authority on the point is 20 Weekly Reporter 189 at 192. This was put to Mr. Bashyam and he stated that this is merely *obiter*. Even if it is regarded as *obiter* it is a correct statement of law and support for it can be obtained in a number of other judgments, namely :—

I.L.R. 52 Madras p. 398.

I.L.R. 29 Madras p. 437.

It is now 4 p.m. Further hearing adjourned for 28.3.49.

(Intld.) . . . A.D.J.

28th March 1949.

28th March 1949.

D.C. 37 & 38 T (Special).

Appearances as before.

Mr. Weerasuriya continues his address :

As regards the position of the sole surviving coparcener Mr. Iyer's position is that in the hands of the sole surviving coparcener property vests absolutely ; it is separate property which he is free to dispose of or gift away or to alienate for value and to dispose of by last will. Mr. Iyer has said so in his evidence at pages 108 and 131. The particular passage in the 20 Weekly Reporter case was put to Mr. Iyer in cross-examination as to whether it was really *obiter*. Possibly one might come to that conclusion but it is really a judgment which as explained by Mr. Iyer, contains an observation as regards a certain subject which at that time had not been quite clarified.

Another case on the point would be I.L.R. 52 Madras p. 398. This was a case of a Hindu family which consisted of father, son and the son's wife. The son died leaving his widow with power of adoption, so that the joint family consisted of father as sole coparcener and the son's widow. Four days after the death of the son before the widow exercised her power the father gifted practically all the property to his daughters and later within a week the widow made an adoption and the widow's heir claimed that the gift was bad and that he succeeded to the property as at the date of death of his father. This authority is important for two purposes : first of all to show that adoption does not take retrospective effect in a case like this, and secondly, what is the position of the sole surviving coparcener, namely the position of the father. There was a widow left who had right to maintenance and also the right of adoption. The last surviving male member of the family is called " full owner." See page 405 of the judgment. This authority was referred to in the evidence of Mr. Raja Iyer at page 131. This was also put to Mr. Bashyam. He did not agree with the expression " full owner." His evidence is at page 98 (about the middle). See 52 Madras at page 420. (In the light of what is decided the effect of the judgment is that the father while being the sole surviving coparcener was full owner of that property.)

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In I.L.R. 29 Madras 437 that was a case where the son was a sole surviving coparcener was adopted into another family. When adoption takes place the son brings into the adoptive family his separate property but he leaves behind the coparcenary property, and in this particular case the son who was a sole surviving coparcener who had his mother alive with power to adopt and also with right of maintenance, it was held that on his adoption he brought the property which he had as sole surviving coparcener the reason being that it had vested in him absolutely and separately (see page 446 bottom). This case sets out correctly the law. This particular case does not appear to have been put to Mr. Bashyam in cross-examination as it was available only when Mr. Raja Iyer was giving evidence. It was put to Mr. Raja Iyer at page 135. On this point see the observations of the Federal Court in A.I.R. 1945 (Federal Court) page 25. This point is dealt with in the last para. at p. 33. These cases show quite clearly what the position of the sole surviving coparcener is.

On the question whether a right to maintenance in any way alters the nature of the property see I.L.R. 56 Madras p. 1 at p. 6 1937 A.I.R. (P.C.) p. 36 at p. 37 ; also p. 239. All those cases on those particular points say that the right to maintenance does not make any difference : the owner of coparcenary property may have certain obligations like maintenance and so on, those obligations may increase or may decrease but that does not affect his ownership of the property. All those cases are referred to in the evidence. The 63 Madras case is referred to at page 143 of Mr. Iyer's evidence ; 1937 A.I.R. (P.C.) case is referred to at pages 133, 136, 216 and 230 of Mr. Iyer's evidence. It does not appear to be the case of the Appellants that the right to maintenance is a right to property as would appear from Mr. Bashyam's evidence at page 35. His general evidence was that coparceners only have a right to maintenance, the same right as the other members who are not coparceners. Take that evidence in conjunction with the evidence at page 24 (8 lines from the top). He quotes Mayne and says that no coparcener has any vested title in the joint family property. What he says is whatever rights the coparcener has are not rights to property. Therefore if that is the position the fact that there are persons with right to maintenance cannot convert a separate property of a coparcener into joint property or coparcenary property : even adoption does not change the character of the property. 1937 Privy Council p. 36 at p. 37 ; 1943 A.I.R. (P.C.) p. 196 at 199. The headnote (*b*) in this particular case (1943 A.I.R.) is not quite correct. What this judgment held was that the death of the sole surviving coparcener does not necessarily put an end to the joint family where there are members like widows with a right to adoption—that the family does not come to an end till there is a possibility of a son being born or being created by adoption. This is one of the cases which is relied on very strongly by Mr. Bashyam as support for his proposition that ancestral property whether obtained by partition or whether coming as sole surviving coparcener that property remains joint family property even though there are no other persons who acquired any right from birth ; the mere existence, the mere possibility of such a contingency makes it or preserves it in the state of being joint family or coparcenary property (page 48 of Mr. Bashyam's evidence). Mr. Bashyam's position is not correct because all that this case decided was that the family does not cease to exist so long as there

are female members who can bring into existence a coparcener by adoption ; it nowhere says that the property becomes or remains joint family property. In this connection it is important to note that the head note is not quite correct having regard to the actual matter which has been decided in the case. This very case was put to Mr. Iyer in view of what Mr. Bashyam has stated. See page 139.

The next case that was put to Mr. Bashyam as the case which strongly supports the Crown's position that Arunachalam Chettiar (Sr.) was the sole owner of his property is Privy Council decision 1937 A.I.R. p. 36. See page 39 of Mr. Bashyam's evidence on this judgment. In cross-examination it was put to him again at page 92 (bottom) also at page 94 (last question).

It is quite clear that the Privy Council did not proceed to decide this case on the footing that a gift from the father to the son was separate property. They held assuming it is ancestral property, even if it is ancestral property the existence of a daughter or widow with right of maintenance and right of adoption does not make a difference ; it does not convert that property into joint property. This case comes at the end of a long series of cases which hold that the sole coparcener's right to property is absolute, and the existence of persons with right to maintenance or right to adoptions does not make any difference to that property. This judgment of the Privy Council supports the Crown's case.

Then there is the judgment in the same volume at page 239. In this judgment they merely refer to previous decisions and set aside the ruling of the Bombay High Court, in A.I.R. 1935 Bombay p. 412. In order to know the effect of the ruling it is necessary to know what was actually held in the Bombay High Court case. See pages 413 and 414. On these cases see the evidence of Mr. Raja Iyer at page 216. Therefore the position as regards the sole surviving coparcener is made clear from these authorities. Mr. Bashyam had tried to give a certain interpretation of the 1937 Privy Council case which is quite unacceptable and he also had given a certain interpretation to the 1943 Privy Council case at page 198 and that interpretation too is incorrect and most important of all Mr. Bashyam relied on the Federal Court judgment in this case. 1945 Federal Court page 25. He states that the Federal Court in this very case held that the property left by Arunachalam Sr. was joint family property. If he can establish that that is what the Federal Court has said, then it will take the Appellants' case very far. Is that the effect of the judgment ? A great deal of the judgment is on the question as to whether the Hindu Women's Right to Property Act of 1937 was valid or not. The point of consideration in this case commences at page 32 of the Federal Court judgment. A copy of the Act will be found at Mayne page 714 Chap. XIV. The section there is the amended section. At the time of this case the section was not amended. The question whether this was separate property within the meaning of section 3 (1). This case held that under section 3 (1) the estate left by Arunachalam Chettiar (Sr.) was not separate property, meaning thereby self acquired property. Mr. Bashyam says that Arunachalam (Sr's) property was joint family property and he says that is the effect of the judgment. This judgment first of all considers what is separate property : " separate " in the strict sense is self acquired property and in the loose

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sense ancestral property in the hands of a sole surviving coparcener. The last sentence in section 3 (1) connotes separate property not coparcenary property.

(*Interval.*)

(Intld.) . . . A.D.J.

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28th March 1949.

38/T (Special).

(*After Lunch.*)

Appearances as before.

Mr. Weerasuriya continues his address :

In the morning I referred to A.I.R. 1945 Federal Court 25. He refers to page 32. I am only relying on the argument of the learned Judge on the expressions used " devolves " " inherit." Section 3 was intended to be ancestral property. He refers to sub-section 2 of the Hindu Women's Right to Property Act. This clearly refers to coparcenary property. He refers to page 33 of the judgment cited above. It is very clear from these. He refers to next page in the judgment. Mr. Bashyam says this is a case where property in the hands of a sole surviving coparcener was held to be joint property. It cannot be. The Judgment says it has the potentiality of becoming such property, and that it was not separate property within the strict sense of the term. There cannot possibly be any doubt. He refers to the Order that appears at the very end of the judgment at page 46 column 2. That makes it quite clear. Mr. Bashyam says that this case holds that the property left by Arunachalam Sr. was joint family property. It is sheer nonsense for him to say that. If he intended to make it as a statement of fact that that case decided that the property was joint property, it is completely wrong. If on the other hand he made an inference, that inference was wrongly based. He refers to Mr. Bashyam's evidence at page 38. Nothing of that sort happened in that judgment. This was put to Mr. Raja Iyer at page 141. It is clear that it was separate property—self acquired property. He refers to the evidence at page 142. This judgment is relied on for the case for the Crown. He refers to the income tax case which was decided in 1945 A.I.R. Madras page 122. It is no use saying that these are income tax cases. The question is what are the principles of Hindu Law applicable. After Arunachalam Jr's death the income which Arunachalam Sr. got from these properties was assessed as income he received as Karta of an undivided family ; the rate of tax was less than an individual. He cites 37 A.I.R. Privy Council page 36. On the authority of that judgment the income was assessed as the income of an individual and appeal was taken.

There is an omission I made in regard to Arunachalam Jr's case. He refers to section 3 (2) of the Hindu Women's Right to Property Act. It cannot be disputed that this subsection deals with coparcenary interest in joint property. That interest is described as interest in Hindu Joint family. We have recognition of the fact that interest of a coparcener is an interest in the property. He refers to section 8 (1) (*b*) of the Estate Duty Ordinance 8 of 1919. The wording is absolutely the same. If any

further arguments were necessary to show that in the case of Arunachalam Jr. he had an interest in the property which ceased on his death, this should show clearly what was intended by the legislature. He refers to A.I.R. 35 Bombay 412 at page 422. He refers to certain observations made at page 415 1st column. Important cases have been dealt with which support the Crown's contention that in the hands of Arunachalam Sr. was his own property. The important case which is relied on by the other side is A.I.R. 1941 Privy Council at page 120. Mr. Bashyam attached a lot of importance to this case. He refers to page 70 of Bashyam's evidence, and page 74. What was held in this case was where there was a holder who had four sons living with him and also had a brother, all of them constituting a joint family, being impartible property the very nature of the property was such that the holder had the absolute right of alienation of that property and none of the other members, not even the males, could have restrained him from alienating. They had no right of maintenance ; no right to demand partition but they had a right of succession by survivorship. If the holder died without alienating the property in order to find out who succeeds to it, one will have to look to the members of the family and it would have been the member next in order in line of succession, by right of survivorship. This was also the income tax case but I do not proceed to belittle the judgment on that ground. The Lordships of the Privy Council held that the holder of that property was not the sole owner but that the joint family was the owner. As regards the income they held that the income was the sole income of the holder because the income was something to which the other members had no right of common enjoyment. Therefore they could not claim the income. The question is how is this judgment going to help the Appellants. Mr. Bashyam says he relies on this judgment because though it was coparcenary property there is no right to demand partition and although the holder can gift or alienate it still it has been held that it is the joint property of the Hindu family. That is how he takes up the position that Arunachalam Sr's property was joint family property. Mr. Weerasuriya refers to Mullah dealing with impartible estates at page 614 section 587. What Mullah draws attention to is that there are three characteristics in coparcenary property, that is, right of common enjoyment, right to demand partition and the right of survivorship. If there is any one of these characteristics present in property there would be no need to quarrel with a finding Court that the property is coparcenary property. In this case the Privy Council held that the property was the property of the joint Hindu family because even though there were not the other two characteristics, there was the right of taking property by survivorship. How does the analogy of this case help the other side in the present case ? In the present case he cannot say this is authority for holding that the property of Arunachalam Sr. was coparcenary property. In the case of Arunachalam Sr. there was not present even one of these three characteristics. Succession by survivorship is characteristic of coparcenary property. Succession by inheritance is characteristic of separate property. He refers to Mulla section 34 page 25. He refers to paragraph 2 sub-paragraph 2. He refers to Mulla section 230. That is not really in accordance with what he has stated at page 34. This was put to Mr. Iyer and he has stated that Mayne's statements on the point is to be preferred. Mr. Weerasuriya refers to 1932 A.I.R. Privy Council 216 at page 221 (middle of column 2

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of that page). He says he relies on the passage quoted from another case. In the case of impartible estates it is considered the joint property of the family for that limited purpose, namely, in order to consider who is the person to succeed the holder. All that this judgment holds is that impartible estate would be regarded as property of the family and not the property of the holder because one at least of those three characteristics of coparcenary would exist in such property. That case cannot be applied to the present case where property of Arunachalam was all along separate property. There was not a single of these three incidents of coparcenary property. Although the Privy Council held this was the property of the family, he refers to 1942 A.I.R. Privy Council page 3 at page 5 column 2. They declined to hold that any member there having a right of maintenance as a result of custom, that such right should be regarded as a right of property. They refer to this very case. Even though they held that the property is the property of the joint family they refuse to recognise that a mere right to maintenance was a right which gave them any ownership of that property.

On the question of what the property of Arunachalam Sr. was those are the submissions.

The next question is whether adoption of some by the three widows will affect the legal position. Even if the adoption is valid the position is that adoption does not have say retrospective effect in order to affect disposition previously made. If that is the position it will be necessary to consider the will left by Arunachalam Sr.—document A2. He refers to the third paragraph of page 1 of the will. Definitely therefore the estate has been given to the Executors subject to certain directions. He refers to page 5 last but one paragraph. Clearly the property has been handed over to the Executors in trust for the boys who were to be adopted till such time as they became majors. Arunachalam being a person who was entitled to give away property by will in this particular case the will took effect on his death. Property passed to the Executors. Estate duty is only concerned with the passing of property as pointed out in the judgment of *Winans* v. *Attorney-General* [1910] Appeal Cases House of Lords at page 27. He refers to page 32. Whoever may have been the ultimate owners of this property, the beneficiaries, the legal title passed to the Executors making them holders in trust for the persons who were going to be adopted subsequently. But the property had passed under the will and any subsequent adoption in 1945 cannot possibly have any effect on obligations to pay any tax which had attached to that estate on the date of death. The last will was put to Mr. Iyer—page 147. Mr. Bashyam in his evidence says that even in the case of a sole surviving coparcener or a person who has obtained ancestral property on partition and there are no other coparceners having an interest in it, he says that such property continues to be property held as joint property subject to the right of alienations or disposition by will. It has been held in the case of coparcenary property it cannot be disposed of by will. He refers to section 368 page 432 of Mullah—paragraph 2 sub-section 2. There is one case which has been referred to where a will was made by one coparcener and he had obtained the consent of all the others. That was not regarded as testamentary disposition. It was recognised as alienation which took

effect on the same day. He refers to page 130 of Mr. Iyer's evidence (bottom); I.L.R. 1948 Allahabad 313. Those are the submissions on Hindu Law.

The Issues appear at page 4 of the proceedings in 38/T (Special). He refers to the Issues.

Issue 1—(A) He and his son did form co-partners and as such carried on business during the lifetime of both of them. This is not specific as to the point of time contemplated. It is conceded that he and his son carried on business as co-partners.

(B) While he was joined with his son he had a definite share in the assets as a co-partner, and after his son's death all the properties became his property.

(C) None of the assets which have been assessed for duty in this case are the assets of the family but are the separate property of Arunachalam Sr.

Issue 2—Answer to that is No. No part of the estate was the joint property of the Hindu undivided family.

Issue 3—My submission is " Yes " as regards issue 1 and " No " as regards issue 2. Even if issue 1 is answered in the affirmative estate duty would be payable. If issue 2 is answered in the affirmative then answer to issue 2 in respect of issue 3 would be " No."

Issue 4—If issue 3 is in the negative the value would be the value assessed by the Commissioner of Estate Duty.

Issue 5—If issue 2 is answered in the affirmative then of course section 73 would apply and the issue will have to be answered in the affirmative.

Issue 6—Mr. Weerasuriya says that the Court is bound by the decision in 45 N.L.R. 230. Mr. Chelvanayagam while admitting that that case would now be binding on the Court states that he wishes to make further submissions with regard to that, namely, that a higher rate of tax was levied in the income tax cases and this may make a difference. Mr. Weerasuriya cites 45 A.I.R. Madras 122. In this very case after Arunachalam Jr. died the income in the hands of Arunachalam Sr. was originally taxed as joint property. After the decision in 1937 A.I.R. Privy Council page 36 the Income Tax Commissioner decided to change the method of assessment and to tax him as an individual. If any question of estoppel arose, the judgment of the Madras High Court showed that estoppel did not operate and it was quite correct procedure for the Income Tax Commissioner to have taken steps to correct the wrong basis of assessment of the income of Arunachalam. The decision in this case would also be relevant for the purpose of this issue.

Issue 7—All the property passed and such property was separate property of Arunachalam Sr. Even assuming that the Court would hold that on the adoption of a son to Arunachalam Jr. in 1945 he must be deemed to have been a coparcener at the date of Arunachalam Sr's. death, the property would have passed to the Executors under the will A2. This issue will have to be answered as " Yes."

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Issue 8—If the property had not passed within the meaning of section 3 the answer must be in the negative.

Issue 9—On this point it would be necessary to refer to the evidence. He refers to page 18 of the evidence (last sentence). Actual documents were in Colombo. He refers to the next paragraph. In the book of rules relating to these notes the position as regards notes is made quite clear. It shows how the property in them can be transferred. He refers to cross-examination at page 21—first sentence—and page 25.

Further hearing tomorrow.

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Appearances as before.

Mr. Weerasuriya continues his address :

I was dealing with issue 9 yesterday. He refers to pages 42 and 43 of the evidence of 19th July—evidence of David Norrie—last but one paragraph of page 43. If the object is to show that in the case of these securities there is no transaction which takes place in the share market, this evidence does not help very much. These are securities which could be negotiated ; property in them could be transferred by endorsement and 20 delivery. All these notes were physically situated in Colombo at the time of death and it was open to the owner or representatives to endorse and obtain cash. He refers to document A10—page 2 of A10 paragraph 2. All the securities produced are promissory notes. He refers to page 18 of A10 Chap. 4 and the next paragraph at page 19. The position is that in the case of promissory notes transfer of title is by endorsement and delivery and if that is the position I would refer Court to Green on Death Duties (2nd Edition) pages 583 and 584. These are bearer securities. He refers to first paragraph on page 584 and page 969 Article 3 sub-paragraphs 1 and *b*. Although they are payable to order they are in effect 30 bearer securities. If they are regarded as bearer securities they should be treated as assets situated in Ceylon. All that is necessary would be an endorsement. He refers to *Winans* v. *Attorney-General* [1910] Appeal Cases, where the general principles applicable to foreign bonds situated in another country are discussed.

He cites *Attorney-General* v. *Bouwens* 4 M. & W. Reports page 172 Volume 150 of the English Reports at page 1390.

He cites Dymond (10th Edition) page 90.

Issue 9 (A)—He refers to page 21 of the evidence. In order to ascertain the rates payable these items should be included. 40

With regard to 9 (A) Mr. Chelvanayagam admits that even if Mysore Government security is to be excluded from the estate the value is to be considered to calculate the rate at which the assessment should be made.

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Issue 9 (B)—At page 44 there was evidence that a sum of Rs.40,000/- had been paid as succession duty in Mysore bonds. My position is covered by issue 9 (C).

Issue 9 (C)—He refers to page 47 of the proceedings. Appellant cannot in these proceedings take up that position. On the present petition of appeal—the other side cannot canvass that position. They will have to move to amend the petition of appeal. Such application would be objected to. As regards 9 (B) it is irrelevant on the pleadings.

Issue 10—Interest is clearly payable in terms of section 46. He refers to A18 and A23 assessment notices.

Issue 11A.—Mr. Weerasuriya concedes that the answer to it will be " Yes " in view of section 22. Likewise answer to 11 (B) would be " Yes " under section 18.

(It is agreed that with regard to issue 11, if I answer in the affirmative both parties will submit statements showing the amounts deductible.)

Issues 12, 13 and 14.—He refers to judgment in Natchiappa Chettiar's case No. 10 Special. The Court will make a similar order.

Mr. Weersuriya says that there is a certain matter which he omitted to mention yesterday when he was dealing with issue 5 ; Ordinance 1 of 1938 is of course Chap. 187 and section 73 as it now stands is different from section 73 as it appeared in the Volume. Section 73 has been subsequently amended by Ordinance of 1938. Arunachalam, Sr., died in 1938. He dies when section 73 as it appeared in the Volume was in force. In this case there is an admission that all the property assessed for duty is property of Hindu undivided family. In the application of section 73 only such of the property of Hindu undivided family as is known to be movable property in Ceylon would have the benefit of the section.

Dealing with adoption, the will A2 took effect before adoption. He cites 50 Madras I.L.R. page 508 at page 525 followed in 1946 A.I.R. Nagpur page 203. 52 Madras followed that same case. Evidence of Mr. Iyer on those two cases is at page 148 and 152.

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No. 21.
Address of Counsel for the Original Appellants, 29th March 1949.

No. 21.

ADDRESS OF COUNSEL for the Original Appellants.

Mr. Chelvanayagam addresses Court.

Getting to the points in dispute right at the outset I raise the question of burden. My friend suggested that the burden was on me because I came to Court in the position of an Appellant. The position that there is any burden in this matter on me to show that the assessment is wrong is I submit not correct law. I stated from the start to the finish that the burden lies on the Crown to show that the property that is being taxed is liable to tax. From the start to finish the assessing authority has to show that the tax is leviable. I do not suggest that you have to strain the law to find whether a tax is leviable on this property or not. I do not suggest it at all. But the burden as I shall show on a series of authorities, lies on the Crown to show that the property on which death duty is sought to be levied comes within the statute which levies the death duty. There is slight distinction in the income tax ordinance where statutorily the burden shifts. In the case of income tax the statute creates a presumption that the assessment is right and the burden would be on the assessee to show that the assessment is wrong. There is no such presumption statutorily created by the Estate Duty Ordinance of 1919 or by the Ordinance of 1937 or 1938. Therefore the burden would be in a way in which it will be under the common law or general law of the land. Let us consider what the general law relating to the burden on the Crown and on the subject of these taxes is. There are series of cases in England and they deal with interpretation of statutes of tax. One of the earliest cases that deal with this question is *Parkington* v. *Attorney-General* 1869 Law Reports 4 House of Lords Cases page 100. The particular passage referred to is at page 122. This *dictum* has been followed in a number of cases thereafter, first of all in the case of *Attorney-General* v. *Selborne* [1901] K.B. page 388 at page 396 (2nd paragraph). The same *dictum* is found in the case of *Tennant* v. *Smith* (1882) Appeal Cases page 150 at page 154. There are on eor two other cases which are important: *Attorney-General* v. *Milne* [1914] Appeal Cases page 765 at page 771 (second paragraph of the judgment) 1894 Finance Act is the very Act from which the 1919 Estate Duty Ordinance has been taken. The whole of the 1919 Ordinance has been taken from 1894 Finance Act—some sections taken bodily and some to suit our Ordinance. It is very plain and definite the manner in which the law looks on the interpretation of the statutes to tax. There is no presumption that the Crown wants to tax nor is there any presumption that the Crown has any particular object in taxing. They want revenue for a purpose. It brings legislation and the legislation is couched in a particular language. If the thing to be taxed is caught in the words it is taxed. If it is not caught in the words it is not taxed. Crown by virtue of administrative department by exercise of its administrative machinery goes and serves a notice on certain persons who are in possession of assets of a deceased person and says such and such property is caught within the Estate Duty Ordinance and so much is payable—pay it. That is what the administrative department of the Crown does. From the determination of the administrative officer there is a right of appeal to the appropriate judicial tribunal. When we come before the

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appropriate tribunal the question is not hampered in any way. The question determined by the Court is the question as to whether the tax has been properly imposed; whether the administrative department is correct in imposing the duty on the assessee or whether it is not, and therefore you do not start with the presumption that the administrative machinery has done its work correctly. You start from blank. You ask yourself the question, I submit, whether the tax in this case has been properly levied in terms of the statute that imposes the duty. Without any hindrance or objection it is the question whether the assessees are properly taxed; whether the tax is leviable and what is the quantum of taxes. The whole matter is afresh before this Court. I am looking at the 1919 Ordinance as it originally stood before its amendment in 1938. Part 1 deals with the administration; part 2 deals with grant of estate duty. The whole of that up to sections 15 and 16 deal with merely the question of taxes leviable. Section 17 deals with valuation of property. Section 18 onwards deals with who are liable to pay the duty. Section 21 onwards deals with the machinery for the assessment and collection of duty. Section 21—duty is cast on the subject to make a statement. He refers to sections 22 and 23. He refers to section 22 (3) & (4). There was a right of appeal from the assessment to the Board. There is no finality to the assessment until the Court determined the question. Section 22 deals with assessment and appeal therefrom. He refers to section 27. The two sections are quite separate. One is appeal from the assessment and section 27 is an independent section where irrespective of the question of appeal to determine the correctness of the assessment the Commissioner is empowered to return the duty that has been overpaid. There was a case of Ramasamy Chettiar which is reported in 30 N.L.R. Under this section 27 Ramasamy Chettiar brought an action for the refund of 2/3rds duty paid on the death of a member of an Hindu undivided family on the basis that the deceased person was entitled only to 1/3rd of the estate and not the whole. The machinery of the assessing department has various parts. One is assessment by the assessor himself but that is an assessment which is subject to an appeal and that appeal is not in any way limited. Its part of the task of assessment is that it is subject to appeal to a Tribunal which is common both to the subject and Crown—between the administrative department and the party who was assessed. That portion of that Ordinance which deals with the machinery of assessment and appeal therefrom has been superseded by the relevant portions of Chapter 187 Vol. 4. The second section creates the administrative department. Section 3 onwards grants the duty and says how duty is granted. Section 6 onwards deals with the type of property, manner of valuation of the property on which tax is involved. We go on up to section 20, 21, 22, 23. Section 24 onwards deals with the liabilities and section 29 we start with the machinery of ascertaining the duty which casts on us the making of a declaration of property and section 32 rates assessment. From section 32 this point is irrelevant. After making a declaration the assessor, whether with a declaration or not, proceeds to assess. Section 33 supplements the section. Section 34 is the most important section. In point of fact there is no question of the burden shifting at any stage. The burden shifts in this way. Your Honour comes to a finding of fact on certain evidence that is placed. Then it might be necessary for us to appeal from that question of fact; to follow the normal routes, that the Judge's finding of fact has gone wrong; it is not supported

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by the evidence or the Judge has misdirected himself on the question of law. We ask the Appellate Court to review the finding of the Judge. Even there there is no shifting of burden. Appellate Court says here is a judicial tribunal which has come to a finding of fact ; we will act in review according to certain rules that have been adopted for our convenience. Every Court of Appeal is a Court of re-hearing. In other words, in the Appellate Court we are entitled to have the matter re-heard and it would be competent for the Appellate Court to say we will start anew. That aspect of the matter does not trouble us at this stage. We come to you in respect of a right granted by the legislature in respect of a duty cast on the Court. There is no question that we have to establish that anybody is wrong in the sense that we are entitled to ask Court to look at the whole question and consider the statute on which tax is imposed on this property. The whole matter is open and it is for the Court to consider the question as the learned Judge puts it in the judgment I have cited from the point of view as to whether the duty that the legislature seeks to impose has actually been imposed on the property sought to be taxed ; on the estate which is sought to be made liable to duty. In respect of some statutes, penal statutes, the Courts go further and say that in cases of doubt the Court will hold that there is no duty imposed. I do not think we need have to go so far. The burden is from the start to finish on the Crown. He cites *Nicholson* v. *Peiris* (1862) 31 Law Journal Reports Exchequer series page 233, at page 235. Taking the steps that those cases state. Those cases state that is the way to interpret particular statutes ; second step is there is machinery erected for the purpose of ascertaining liability. That machinery consists of the administrative department from which there is a right of appeal to Court. That machinery will look at the case in the light of those decisions. It does not say that when it passes from the assessor's hands and comes to Court those principles which are enunciated there do not apply merely because it passed out of the assessor's hands. If those principles apply when in the hands of Court then the matter is just as when it was in the hands of the assessor. It is not for me to show that a duty is not imposable. Ultimately when parties have entered upon the evidence and both parties have placed evidence and the Court has all the facts there is no burden on the person. The Crown wants to tax ; it has taxed and recovered, but we are, as we were before, in the eye of the Court. The fact that we have been taxed and paid the duty should not make any difference to the question whether the duty is payable or not. Supposing the Crown sought to tax Queen's House which they say passed on the death of *X*. I say that that did not pass on the death of *X*. In Court the burden of proving that Queen's House did pass on the death is on the Crown and it would have been necessary for them to have said we have such and such evidence. The authorities cited do not deal with the question of burden in the direct way but the inference is there. They must show that duty is leviable. It is a question of inference or deduction to show that the burden lies on them. There is no presumption created in the saying that the assessment is right. He refers to section 73 (4). Even there the appeal from the assessment of the Commissioner is not based on any presumption that the assessment is right. Where the Court has to deal with the matter, the whole matter is determined, even in the House of Lords by the three or four Courts, on the footing that we have got to look into the question—right as it was at the very commencement from

the point of view of whether the tax is leviable under the particular statute on this particular property and claimable from this particular assessee. The next approach is the mixture of the two sets of principles. This is not a case purely of Hindu Law. We have spent so much time in ascertaining the principles of Hindu Law applicable to the facts of the present case but they are only supplementary. The main question is a determination of the true meaning of the taxing statute in this case. There are two taxing statutes each applicable to two different cases before Court. In either case the main question before Court is " Does the property taxed come within the meaning of the particular taxing statute ? " In trying to find it out we see what is the nature of the property we are dealing with and what the quality and rights of persons of the properties are. We have got to look at the Hindu law only to see the connection between the individuals that are supposed to have something to do with this property and then ask yourself the ultimate question " Is the connection such that the property in this case gets caught up within the four walls of the section ? " Ultimately it is a question for this Court to decide on a construction of the taxing statute. The evidence of the experts in question and the assistance offered by the Indian authorities as well as the text book writers are only helpful to ascertain such of the qualities of the property or such of the nature of the interest or rights that the father and son had in respect of these properties to see whether the property gets caught up within the meaning of the sections of our statute. Therefore first of all we will have to consider what is the meaning of the earlier statute in this case. Earlier statute in this case deals with two sets of cases under sections 7 and 8. My friend has clearly not tried to bring the son's estate within section 7. Section 7 has been bodily taken from an English statute. First of all section 7 deals with property that in reality passes. Section 8 deals with property that in reality does not pass but by a fiction of law is made to pass. Therefore the two sections are mutually exclusive each of the other. Section 7—if there is property which passes then there is a duty on it. As to what passes, there is a definition at page 605 section 2. In other words, if my father gives me Blackacre subject to the condition that it shall go over to my son at my death, then that is property that passes ; or if he says it will go to my son 10 years after death, it is property that passes. On my death it passes if he does certain acts. There was the actual changing over title of possession of the property. Section 8—we have something artificial. If I had property which I was owner and could dispose on my death it passes. Section 8 (1) (*a*) is not wanted. 8 (1) (*a*) deals with property which does not pass but over which I had right of disposition which normally does not pass but notionally for the purpose of law will be included as property that passes. Supposing my father left Blackacre to me and gave my mother, his widow, who was executrix, power that during her lifetime she can appoint some person including herself to succeed to the property, Blackacre, which is in my hands, as long as she was living she had power to dispose of Blackacre of which I was owner. My mother, when she dies, that power dies with her. From the definition section at page 606 (top) I shall have occasion to ask Court to consider " as he may deem fit." The competency to dispose is explained to a large extent by that. But that does not mean that the illustrations that I have given disposes of the whole meaning of that subsection. I have given an illustration in trying to explain my submission

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that section 8 (1) (*a*) deals with a very definite type of property to what section 7 deals with. Similarly 8 (1) (*b*)—Supposing I am full owner of Blackacre. I have interest in Blackacre. I die, the property passes, so that 8 (1) (*b*) is not wanted. Therefore it must be dealing with some property which is only deemed to pass that is caught up. Most of the examples deal with annuities. My father by will leaves Blackacre to me. I am full owner of Blackacre but charges on that annuity of Rs.1,000/– a year payable to my mother. When mother dies that interest of Rs.1,000/– a year which mother had ceases. Blackacre does not pass ; it is with me. I am owner of Blackacre. My mother is given an annuity of Rs.1,000/– a year as long as the youngest child becomes of age or as long as the child dies. That would be an interest which the deceased or any other person had, an interest ceasing on death. These are cases that are caught up. Decisions show that under 8 (1) (*b*) on cesser of interest benefit accrues to the property and not to a person. On my mother's death Blackacre gets a benefit in respect of that small portion. He cites Woolley—Handbook on Death Duties at page 111 (bottom) which is the same as 8 (1) (*b*). He refers to the Finance Act of 1894 Chap. 30. First section corresponds to our section 7. For all purposes it is taken bodily. Section 7 is identical. He refers to Section 2 of the Finance Act. 2 (1) (*a*) is identical ; 2 (1) (*b*) is identical. On the corresponding effects of section 1 and 2 on each other, to what extent they overlap or do not overlap, to what extent the meaning of competency to dispose and cesser of interest I submit will have equal application to our statute of 1919. Certainly sections 7, 8 (1) (*a*) and 8 (1) (*b*). He cites *Earl Cowley* v. *Inland Revenue Commissioners* (1899) Appeal Cases page 198 at page 211. This is the dictum followed in series of taxing cases. Section 2 deals with property which does not pass but deem to pass and section 1 property that passes. Property that passes normally and generally falls within section 1. There is a reference in the case of *Attorney-General* v. *Milne* [1914] Appeal Cases page 765 at page 772 referred to earlier. He refers to page 779. That is, I submit, the real meaning of section 7 and section 8 under which we have got to consider. I say quite correctly both my friend and the experts have dealt with the case and tried to bring it outside section 7. Arunachalam Sr. was a man who was alive, who was in possession of the whole estate which he got from the family into which he was born after his elders had died and which he was in possession of and for which he had some title according to Hindu Law and which he was enjoying, and all of a sudden a son is born and grows up as Arunachalam Jr. Before Arunachalam Jr. came into existence Arunachalam Sr. was in full possession and his son when he was born comes into being and by reason of his birth gets an interest, or attachment or some sort of holding on all this property by reason of his birth by implications of the law and he lives for a few years and dies. Arunachalam Sr. the father continues in possession. He continues in the same way after the death of his son as before his birth. Therefore quite clearly there is no property that actually passes to Arunachalam Jr. Supposing Arunachalam Jr. was born and died as an infant two months later, the legal position would be the same, whether he lived up to 34 married and died.

(Sgd.) N. SINNETAMBY A.D.J.

(*Interval*).

D.C.37 & 38/T (Special).

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(After Interval.)

Mr. Chelvanayagam continues his address.

When looking at the nature of the property that Arunachalam (Jr.) had in this estate certain qualities would support the theory that it falls under section 7, certain qualities would support a case under section 8 (1) (*a*) and certain other qualities would support it under section 8 (1) (*b*). While examining everyone of these classes it is absolutely necessary to avoid confusion and to make each one of the three categories distinct. In considering the nature—the qualities—of the property that Arunachalam (Jr.) had no doubt some may point one way, others may point another way but what is needed is to take all the qualities and all the characteristics of the property considering them as a whole do they fall first under section 7, then under 8 (1) (*a*) and then under 8 (1) (*b*). Take for example section 8 (1) (*a*). The Crown was submitting a series of judgments on the question of alienability of a coparcener's interest. Questions of alienability of a coparcener's interest are pertinent to an inquiry under section 8 (1) (*a*) and 8 (1) (*a*) alone—property of which he was competent to dispose. If the interest in *Earl Cowley's* case is taken as a basis, classes which fall under 8 (1) (*a*) are exclusive of classes which fall under 8 (1) (*b*) and both of them are included to fall under 7. " Exclusive " means if one property falls under section 7 it does not fall under 8 (1) (*a*). Lord Atkinson's judgment in *Earl Cowley's* case is they are mutually exclusive. Supposing a person dies owning property that will pass on his death to his heirs ; that property will not fall under Section 7 and under section 8 (1) (*a*) ; it will fall under section 7 : if it falls under 7 it does not fall under 8 —it cannot fall under 8—but there is no need to have recourse to 8. Section 8 deals with property that does not pass but is deemed to pass. See Lord Atkinson's judgment at page 212. What the Appellants in this case are asking for is a certain clarity on a certain basis on a certain submission that is being made : they are not trying to steal an advantage over the other side in respect of this matter. The submission that is made might catch up Arunachalam (Jr.'s) rights in this estate. Even if he had no title to property, if he had a right to dispose of it, then section 8 (1) (*a*) catches property over which he was not owner. Arunachalam (Jr.) was not owner of any share or any portion of the joint estate but even if he was not, if he was competent to dispose any portion of it then it is caught up under section 8 (1) (*a*). That is the logical result of this argument.

There are certain qualities of Arunachalam (Jr.'s) property in the estate which might suggest that he has certain of the elements of ownership ; if he has certain elements of ownership they fall under section 7. Discuss that separately, there is no ownership and nothing passes and section 7 does not apply. That is almost common among both the experts and the Crown and the Appellants. All that the Appellants are labouring for just now is that when considering section 8 (1) (*a*) consider only such of the qualities of Arunachalam (Jr.'s) property or ownership of interest as are appertaining to that question of competency to dispose and nothing else. For example when discussing 8 (1) (*a*) the fact that he has a right

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to maintenance, the fact that he has a right to live on the property, the fact that his daughter can be dowried out of it are utterly irrelevant. If he has all the qualities without the right of disposition section 8 (1) (*a*) does not apply. Lord Atkinson's judgment says that the framework of the statute is there: put all these cases into separate compartments. In other words the whole of section 8 deals with the right to dispose of property over which the deceased had a right of disposition, over which he was competent to dispose but which does not pass. The court is asked to deal with a branch of law which is foreign to Ceylon, which is fast changing—two systems of law, one ancient with the idea of corporate family holding the property and the other modern with the individual holding the property. Between the two the law is changing fast so much so that the Privy Council said that " we cannot recognise the changes in the law more than to the extent to which the decided cases apply." Therefore in considering whether the estate of Arunachalam (Jr.) falls within 8 (1) (*a*) it must be kept in mind the boundaries of 8 (1) (*a*). That has nothing to do with the ownership of property or with any interest in the property or with right of maintenance. It only deals with the question whether the deceased person was competent to dispose. Section 8 (1) (*a*) therefore deals specifically with only such of the property as do not belong to the deceased but over which he had a right to dispose or competency to dispose or power of disposal. The case can be considered only in that light. The other rights are all things that will fall under different heads. One cannot get a combination of certain qualities, some of which under section 8 (1) (*a*), some under 8 (1) (*b*) and some under section 7 put them together and give a loose conception that this liable to tax. That is what exactly the Crown is trying to do. As against some of the qualities which will bring it under section 7 there are many more qualities which will take it out of section 7; they must then be considered separately, what are the qualities which will be under 7 and what will take it out. Similarly what are the attributes which will bring it under 8 (1) (*a*) and what are attributes which will take it out of that section. The experts who gave evidence are not experts of Ceylon law: they have no right to interpret Ceylon law. In as much as they are lawyers they are entitled to form an opinion but the right of interpretation of the particular sections is the right of this court. With respect to the right of interpretation all the assistance the experts can give is to say what is the nature of the interest or right or the quality of the property that the coparcener had in the property to make the court come to a decision. Are they such which will gain quarter within any of these sections.

Section 8 (1) (*a*) is the first section under which the Crown wants to bring it. While considering it only the question of competency to dispose should be considered. Any other qualities, any other characteristics that the owner or the coparcener has may throw light on the question of competency; therefore the Appellants are not trying to take it out of that. The fundamental question would be to determine first as to whether he is competent to dispose. It may be his property, it may be somebody else's, in fact it cannot be his property—if it is his property it will not come under section 8 (1). In other words it may be somebody else's property over which he had the power to dispose. Halsbury and all these authorities cite the judgment in *Earl Cowley's* case as the decisive case

for the interpretation of sections 1 and 2 of the Finance Act of 1894 which corresponds to sections 7 and 8. The consideration of the facts of this case will be logical only on that basis.

" Competent to dispose " is defined under section 2 (ii) (*a*). It is a competent power to dispose ; it is not a direction. Power may be power to dispose of it as he thinks fit. Under section 8 (1) (*a*) one has to catch a property which does not pass in the normal English sense of the word—under the normal conception of the language—but some other property which does not normally pass has to be caught and put inside this by a fiction of the law. Therefore it must fit in within the four walls of that definition.

What did Arunachalam (Jr.) do ? All are agreed that he cannot gift any portion of his share : all are agreed that he cannot dispose of by will : parties are also disagreed as to whether he can alienate or not. Granting the dispute in the matter to the other side what is the most that the Crown can claim in respect of the right that Arunachalam (Jr.) had over the estate ? The most they can claim is that he had a right to transfer certain properties to an alienee who had certain rights to work out a partition which they call a legal right, some call it an equitable right it does not matter what they call it. Competency to dispose is one of the rights but it is a full right. Competency to dispose itself may have component parts. Even granting all these disputed points on this aspect to the Crown still it does not come within the four walls of competency to dispose.

The statute that is being interpreted does not normally apply to cases with which the law in Ceylon is familiar. If there are properties to which other conceptions of law will apply but which will come and fall within this provision catch them up by all means : that will be quite rightly and readily caught up, but thus far and no further. If it is intended to catch up within the meaning of this section property in respect of which there are various types of qualities then first of all it must be seen whether it catches up within this section, is the statute wide enough to catch it up. Has the Crown been able to bring the property in question within the four walls of this section ? Supposing there was a dispute between Mr. Bashyam and Mr. Raja Iyer as to how an alienee's share in a coparcenary is worked out by the Indian Courts what does it matter. Ultimately this Court will accept one view or the other. Whichever view is accepted what is the position ? Where is the competency to dispose ? Has Arunachalam (Jr.) the competency to dispose ? He cannot do some of the fractional parts which that phrase connotes. With regard to residual rights Mr. Bashyam has said one thing and Mr. Raja Iyer has said another thing. Is there much of a difference between the two of them ? Both have said that in ancient Hindu Law the capacity of a coparcener to alienate even for value was not allowed. They are asking the Court to decide the case according to the law of India as at the date of death of Arunachalam Chettier (Jr.). That is the law that is applicable. But ascertaining the true effect and implications of the law as on the date Arunachalam Chettiar died it is absolutely necessary to consider that position was reached. As to the manner in which the law developed there

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is no doubt. Mr. Bashyam stated that in Ancient Hindu Law there was no conception of a coparcener, certainly a son when the father was alive, alienating any property. When Ancient Hindu Law came to be considered by the Privy Council their conception to the system of law was entirely different. The thing had to go on changing; they had to recognised exceptions; the law had to be built on exceptions. Those exceptions were developments of the law but as the Privy Council says "thus far and no further." It says that in I.L.R. 5 Bombay p. 48 or 7 Indian Appeals p. 194. Now it is very relevant to see what the actual position is and therefore to look into the history of the matter. The history of the matter is both sides are agreed this was the state of the law in ancient India but exceptions have been built on and says the Privy Council we will not deviate from the ancient exceptions except to the extent that built on exceptions have become part of the law, thus far and no further (latter portion of page 194). It makes it crystal clear as to what the law was in respect of alienability. The law had developed up to that state (1880); it had not developed further. In the course of transition between the British occupation and 1880 the law developed perhaps owing to ignorance of the Judges of the fundamental principles of Hindu law or by a series of circumstances which allowed that course to take place. Some of the circumstances were these: A creditor of a coparcener went and got decree on the coparcener and when he went to seize his share of the coparcenary property the Judge dealing with the question to begin with would have said it would be iniquitous to allow a judgment creditor to go without satisfaction of his just decree; let us give a right to him: let us give the judgment creditor the right to sell up that property and go and work that out in a partition case amongst the members of that family: let us put that purchaser in the judgment decree sale in the position of the coparcener judgment debtor himself. That might have been the first stage. There is evidence to show that was the first stage. When that had got crystallised and got recognised as a principle then came the next stage of a coparcener voluntarily alienating for value some of his share of the coparcenary property to some person and some other Judge dealing with that for the first time said if at an execution sale a purchaser is to be given rights of equity work out in a partition: why not a voluntary purchaser who has given good money in this property be allowed to take the place of this man in the partition. Thus the law developed: there it stopped and refused to move further. By that time the persons have understood the implications of the Hindu Law fully enough. Therefore any attempt by the Ceylon Government—leave aside the Indian Government—to vary the law would not be allowed by the Hindu Law and certainly by the Privy Council which still functions as the ultimate Court of authority over India as well as over Ceylon. The main principle is contained in 7 Indian Appeals which has not been differentiated by even their Lordships up to now in spite of the lapse of time.

It is not necessary to refer to Mr. Bashyam's evidence on this point; he of course gave evidence for the Appellants. He stated categorically that there is no right of alienation, only the alienee is given certain rights at the expense of the alienor. What does Mr. Raja Iyer say on this matter. His evidence is at page 221, also at page 228.

7 Indian Appeals page 88 at page 102. In this connection the Crown submitted a series of cases starting from the judgment of Bashyam Iyer in 25 Madras p. 690, and followed up in A.I.R. 1916 Madras 1170 to show that there were decisions and dicts of the Madras High Court recognising a vested interest in a coparcener in respect of the joint family property of the family to which he belonged. Mr. Bashyam in giving evidence stated that the view of Bashyam Iyer in 25 Madras was not correct law and had not been followed in 1914 A.I.R. Madras 440 and 1915 Madras A.I.R. 453. The Crown pointed out that 1914 A.I.R. Madras and 1915 A.I.R. Madras are not followed in the 1916 A.I.R. Madras. The Court will see that 25 Madras and 1916 A.I.R. Madras are not followed in 1933 Madras which followed 1914 A.I.R. Madras and 1915 A.I.R. Madras. The position seems to be this: that in the Madras High Court where there a large number of judges two lines of decisions exist in respect of certain question, that is the exact rights of a coparcener in a coparcenary property and the rights of alienation flowing out of an alienation by the coparcener. One is not concerned about these two lines of authority : all that it shows is this : describe the law as it is. They are not decided in their own minds as to what is the exact position to be given to a coparcener in respect of this same property. In 25 Madras I.L.R. p. 690 the Crown pointed out that this case went to the extent that a coparcener had a vested interest and he read 1916 A.I.R. 470. Mr. Bashyam has referred to this. Please see 1933 Madras where the 1916 Madras has not been followed. In other words there are two series of judgments one series saying one thing and the other saying another thing. See A.I.R. 1933 Madras p. 158.

The 1933 A.I.R. Madras case takes a view which is more favourable to the Appellants. It is not their position this is settled law. If they have not settled the law on this point then one must go back to the fundamental position from which it started, namely the position of a coparcener in respect of his property. This case was a case where Mr. Raja Iyer himself was one of the counsel arguing the case. This case is referred to in Mr. Bashyam's evidence. The judgment is concluded at page 162. The evidence of Mr. Bashyam on this point is at page 22 (bottom) Raja Iyer's evidence is at page 220.

While discussing the question of applicability of section 8 (1) (*a*) at times right of ownership was also dealt with. In fact what is material to section 8 (1) (*a*) is the right of disposition that may be there. In certain places ownership was considered because it was allied to the question of disposition. Strictly speaking it is not allied when considering section 8 (1) (*a*). When dealing with right of disposition the position is this : if a man sells and brings the money and if he keeps it there it really forms part of the estate. That shows for example the limited extent to which he can dispose of his property. This limited extent of right which has developed in law will not and is not caught within section 8 (1) (*a*) in any event.

Regarding section 8 (1) (*b*) there again one has to keep in mind that it is an interest in a property which does not pass. It is an interest in a property which is exclusive of the property that is caught up within section 7. Reference has already been made to the case of Woolley pages 110 and 111 which shows that the benefit accrues to the property

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and not to any person. Examination of the experts on this question was on the basis that a benefit accrued to the father by the son dying. The whole of that discussion was on that basis ; that is relevant towards other points in the case but it is not relevant towards the disposition of 8 (1) (*b*) but even if it is relevant what is the interest ?

In considering interest it is necessary to consider some of the cases. In the case of *Attorney-General* v. *Watson* Law Reports [1917] 2 K.B. at 427 and at 432 this question was discussed. The first point is in every case where there is a benefit or a release in respect of property that is contemplated or caught up within section 8 (1) (*b*). The illustration in Woolley's case is important. The illustration is not based on any decision ; it is the author's example but it is drawn from principles. The question whether a benefit accrues to a person is not the deciding factor.

It is now 4 p.m. Further hearing tomorrow.

(Sgd.) N. SINNETANBY A.D.J.

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Mr. Chelvanayagam continues his address :

Before dealing with section 8 (1) (*b*), to go back to section 8 (1) (*a*) for a while—Submission later on is going to be that the nature of a junior coparcener's interest in this family property is such that it will not get caught up under any of the provisions of the Estate Duty Ordinance ; but leading up to that the provisions will have to be taken one by one and discussed. While submissions are being made on each one of these branches under which tax is sought to be levied the Court will have in mind the ultimate issue which will be submitted namely, that the nature of a coparcener's interest, specially a coparcener who is not the head of the family, is such that it is so elusive, so fluctuating in quantity that it will never get caught up within the meaning of any of the provisions of the Estate Duty Ordinance and that judging by the correct principle of interpretation of any statute the Court will see that the framers of this Ordinance never had any intention to catch up property of this nature that is, of the nature that a coparcener has in respect of this joint family property. Every sub-head of taxation—like section 7, 8 (1) (*a*), 8 (1) (*b*)—has to be dealt with separately and independently. A certain amount of confusion has been caused by the other side by putting up some attributes which are relevant to one of these heads, mixing up certain other attributes which are relevant to another head and adding on the attributes which are relevant to a third head, make a conglomeration of the whole thing and create an idea that the property is caught up. That is not the idea of the Ordinance. There are two definite defined classes of heads.

A series of cases have been cited by the Crown under the heading section 8 (1) (*a*). Under this section the Crown has cited and emphasised very largely some cases. They have said that a coparcenary interest in

the joint family property is a vested interest. Under 8 (1) (*a*) that is utterly irrelevant. It may be a vested interest and still a property might not fall under 8 (1) (*a*). To take an example *A's* father has left property to *A* but he has specifically taken away the power of disposition in *A* and granted the power of disposition to the executor or executrix under his will. *A* had the full right to possess and enjoy and take the income of that property. When *A* dies the property passes: it will pass under section 7. *A* has a vested interest. *A* is the owner of the property without the right of disposition. The right of disposition is in somebody else: power of appointment is in somebody else. When the executor under the father's will dies that property passes under section 8 (1) (*a*) because it is property over which the deceased was competent to dispose. Executor here means executor personally. With the result when discussing whether the property falls under 8 (1) (*a*) to discuss the question whether there is a vested interest is irrelevant, will lead to confused results and to wrong conclusions.

Earl Cowley's case has been repeated throughout a series of judgments between that time and today. The true construction of the statute is each is in an exclusively different class. Under section 7 the property actually passes: that means the title or possession of the property as a whole changes hands. The Crown has cited a number of cases dealing with the question of the vested interest that a coparcener might have or might not have in respect of coparcenary property and got hold of a stray judgment in 53 Madras page 1 which has been put to experts and emphasised. It has no bearing on the questions under discussion under head 8 (1) (*a*); it will have a bearing if the discussion is under section 7. Then it has to be considered quite separately as to whether the interest that a junior coparcener like Arunachalam Jr. had in respect of that property passes. It is so elusive a character that one can never say—and experts have not attempted to show—that a property passes. But certain aspects of the nature of the property which are relevant for consideration under section 7 are got hold of by a false argument, false reasoning under section 8 (1) (*a*) and tried to give weight and support to the submission that this property comes under section 8 (1) (*a*).

Mr. Chelvanayagam refers to A.I.R. (1929) Madras 865. Certain questions arose in that case which were referred to a full bench Court for decision. A full bench consists of three judges. It will be seen from the title pages that the High Court consists of as many as about 14 or 15 judges and three of them delivered this judgment. There other judgments containing contrary opinions by other judges: these judgments will be referred to court. This judgment is by no means an authoritative ruling of the court. The question for determination that was referred to the full bench was this: in a joint family there had been a partial partition whereby on an earlier occasion one or two members had divided off some branches had divided off taken certain portions of the family property. There was a full and complete partition amongst all the members of the joint family at a later stage. The question that arose at that stage was whether at the later partition an account had to be taken of the property that was separated off on an earlier occasion or whether without taking account of that they have got a partition to property on the latter occasion as the property stood on that occasion. That was the question

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which was referred to the bench of three judges for opinion on which they gave the opinion that one has got to take into account the property that was given off at the earlier occasion. That is the simple question for decision and that was the actual decision. For the purpose of arriving at that decision the three judges preferred to write three judgments and of the three judges that delivered the judgment Justice Wallace had chosen to indulge in a legal philosophy of the theory of, of the character of a coparcener's interest in the joint family property and it is that theoretical philosophy that is the sheet anchor of the Crown in this case. The legal philosophy that Mr. Justice Wallace indulged in had been put to Mr. Bashyam and he says that it is all *obiter*. Look at the judgment of the other two judges. Do they indulge in any of these ultra legal theories which Justice Wallace has indulged in for the purpose of coming to the conclusion and about the vested interest of a coparcener in the joint family property before they arrived at a decision and whether all that legal philosophy is the matter for decision? What is the matter that is decided in the case and what is the binding effect of the judgment and what is *obiter dicta*? These are questions which often arise when a judgment is cited before the court. The passage relied on by the Crown is at page 10. The court will read this judgment because some erring desposition on the philosophy of Hindu Law by one judgment is taken as the last word on the theory of Hindu Law of a coparcener's interest. By a later judgment of the Madras High Court it will be seen that what Justice Wallace construes as the established law is not the law. Exodus into the theory of Hindu Law is completely unjustified for the purpose of the question for decision in that case. Ananda Krishna Iyer's judgment is at page 20. See how he works out the whole thing. The Chief Justice says "I do not want to disturb the law in the Province." Ananda Krishna Iyer says "I will have to work out on the principles of equity" without going into the theory of vested interest.

Mr. Bashyam has already referred to this judgment of Mr. Justice Wallace. He says that does not set down the law that a coparcener has a vested interest. While on this question see 1945 A.I.R. Madras p. 257, at p. 258. This is a case where on insolvency of a coparcener his share or interest in the joint family property had vested in the assignee but after the insolvency proceedings were over the question as to what became of the remainder of the property that vested in the assignee was considered, whether it came back to the joint family or formed part of the joint family. It is not correct to say that an insolvent coparcener's property ceased to be joint family property merely because it rests in the assignee.

There is one judgment where they did differ from the reasoning of Justice Wallace in the 52 Madras case. That is in 56 Madras page 534 which is also reported in 1933 A.I.R. Madras page 158, dealing with what right a transferee or an alienee gets. Does he get the share at the time of alienation or at the time of suit? Justice Wallace says at the time of alienation: This judgment says No—the transferee got some fluctuating interest which the transferor had and what he gets will be the share or interest what the transferor would have at the time of the partition suit. It is not the case of the Appellants that this case is definite accepted principle of law in the Madras or the Indian Courts but it is a view one set

of judges have made and the other view that another set of judges had made with the result that one is led to the position that from neither can one draw the theory of the law and the interest of a coparcener in his family property. This case is referred to to show that on some of these matters the law has not definitely settled down—there is no uniformity of decision on this question. See pages 158 and 162 of 1933 A.I.R. Madras. On this question of vested interest only see case reported in 1941 A.I.R. (P.C.) page 48.

It has become necessary to deal with this question of vested interest because that question was given very much weight by the Crown in order to shut that because a coparcener has a vested interest there is is competent to dispose. The Appellant's position is he has no vested interest ; a coparcener in the joint family property has no interest. Therefore the theory of vested interest fails, although there is some support in Justice Wallace's judgment. If it is such an accepted principle he should have been able to get some well known writer who would accept that as vested interest. Not one of the text writers refer to coparcenary interest as vested interest.

The question of considering the vested interest is appropriate under section 7, is misleading under section 8 (1) (*a*). The question of right to dispose may be existing along with vested interest, may be existing without vested interest ; 8 (1) (*a*) deals with property which is not vested. If the Crown was arguing the case under section 7 and adopted this principle of vested interest then it would be more appropriate. The adoption would be not merely on the question of vested interest but on various other aspects of it to show that the nature of the property of a coparcener in the joint family would be such as to pass. But there are certain other illustrations and implications which the Appellants wish to present to Court in order to elaborate their point of view. For one thing the tax is levied here not on the whole of the coparcenary property of Arunachalam Jr. and Arunachalam Sr. but on the Ceylon portion of it. What was the right of Arunachalam Jr. only on the Ceylon portion of that property ? That is question 1. Had Arunachalam Jr. competency to dispose of a portion of the joint family property as apart from his share of the whole property because the tax is levied on Ceylon property, not on the whole of it. Question No. 2, Does this question of competency to dispose deal with movable property or immovable property or does it deal even with money ? Mr. Raja Iyer's evidence on this point is at page 220.

In this case the case is not presented by the Crown on the basis that Arunachalam Jr. had title to any particular movable property or landed property in Ceylon. The whole case is presented on the basis that there is a joint family. The father and son are members ; joint family consists of the business : everything else is business interest and the son has an interest to the extent of his business, not that he has any title. Therefore the Court has to examine the question of competency and discuss only from the angle and not from the point of view of title. If Arunachalam (Jr.) was looking after his father's business here and property was bought in his father's name, then further questions will arise as to whether he was trustee of the joint family. For example Manikam Chettiar would have bought from business funds and he would have held it in trust for

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the joint family. All these questions are eliminated. All the basis is this : there is a business between the father and the son, who call it joint family : in the business assets the son has a right by reason of his having been born into that family : his half share they want to tax because he is competent to dispose. Is he competent to dispose of it ? Has he competency to dispose of the money which is in the control of the father. It is granted by Mr. Raja Iyer if there was for example Blackacre in the son : if the son sold it and brought the money into the business the money belongs to the joint family. What is the question of competency to dispose. There for example the competency to dispose has a relevant meaning. He might have had competency to dispose because the title deed was in him. In such an event of course there is another question whether a trustee has a competency to dispose. All those questions do not arise. The simple question is this : Arunachalam (Jr.) dies in Devakottai when he died he had certain interest in the joint family of which his father and he were members along with others. By reason of that right had he a competency to dispose of any portion of the Ceylon assets.

Competency to dispose generally of all his assets has already been dealt with. Now the question is had he competency to dispose of a portion of his assets in Ceylon—in Money, in promissory notes, in book debts and in various other matters. Now the Court will appreciate that the admissions were not got for the benefit of the Appellants or for the Crown. They were necessary for the Appellants to cut down their case. If the admissions were not there the Appellants would have to prove the ancestry and various other things to show that all the property was the unexpended amount from a central nucleus. But from the point of view of Arunachalam (Jr.) they would have shown that there was no property in the name of Arunachalam (Jr.) ; he being a son born in the family of Arunachalam Sr. would have had no property or he may have had very little property, with the result the admissions made by the Appellants in respect of that matter is the foundation of the Crown's claim that Arunachalam Jr. had an interest in the estate which was all under the control, possession and power of Arunachalam Sr. : that is the connection of being born in the family. One must have that in view in considering the question of competency to dispose what, competency to dispose of property in Ceylon on which is sought to be levied a tax. In the case of the father it is very different. The father's right even when he was a joint member of the family when the son was alive was greater than that of the son but they were even greater when he became sole surviving coparcener.

In dealing with the son's case the right of the son will have to be kept in mind as a junior member of the coparcenary, not the managing member and not the sole surviving coparcener. A slightly worse case can be mentioned only for the purpose of considering the general application but this is not the case in point of fact : The son for example might have had two sons himself. At a partition the father Arunachalam and the son Arunachalam would have taken half share each. The half the son has taken would have been the portion of the son and his sons. In other words it would not have been property of a sole surviving coparcener at that time, but if there were only two if they had partitioned before the death of Arunachalam Jr. he would have taken as sole surviving

coparcener. When considering the right of a coparcener to alienate and dispose one has to consider generally the right and the particular right of a particular individual concerned and in the particular circumstances. In fact Arunachalam Jr.'s rights were inferior to that of Arunachalam Sr. and were even more inferior to that of Arunachalam Sr.'s rights when he became sole surviving coparcener but it was slightly better than Arunachalam Jr.'s rights had been at the time of his death. In other words his position has to be considered in a particular way ; he had two sons, he was a junior member, he had no manager, he had no property. In that connection it has been repeatedly mentioned to consider the right of the managing member or the Kartha in order to consider the right of the junior member at that time.

See Mayne at p. 380 Sec. 298. The result is the junior member could not have compelled the senior member to give him half the income : he could not have demanded he should spend on a more lavish scale than the father is spending : and he could not compel the father to spend less on some other children. With all these limitations, with all these rights in the manager the position of the junior member has to be considered. He certainly has some rights but are they rights which go to make the property such as to get caught up under the different sections. Some of the passages read and most of the arguments submitted on behalf of the Appellants might very well be relevant in considering the question whether when Arunachalam Jr. died anything passed. For the moment the trouble of inquiring into it saved because the Crown has not sought to bring it up under section 7 because the difficulties involved there are much greater than the difficulties involved under section 8 (1) (*a*) and 8 (1) (*b*).

With regard to 8 (1) (*b*) the cesser of interest referred to there is in the nature of a charge rather than in the nature of a life interest. The attempt on the other side has been to try and bring the interest of Arunachalam Jr. for the purpose of argument under this section to try and bring the nature of Arunachalam Jr.'s interest in the joint family property up to the quality or status or standard of a life interest or something in the nature of a limited life interest. It is only in the category one has to consider it as a cesser of interest. The question that he had power to alienate has nothing to do when considering the cesser of interest. Under the authority it will lead to wrong conclusions ; that is the confusion created by the Crown in this case.

The authority referred to in Woolley does not say that 8 (1) (*a*) is mutually exclusive of 8 (1) (*b*) but this can be argued by a parity of reasoning in *Earl Cowley's* case. In fact the authority is *Earl Cowley's* case. In other words the framework of the section as depicted by Lord MacNaughton in that judgment takes up a number of cases and arranges them one by one. There are two methods of definition : one is by describing that such and such a thing is such a thing : another way of definition is such and such a thing shall be A, B, C, D—enumerated. They are seriative. In every one of these cases they considered whether a property gets caught up under one or another of these categories ; while considering 8 (1) (*b*) to think of 8 (1) (*a*) or something else would be misleading. What has to be seen is had this man an interest in the property which ceased at

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death ? What is meant to pass is the property. In this respect it will be necessary to go back to *Earl Cowley's* case. 1899 Appeal Cases p. 198 see pages 198 and 210.

The succession duty Act of 1853 is contained in Dymond on Death Duties p. 421.

In the present case the duty is not a duty on succession. It is a duty that arises on the property that passes on death or property that is deemed to pass on death—not on the fact that somebody succeeds to property. There are certain charges that cease on death. At first sight one is inclined to think that section 8 (1) (*b*) deals with life interest. Therefore what must be kept in mind is the interest, that section 2 (1) (*b*) is something in the nature of a determinable charge. This submission is made only to examine the nature of Arunachalam Jr.'s interest in the property, to see whether it comes within the definition as to whether it is in the nature of a determinable charge. There is no other section in the Ordinance which defines the cesser of interest. In other words a coparcener's interest is not a life interest at all, but in the light of the submissions the question for examination is did a junior coparcener like Arunachalam Jr. have an interest which was in the nature of a charge on the property which ceased at his death.

Before proceeding to deal with the quality of Arunachalam Jr.'s interest in this property and ask the Court to consider whether it falls within the meaning of this section, there is one other point to make which will help the court to consider whether the sort of interest that Arunachalam Jr. had in this joint family property is one that is caught up within 8 (1) (*b*). The point is this : it is the Appellant's contention that the sort of interest that a junior coparcenary member has in a joint family estate is never within the contemplation of the framers of this Ordinance or the legislature which was responsible for this. What is the intention as expressed in the statute ? One cannot see the intention of the legislature except in the language that is used. In looking at the language one is entitled to look at the general law of the country and to see whether the expressions used here had a meaning—one is entitled to see what is the natural meaning of the statute. Now the nature of the property which the junior coparcenary had in the joint family property was unknown to Ceylon law. Although it is unknown it may be taxable if it can be brought within this : life interests were known, settled property, rights on insurance policies, annuities were all known, the properties over which he had powers of appointment were known, with the result many of those main cases had been brought in under this section ; but still if one can bring interest within the meaning of this it can be all right, but such an elusive, indefinable fluctuating interest that a junior coparcener has in respect of joint family property was never within the contemplation of this Ordinance and never had been. The word interest is used here in 8 (1) (*b*) in a loose sense. Therefore to take that and without ascertaining the exact meaning of it as used under this section and to say that the word interest is used in a foreign system of law, Hindu Law, in respect of rights a junior coparcener has over the joint family property will lead to malicious conclusions. Look at the whole of the statute ; the machinery provided for the valuing and collecting of tax and see whether

this sort of property was intended to be included. There are other provisions of this Ordinance which speak of valuing interest, valuing property. Any one of those sections will not help the court to value the interest that a coparcener had over the joint family property. There is no machinery provided for valuing. To value life interest, to value property that passes which one can sell in the open market there is a method but this elusive indefinable right that a junior coparcener has over the joint family property is incapable of valuation according to the rest of the provisions. It is right to advance such an argument to the court to look at the Ordinance in that way for the purpose of deciding this question. For that purpose see the case of *Colquhol* v. *Brookes* Law Reports 1889 14 Appeal Cases p. 493. Colquhol was a taxing officer. Brookes was a person resident in England. He was a partner in a business in Australia which was a prospering business producing a large income. A portion of that income reached Brookes in England on which he paid income tax, but the Crown sought to levy income tax on the whole income of Brookes in respect of his partnership in Australia inclusive of the portion which did not reach Brookes in England. He contested the contention. The Crown said the taxing sections used the language which is comprehensive enough to catch up all income all over the world. But Brookes contended that in spite of that only that portion of his income which reached England is taxable. In arriving at a decision the House of Lords decided this on one criterion, namely, they said although the levying section is wide enough to catch up the income arising in Australia the machinery for ascertaining and collecting the tax was not provided for the income that arose in Australia, and therefore taking the whole Act together—the imposing part of the Act and the machinery for the collecting and assessing of the income part of the Act—they came to the conclusion that the Act did not intend to catch up the income of Brookes in Australia which did not reach him in England.

(*Interval.*)

(Sgd.) N. SINNETAMBY A.D.J.

37/T & 38/T (Special).

30th March 1949.

(*After Lunch.*)

Appearance as before.

Mr. Chelvanayagam continues his address :

He cites Law Reports (1899) 14 Appeal Cases Privy Council page 493. He refers to the judgment at page 500. He refers to pages 502, 508 and 510 (last paragraph). For the one reason that the section imposing or levying the tax is wide enough to catch up the profits from the business carried on abroad, yet they held that it was the intention of the legislature to tax such income because it had not provided the machinery. In this case, property of this nature was never known to Ceylon law. Such unknown properties and unknown rights in properties as are to the subject matter of this case which could normally have been thought of

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are not even provided for in the valuing sections. Section 17 deals with deductions of death and funeral expenses. The property that is taxable is the 1/2 share of the joint family property. The debts they all deduct are the debts of the only coparcener, of the junior coparcener not the debts incurred by the manager of the family. In other words, if the estate was 10 lakhs consisting of all immovable property 1/2 of that would pass if it is considered it necessarily passes. Then only the debts created by the junior member would be deducted. For necessities of family and family requirements the only person that can legitimately create them, make encumbrances, may be the manager of the family. Those debts would not be deducted. I am pointing it out as an anomaly to support my contention that property of this nature was not intended. Even if it was intended in the statute by use of language it had not been caught up. He refers to section 17. He refers to subsection 6. That subsection would not apply. He refers to subsection 6 (*b*). The method of valuation where the income is ascertainable under this section is given in Woolley. He refers to page 112 of Woolley. I submit that the only tangible interest that the other side can point out and which the junior coparcener has over the joint family property—I do not say it is a charge; I am only granting that the other side may be able to charge—my argument is that the law cannot be enforced except in a certain particular way according to the Hindu Law. In the case of life interest you can recover. Even if the interest is wider than a charge there is no method of valuing it because the amount of maintenance is not fixed. It is completely at the discretion of the managing member. It is not determinable by Court. There are no principles by which to determine. We are dealing with an interest which is utterly unascertainable. Here we are dealing with the case of life interest and life interest will come under section 7. This proviso does not necessarily apply to section 7 (1) and 8 (1) (*b*). The person who was framing section 17 (6) possibly had in mind the case of 8 (1) (*b*). The draftsman of this took for example various portions of the 1894 statutes and put them together. In an appropriate case it would be for the Court to consider whether life interest will come under section 8 (1) (*b*) and not under section 7 in spite of section 17 (6) because I concede that possibly the person who was drafting the section thought that 8 (1) (*b*) catches up life interest. Life interest passes. Life interest must necessarily fall under section 7. Supposing I have the life interest of Blackacre, on my death it passes to someone. I have the control or possession of the property. That whole thing passes to somebody. Not the title but the controlling power will pass *vide Attorney-General* v. *Milne*. If somebody else had a charge on Blackacre which is owned by me, on his death that charge or annuity will pass. That will be the cesser of interest. He refers to *Earl Cowley's* case. Section 17 (6) is taken from section 7 (7) of the Finance Act. Proviso about life interest is new. No doubt the draftsman of our ordinance has thought that life interest gets caught up within section 8 (1) (*b*). I submit that the inclusion of the proviso cannot remove the distinction between section 7 and section 8 as is indicated by Lord Macnaughton in *Cowley's* case. There is no provision for valuing an interest or a property of the nature of a junior coparcener with interest in the property, first, and secondly it is anomalous that on his alleged share of the property only his debts—debts created by him—are chargeable. It is anomalous because property

of this nature was never intended. Property of this nature was not known to our law. If it can come within the meaning of sections 7, 8 (1) (*a*), 8 (1) (*b*) then it would be caught up. 8 (1) (*a*) gave no room for argument that the property of the coparcener was property over which this man had competence to dispose. 8 (1) (*b*)—what is the interest he had ? Is that an interest in the property which ceased ? To what extent did it enlarge ? I am asking you to consider the question of interest this person had different from the other questions that are not raised. When we were talking of interest we were talking of vested interest. If it is vested interest property passes. If he had limited powers of alienation it must be considered under 8 (1) (*a*). When we are considering section 8 (1) (*b*) we have got to keep in mind to consider only such of the qualities that are relevant in regard to interest. That is not cesser of interest. Interest is something like a benefit that you get in the sense of enjoyment of benefit. The right to call for partition may throw light on other portions to determine the quality of ownership that this man had in respect of this property but it will not be a cesser of interest. If he is owner of it, property passes or was in full enjoyment of it, the property passes. But there we have got to look at it in relation to the family right and the managing member's right. Managing member has full control and possession of the property audits income and the houses and the spending capacity until the partition is called. Therefore this man had no rights. Can he sue and get a house for himself ? It is a doubtful question. He can sue for maintenance. Mayne says that a coparcener can sue in an appropriate case and get a charge placed on the property. It is something like an attachment but until such a thing happens it is a personal right. He refers to Mayne page 843 section 705. If when it comes to the question of the right to live in a house and right to maintenance, only if you consider those portions which are measurable in money value, the right of a junior member is no larger than the right of a widow or rights of certain other persons who are outside the coparcenary. Male members who are born to the 3rd generation have a right to maintenance. Women members have also a right to maintenance. Those have no right to property. When we are considering this position, even a widow has a right to maintenance and live in a house. Therefore for the purpose of considering whether the junior's right comes under this section we have got to consider whether a woman's right comes under the section. There is complete equality between the two of them for the purpose of this section. Can you imagine in the case of a joint Hindu family when a woman member dies the Crown saying I want to tax a fractional share of this estate because it was caught up under 8 (1) (*b*) ? Because we are dealing with a woman of the Hindu family all her other rights do not exist. It is a coparcenary member who has those rights. When we are considering money value as long as he is alive the money value to him is the same as the money value to a woman member, widow, daughter, mother, sister or any other person. In other words, if we have got to consider section 7 independently 8 (1) (*a*) independently, 8 (1) (*b*) independently and find out whether it comes under any section, under 8 (1) (*b*) it does not. If it comes in then the case of every woman member the Crown would be entitled to act under 8 (1) (*b*) because the woman as long as she was alive had a right to maintenance. Mr. Chelvanayagam refers to the evidence of Mr. Raja Iyer at page 105 in 38/T. When the

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witness was examined he was examined with the idea of getting his conception of the Hindu Law out of him but not with a view to elucidate the implications of the Estate Duty Ordinance, which is not his function ; it is the Court's function.

He refers to page 125 of Mr. Raja Iyer's in 38/T.

He refers to page 123 of the evidence (bottom).

He refers to Mayne page 338 section 264 and page 339.

Further hearing on 5th April 1949.

(Sgd.) N. SINNETAMBY A.D.J.

D.C. 37 & 38/T (Special).

5th April 1949.

5th April 1949.

Appearances as before.

Mr. Chelvanayagam continues his address :

On a proper interpretation of sections 7 and 8 (1) (*b*) property in the nature of a life interest would come under section 7 and not under sections 8 (1) (*a*) or 8 (1) (*b*). That was the effect of Lord Macnaughton's judgment. But the Appellants conceded that the Draftsman had in mind by drafting the later section 17 (6) a case of life interest falling within section 8 (1) (*b*). In spite of that the submission is that a proper interpretation of sections 7, 8 (1) (*a*) and 8 (1) (*b*) would be that a life interest would fall under section 7, but it does not matter. Even if the case of a life interest be considered under section 8 (1) (*b*) the nature of the interest of Arunachalam Jr. in respect of this estate does not come up to what is involved in a life interest under Ceylon law. The question of right of disposition or the competency to dispose is rightly considered under 8 (1) (*a*). To make it more clear take the example of an executor having powers of disposition over property left by the will of the testator to the son of the testator : the testator leaves property to his son under his will but gives a right of disposition to the executor : such property would necessarily pass on the death of the executor. In that case the executor who had a personal right to dispose of the property given to the son of the testator were to die there will be no cesser of interest and one could not bring the property of the son as passing on the death of the executor personally under sub-head (*b*) of section 8 (1). One could bring it under 8 (1) (*a*) because the executor had the right to dispose and therefore that property passes with death which the executor could have disposed during his lifetime, but it is not a property over which there was a cesser of interest. That distinction is made to show that the proper meaning of an interest ceasing under section 8 (1) (*b*) is some benefit that the deceased had over the property tantamount to a charge or even wider than that of a charge, that of say life interest, some benefit accruing to somebody or other which ceases on the death of the deceased, some tangible benefit, something which is irretrievable in money or money value, something one gets out of the property, some charge or other than a charge for a matter or argument which is assessable in

money rent. That is the proper interpretation of section 8 (1) (*b*). Therefore all the arguments advanced by the Crown to show that this property fell under 8 (1) (*b*) are not appropriate to this head. They tried to show for example that Arunachalam Jr. had the right to a partition: he had certain rights which he could transfer to a transferee for value. Neither of those will help to determine whether Arunachalam Jr. had an interest which ceased on his death. He has certain benefits out of the property which ceased on death, that is not disputed. What are the benefits he had which ceased on death? And do they come under 8 (1) (*b*)? The benefits that he had were the right to live in one house which belongs to the joint family property, the right to be maintained out of that property, the right to have his daughter dowried out of that property, the right to have his daughter maintained out of the income of the property. These are all certain benefits that he had. The consideration of those benefits is appropriate under section 8 (1) (*b*). The deceased had a right to dowry his daughter: that was a benefit which the deceased had but which was a benefit which did not cease at his death. These examples are taken and multiplied to show that the half share of the joint property which the Crown is trying to tax on the death of Arunachalam Jr. does not come within this section. Arunachalam Chettiar Jr. had a right to live in the joint family property: that ceased on death; he had a right to be supported: that ceased on his death. He had a right to dowry his daughter out of the assets. Even if it was a benefit that he had enjoyed out of the property that did not cease on death because the daughter herself would have had that right quite independently; so much so it is a question whether the right to dowry the daughter is a benefit to him or his daughter. But whichever way it is considered, even if it was a benefit, it was not a benefit that ceased on his death. In other words to narrow it down to the benefits that ceased on his death it comes to this: the right to be maintained, the right to live, these two rights are the only two proper rights that fall within section 8 (1) (*b*) which cease on his death. But do they amount to such an interest as would come under 8 (1) (*b*) to make the property out of which these benefits arose to pass? What passes is not the benefit but is property in which the deceased had a benefit. In other words the life interest that a junior member of a joint Hindu family has in respect of his family is not one which the legislature had in contemplation when enacting section 8 (1) (*b*). Incidentally a number of property rights—positive and negative—of the junior coparcenary member in respect of joint family estate has been mentioned. To take one or two more: mention has already been made that the right of maintenance is not a charge but can be made a charge by a person who has a right to be maintained. Quite apart from that reference was made to the fact in the evidence of the expert witnesses that in India as in Ceylon guardians can be appointed over the property belonging to the minors. If Arunachalam Jr. had a separate property and if he was a minor a guardian can be appointed by the Court over that property. But even that guardian who can be appointed over that separate property cannot be appointed over Arunachalam Jr.'s share or interest or portion of the joint family property. So says Mr. Raja Iyer at page 225 of his evidence. Mayne elaborates that at page 298, section 230. The Appellants are not arguing the question of jurisdiction of the court under the Guardians and Wards Act; they are attempting

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to show the nature of the interest that the minor member or the junior member of a coparcenary has in respect of joint family property ; it is such property over which the court will not normally appoint a guardian. This minor could not take all the income of the property. The income must properly be taken by the managing member ; the managing member could take all the income and allot for the junior member such portion as the managing member decides in his discretion to be the proper amount for the expenditure of the minor member. The point the Appellants are driving at is to show the extent to which this property is different from separate property. There are some points no doubt that must exist when there is similarity between the junior member's rights over separate property and the junior member's rights over coparcenary property but what is the extent to which it is different. The extent to which it is different is such that it cannot be called certainly a life interest. The reason that Mayne gives under the Guardians and Wards Act is that one could appoint a guardian to individual property of the minor or such would catch up his separate property but one could not appoint a guardian over his coparcenary interest because that is not his individual property. There is a fundamental distinction between the two classes of properties. The question is whether the distinction is sufficient to make it fall outside 8 (1) (*b*) or in other words whether the interest or the benefit the junior member has over his coparcenary is large enough to bring it under 8 (1) (*b*). But it is such an interest which is so difficult to measure, so difficult to value, so changing from time to time in extent, and such is an interest which the Crown is trying to bring under 8 (1) (*b*). Certainly this much is clear : that that interest does not extend to a half share of this estate ; if it extends at all it extends to such a minor portion, such an elusive portion that it was never contemplated to fall within 8 (1) (*b*) of this Ordinance. A life interest need not necessarily be over the whole property. In so saying the Appellants are making a confession which might be used against them but they do so for the sake of clarity. A life interest that passes under section 7 or under 8 (1) (*b*) need not necessarily be over the whole property. It is immaterial for the present submission whether it falls under 7 or 8 (1) (*b*). A life interest may be over a fraction of the property but it is something that can be got hold of. It may be a life interest over 1/10 of the property but it is something that can be got hold of. In other words one can sue any person who is in adverse possession of it to recover the 1/10th portion of the property ; that is the meaning of life interest. The benefit or profit that is due to a person can be reduced to possession. Supposing for example *A* had a life interest over 1/10th of Blackacre or had Rs.1,000/– charge per annum over Blackacre income. In either case *A* can reduce it to possession. It is measurable and the law has allowed it to be reduced to possession or to appropriate it. Is the nature of the interest that Arunachalam Jr. has such that it can be measured ? The only extent to which it can be done is to file an action for maintenance and make a charge on it. If given the strictest interpretation then the only property that would pass under 8 (1) (*b*) would be the property to the extent one would have got a right to be paid maintenance. In fact the argument reduces itself to such an absurdity to show that such a right to maintenance is not the right or benefit that is contemplated as meaning to pass under 8 (1) (*b*). The whole of it is in the possession of the kartha.

A junior member cannot reduce it to possession except that he has certain rights which mislead people to thinking that it is a right in the nature of a life interest. In that connection see Mayne page 380 section 298. See Mr. Raja Iyer's evidence at page 224. He cited Sarvadikari in support of his theory leaving out another page which was put to him in the course of cross-examination. This question of calling a coparcener's interest in the property as a share or not a share is really besides the point. It does not matter very much. It only helps in ascertaining the true nature of a man's right or interest in the property to see whether if considered under 8 (1) (*a*) he is competent to dispose or, if considered under 8 (1) (*b*) he had a benefit or interest which ceased on death and what is the extent of the benefit. Another point as represented by the Crown is the benefit that accrues. What is the benefit? Benefit accruing to the surviving coparcener: that he can dispose the property. Submission is that is not a benefit which the meaning of section 8 (1) (*b*) at all. It is confusing between two matters: between the right of disposal that one person has and the right of disposal that another person has. For example in the illustration that was given: a father leaving property by his will to the son keeping the right of disposal as long as the mother was alive in the mother: when the mother dies the right of disposal dies with her: no benefit accrues by reason of that: the son had the enjoyment of the property, he takes the whole income, he will continue to take the income. According to Lord Macnaughton's judgment the word interest is used in section 8 (1) (*b*) and the corresponding English section to mean a sort of a charge or something in the nature of a charge. The question that somebody else gets right of disposal has nothing to do with this matter. In fact what the Appellants say is to try and see whether the property in question comes within the different provisions of the Estate Duty Ordinance—not to mix up what is appropriate to one head with what is appropriate to another head. When considering the benefit that ceases or the interest that ceases the court has not to consider whether the property passes under section 7 or whether there is a right to dispose or a competency to dispose that was possessed by the man who died. In other words the Court has got to take this Ordinance as falling under different classes, different categories. To say that by reason of a member's death the father temporarily got certain rights of disposal which were larger than the share he originally had or diminishes again when a child is adopted is not a benefit which accrues; it may be appropriate in discussing the powers of disposal; it is utterly irrelevant in considering what is the benefit. Benefit is simply this: what is the money value this man had? Is it in the nature of a charge. If it is in the nature of a charge the most that can be considered is his right or right to live, which is money value. with the result the son's interest in this joint family property is such that it does not get within any one of the provisions under which the Crown is seeking to attract it.

Consider the theory that was put forward by Mr. Bashyam in his evidence; that is the theory that the owner of joint family property is the family itself. In the light of the submissions on both sides consider whether that is not really the case in respect of the joint family property. Mr. Raja Iyer had tried to get out of that position but he could not get out of it. From any other theory it is impossible to get account for the

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number of features that exist, to take for example the fundamental incidents of joint family property. A child is born into the family and he takes an interest in the joint family property : on the same day there may be half a dozen children born to members of the joint family and all sets of those children acquire interest in the property. The only connecting factor is that they are born into the family and they got maintenance. That fact and that simple fact about joint family property cannot be accounted for except by the contention in Hindu Law that the real owner of the joint family property is the family itself.

How does Mr. Raja Iyer try to get out of that difficulty. Before finding that out the court will see one or two judgments in which some strong passages occur :—

1934 Allahabad page 553 at 556.

17 Madras p. 316 at 327.

11 Moore's Appeals case which has been repeatedly cited.

1941 A.I.R. (P.C.) p. 122.

Mr. Raja Iyer's cross-examination on this point starts at page 166 (middle).

When a family is considered as a juristic person owning property it not exactly identical with for example a joint stock company owning property. There are corporations and corporations. In every corporation when there is property to be owned someone has got to act, has to function to make the corporation do its duty ; but the central conception is the family is the owner of the property. This was put at the forefront of Mr. Bashyam's evidence because the real nature of ownership of joint family property cannot be understood if the position of the family as the owner of the joint family property is not considered. Therefore section 8 (1) (*b*) has to be considered in that light. That is, here is a family that owns property : a junior member is born into the family : he has certain rights in respect of which he enjoys certain benefits and those benefits, whether they lapse or cease to exist, are they such that it could be said that the property over which this man had the benefit passes under section 8 (1) (*b*). No doubt much has been said about partition and division by certain persons of the family. In every case a partition is not a partition between individual human beings but a breaking up of the family into various other families ; that is the point one has to keep in mind. No doubt in some cases the members that separate out are single human beings and individuals, but partition of a joint family does not deal only with that ; partition of a joint Hindu family deals centrally with the division of larger families and the falling of it into smaller families. When families become too large to be held under the fold of one family they break up. It has, therefore, to be considered whether there has been a cesser of interest under 8 (1) (*b*) in respect of property which is held by a joint family as such, as a juristic person, as a legal entity.

The main proposition that arises in respect of the son's estate is the question whether the property that he left, if he left any, is property that is taxable for estate duty under the Estate Duty Ordinance of 1919. There are some subsidiary issues on which along with the subsidiary issues in the father's estate submission will be made later.

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With regard to the father's estate it is a much easier case, a much simpler case. In the case of the father's estate it starts with the admission that at the death of Arunachalam Jr. in 1934 the whole estate was joint family property. Then there is the admission that at the death of Arunachalam Sr. the estate left by him would have been the joint family property of the family of which he and his son were the members if the son had not died. They narrow down the issue in the whole case to whether what was joint property with the father and son or both together as members of joint family in 1934, and what would have been joint family property if the son lived up to 1938—had become somewhat different between 1934 and 1938 by the death of the son.

The Crown has undertaken a huge burden in respect of that matter and they have signally failed to discharge it. In 1934 when the son died it was admittedly joint family property. The same thing goes on and enlarges and is left as property at 1938. Admittedly if the son had lived it would have been joint family property. By the death of the son had the nature of the property changed ?

The Crown has cited nothing definite from the text books or the authorities nor has the Crown got Mr. Raja Iyer to say definitely that on the son's death the whole of the property of which the son and the father as members of a joint family were in possession had become separate property or had ceased to be joint family property. No doubt by reason of the fact that the father became the sole surviving coparcener there were certain incidents which arise or which changes his possession of the property ; two of them are very important, because on those two the Crown hangs its whole case to show that the property is not joint but something else. The nature of the incidents are these : (1) between 1934 and 1938, between the son's death and the father's death the income of the whole property was taken and rightly taken by the father and father alone. To that must be added that as a fact the income was the income of the father and father alone subject to certain rights of maintenance of female members. That proposition is right. (2) The second point is to show that the property between 1934 and 1938 was not held in coparcenary, meaning thereby that there were no more than one coparcener owning that property during that time. Even that proposition as a question of fact the Appellants do not dispute but what they dispute is this : from those two facts do not flow the inference that the property of which Arunachalam Sr. was the sole income owner, the property of which he was the sole coparcener during those years had ceased to be joint family property. In fact they place their case as high as this : that authorities of the Privy Council and of the Federal Court deal directly with both those points and show that both those points are not inconsistent with property being joint family property : in other words the Privy Council has specially dealt with the case of ownership of property being in joint family but income being in an individual ; secondly the Federal Court in this very judgment has considered the question that the ownership of property may be in joint family but it may not be held in coparcenary. On the second proposition the Privy Council in a number of cases repeatedly established the fact that a joint

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family property need not necessarily be held in coparcenary during any period of time. In point of fact they have gone to the extent of saying that there may be no coparcenary at all or there may be even one coparcener but still the property would be joint family property. The father's case has been made very much simpler in view of the admissions. Even otherwise the court would have found without any difficulty that in 1938 the property would have been joint family property. But do the admissions go to the extent of destroying the joint family of its innate character. On this point the Crown cited the case in 20 Weekly Reports. The statement there is a very harmless statement, the only point is whether it would apply to the facts of this case. What is separate property can become joint family property: the father earns money and goes and puts it into the common pool: it becomes joint family property: it gets mixed up. The father earns money, he dies without disposing of that property: his sons inherit it: it is the common property, it is ancestral property in the hands of the sons and sons' sons. A clear case of the converse instance has been given by Mulla where for example a joint family ceased to exist in the way that you reach a sole surviving coparcener and he gets into a position that there can be no further additions to the family either in law or in fact. If such a stage is reached then it becomes separate property. At the earlier stage when the family has not ceased to exist or when a man becomes sole surviving coparcener that the Crown has failed to establish. A number of instances of joint family property becoming separate property were put to Mr. Raja Iyer. The result is that the incidents broadly based to say that the distinction between joint family property and separate property is only temporary in nature is true in some cases but it is not true in every case.

(*Adjourned for lunch.*)

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(*After lunch.*)

Appearances as before.

Mr. Chelvanayagam continues his address:

The main contention in respect of the father's estate comes under section 73. Objections raised against the sons' estate cannot be raised with the same force in respect of the father's estate, e.g., right of disposition, cesser of interest etc., because as the sole surviving coparcener he was the human being who could have dealt with the property and one being who enjoyed the property and from whom the property passed except in the case of adoption in the family. Even he as sole surviving coparcener was in many ways different from the full owner. Our main contention comes under section 73. He refers to section 73 of the New Ordinance Vol. 4 page 602. That is property that falls within the category of joint property of the Hindu undivided family. The property must be the property of the joint Hindu undivided family. This section has been amended after the death of Arunachalam Sr. into two subsections. It would be correct for the Crown to say that Arunachalam's estate must be governed by the Ordinance as unamended, but it is my contention that

the amendment did not change them ; it only clarified it. It only removed any doubt in respect of that matter. Even otherwise the admission in this case absolves us from the main difficulty. I would concede that the ordinance as unamended would be applicable. First contention is that the amendment does not change the law ; it only clarifies. Those two sub-sections are contained in one subsection. The evidence here is that this was a business that was carried on in Ceylon by the father and son first and later on by the father. All assets immovable and movable were business assets. We need not trouble about this because of the admission that all the estate that was left by Arunachalam Sr. would have been joint family property had the son lived on that day, with the result if you say the death of the son does not make any change the admission brings us within section 73. He refers to page 7 in 37/T— admission No. 4 and No. 7. Whatever it was, whether immovable or movable property, that is property which would have been joint property of that Hindu undivided family as specified in section 73. The only question for court to determine is, Did the death of the son alter the situation ? Did it take the property out of that category ? The admission absolves us from the difficulty. The law that governs the devolution of movable property will be personal ; devolution of immovable property—the law of the land. We are not dealing with the question of devolution at all. It might be said that in respect of immovable property found in Ceylon you cannot say that joint family attaches to it. Supposing I am a member of a joint Hindu family in India of which my father and brothers are members. I bring Rs.50,000 out of that to Ceylon and buy property here. The property would be held on land tenure system here. In an appropriate case my father and brothers can come and contend with the Crown saying that although our brother's property was immovable property as far as we are concerned it is of the nature of movable property and is free from duty. Doubts on all those questions have been removed by the amending section. We need not worry about that in view of the admissions. Otherwise, I would have led evidence to show that any immovable property left in Ceylon partook of the nature of movable property. The only question is what is the meaning of the joint property of that Hindu undivided family. Even to ascertain the joint property of the Hindu undivided family certain amount of guidance is given by the admissions. You are asked to determine whether by the son's death it had ceased to be joint property. One or two possible meanings can be given to the term joint property of that Hindu undivided family. A meaning can be attempted to be given that joint property must necessarily mean joined by more than one human individual at that time. Another meaning is joint property as understood in that law, that is, it may not be owned by more than one person but still go under the classification of joint property, because some of the judgments that I am going to refer to in that connection throw a lot of light on it. In regard to impartible estate they say it is not jointly owned but it is joint family property. A property is said to be coparcenary when more than one coparcener owns it. In the case of impartible estate the Privy Council has held that it is joint family property but not held in coparcenary. It is not property in respect of which more than one person holds it as owner. That is a characteristic of impartible estate of a zamindari. He is full owner of the property but still it is joint family property. I am

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submitting this to Court to help my interpretation of the meaning of this phrase joint property of that Hindu undivided family. Section 73 would mean therefore not necessarily property that is owned at any time by more than one individual but joint property of Hindu undivided family as opposed to separate property. The question therefore is does this property come within the meaning of joint property of that Hindu undivided family under section 73. In that connection it may be helpful to look at Gazette 8287 of 30.4.1937. Draft order is at page 620; Objects & Reasons at page 641. Paragraph 10 deals with this section 73. The bill is the next bill. Page 642 amending bill of the Income Tax Ordinance. He refers to clause 2 of the amending ordinance sub-clause 2. He refers to paragraph 3. During Arunachalam Jr.'s lifetime property was assessed on the basis of joint Hindu family for income tax. Since Jr.'s death and till Sr.'s death it was assessed for income tax on the basis of Hindu undivided family and income as income of such family. From 1937 to 1938 on the income we paid the additional rate for one year. That additional tax was levied by reason of this provision and the other exemption given. That might affect the question of estoppel. Apart from the question of estoppel the question of interpretation is not affected by the fact that estate duty department interpreted it in one way. Because the department interpreted it in the other way the Court is not bound to follow the interpretation. The question is for determination, whether the property which was the joint property of the Hindu undivided family ceased to be the joint property of that Hindu undivided family because that family happened to have only one surviving coparcener. That Arunachalam Sr. when he was sole surviving coparcener was a member of the Hindu undivided family there can be no doubt. The only question is whether the property that was joint property is even now joint property of that family or separate property of Arunachalam Sr. If it was self acquired property of Arunachalam Sr. even the other side, Raja Iyer and everybody would concede that no child born or adopted would take a share of the property. It is not therefore separate property. Even if what the Crown says is correct it must fall midway between separate property and joint property. I say that what was joint property has not ceased to be joint property because the family did not cease to exist. There is a possibility of further coparceners having it, by law or by nature and the temporary manner of dealing with the property does not kill the very sense of the property the joint family nature. One of the most important incidents of joint family property, which separate property does not have, is that a child acquires a right by birth. Let us see who are the members of the Hindu joint family. It is admitted both by Raja Iyer and Bashyam that members of joint Hindu family may be outsiders called coparceners. There is no reason whatever to restrict the meaning of the words where a member of Hindu undivided family dies to interpret it to say where a member of the coparcenary dies. Hindu undivided family consists of male and female members. On that there is no dispute. He cites Mayne page 339. The position of the female member is important. He cites A.I.R. 1945 Allahabad page 286. He cites 1948 A.I.R. Privy Council 165. This case was dealt with in the evidence. This was put to Mr. Raja Iyer at page 219. The case that is referred to is 1943 A.I.R. Privy Council 196. The dictum is that joint family does not come to an end. I submit that Arunachalam Chettiar's joint Hindu family does

exist and the reservations I made when those admissions were noted are correct in law. I reserved to myself the position of establishing proof or maintaining that the joint Hindu family of Arunachalam Chettiar consisted of other members who were females. A number of income tax cases were cited chief amongst which is the 1937 A.I.R. Privy Council 36. In respect of that case the position taken up by us is that it is so according to Mr. Bashyam in terms of the Benares School of Law which applied to this particular family considered in this case. Mr. Raja Iyer says that it is not so. It is for the Court to decide which position is right. Even if that is the Mithaksara position that does not destroy the position that the property is not his but the property is the property of the joint Hindu family of which he was member. It does not deal with the question of the character of the property. As the other side relies on this important case, I would ask the Court to consider it in detail. Mr. Chelvanayagam refers to page 37. There is a conflict between the Madras and Bombay School whether the property of the father when gifted to the son is separate property or joint property. He cites A.I.R. (1941) Privy Council 120. This was put to Mr. Raja Iyer at length. He refers to page 123 to the above case. These cases clearly show the dividing line. The point I was trying to develop is the point that in Hindu Law two things can be different, and these cases show definitely that the mere fact that the income is treated as the income of an individual does not mean that the property from which he derives the income is also his property. The evidence of Mr. Raja Iyer is at pages 168 and 169. He cites 1943 A.I.R. Privy Council 196 at page 201. We come to the final contention on which Mr. Raja Iyer would not give in. He says there was no distinction between coparcenary property and joint family property. Here is a definite explanation that joint family property need not be held in coparcenary. In other words in the case of Arunachalam Sr. we come to this position. Here was property which was joint property of that family when the son was alive. When the son died can the nature change? Even if the 1937 A.I.R. Privy Council 36 case applies. It may be that he is not holding it in coparcenary but it is still joint property. No authority or decision has been cited to show that it is anything but joint property of that joint Hindu family. Would you call it the category midway? There is no such authority. All you can say is that it is joint property of that joint Hindu family temporarily characteristics of which have changed. As soon as a child is born or adopted that child takes a right which the last holder cannot prevent. In the light of the position let us consider what the Federal Court decided in this very case. We cannot draw the inference because the income is individual therefore the property is individual property. He cites 1945 A.I.R. Federal Court page 25. I doubt anybody in the Privy Council dissenting from the opinion expressed by Mr. Justice Varadachariar. He says it does not come within the category of separate property. I would ask Court to read this case through and through as it is the case most near to this case; whether the terms separate or joint property are used in a different sense from the sense used in the Hindu law.

Further hearing tomorrow afternoon.

(Sgd.) . . . Addtl. District Judge.

In the District Court, Colombo.

(Special). 6th May 1949.

Same appearances.

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Mr. Chelvanayagam continues his address :

He invites reference to the judgment of the Federal Court of India reported in 1945 A.I.R. Federal Court p. 25. That was a decision in respect of this very estate ; therefore the case has to be examined in its fullest. To begin with the court is aware when Arunachalam, Sr. dies he left amongst others two widows and a daughter-in-law who was the son's widow. The son's widow brought an action for the partition of the whole estate in the Sub-Court of Devakottai. At the same time the executors of the last will of Arunachalam Sr. applied for probate in the District Court of Ramnad. Both cases were combined and the Court pending the litigation appointed receivers who came into this court and obtained administration and for whom counsel now appear.

The civil case which the daughter-in-law brought for the partition of the whole estate was tried in the Sub-Court of Devakottai and a judgment was given ordering a partition of the estate between or amongst the three widows : the daughter-in-law was entitled to a half share on the footing that she represented the deceased's son of Arunachalam Chettiar Sr.; the two widows of Arunachalam Sr. were given the other half between themselves.

The right whereby the daughter-in-law claimed for a partition was based on the Hindu Women's Right to Property Act. The daughter-in-law was not satisfied with certain portions of the judgment of the Sub-Court and appealed to the Madras High Court and that court affirmed the judgment regarding partition of the whole estate on the basis that the daughter-in-law was entitled to certain rights under the Hindu Women's Right to Property Act of 1938, but limited the partition in respect of the Indian estate saying that the Ceylon estate was outside the jurisdiction of the Indian Courts. The Chief Justice of the Madras High Court based that judgment definitely on the footing that the whole property left by Arunachalam Sr. was his separate property and gave the daughter-in-law that right which she would have in respect of the separate property of Arunachalam Sr. and which right she got under the Hindu Women's Right to Property Act. The daughter-in-law appealed to the Federal Court because she was dissatisfied with the exclusion of the Ceylon Estate and the other widows also had cross appeals in respect of other matters. The Federal Court considered the whole question and decided that the property left by Arunachalam Sr. was not separate property. Strictly speaking the decision or the actual point that was decided was that it was not separate property within the meaning of the Hindu Women's Right to Property Act but it is the Appellants' submission that a consideration of the whole of the Hindu Women's Right to Property Act would leave one with no other result but the conclusion that the Federal Court came to a finding that it was not separate property because it was still joint family property in the hands of Arunachalam Sr. That is definitely the reasoning of Justice Vardacharia's judgment : he has not come to the conclusion that it is joint family property but the conclusion is inevitable in the circumstances of that case because the Hindu Women's Right to

Property Act changes the property of a Methakshara Hindu and divides it into two categories, namely, separate property and joint property, and legislates in respect of separate property in one case and in respect of joint family property in the other case: so that if the property is not separate it must be joint and if the property is not joint family property it must be separate. The two exhausts all the property that a Methakshara Hindu would have left in India when he died. In respect of separate property the daughter-in-law, being the widow of the deceased's son, would have had some share but in respect of joint family property she would not have had a share under the relevant section of the Hindu Women's Right to Property Act. Therefore it is necessary to consider the Hindu Women's Right to Property Act. When confronted with this judgment Mr. Raja Iyer very cleverly, like a witness to fact rather than a witness to opinion, said that the decision in the Federal Court case was to the effect that the property left by Arunachalam Sr. was not separate property within the meaning of the Hindu Women's Right to Property Act. That answer of Mr. Raja Iyer is correct because that was the decision there. But the reasoning in that case has to be looked at because the reasoning is this: it is not separate property because it is still joint family property in the hands of the sole surviving coparcener.

(Mr. Weerasuriya states that what was held in the judgment of the Federal Court was that separate property there meant separate property in the narrow sense, namely, self-acquired property.)

Mr. Chelvanayagam continues:

This comment makes it necessary to go back a step. Separate property in Hindu Law may be self-acquired property or other properties which fall within the category of separate property. In other words, a property which a Hindu inherited from his mother or a property which a Hindu inherited from his relatives other than his male ancestors, would all fall within the category of separate property; that is property over which the Hindu had complete rights of ownership—with the result the words " separate property " would refer to not merely self acquisitions but to all other categories of property over which a Hindu had complete rights and which whole category of separate property (including self-acquired and other property) will fall outside the category of joint family property. In other words if one takes the whole property owned by a Methakshara Hindu one must first of all divide it into two classes (i) joint family property and (ii) separate property; separate property falls under two classes (A) self acquired and (B) property other than self-acquired but which is not joint family property. The Appellants submit that " separate property" is used in the Hindu Women's Right to Property Act to catch up every type of separate property, not merely self-acquired property and there is no reason whatsoever to attribute to the Indian Legislature an intention to use the term separate property in that Act in a sense to denote only one species of property whereas separate property in the Hindu Law includes many species. In other words every type of property which is not joint family property, which is not owned as joint family property, falls within the category of separate property and it is the contention of the Appellants that Varacharian J. used the term " separate property " in that judgment to denote every type of separate property. In the ordinary rule of

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interpretation when a term is used in the statute it must be given the fullest meaning that it is capable of. Mulla in section 230 classifies separate property as property acquired in any one of nine ways. In Section 220 he makes the main division of property under Hindu Law into two classes. The two classes are exhaustive : there are no other classes. The learned experts who gave evidence do not tell of any other classification of property other than joint family property and separate property. The moment it is separate property it is not joint family property : if it is not separate property it must be joint family property : it must necessarily fall within one of these two classes. It goes on to describe and denote joint family property and thereafter separate property into various sub-classes. At the top of page 237 it is said separate property includes self-acquired property, but it includes various other categories as will be found in section 230. There are nine categories in section 230, and it would be a very grave piece of misinterpretation to say that the Hindu Women's Right to Property Act used the term " separate property " in Hindu Law to denote self-acquired property and self-acquired property alone.

Having seen the two main classifications of property in Hindu Law, namely that of joint family property and separate property, look at the Hindu Women's Right to Property Act and see whether they have kept to the main classifications there. It is the rule of interpretation to attribute to the legislature knowledge of the law of the country over which it legislates. The Act first of all draws the true distinction between Dayabaga and Methakshara law. In the case of the Dayabaga law it has already been stated by the experts here in this case that a male member has a definite share, whereas in the case of the Methakshara law a coparcener has no definite share until he gets a partition. Therefore in respect of joint family property there is a very big distinction between Dayabaga law and Methakshara law. That distinction will be seen even in this piece of legislation. This legislates for example that when a Hindu subject to the Dayabaga law dies all his property follows a certain rule of succession under this Act. In the case of a Methakshara Hindu two separate sections of legislation are introduced into that Act. One is, what is to happen in respect of his separate property and the other is what is to happen in respect of his joint family property. In the case of a Dayabaga Hindu it legislates for all the property that he receives. It cannot be interpreted with any sense of reason to say that the Hindu Women's Right to Property Act left out any other classes of property out of its purview. The Act taken as a whole must be interpreted to mean that it legislates for all the property of a Hindu. Even the preamble is important. There is no limitation in respect of the word " property." Section 3 (1) is important. That section provides for " any " property left by a Dayabaga Hindu : it provides for separate property left by a Methakshara Hindu. Can that be interpreted for example to say that separate property there refers only to self-acquired property and not to other classes of property which were separate in his hands. It definitely, therefore, deals with every type of separate property. When one reads Justice Vardachariar's judgment that meaning is even more clear than what appears in the section itself. Sub-section (3) need not be considered as that deals only with the nature of the estate that a woman enjoys, because that does not affect the point under consideration.

Section 3 (1) deals with any property left by a Dayabaga Hindu and deals with separate property of a Methakshara Hindu. What is left out is this : some property of a Methakshara Hindu is left out of Section 3 (1). A Methakshara Hindu's separate property is legislated for ; some property is not yet legislated for. Sub-section (2) legislates for what is left out of section 3 (1) in respect of a Methakshara Hindu. By the time one comes to sub-section (2) one would have exhausted all the categories of property that a Dayabaga Hindu might leave or a Methakshara Hindu might leave or a customary law Hindu might leave. Therefore there is left only one portion of Methakshara Hindu. What is left out is caught up in 3 (2). The most normal interpretation, keeping in mind the classification of property known to the Hindu law is that section 3 (1) and section 3 (2) exhausts every type of property that a Methakshara Hindu might leave. Is it not a clear indication that this Act is intended to enact in respect of every type of property governed by any school of Hindu law. Is there a category of property which falls outside the class of separate property and outside the class of joint family property which Arunachalam Sr. might have owned ? The answer is no. A Hindu does not own any property which falls outside the name of separate property or outside the name of joint family property. For example in respect of joint family property section 3 (2) does not say joint family property owned by the family or owned by the Hindu that was dying. It says " having at the time of his death an interest in the Hindu joint family property." They limit it to that of an interest because they go on the well known principle of Hindu law that coparcener or any member of a joint family property. That interest which he has goes to the widow : the widow takes the same interest as the man has. In respect of joint family property sub-section (2) says " an interest," whereas in respect of separate property the words used are " in respect of which he dies intestate the widow shall have the same share as the . . . ". In respect of separate property the word " share " is used because it is the appropriate word. In respect of joint family property the appropriate word to be used is " interest ".

If the Courts in India held that the property left by Arunachalam Sr. does not fall within the category given in section 3 (1) it necessarily falls within the sub-section (2) of section 3 ; if it falls within 3 (1) it does not fall within 3 (2) ; the two put together exhausts the whole class : that is the submission of the Appellants in respect of this matter : that is more than clear by reading Justice Vardahariar's judgment.

See the proviso to section 3 (1). The Plaintiff in the Devakottai case was the son's widow ; she would have come in under the first proviso to section 3 (1) : she could not come under any other proviso if she came under that. That is, she could have taken only a share which her husband would have taken if he was alive out of the separate property of Arunachalam Sr. Now says Mr. Raja Iyer in this case that the whole of this property left by Arunachalam Sr. is separate property. He says so categorically. If that was separate property in Hindu law why should it not come under section 3 (1) ? What is this special sense in which 3 (1) is used ? Is not 3 (1) used in the term separate property in the manner in which the term separate property is used in Hindu law ? Is there any indication that separate property is used in that section in a limited sense or any other sense but in the general sense in which separate

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property is used in Hindu law ? If it was used in any other sense has it been defined in that Act. The whole of that Act is given as an appendix to Mulla. The Act does not give any other definition but the meaning contained in those sections themselves. Mr. Raja Iyer says that the property left by Arunachalam Sr. is separate property. If so why cannot it come within 3 (1) ; if it does not come there it must come within 3 (2) and under 3 (2) the son's widow gets no interest and therefore her action is to be dismissed and her action was dismissed by the Federal Court in respect of the main estate but her action was preserved in respect of such small items that might fall within the definition of separate property.

The submissions on the Act are therefore, firstly the terms " separate property" and "joint family property" are used in the Act in the ordinary sense in which they are used in Hindu law, (2) that in Hindu law separate property and joint family property are two classes both of which exhausts all the types of property that a Methakshara Hindu owns or has interest or the Act purports to legislate for all the property left by a Hindu of any school of law known in India (3) that the act taken by itself and taken in conjunction with the principles of Hindu law exhausts every class of property of a Methakshara Hindu, and (4) if the judgment of the Federal Court is that the property left by Arunachalam Sr. does not fall within the category of separate property it does not fall because it is joint family property and nothing else.

The Madras High Court judgment is contained in 1944 A.I.R. Madras p. 340 at 341, 343 (column 2 bottom). The reasoning of Chief Justice Leach in this judgment is the very reasoning of Mr. Raja Iyer in this case and the very reasoning which the Crown is supporting and this very reasoning has been overruled. What has Mr. Raja Iyer said ? He said that Arunachalam Chettiar Sr. held this property jointly with his father at one stage and jointly with his son at another stage and during all those stages it is joint family but when he became sole surviving coparcener he had the disposing power and because he had disposing power it became separate property : So says Leach J. which has been overruled. Consider section 5 of the Act. He uses section 5 to support the contention that it is separate property : he has disposing power, power of testamentary capacity over the property, therefore it is separate property. So says Chief Justice Leach, so says Mr. Raja Iyer, so says the Crown in this case. If this case had stopped with the Madras High Court it must be confessed the Appellants would be in a very great difficulty to argue the case before this court on the question of Hindu law.

Mr. Chelvanayagam refers to the paragraph commencing at the bottom of first column at page 344 and ending at the top of the 2nd column on the same page.

The Crown and Mr. Raja Iyer are inviting this court to give a decision in this case following the High Court judgment of Chief Justice Leach. The contention in that case was whether Arunachalam Sr.'s property was separate property or joint family property and Chief Justice Leach held it was separate property and the Crown is asking this court to give a judgment that it was separate property for the very reason that appealed to Chief Justice Leach.

See the elaborate and exhaustive judgment of Justice Vardachariar in the Federal Court reported in the 1945 A.I.R. Federal Court p. 25. Refers to the top of page 32. Before going further see section 230 of Mulla, sub-sections 6 and 7. He is considering the term " separate property " in that connection as including every category of property which is the antithesis of Ancestral property, coparcenary property and joint family property. He is not at all determining that separate property is the only class of self acquired property that is intended to be caught up in the Hindu Women's Right to Property Act. Mr. Chelvanayagam draws special attention to the last paragraph at page 33. The reasoning by Justice Vardachariar is this: the property held by the sole surviving coparcener no doubt is held by him in full right of disposition but the full right of disposition is subject to fluctuation and subject to qualifications: because it is subject to qualifications it is not separate property within the meaning of the Act; if it is not separate property within the meaning of that Act it will be joint family property within the meaning of that Act. It is joint family property before Arunachalam Jr. became sole surviving coparcener. It becomes joint family property as soon as a son is born or a son is taken to adoption; during the intermediary stage it still has the characteristics of joint family property. There is no authority to show that it has ceased to be joint family property. (Mr. Weerasuriya refers to the order at page 46, 2nd column.) Mr. Chelvanayagam reads the Order at page 46, column 2. He says that is in respect of all the property which was the joint property of Arunachalam Jr. and Arunachalam Sr. another person would claim a right: all that is excluded. Therefore all the estate this court is dealing with is the joint property of the son and the father upon the admission: all that is excluded upon the provisions of the Order. But if there is any other property of Arunachalam Sr. the widow may prove that and take her right. But that property which was joint property before Arunachalam Jr.'s death in respect of which another son adopted or born would have taken a right by birth is excluded. Whether there are such properties or what they are will have to be determined before the final decree is passed; such property is not dealt with here. Immediately all the widows came, all three of them on the same day by agreement adopted a son and divided the whole estate: this is in accordance with the Privy Council judgment in the 1943 A.I.R. case. The sole surviving coparcener leaves an estate which vests in the collateral and by adoption by the widows the property re-vests. Mulla at section 230 under sub-section (7) gives the case of *Bachoo* v. *Mankorebi* 34 Indian Appeals p. 107. This was the case of two brothers forming a joint Hindu family both of them died. To one brother was born a posthumous son. After the death of the other brother the widow adopted a child. The posthumous son claimed the whole of the joint family property as belonging to him exclusively on the footing that at the time he was born the whole joint family property of the two brothers —the father of the posthumous child and his uncle—had vested absolutely in him and once it had vested in him as sole surviving coparcener it could not thereafter—any portion—go to the child that is adopted by the widow thereafter. Held that the son so adopted became by virtue of his adoption jointly entitled with the Plaintiff to the estate in suit. The court will see for example, the Plaintiff the posthumous child was at one stage the sole surviving coparcener and in possession of the whole of the

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property of the family. It was contended therefore that it became separate property and by reason of it becoming separate property became absolute ; it had no character of joint family ; it could not go to a child adopted thereafter. That is why example (7) mentions this case as a category of separate property only if there was no widow capable of adopting a son. Therefore in this case the court must treat this property which had the characterising of joint family property of becoming the property of a child adopted. That is a proposition very well accepted and well settled now. A number of cases have been mentioned in the arguments. See the passage at page 113 : the Privy Council refers to the property in the hands of the posthumous son who was in the position of a sole surviving coparcener as the joint property. With regard to the remark made by the Crown relating to Judge Vardachariar's definition of self-acquired property, the court will see section 230 of Mulla. It says " property acquired in any of the following ways is the separate property of the acquirer." It is called self acquired property and is subject to the incidents mentioned. In other words in one sense the term self acquired property is used synonymously with separate property. Separate property includes what is strictly called separate property and other classes of property ; they are all sometimes called separate property. Is not Judge Vardachariar using the term self acquired property in that judgment to be coterminous with all classes of separate property? After all one must not get lost in the words without understanding the meaning in which the words are used. With the result the term self acquired property is used in Hindu Law and judgments to denote every class of property as opposed to ancestral property, coparcenary property, joint family property. In that same connection as 34 Indian Appeal case of vesting in an adopted child the share of the joint family property the court is referred to the expression by the Privy Council in a similar case in 1943 A.I.R. Privy Council p. 196 at page 200. This case is repeatedly cited for various purposes but there is a relevant passage at this point of the argument. This is one of those cases where all the coparceners had died and the joint family property was left without there being a coparcener to hold. The widows had adopted and the question of what happened on adoption to the joint family property and what is the language used by the Privy Council relating to this is noteworthy. The words are these : " It must vest the family property in the adopted son on the same principles displacing any title based merely on inheritance from the last surviving coparcener." They describe it as the family property and the question of this right of the adopted child acquiring the property arises because it is joint family property. They describe it as family property in judgment after judgment. Attention is drawn to these passages in connection with the argument of the Appellants relating to the distinction between separate property and joint property contained in the Federal Court judgment of Judge Vardachariar.

Mr. Raja Iyer's evidence has to be rejected on many points. The Appellants have made their submissions and the Privy Council has held certain matters without any ambiguity on those questions, namely, it is submitted that the Privy Council had held in the 1943 Privy Council case at page 196 that an impartible estate is joint family property but not held

in coparcenary. The reasoning of Mr. Raja Iyer for saying categorically that the property left by Arunachalam Sr. is separate property consists of the following :

(1) that Arunachalam Sr. had full powers of disposition of the property as sole surviving coparcener,

(2) that he did not hold it in coparcenary with any other coparcener,

(3) that he could dispose of it by will and that these three qualifications were qualifications found in separate property.

It has been pointed out on behalf of the Appellants that full powers of disposition of Arunachalam Sr. in respect of this property are not the same as full powers of disposition in respect of separate property. Secondly it was pointed out that it is not necessary for property to be joint family property, that it has to be held in coparcenary ; that repeatedly the Privy Council has held that an impartible estate is not held in coparcenary but is joint family property ; and thirdly that the power of willing is not destroyed. It has also been pointed out that all these qualifications were not necessarily qualifications which destroyed the character of a joint family property. At some places in Mr. Raja Iyer's cross-examination he admitted some of these points that I made but later he went back or dodged answering the questions. Another reason that Mr. Raja Iyer gave was that the income taken of the joint family property is by the sole surviving coparcener, alone by himself and that is his income and therefore the property is his in the sense that it is separate property. It was pointed out to him that there were Privy Council decisions which showed that the property while belonging to the joint family and the income while belonging to a particular individual that that distinction exists is clearly established by Privy Council cases in relation to the Hindu family. That distinction was clearly set out in the 1941 A.I.R. Privy Council case 120 which was a case relating to super tax. That case for example was cited by Mr. Raja Iyer himself while giving his evidence-in-chief to show that the income of a sole surviving coparcener was his income and therefore the property was his property, but he left out—completely left out—another portion of that judgment which showed that a house which belonged to an impartible estate of which the income was taken by the individual was declared not to be the property of the individual but the joint property and therefore not liable to tax. Mr. Raja Iyer had to be asked between two dates of his giving evidence to read that judgment. After reading back that judgment he came back and admitted a number of points. He could not readily admit points made out in the Privy Council judgments and points made out in text books which were against his contention. The criticism of Mr. Raja Iyer's evidence may be illustrated to court from the following pages : Page 168. Page 120 where the 1941 A.I.R. Privy Council case was put to him. His earlier evidence in respect of this judgment is at pages 111 (bottom), 112, 144 (just below the middle), 145. The court will examine this case and Mr. Raja Iyer's evidence on this point. All these are dealt with at page 169 in cross-examination. From 169 it goes to 189 and the next evidence under

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cross-examination is at page 190. At the earlier page before the adjournment he had denied that it was part of an impartible estate or that he did not know it.

Section 9 was a tax on the income of house property of which the assessee was owner. Therefore although the income belonged to the samindar he was held not liable to tax under section 9 because he was not the owner of the property. Sections 8 and 12 imposed a tax on the income of a man and there the Samindar became liable to pay income out of the samindari which belonged to the joint family but of which the income was his. The distinction is between ownership in one set of persons and income belonging to one man in Hindu law. With the result that while showing that the income belongs to one man does not necessarily draw the inference that the property belongs to the same man. In fact Mr. Raja Iyer after all his cross-examination was held to admit that. Reasoning after reasoning on which Mr. Raja Iyer based his conclusion that the estate of Arunachalam Sr. was separate property was being destroyed. One reason he said is that Arunachalam Sr. had full control over the income of the estate which he held as sole surviving coparcener ; therefore he says the property is his separate property. Here he says that it does not necessarily follow that because the income belonged to one man the property necessarily belong to him. The second reason Mr. Raja Iyer gave was that this property was the separate property of Arunachalam Sr. because it was not held by him jointly with any other coparcener : in other words it was not held in coparcenary. Because a property is not held by a man in coparcenary from that it does not follow that property is not joint family property.

The next series of questions deal with that aspect and there at one stage he admits that proposition that because a property is not held in coparcenary it does not necessarily mean that it is not joint family and then goes back. See pages 192 to 195 (bottom).

There are four characteristics of partible joint family property : if that property has lost three of those characteristics by force of custom its position is this : In respect of those three matters which it has lost it resembles separate property but still it is described as joint family property of the family until it has lost its last characteristic. Mr. Raja Iyer's second reason for saying that the estate left by Arunachalam Sr. is separate property and not joint family property is destroyed. Here is another example of a property which is not held in coparcenary but which is joint family property. This point is at the middle of page 199 of Mr. Raja Iyer's evidence. He explains by saying that up till 1941 there was doubt as to whether this was joint family property but after a review of these cases the Privy Council stated that an impartible estate was joint family property. He was questioned in that connection and his answers are at pages 193 to 195 ; he admitted that. Now he says he will not admit. His answer is a confused answer. He cannot answer that question because it goes against his argument. He is arguing the case for the Crown : he is not giving expert evidence.

(*Interval*)

(Sgd.) . . . Addtl. District Judge.

6th May, 1949.

In the District Court, Colombo.

37 & 38/T (Special)

(*After Lunch*)

No. 21. Address of Counsel for the Original Appellants, 6th May 1949, *continued.*

Appearances as before.

Mr. Chelvanayagam continues his address :

After attempting to destroy the reasons which Mr. Raja Iyer gave for stating that this property was separate property, we tried to show through Mr. Raja Iyer himself certain contradictory distinctions between the property in the hands of a sole surviving coparcener and separate property. We tried to establish a few distinctions which in some form or other Mr. Raja Iyer conceded with reluctance. The distinctions were : this property in the hands of the sole surviving coparcener which was once joint family still has characteristics which properly called separate property has not. The main one, the dominant quality in the property, is of a son by birth or adoption taking an interest in the property. That birth or adoption will give an interest to a son even after the sole surviving coparcener is dead and the property has gone by inheritance to a collateral. No such quality there is in what is called separate property. Mr. Raja Iyer himself tries to draw a distinction between self-acquired property and separate property, the same point that I made this morning in the Federal Court judgment. The point he distinguishes between separate and self-acquired property does exists in one sense but in another, as shown by Mullah, the term is synonymous. To get back to separate property and the property in the hands of the sole surviving coparcener we pointed out that it has the potentiality of giving an interest to a son born or adopted. Mr. Raja Iyer tried to put it this way that the potentiality becomes joint family. I say no. It is a misuser of the language. It is potentiality of becoming joint only by another son by birth or adoption which gives a special characteristic. The potentiality is that it becomes co-owned by somebody taking an interest by birth. To belittle it and say that it has potentiality is something that I do not concede. I say that the potentiality of becoming co-owned gives the name, the characteristic and the classification of joint family property, and nothing else. That if at all is the fundamental distinction between joint family property and separate property. If there is one distinction that is the one (the right by birth or adoption). In respect of this property in the hands of the sole surviving coparcener the women members of that family have certain rights which they do not have over the separate property properly so called of Arunachalam Sr. The women members certainly have rights of maintenance, rights of restraining waste by Arunachalam Sr. Although Arunachalam Sr. has in respect of this property a full power of disposition limited to some extent, still the women members of that family have certain legal rights in respect of that property which they do not have in respect of separate property. With difficulty Mr. Raja Iyer has been made to concede that. Therefore for a matter of theory we propounded or we submitted as a proposition that we have to conceive the family as the owner in respect of joint family property and an individual as owner in respect of separate property. Mr. Raja Iyer denied this at the

In the District Court, Colombo.

No. 21. Address of Counsel for the Original Appellants, 6th May 1949, *continued.*

commencement and in the course of his examination in chief. He denied the conception of family as owner. He stood by the conception in respect of joint family property. It is not the family who is the owner but certain male members who were owners for the time being. He had to give way to the conception of the family as a whole, family as a unit. On these three points Mr. Raja Iyer was cross-examined and also on the theoretical basis of the family as a unit. When we talk of the family as legal entity the Indian Judges and the Privy Council Judges hold that the Hindu family is not a legal entity in the sense of English law but it is different from an individual. It has existence as a unit and therefore used the term sort of corporation. It has some characteristics of corporation without having all the characteristics of limited liability. Mr. Raja Iyer was cross-examined on the question of distinction between the property in this case of Arunachalam Sr. and of separate property properly so called : page 201 of the evidence (3rd question from top). I may not know, my learned friend may not know the various meanings in which the term self-acquired property is used in Hindu law but Mr. Raja Iyer should have. I want to show the distinction between property in the hands of the sole surviving coparcener and separate property ; that it has some of the incidents he denies. In ancestral property in the hands of a coparcener there is the characteristic of being owned by a child by birth or adoption by a collateral's widow. Section 705 of Mayne was put to Mr. Raja Iyer. Arunachalam's stepmother could have got a charge. His daughter in law could have got a charge not merely the widow of Arunachalam Sr. Arunachalam's wife can get a charge on Arunachalam's property. With what difficulty we had to squeeze out these admissions from the expert witness. This property that Arunachalam Sr. held jointly with his father at one stage, jointly with the son at another stage, has got some of the characteristics. His father's widow, brother's widow, son's widow can sue him and get a charge put on the property. When I asked Raja Iyer about the difference he said the wife can get a charge for maintenance in respect of the husband's separate property. That is not the question. The question is a widow who is a member of the joint family can get a charge on the joint family property of which the sole surviving coparcener is for many purposes treated as absolute owner.

Mr. Chelvanayagam reads section 703 of Mayne.

He had given the opinion that ancestral property in the hands of a sole surviving coparcener with widow living is separate property. It has all the incidents of separate property. To say that would be utterly irresponsible. In other words, the whole thing is only explainable by what the Indian and the English lawyers dealing with Hindu Law had done, namely, by postulating the family as unit of ownership—sort of corporation—and members having rights ; males called coparceners having a larger interest and females having a smaller interest. Male members had right of partition ; females had not. After the Hindu Women's Right to Property Act female members had right to partition in respect of joint family property. These fundamental definitions stare at Mr. Raja Iyer's face. I put Raja into tiresome cross-examination to show that it has not got characteristics of separate property. Mr. Chelvanayagam refers to Mr. Raja Iyer's evidence at page 206. These are obligations imposed by

No. 21.
Address of Counsel for the Original Appellants, 6th May 1949, *continued.*

the law but not voluntary charges like mortgage charges. The fact is that some liabilities attach to a property of a sole surviving coparcener by right of law ; the others by act of parties.

The real distinction between separate property and joint property can be explained on the basis that separate property is owned by an individual whereas joint property is owned in a sense by a family treated as a sort of corporation. Mr. Raja Iyer denied it. He was cross-examined at page 166 (latter portion). Property is vested in me. I own it. If somebody else has a right it is not fully vested in me. There is no distinction between vested and ownership. The conception is family as owner. A coparcener has a larger interest but the others are members who have got definite rights in the property. If there is joint Hindu family owning only an ancestral house and nothing else, all the widows of deceased coparceners had a right to live there and cannot be ejected by a purchaser. If that is not real right, what is it ? With the result I want to point out every aspect of this similarity and distinction between the property of a sole surviving coparcener and separate property before I come to ask Your Honour to interpret section 73. We start with an admission that when Arunachalam, Jr., was alive in 1934 all this property was joint family property. When Arunachalam, Sr., died if Arunachalam, Jr., had been alive it would have been joint property. Those two admissions are here. The only thing to determine is has the property ceased to be joint family property because there was only one surviving coparcener in the person of Arunachalam, Sr. No doubt there are certain distinctions between the possession when there are more than one coparcener and when there is one coparcener. But does that distinction take it out of that category ? The distinction between joint family property when there are more than one coparcener and the nature of the property when there is one coparcener is of a temporary nature ; they do not change. There is no one authority to show that in such a case it becomes separate property excepting one passage in Mayne. Mullah does not treat it as separate property. Federal Court does not treat it as separate property. Gupte does not treat it as separate property at page 98 section 4 (8). Mr. Chelvanayagam refers to the 8th item. I say even this statement of Gupte is incorrect. He cannot alienate the ancestral house as though it was his separate property and give the purchaser a right. It does not devolve. Arunachalam, Sr.'s property on his death devolves on certain persons, widows, adopted children. It goes to the children. Separate property goes once and for all. Gupte has not put it very clear. Therefore it does not even devolve as though it were separate property. It devolves subject to incidents of ownership changing on adoption, i.e. the Privy Council cases which have been cited. The sole surviving coparcener dies without a will. The property goes by inheritance to some people. They take it subject to the right being defeated by adoption. There is no authority whatsoever excepting a passage in Mayne at page 365 : section 285 No. 4. In other words, it is not separate property like other separate property. What Mayne says is it is separate property subject to something happening. Close attention we have paid to the nature and incidents of this property by the examination of Mr. Raja Iyer, Advocate-General of Madras. It is very clear to us that this joint family property in the hands of Arunachalam, Sr., when he was sole surviving coparcener had lost some of

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No. 21. Address of Counsel for the Original Appellants, 6th May 1949, *continued.*

the characteristics which it earlier had which would come back on the mere birth or adoption of a son. I say it is joint family property and nothing else.

Further hearing on 27th May, 1949.

(Sgd.) . . . Addl. District Judge.

37/T (Special)

27th May 1949.

27th May 1949.

Appearances as before.

Mr. Chelvanayagam continues his address :

Mr. Chelvanayagam refers to page 101 of the addresses.

In the Federal Court judgment Justice Vardachariar used the term self-acquired property in many places but I submit that in all those places he uses the term self-acquired property he uses it synonymously with separate property and already I have given you reference to Mullah as the authority for the statement that the terms separate property and self-acquired property are used synonymously. Justice Vardachariar had used the term separate property in a stricter sense and in a wider sense. The term separate property itself he has used in two senses. Mr. Chelvanayagam refers to page 32. He uses the term separate property in the limited sense not to apply that term to property taken on partition by a coparcener and to property which is held by a sole surviving coparcener which he says resembles in some measure to separate property. Mr. Chelvanayagam refers to section 222 of Mullah. He gives the incidents of separate or self-acquired property. One of the incidents he gives as the first one is that no other member of the coparcenary, not even his male issue acquires any interest by birth. The text I have submitted to Court to distinguish between separate property and joint family property is the right that a male member acquires by birth in the property. In separate property no member by birth or adoption acquires an interest. Even if there was no coparcener at the time of birth in joint family property he acquires an interest. After making those general submissions I was proceeding to the submissions on section 73 of the Estate Duty Ordinance Vol. 4 at page 602. I submit that the meaning of this section should be considered after making comments on the general principles applicable to the case of an Hindu undivided family or a Hindu dying. After making those general observations we shall consider the meaning of section 73. (Section 73 is read.) First of all, where a member of a Hindu undivided family dies, it is our submission that Arunachalam, Sr., was a member of a Hindu undivided family. The widows were alive. That is the first point of contention between the Crown and us. You will notice that in the admissions that we recorded the Crown restricted the family to Arunachalam, Sr., and Arunachalam, Jr., if he had been alive at the time of death of Arunachalam, Sr. I submitted that the Hindu undivided

family of which Arunachalam was a member consisted not only of males but also of females. On that point I have addressed generally. I wish to add two decisive authorities on that point.

(Mr. Weerasuriya does not dispute the fact that the joint family was in existence after the death of Arunachalam, Jr., at the time of the death of Arunachalam, Sr.)

A large number of authorities have been cited by me to show thatthe family continues to exist.

Mr. Chelvanayagam refers to the Nagpur High Court judgment: 1942 A.I.R. Nagpur page 19 and page 21. This is the judgment which in the 1943 Privy Council case was treated with approval and followed as deciding the position of Hindu undivided family and its continuation and existence. Widows' rights are not merely rights of receiving maintenance but adding coparceners to the family. The principle of the action has been followed by the Privy Council and is law. It is admitted and is sufficiently established before Court that Arunachalam, Sr., was a member of a Hindu undivided family, of which he was one member and there were other members; most of them were females, stepmother, widow, son's wife. One will have to remember where a member of a Hindu undivided family dies should that be mistaken for where a member of a Hindu coparcenary dies. At various points—the argument and evidence of Raja Iyer—there was a tendency to restrict the Hindu undivided family to the Hindu coparcenary. I say this because at various stages the position has been taken up by the Crown that Arunachalam Chettiar, Sr., was not a coparcener in the sense he was not one of the many coparceners at the moment before his death. We should not in this section replace the words " where a member of a Hindu undivided family dies " with the words " where a member of a Hindu coparcenary dies." In a similar taxing enactment the Privy Council used the same words " don't paste over the words of ' Hindu undivided family ' the words ' Hindu coparcenary '." That is the income tax case of a sole surviving coparcener where they said the income was to be taxed as the income of the individual coparcener. Mr. Chelvanayagam refers to 1937 A.I.R. Privy Council 36 at page 38. With the result the first line of section 73 is completely satisfied where a member of a Hindu undivided family dies. " On any property to be joint property of that Hindu undivided family " : Now in respect of that matter the general submissions we have made are that the property that is taxed was the joint property of that Hindu undivided family and not of Arunachalam, Sr. On that matter the whole argument has proceeded and days have been spent on it. I only wish in concluding to refer to two passages which have also been referred to earlier by me. One is the passage in 34 Indian Appeals 107 at 113 as particularly applicable to this portion of that section 73 referring to the property that was held by a sole surviving coparcener. Their Lordships of the Privy Council speak of it as joint property. Mr. Chelvanayagam refers to the last paragraph of page 113. The property that was held by the last coparcener is described as joint property. When Arunachalam, Sr., died the amendment to section 73 had not come into force. I have made reference to it. Mr. Chelvanayagam refers to 1943 A.I.R. Privy Council page 196 at page 200. (It is read.) It refers to as family property. 34 Indian Appeals refer to a joint property.

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With the result that whether it is in the hands of the last sole surviving coparcener or even after his death, even today, it must be referred to as the family property or the joint property. The joint property or joint family property would be the same. Coparcenary property would mean the same but not necessarily held in coparcenary. There is a distinction between property held in coparcenary and coparcenary property. I submit that Arunachalam, Sr.'s estate falls very clearly and as clearly as possible within the four walls of section 73. Then the amendment to section 73 was made I submit to clarify the position on behalf of the assessment. I ask for no benefit which might be conferred by the amending section. The amending section is split into two portions in respect of the movable estate and immovable estate. Lest it be said that lands in Ceylon by reason of the fact of the law of the country where the land is situated the lands might not come within the category of joint property, they clarified by saying lands which if they were movable property would be joint family property would also come within section 73. For the present case it is not necessary to construe that because the admission speaks of the whole of the estate. It would have been joint family property had Arunachalam, Jr., lived on that day. It only leaves for Court to consider the question whether it is movable or immovable property. The only question is whether the estate would be joint family property in the hands of Arunachalam, Sr., in spite of the death of Arunachalam, Jr. It is admitted that the property would be joint family property if Arunachalam, Jr., had lived in 1938. It is here admitted that all the property whether movable or immovable would have been the joint property of that family under the admissions if Arunachalam, Jr., had been alive at the date of the death of Arunachalam, Sr. With the result I submit that the question of amendment is immaterial but I would have argued if any argument had been put forward by the other side that this section would not apply to separate property. I would have argued that it partook of movable assets because they were movable assets.

(Mr. Weerasuriya states that section 73 would apply only to movable property.)

I am surprised at the attitude of my friend in respect of this matter but I do not mind meeting any attitude taken up by the Crown because I am willing to meet the argument.

I say section 73 would apply even before its amendment to any property that can be properly considered to be joint family property. Even immovable property in Ceylon can in appropriate circumstances be considered to belong to the class of joint family property of a Hindu family. I will give an example : Supposing *A* and *B* were brothers and members of a joint Hindu family in India. Out of the joint family funds *A* brings Rs.100,000 to Ceylon for purposes of trade. Everything that *A* acquires with the Rs.100,000 will belong to the joint family of which *A* and *B* were members. If *A* in the course of trade in Ceylon acquires an estate with that Rs.100,000, it would be open to *B* to sue *A* for a declaration that that estate belonged to the joint Hindu family of which *A* and *B* were members. As between them it would be so. In other words, as between *A* and *B*, *A* has merely converted joint family funds into immovable property in another country. If the property from *A's* hands went into the hands of an innocent purchaser *B* cannot pursue that matter. That is clear. If *A* put it in the hands of a relative of his *B* can still pursue that. With the result that in

certain circumstances the immovable property of *A* in Ceylon bought out of joint family funds will have impeached in it the characteristics of joint family property. My friend says that section 73 as it stood any property proved to be the joint property of a Hindu undivided family is exempt from taxation. I say that if with joint family funds immovable property had been bought in Ceylon that immovable property will still partake of the nature of the joint family funds and it would be appropriate to discuss the question whether section 73 would apply even to such lands. Of course, to remove any doubts in respect of that matter the amending Ordinance has been brought. It is not that that amending Ordinance changed the law. It may have been brought to clarify. My submission is that it is brought to clarify but it is not necessary to go into argument as to whether the immovable property left here in respect of that estate would partake of the nature of personal property because of the admissions made by the Crown before we started the case. I would have led evidence.

(In view of the admissions no evidence was led on this point. It may be that evidence would have been led if he did not agree to the admissions recorded. On those admissions he has no objection to argument being addressed. This is what he meant by his earlier statement.)

Admission 7 is that the property assessed for the payment of estate duty on the estate of Arunachalam, Sr., was property which, had a son been alive on 22.2.38, would have been on that date property of the Hindu undivided family of which father and son were members. It refers to movable and immovable property. It is not joint family property because there were no two coparceners. There is no distinction made. There is no evidence to say what is movable property and what is immovable property. The whole was business assets which included some portions of immovable property, moneys, Mysore bonds and various other kinds of assets. But all taken as a whole is admitted to be joint family property if the son had been alive. With the result I submit that the question of the amendment to section 73 has become utterly irrelevant for argument for the purpose of this case. I now go on to a different question. A question will not arise if the estate of the son taken with the estate of the father as a whole is held not liable to duty on the general principles of the Hindu Law which we have been arguing before Court. If the Court were to hold that the exemption for duty and the principles applicable to the Hindu Law do not arise, in other words, if the court holds that duty is leviable on the estate as a whole—both estates—in spite of the Hindu Law—if that were so, then the present argument would apply to portions of the estate, namely, the Mysore deposits as applicable to the son's estate and the Mysore bonds as applicable to the father's estate. At the time the son died there was a certain amount of money which was in deposit in Mysore. At the time that the father died there was found in Ceylon a number of Mysore Government promissory notes which totalled the value of some nearly 10 laks, a considerable portion of the estate. With the result that even if the estate is liable to duty on the general principles it might be that no duty could be levied on these Mysore deposits and on these Mysore bonds. I will deal with both matters together because the principles applicable to the Mysore deposits or Mysore bonds or Mysore promissory notes are more or less the same.

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The estate left by the father is roughly about 40 lakhs out of which the Mysore promissory notes total in value about 10 laks. Nearly ¼ of the duty would be cut off if they were not taxable to duty in Ceylon. Both son and father were people domiciled in India. What is important is that both died in India with the result that the Ceylon Government can levy duty in respect of what can be considered as Ceylon estate of these people, not the whole estate. For the sake of determining what is the Ceylon estate certain principles of private international law are available. Arunachalam, Sr. I will take his case and deal with him separately for the sake of deciding whether the Mysore promissory notes formed part of the Ceylon estate. The general principle seems to be that Ceylon estate consists of whatever property was found in Ceylon. All lands in Ceylon without any further argument become Ceylon property and part of the Ceylon estate. All tangible movables found in Ceylon like household furniture, money, goods and such other articles would *prima facie* be property forming part of the Ceylon estate but there are certain tangible property like shares in a foreign company, copyright, bonds or foreign promissory notes. In respect of those the question arises as to whether they are to be treated as the property of the Ceylon estate or the property of the estate in the foreign country in which the deceased died or in which the company is or in which the debtor lives and various other principles. In order to bring these Mysore promissory notes within the Ceylon estate my learned friend cited to you two judgments, one is the case of *Attorney-General* v. *Bouwens* and the other is the case of *Attorney-General* v. *Winans* in 1910 Appeal Cases, on both of which I rely myself. It is my submission first of all that in respect of simple contract debts they are supposed to be situated in the country in which the debtor lives or is resident. That is, if I have a simple contract debt due to me from a man in India and I die here in Ceylon the simple contract debt is not situated in Ceylon but where the debtor lives. If I had a promissory note from the debtor made by the debtor in Ceylon and that promissory note was in Ceylon at the time of my death the promissory note as a property would be considered to be property lying in Ceylon although the payment may have to be made there. If the promissory note was a note made in India by the debtor and that promissory note was lying in Ceylon at the time of my death still that debt or that promissory note is not to be treated as property situated in Ceylon at the time of my death even though it is made payable in Ceylon. I am making a categorical statement which I shall try to substantiate. A promissory note as such has various qualities and characteristics. A promissory note as such is not strictly speaking a security and there are a number of authorities which speak of the promissory note as being no security. It is only evidence of a debt. It can also in certain circumstances be a negotiable instrument. I say advisedly in certain circumstances. It can in certain circumstances be not a negotiable instrument. Inasmuch as it is considered a negotiable instrument it is something more than evidence. It is a thing that passes by delivery from one owner to another. Delivery means delivery by endorsement or without endorsement and delivery in the appropriate cases. For example, a promissory note or bill of exchange has the characteristics of a negotiable instrument. It is treated as almost a chattel and is treated as situated in the country, in which it was found. But in circumstances where a promissory note or a bill of exchange is not treated as a negotiable

instrument it is treated only as evidence of a debt. It is in circumstances where it is not treated as a negotiable instrument that it is treated as something which is only evidence of debt because where it is not a negotiable instrument I can only pass to my transferee whatever rights in the document I have myself. It is only when it is a negotiable instrument I pass a better title than I have myself. Therefore it is important to find out the circumstances under which a promissory note or bill of exchange becomes a negotiable instrument and the circumstances in which it is not so. Negotiability is something higher than transfer, but I can negotiate what I do not have in respect of a negotiable instrument. I can give a better title to my transferee than I have in it myself. That is the essence of a negotiable instrument. Regarding negotiability Dicey on Conflict of Laws Rules 176 and 177 has a very interesting note on this point because I contend that the Mysore Government promissory notes which are the subject-matter of this case are not negotiable instruments in Ceylon. They would not be negotiable instruments in England. They may or may not be negotiable instruments in Mysore, but for purposes of argument I say that they are negotiable instruments in Mysore. The reason is the document is treated as a negotiable instrument by virtue of two facts either made so by a statute in the country or by the custom of the trade. I would place every authority in respect of the matter either for or against us. (Rule 176 of Dicey is read.) I submit that under this Clause A that I have referred to it means not necessarily delivery in blank but endorsement and delivery also. The point is that property passes; property in the bill passes; the right passes. That is the characteristic of negotiability. It passes by mere delivery. It is the mere fact of delivery that gives title not the fact that the deliverer had title. That is the distinction in regard to negotiable instruments. I shall establish documents which have been held in England to be negotiable by custom of the mercantile world and those which have not been held by the custom of the mercantile world there. There are two cases which show the distinction. There was one case where a number of Prussian Government bonds, which were Prussian Government promissory notes, which were deposited which were stolen by some person in England from the real owner and deposited by him for value with his bankers as security for an overdraft. They were held not to be negotiable instruments because though they were negotiable in Prussia they were not negotiable instruments by any Act of England. The Bills of Exchange Act did not apply because it applied only to bills made in England. Secondly, by the custom of the mercantile world in England those bonds had not attached to themselves the quality of negotiable instruments. As against that there were certain other Russian and Austrian bonds in another case which were also not negotiable in England by reason of an Act of Parliament in England but which acquired to themselves the qualities of negotiable instruments; they were treated as negotiable instruments. In other words, a document in the form of a promissory note, especially a foreign document, may be a negotiable instrument or may not be. It can become a negotiable instrument in England by Act of Parliament. Rule 177 of Dicey clarifies it. (It is read.) Rules 176 and 177 make it clear. In Ceylon, I submit by parity of reasoning, a document in the form of a promissory note can be a negotiable instrument only by an Act of our legislature. There is nothing in Ceylon to correspond with the mercantile world of England. There is nothing called the mercantile

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No. 21. Address of Counsel for the Original Appellants, 27th May 1949, *continued.*

world of Ceylon. There is no such thing known to our law. There is no reference in the Bills of Exchange Ordinance to the custom of the mercantile world in England. The law applicable to bills of exchange was our law under the general Ordinance until this enactment was passed. (He refers to Chapter 66, page 138 of Vol. II.) There is no reference to bills of exchange. At one time the law relating to bills of exchange was English law but after the Bills of Exchange Ordinance was passed it was no more the law. (He refers to section 97 (2) at page 187 Vol. II. It is read.) I am prepared to give that sub-section of section 97 the fullest benefit that the Crown might want to have under that. That does not mean that the custom of the mercantile world of England will get caught up within that. The custom of the mercantile world in England is different from the law merchant. A debtor has to seek the place of the creditor for payment. That is the common law of England. The rules of law merchant would be the rules relating to brokers, the part that a broker plays in the transactions between two contracting parties. Various other things of that nature can be called part of the law merchant but what is designated in Dicey, is, by the custom of the mercantile world of England, treated as negotiable instruments. You might even say that the custom of the mercantile world in England is part of the law here. Even if that is so, they should prove by the custom of the mercantile world in England that the Mysore Government promissory notes have acquired the quality of negotiable instruments. Like the case of the Prussian bonds there would be no proof that they had become negotiable instruments. There is no proof that the Mysore Government promissory notes had become negotiable instruments in England by the custom of the mercantile world even if that was part of the law merchant. Before I go to read the passages in the textbooks which my friend read to Court I am going to read the two cases which illustrate the two types of cases so that we may be able to understand the passages that have been cited by my friend.

(Mr. Chelvanayagam cites *Picker* v. *London and County Bank* (1887) in Queen's Bench Division 515. It is read. He refers to Lord Esher's judgment.)

In Ceylon some Ceylon statute should be relied on. That is a case under one extreme. A case on the other side is the case of *Goodwin* v. *Roberts* (1876), 1 Appeal Cases page 476. (This was referred to in the other case.) (It is read.)

(Mr. Chelvanayagam refers to page 478 bottom: judgment of Lord Hatherley at page 491; page 490 in the judgment of the Lord Chancellor (third paragraph); and page 496 judgment of Lord Selborne.)

Our Bills of Exchange Ordinance applies to promissory notes, cheques and bills of exchange made in Ceylon. The negotiability conferred by our Bills of Exchange Ordinance is only to documents which are within the jurisdiction of the legislature of this country, that is, documents executed within this country. They cannot apply and they do not normally be intended to apply to instruments made outside this country. There is no question of negotiability in respect of documents made outside this country unless by statute those documents are made specially negotiable or where by custom of law it gives the quality of negotiability. This distinction has to be borne in mind while reading *Attorney-General* v. *Bouwens*. Negotiable instruments like chattels are said

to be situated in the place where they are found. They appear to contradict one portion with the other but they are not so. They refer to two sets of documents. One set is promissory notes which have not got the quality of negotiability and the other promissory notes which have got the quality of negotiability. I will ask the court to read the whole of the comment under Rules 176 and 177 in Dicey's Conflict of Laws, 1932 Edition. (It is read.) The question is whether it is to be treated as chattels in determining the question whether it is situated in Ceylon at the time when Arunachalam Chettiar died. We are not to say that it is so similar to a chattel as to be treated as part of the Ceylon estate.

(Mr. Chelvanayagam refers to *Attorney-General* v. *Bouwens* 4 M. & W. page 171 at page 190. It is read.)

I submit that it was necessary to see the distinct meaning given to these terms in law before referring to these passages in this particular judgment The title is handed by delivery only, promissory notes and bills of exchange on the one hand and negotiable instruments on the other hand. Documents might satisfy both classes of instruments but there can be a distinction. If in this particular case the Mysore bonds fall within the category of clear promissory notes and do not fall within the category of negotiable instruments the debts are situated where the Mysore Government is and not where the promissory notes were found. If our contention is right it is not necessary to administer in respect of these Mysore bonds. " Being transferred here " I submit must be read in the sense that term is used in Dicey. Transferred here is you give property by the mere act of delivery not by reason of the fact that you had title. If I am entitled to £1,000,000 in the Bank of England I can pass that by an Act here. That is not the question of transfer here. What is referred to here is transfer by act of delivery. You will notice that in the earlier passage in Dicey negotiable instruments partake the nature of chattels. The term " transferred here " I submit is to be read in that particular quality. I have stolen Rs.100 from my friend. I hand it some creditor of mine in payment. I give full title to it although I have no title to the Rs.100 I have stolen. This portion of the judgment my learned friend read and cited without drawing the distinction between promissory note and when it becomes the nature of a chattel. I cited this passage to show that the Mysore promissory notes were not chattels and were not property situated here. I depend on this case as stating the correct view of the law and depend on it to show that the Mysore promissory notes in this case do not partake of the nature of chattels because they are not negotiable instruments, because title cannot be transferred by mere delivery or by mere endorsement and delivery in the sense that a transferor cannot give a better title to the transferee than the transferor himself had. Therefore they do not partake of the nature of chattels.

(Mr. Chelvanayagam refers to *Attorney-General* v. *Winans* [1910] Appeal Cases page 27.)

A description of the documents is given at page 31. The word " marketable " has a special meaning. Transfer by delivery includes endorsement and delivery. You give full title to the bonds by mere delivery.

In the District Court, Colombo.

No. 21. Address of Counsel for the Original Appellants, 27th May 1949, *continued.*

In support of some of the principles that I submitted I like to give one or two more authorities.

(Mr. Chelvanayagam cites 5 Words and Phrases by Roland Burrows at page 44.)

I think my friend referred to specialty debt.

(Mr. Chelvanayagam cites *Rex* v. *Williams* [1942] Appeal Cases 542 at page 555.)

My submission is that specialty debt is a special term employed in English law to a particular debt which is more historical than descriptive and the term is meaningless here in Ceylon. This was a taxing case dealing with certain share certificates in a company in Canada which had been signed and endorsed in blank by the owner at the time of his death. The question was the situation of the certificates at the time of the death, whether it was situated at the place where the company register was or where the certificates were found. Page 544 (bottom) deals with this question of what are specialty debts. This throws a lot of light, specialty debts created in a special way according to the law. I do not think it can be said that that law can apply to another country. Specialty debts are situated in the place where the debts were found. If specialty debts were situated here in Colombo when Arunachalam Sr. dies they are not of the category of specialty debts. This excerpt from the judgment of the Privy Council shows what a specialty debt is. Mysore promissory notes will not come within that category. It is not a chattel, it is not a negotiable instrument, it is not a specialty debt. Therefore it cannot be situated in Ceylon where the promissory notes were found at the time of the death of Arunachalam Sr. They can only be treated as promissory notes made by the Mysore Government at the most which are not negotiable here in Ceylon and therefore which are only evidence of a debt where the debtor resided outside Ceylon. To that extent asset represented by these Mysore promissory notes is not part of the Ceylon estate of Arunachalam Sr.

(Mr. Chelvanayagam cites Cheshire on Private International Law 3rd Edition pages 597 and 598.)

Whatever principle applies, where money is payable where it is recovered from the debtor where the debt is situated, the Mysore debt was the original debt; the deposit of the money during the son's lifetime and which was part of the son's estate and the money due on the Mysore notes which are part of the father's estate. By whichever test you look they are wholly situated outside Ceylon. They do not form part of the Ceylon estate. We could have recovered the money in Mysore and come away because the deceased was from outside Ceylon, his administrators were from outside Ceylon, debts due were from persons outside Ceylon. They had nothing to do. The only point is the Government of this country could have prevented the notes being taken away. By no test applicable to the decision of the situation of the property according to the rules of private international law could it be said that these notes were property situated in Ceylon unless they conform to one of the categories, namely of chattels, or of negotiable instruments or of specialty debts, or those classes which are deemed to be situated in the place where they were found at the time of death. I wish now to refer over again to the passages

in Green and Dymond read to Court as supporting his case that these promissory notes were situated in Ceylon. I submit that if my earlier submissions regarding the distinction between negotiable instruments and chattels on the one hand and simple debts and promissory notes on the other hand are correct, those passages support me rather than my friend's case. At pages 41 and 42 of Mr. Weerasuriya's address, Mr. Weerasuriya referred to Green at 583 and 584. It is my submission that the passages at pages 583 and 584 support the distinction which I have drawn and throw the whole thing in a clear line because of the distinctions drawn. Bearer securities are securities where the property is transferred by delivery or endorsement and delivery. Every one of the terms carries a page of meaning. They must be chattels. My taking this book to England or New Zealand and selling it to somebody : the person who buys it just takes the property as a chattel. All negotiable instruments are dealt with by the law of the country where they are found. Anybody who takes them acquires title. All these passages in this text-book and in any other text-book have to be read with the appropriate reference to the terms. We use the terms " transfer, property, chattel, saleable chattel, bearer security, marketable security." They all refer to certain well-known ideas of the law. That is, a person who takes delivery gets a better title than the person who actually does the transfer. If they have got that characteristic they can be dealt with as cash ; otherwise bills of exchange or promissory notes are evidence of simple debts. In connection with this matter my friend referred to page 969. At 969 appears a particular convention between England and Canada or England and America. My friend referred to Article 3 sub-section B note. Before I come to that reference I refer to page 968. It is a particular agreement not the general law of the land. This is a special agreement but throws some light on the distinction. The general law is that negotiable bills payable to order are not treated as bearer securities but this particular convention treats them as bearer securities even if they are payable to order. But they are not bearer securities till they are endorsed. But for the purpose of this case although not treated they are treated as bearer securities. The term " delivery " includes a delivery by endorsement and delivery. In connection with that I refer to 2 Hailsham page 723 section 1015. The form of instrument must be the negotiable form. (He refers to the note.) You transfer it by delivery. It is the delivery that gives the title. I transfer Blackacre to my friend. He gets title because I had title. Either title is obtained by delivery, endorsement and delivery or otherwise. With the result the citations 583, 584 and 969 do not contradict our case, but support our case. My friend cited Dymond at page 90. (Mr. Chelvanayagam reads page 90.) The title passes by delivery. In respect of these bonds the title passes by reason of the fact that the transferor had a title. That is the distinction I am trying to draw. These are not negotiable in Ceylon. They are negotiable in Mysore like the Prussian bonds. If, for example, the Administrators have wrongly taken these bonds for a private debt of theirs had transferred them to a bank, the bank gets no better title than the owner had in Ceylon. In India it is different. Our Bills of Exchange Ordinance applies only to acts done in Ceylon. All statutes have territorial limits. With the result that the property in these goods can be transferred in Ceylon by a person who has the property. These passages deal with securities whose title can be transferred by delivery. That is the distinction

In the District Court, Colombo.

No. 21. Address of Counsel for the Original Appellants, 27th May 1949, *continued.*

I have been labouring to submit. In other words, the question of negotiability, if, for example, somebody had stolen the Mysore bonds the case would be the question of Prussian bonds. In Mysore it would be different. The debt is situated where the debtor is but if the debt is covered by a negotiable instrument which is considered a chattel it is also situated in the country where the document is found and is liable to tax here. The same thing is repeated by every text-book writer. There are really three items to which most of my argument this morning applied. One is the Mysore promissory notes, the other is money deposited in Mysore during the lifetime of the son, and the other is a debt due from the company called T.N.V. for which we have taken a mortgage decree in India. That was originally a debt in Ceylon. The man became bankrupt. We could not recover the debt here. We went to India and took a mortgage bond of his property there but books were kept here.

(Mr. Chelvanayagam refers to page 29 of Manickam Chettiar's evidence on 2.6.48. That definitely is not part of the Ceylon estate. He refers to page 28 of the evidence of Manickam Chettiar.)

Further hearing on 1st July 1949.

1st July 1949.

1st July 1949.

37/T (Special)

Same appearances as before.

Mr. Chelvanayagam continues his address :

On the question as to what are negotiable instruments under the Ceylon law, for amplification see Chalmers Bills of Exchange (10th Edition) p. 374. (Chapter at the end of the book.) It deals with the two cases which have already been cited, viz. 18 Q.B.D. and (1876), 1 Appeal Cases and a number of other cases. They establish the contention of the Appellants that in the case of foreign promissory notes and bills of exchange their negotiability in England is determined by one fact, namely the fact that they were handed in the stock exchange as negotiable instruments. In every case it is admitted as a question of fact that they were dealt with in the stock exchange as negotiable instruments and in relation to every one of those cases evidence was given of the fact. The latest case referred to under that Chapter in Chalmers is the case of *Edelstein* v. *Schuler & Co.* [1902] 2 K.B. page 144. This was also a case of certain negotiable instruments which were dealt with illegally by some of the holders. The question is whether the present holders got a better title than the other persons from whom they got. That has to be determined on two facts: (1) whether they were negotiable instruments and (2) whether the holders took it with notice of fraud of the last person who transferred the property. The judgment is at pages 153 and 154.

That judgment also follows the line of cases that have already been cited to show that it is a question of evidence when dealing with foreign bonds, foreign loans or foreign bills of exchange as to whether they are, in this country or in England, treated as negotiable instruments in the sense that they pass on from hand to hand and the holder gets title from

the mere fact that he has got them for value and not by the fact that the transferor had right or title to the property that was handed to the holder.

The next point is the question of adoption. The evidence in this case is that the three widows, namely, the two widows of Arunachalam Sr. and the one widow of Arunachalam Jr., who were all parties to the litigation in respect of the ownership of the whole estate in the South Indian Courts had agreed among themselves and arrived at a compromise whereby all three of them simultaneously adopted a son each. That matter has been accepted by the Indian Sub-Court. Evidence has been given of a person who was present at the time of adoption, of the fact that the sons were adopted and the normal ceremonies that were part of the adoption were gone through. The document whereby the adoption was accepted by the Devakottai Court is A4. To this adoption a good deal of objection has been raised by the Crown on a number of technical points. A4 was finally decided in that Court and it did not go beyond that. There are sufficient documents in this case which will give the history of the litigation relating to this estate in South India. What happened was when Arunachalam Sr. died without leaving a male issue or male descendants the three widows filed among themselves an action in the Sub-Court of Devakottai where they asked for a partition of the whole estate among themselves. That case was decided by the Sub-Court, went up to the Madras High Court and that decision of the Madras High Court by Justice Lee has been cited here. And from there it went up to the Federal Court and the judgment of Justice Vardachariar has been cited. In the Federal Court certain decisions were given and the case was sent back for further hearing on the lines of the decisions. When the case came back these widows came to a compromise and that compromise included an agreement to adopt simultaneously a son to each widow. By that it does not mean that the adoption is to the woman : that is one of the technical objections raised by the Crown : to each woman as the mother, but the adoptive father being the husband in each case.

A4 deals with the question of adoption and compromise. Before coming to A4 the Court will consider A68 which has been put in as an exhibit but really it is put in as an authority on certain of the legal objections raised by the other side to adoption. A68 clarifies the points which are raised as objections to A4. The objections that are raised to adoption are all of them technical but they are entitled to be points if they are good in law. One of the objections was they were adoptions to the mothers and not to the father. Even Mr. Raja Iyer was compelled to give in on that point : when you say adoption to the woman it does necessarily mean adoption to the woman as the mother. The second objection raised was that you cannot have more than one adoption to an adoptive father. That is good law generally excepting in the case of Natukottai Chettiars who have a special custom whereby every widow left by a deceased Natukottai Chettiar is entitled to adoption. Mayne recognises that. This case A68 deals with almost the identical set of circumstances as this Court is dealing with in this particular case. That was also a case of Chettiar and a number of widows ; the same objections the Crown is now raising were raised there and the Madras High Court

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No. 21. Address of Counsel for the Original Appellants, 1st July 1949, *continued.*

has given judgment on that. Every possible technical objection known to the Hindu law was taken up and this case was a decision on that matter. A similar decree is A4 in this case.

(*Court: Q.* In that particular case there was evidence of custom and the Court held that such a custom existed but is that mere fact that in one case the court on evidence led before it held that a certain custom existed, proof of the existence of that custom in another case?—*A.* The custom is the custom known to the particular community.

Q. It may be the custom of the community that was led in that particular case but until that custom acquires the force of law it can be contested in another case: it may be the defendants in that case did not want to lead counter-evidence but it is always open for a party in another case to dispute the evidence of custom: then the burden is on the party who alleges the custom? Custom to get the force of law will have to be—*A.* established in that particular way. What is recognised as a custom is not only applicable to the parties of that particular case but it is something wider.

Q. It is applicable only to the subject matter of that decision?

Mr. Chelvanayagam refers to the chapter on adoption in Mayne at page 242, note (i).

It gives for example a number of cases where the custom had been recognised as derogated from the general rule of law. One of the cases is the case of *Suppramaniam Chettiar* v. *Somasunderam Chettiar* 1936 A.I.R. Madras 642. The point I am trying to make is this: that if the courts recognise a custom they recognise a custom among a particular class. In a big country like India where the Hindu Law applies to a very large section of the population when the courts recognise a custom in one case they mean to recognise it for a particular section of the community or a class of community. In respect of for example this Natukotai Chettiar, the court has recognised a particular custom so much so that I would submit that in respect of that community the fact that such a particular custom has been recognised by the court would be tantamount to a recognition of a legal exception even if that recognition is a custom only in one case. The Court recognises custom not merely on the line of evidence placed before it but examines on its own to see whether it is an exception to the general law. It is not merely a decision *in persona.* Being a decision not *in persona* it has to examine innumerable number of cases. If a custom has to be proved the court will not accept it unless it is proved not merely from the point of view of a particular case but from the point of view of the law. I respectfully submit that the judgment A68 is not merely a matter *in persona.*

This case regarding the adoption of an orphan, normally under the general law the orphan is not to be adopted but here in this case is the judgment in the 1936 Madras Case, judgment of Justice Vardachariar. Therefore every case where a judge had examined the evidence running over a period of time and examined innumerable instances is a case in which the judge comes to a finding on a question of law unless of course it is open to another court before which that finding is cited to reject that finding as a judgment which has no value, in the sense for example that a

judge has on insufficient material or insufficient evidence held in favour of a custom. Therefore another judge might say that the custom that has been taken to be proved in the earlier case was taken not correctly to have been proved.

Q. Cannot you also proceed on this footing : on the evidence in that case the finding there was correct but in this particular case other evidence has been led which throws some doubt on the correctness of that finding ? —*A.* The court can come to that finding.

Q. Does not that mean in each case it has got to be established by independent evidence if it has been recognised in a series of cases through a length of time in the course of several judicial decisions then perhaps you might be able to argue that that itself is strong evidence of existence of the custom ?—*A.* We are dealing with the question of foreign law which has to be judged by expert evidence. The experts' evidence on that subject is that it is a custom among Natukotai Chettiars, there is judicial recognition, here is the authority : that is the expert evidence on that matter.)

Mr. Chelvanayagam continues his address :

Mr. Bashyam's evidence is at page 43. The earlier evidence on that point is at page 37. It is surprising that Mr. Raja Iyer has not given evidence contradicting it : he has not touched on that point at all. Mr. Bashyam has cited this case as one example of where it has been recognised. He has pointed out that it has been recognised by a number of judicial decisions relating to this custom. Mr. Raja Iyer has not contradicted or denied the existence of such a custom.

Even if the simultaneous adoption by the two widows of Arunachalam, Sr., is bad it does not affect the adoption by the widow of Arunachalam, Jr., because in the case of Arunachalam, Jr., there was only one wife and there can be no objection to her adoption. Some evidence was given to show that in normal cases a mother-in-law and a daughter-in-law cannot adopt, that is, a father's widow and a son's widow cannot adopt. But in respect of that matter Mr. Bashyam had replied that this daughter-in-law was not the wife of a son of any one of the adopting widows ; in other words Arunachalam, Jr., was the son by one of the deceased wives of Arunachalam, Sr., with the result that none of the surviving widows of Arunachalam, Sr., could be said to be the mother-in-law of Arunachalam, Jr.'s widow. But the Appellants submit that the question of custom as an exemption to the general law and therefore as a part of the law of adoption in India has been proved without any objection to it.

With regard to the other objection regarding adoption to a mother see Mr. Raja Iyer's evidence at page 167. When Arunachalam, Sr., authorises the three widows in his will to adopt a son each that does not mean that each son with them as mothers and not fathers. One must take it that Arunachalam, Sr., meant to be sensible according to his custom and his law and referred to the sons being adopted as containing his life but each woman as the adoptive mother. Mr. Raja Iyer's evidence on the question of the daughter-in-law adopting is at page 228. Two points are touched in that evidence. In any event the question of the simultaneous adoption

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being bad does not arise. Having said that please see A4. The decree gives as parties the widow and the adopted sons. As between the parties themselves here is a decree. As far as the executors, the widow and the court are concerned between these parties there is a proper and valid adoption but it is not free from collateral attack by anybody else. The real question in the case is not the question that these people may adopt but the more important question is the potentiality of adoption. In regard to that nobody has raised any doubt that the three widows that were left had the power of adoption, certainly one adoption to the father and one adoption to the son. If they could have adopted then the continuity of the family can be established the family had not come to an end. On the lines of the reasoning of the Privy Council earlier mentioned there is no end of the joint family until in law in fact there is no further son who can be added either by nature or by law. The most important point in the adoption is whether there were people who were capable of adopting and that point has not been questioned. For the purpose of these people getting the right to adopt there must be widows and they must have the permission of the deceased husband, if not the husband, of the nearest male relative of the deceased husband. Arunachalam, Jr., has not given any permission to his widow to adopt but it is admitted that Arunachalam, Sr., could give permission to Arunachalam, Jr.'s widow to adopt and that permission he has given in A2 the last will of Arunachalam, Sr. Quite apart from giving the consent it says " it is a fact to be taken into consideration according to the usage and custom of our community." It might refer to both : it might refer to the fact that all these widows can adopt ; also it may refer to the fact that one must refer to the custom. To whatever that may apply certainly Arunachalam, Sr., seems to have thought that there was nothing wrong to give permission to both these widows to adopt a son ; with the result the objections raised to the question of the validity of adoption are technical and they fail. Even if they succeed they have not removed the fundamental question from the Court's consideration, viz. : that these women had the potentiality of adopting and if they had not yet adopted they can still adopt and therefore they can continue the line of the father. In that connection a series of cases have been cited on behalf of the Appellants but the matter will be incomplete if reference is not made to one of the very recently reported cases which goes to the extent of saying that even the coparcenary as such does not come to an end when the last coparcenary dies. In this case the Bombay High Court has gone to the extent of saying that if there is a possibility of adoption when the last surviving coparcener is dead the coparcenary as such of the Hindu joint family, that is the core of the Hindu undivided family, does not come to an end. 51 Bombay Law Reports page 140 at page 146. There is no male member who can be called a coparcener but still the coparcenary is not at an end. The joint family when Arunachalam, Sr., died was as much a family as ever it was before and today it is the same as it has been.

There is only one subsidiary point touching on this and that is to what extent this court will recognise the judgment in A4. A4 is a judgment of a foreign court on the question of statute. It is no doubt a judgment by consent of parties to what extent will this court recognise it. Similar questions have arisen in India itself about the recognition of a judgment of the French court, say in Pondicheri : a Pondicheri court gives judgment in

regard to the status of a person : the Indian Court is asked to recognise the validity of that judgment. A question of that type was decided in (1939) A.I.R. Madras p. 693. They relied on some old cases and one of them is A.I.R. (1938) Bombay p. 394. Section 41 of the Ceylon Ordinance is the same thing.

The last case that is going to be cited here is the case which has been decided in the *K.M.N.S.P.* Appeal in the Supreme Court between the last date of hearing of this case and today. That settles a number of points. It has decided that if the court holds with the Appellants it can give them a decree for the return of the money. It has decided that if the court gives a decree for the money it will give interest from the date of this action till date of decree and thereafter at legal rate. And in that case a decree has been entered for the repayment of the money by the Crown with interest at 5 per cent. which is the legal rate.

The Supreme Court judgment has also decided on another point, on the question of section 73 supporting the submissions earlier made in this case on behalf of the Appellants. Crown submitted to court here that section 73 as amended will not apply because Arunachalam, Sr., died before section 73 was amended. The Appellants submitted that section 73 as amended only clarified the law but did not alter the law and it was merely to remove any question of doubt. The law will be the same even if there has been no amendment.

37/T Special

Mr. Chelvanayagam addresses on the issues :

Issues 1 and 2. In that connection it is necessary to read through the evidence of Mr. Gunasekera as to the steps taken by the Estate Duty Department on the death of the son and when the father was alive. The evidence is at page 52 (last para.). Section 26 referred to is under the new Ordinance. In respect of the application of the provisions of the new Ordinance to the Old Ordinance certainly portions of it apply and if the present Administrators or Receivers are made liable for the duty and made liable to make returns and be made liable to furnish returns and conform to all requirements which are enforced on certain parties by the new Ordinance then it is the contention of the Appellants that section 73 applies to the father's estate as well as to the son's estate : section 73 would apply to the assessed value of the son's estate. That section 73 could apply to the father's estate it is conceded but it is not conceded that section 73 of the new Ordinance could apply equally to the son's estate. When the son died, under the old ordinance the assessing department was not able to get hold of anybody in Ceylon who was in possession of any property over which the son had some interest to make returns or to pay duty or to do anything. When the new ordinance came into force a new machinery was created. So says the Assessor whereby they could pursue certain persons who had control or custody of some property in respect of which the son had an interest at the time of his life, to become liable for duty. In other words the contention of the Crown is that the new Ordinance applies to old estates. It does apply to old estates and the application is provided for by section 79 Vol. IV p. 607.

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No. 21. Address of Counsel for the Original Appellants, 1st July 1949, *continued.*

Sections 1 to 17 of the old ordinance that is the 1919 Ordinance, deal with the question of the imposition of the tax. Similarly under this particular ordinance the first few sections—1 to 19—impose the tax : they are the general taxing sections. Then comes section 73 and says there is an exception. Section 73 falls within a portion of the Ordinance that deals with the assessment, collection or payment or refund of the duty, although it does not deal with as such. Assessment means not merely the ascertainment of the duty but it means something more. When the Assessor gets on to the task of determining what duty is payable on a particular estate then the law comes in and says : While in the process of determining what duty is payable according to the earlier provisions of the section you had better stop your hand, don't proceed further the moment the estate falls within section 73. That is, while in the process of assessment if it is proved to the Commissioner that the property that would otherwise be liable to tax is the property of the joint family then no duty shall be leviable, assessable or paid in respect of that estate. Starting from section 26 on which Mr. Gunasekera relies, that section onwards of this ordinance seems to apply to the old estate. This is a new charge created by section 26. If section 26 applies to an old estate will some of the other provisions like section 66 apply ? Can the Commissioner under that section apply for information in respect of an old estate ? By a parity of reasoning he can. Look at section 67—the Commissioner can act in respect of an old estate. Every one of those sections, from section 20 onwards, applies and carries out the intention of the legislature to leave out estate which are called property belonging to a joint Hindu family. Section 73 comes within the path that deals with collection, assessment, payment or refund of the duty. For the present therefore issue 1 will be answered in the affirmative. If issues 1 and 2 are answered in favour of the Crown it necessarily means that section 73 applies and the whole estate of Arunachalam, Jr., will be exempt from liability because in the case of Arunachalam, Jr., admittedly it was joint family property. If that is not the argument, if that portion of the Ordinance does not apply then the Commissioner cannot get hold of the administrator of the father's estate to pay duty in respect of the son's estate ; to collect such duty the Department admittedly says they were unable to get hold of Manickam Chettiar under A30 to make a return or to get a citation.

It is conceded that where there are no executors or administrators the person who benefits from the property is liable to pay the duty under section 25 of Cap. 167. But there is no connection between the son's estate and the father's estate. If the son did leave an estate it was taken by the father ; the executors of the father's estate are not the executors of the son's estate. The purpose of the present argument is to show how the application of the new ordinance has to be construed in respect of the old ordinance. See section 26. Corresponding portion of section 26 was not in existence under the old ordinance : it was certainly not in that form.

Section 25 is of a different proposition. Corresponding to section 25 the nearest provision is section 19 (2) of the 1919 Ordinance. Corresponding provisions of section 25 and 26 in the new ordinance are very different in nature and different in effect and are contained in section 18 and part of section 19 : with the result the position is really this : under the old

ordinance, if the new ordinance had not come into force, they could not have levied any duty or any charge on the estates that are now being handled most of which is a business asset. Sections 18 and 19 are the only ones which were just sufficient, as Mr. Gunasekera says, to make Manickam Chettiar accountable for the liabilities of an executor under this Ordinance. In fact under the old ordinance there was a judgment of Justice Akbar which said that before the Estate Duty Department could ask for a citation on any party to make a return in respect of any property the Commissioner had to prove to the Court that there was an estate left and that the party on whom the citation is asked for is liable to make a return. It is because of that judgment in A13 the Commissioner of Stamps discontinued the proceedings.

The position of the Appellants therefore is that in respect of the son's estate they are not liable. If the court says that they become liable to pay duty by virtue of the provisions of section 26 and subsequent sections then it is the submission of the Appellants that section 73 also applies: otherwise, if they do not apply then the Appellants are the wrong parties whom the Estate Duty Department have got hold of.

Issue 3. That is the main contention. The deceased has no share in the estate by reason of his interest in the joint family property.

Issue 4: The Appellants submission would be Yes.

Issue 4 (B): He was not entitled to any share.

Issue 4 (C): has been amended.

Issue 5: Admittedly the answer is Yes.

Issue 6: The answer is No.

Issue 7: If it is said that the deceased had a share or an ascertainable share in the joint family estate what is the value of the share. The Crown's contention is that it is a half share; the Appellant's contention is that there was a certain interest which was not capable of being valued.

Issue 8: Section 73 applies because section 73 is within that portion of the new Ordinance which has been made applicable.

Issue 9 (A): It is a question of fact. The answer is Yes.

Issue 9 (B): that is a question of law.

With regard to estoppel, in the *K.M.N.S.P.* case the answer was there was no estoppel but the facts in that case are different and there was no question of collection. The answer in the *K.M.N.S.P.* case will apply to the son's estate because in the son's estate although they treated it as a joint family they are not estopped because they will inflict any affirmative injury. During the time of the son's estate there was no additional duty placed in the joint family; during the father's estate there was an additional duty. The answer in the case of the son's estate will be they are not estopped and the issue must be answered in the negative.

In the District Court, Colombo.

No. 21. Address of Counsel for the Original Appellants, 1st July 1949, *continued.*

Issue 10 : The submission is they are not Ceylon assets.

Issue 11 : This issue has been abandoned.

Issue 12 : The contention of the Crown is that the provisions of section 20 (3) of the new Ordinance do not apply to the old estate. Quite apart from that there is a small amount of the estate in immovable property. The Appellants do not want to trouble the court with that issue.

Issue 13 : The section says that interest is payable ; although they may not assess for five years or six years the section seems to say that interest is payable from one year after the death. Liability to pay interest as charged is conceded.

Issue 14 and 15 at page 11 : Some of these issues are put in different forms in order to exhaust every possible way of approach to the question ; they all deal with the same question.

The Crown raised certain other issues at page 23 of the 9th March saying that the Appellants are not entitled to ask for a rebate of the duty because they have not applied for rebate. They cannot seriously contest that position.

Issues 16 and 17 are quite frivolous.

Refers to section 58.

(*Interval*)

(Sgd.) M. SINNETAMBY,

Additional District Judge.

1.7.49.

1st July 1949.

37/T (Special)

(*After Lunch*)

Appearances as before.

Mr. Chelvanayagam continues his address :

I am dealing with the issue under which the Crown contends that we had to make an application for a refund under section 58. He refers to sections 32 to 40 of the Estate Duty Ordinance. With the result there is a complete set of sections dealing with the question of assessment and appeal therefrom. We have appealed from the assessment.

(He refers to section 44 (2)).

With the result pending the appeal we had to pay the duty. If the court holds that the duty was not payable then the correct order would be that it be repaid. There is nothing in those sections which says that we must make a further application. Section 58 deals with a different

state of affairs, where for some reason or other duty was paid and later it was discovered that duty was not payable. The language of the section deals with where duty was paid and in respect of which there was no appeal. (Section 58 is read.) I submit that the objections of the Crown are not at all substantial. In this case the documents on which the moneys have been paid are A25 to A29, A31, A32 to A35. Some of those have been paid even after three years of the notice of assessment. A35 is a payment in December 1942. The original assessment was more than three years before that. The total amount paid under the documents which I have given is Rs.283,213/24. The total sum does not appear in the son's case, but in the father's case the total sum appears.

(He refers to Mr. Gunasekera's evidence.)

A25 is dated 22.5.42. All the objections raised are frivolous objections.

(He cites *Cartwood* v. *Commissioner of Stamps* 5 Ceylon Law Weekly 90.)

(Intld.) M. S., Additional District Judge.

No. 22.

FURTHER ADDRESS BY COUNSEL for the Original Respondent.

1st July 1949.

37/T & 38/T Special.

Mr. Weerasuriya wishes to address me on some of the cases cited by Mr. Chelvanayagam and on questions of law discussed therein. Mr. Chelvanayagam has already stated that he has no objection to this. In point of fact, I myself would like to hear Mr. Weerasuriya on questions of law involved in this case.

Mr. Weerasuriya addresses me :

My learned friend dealt with the question of burden of proof. I do not wish to make any further submissions on that point as I have already addressed on it. I would like to cite one authority. [1947] 1 A.E.R. 235 at page 277 (middle), where there is a quotation from a judgment of an earlier case. I am submitting it merely to show that there is no burden cast on the Crown. The Court has to construe and see whether the charge arises or not.

Then to deal with case No. 37/T (Special).

I have already cited a number of authorities which would show that one of several coparceners has a definite interest in the coparcenary property although it is a fluctuating one. Although it is subject to fluctuation it is possible at any given time to ascertain what that share is. The authorities show that there is a definite interest. It was in that connection

In the District Court, Colombo.

No. 22. Further Address by Counsel for the Original Respondent, 1st July 1949, *continued.*

that my friend cited two cases, I believe, in an endeavour to show that the law on that point was not very well settled in the Madras Courts. In other words, he suggested that there were two lines of authority and the legal position was not very clear. He referred particularly to a judgment of Justice Jackson in 1933 A.I.R. Madras page 158.

(The particular report cited was I.L.R. 56 Madras 534.) In that case the question arose as to whether, where there has been an alienation by a coparcener, the share that the alienee gets was a share at the time of the alienation or at the time of the partition suit. Court remembers, according to authorities, the alienee is not entitled to step into the shoes of the coparcener. His remedy is to file action for partition and get a decree that he is entitled to such share. It is important because it is suggested by the Appellants that the correct view of the matter is that the share should be determined as at the time of the partition in order to show that till partition takes place there is no share which a coparcener has ; that at the date of alienation the coparcener had some intangible assets. In this reported case Justice Jackson follows two earlier cases, 1914 A.I.R. Madras 440 and 1915 A.I.R. Madras 453. He refused to follow a decision in a full bench case I.L.R. 25 Madras 690 and a decision in another full bench case A.I.R. 1916 Madras 1170 ; this last-mentioned case is referred to in Mayne—Footnote marked W page 498. Justice Jackson refused to follow rulings in two full bench cases. The question is settled beyond all doubt by more recent decisions and I would refer Court to (1940) 52 Law Weekly 915 (Indian Book), where all the decisions on the point have been discussed. 14 Madras 408 and 35 Madras 47 are referred to in this case. I would cite 13 Law Weekly Full Bench 562 at page 577 (1st paragraph) which is earlier than the last case—Full Bench of four Judges decided in 1921. This says that the correct law is as stated in the full bench case (35 Madras 47). It would appear from the 52 Law Weekly case, which I cited, from the judgment at page 917, that the full bench in 35 Madras 47 was a full bench consisting of five judges. That view is accepted as the correct position. I would cite (1948) 1 Madras Law Journal 430 at 434 —judgment of two judges—where the same question is again discussed. I say that the point is important and these cases bear out what I have stated is the legal position as regards the interest that one of the coparceners has in coparcenary property.

Then my friend in referring to the old Estate Duty Ordinance 8 of 1919 put forward an argument that sections 7 and 8 were mutually exclusive. He said that Arunachalam, Jr.'s case must come under section 7 or 8 and that if it is brought under section 8 it should be brought under (*a*), (*b*), (*c*), (*d*) : that each of the subsections would mutually exclude the other sub-sections. As regards that sections 7 and 8 are mutually exclusive, he relied on the *dictum* of Lord Macnaughton in *Earl Cowley* v. *Commissioner of Inland Revenue* [1899] Appeal Cases 198 at 211. In my submissions I did not seek to bring it under section 7 in the sense that it may be regarded as property which passes and cannot be regarded as property which is deemed to pass. Section 7 deals with property passing on death. Section 8 considers other cases. It is intended to amplify section 7. The two sections are not mutually exclusive because it is section 7 that creates the charge. Whatever may be the reason underlying my friend's submission that these two sections are exclusive, one cannot literally accept that

dictum of Lord Macnaughton as correct. If you bring it under section 8 and in bringing it under section 8 you exclude it under section 7, you automatically exclude the very section which creates the charge. One cannot accept the *dictum* as correct. The correctness of it has been doubted in one or two cases, of which I would cite one—[1900] 1 Queen's Bench 440, and the passage on which I rely is at page 450. My submission would be that having regard to the interest which Arunachalam, Jr., had in the coparcenary that was property which he was competent to dispose either under section 8 (1) (*a*) or property in which he had an interest ceasing on death under section 8 (1) (*b*). On the question of the meaning to be given to " competent to dispose " in section 8 (1) (*a*) I should like to cite [1942] 2 All England Reports 496 at 497. In this case it was held that if there is property which you can make your own by some act, it may not at the moment be your own, then that is property which you are competent to dispose within the meaning of the corresponding section in the Act of England. This was a case where a testatrix died leaving a Last Will by which she bequeathed to her husband a legacy of £10,000 and the residue of the Estate she bequeathed to the husband in trust for the son. The husband did not accept this legacy. After some time he by deed disclaimed the legacy. On his death the Inland Revenue authorities sought to recover duty on the £10,000. The reason why I cited this is that even if a coparcener, while he remains a coparcener, has some intangible interest in the coparcenary property, the fact remains that one of the undoubted rights of the coparcener is to demand a partition. He can make that demand even against the wishes of the other coparcener. From the moment that he intimates or notifies to the other coparceners his intention to divide from the family, the authorities are quite clear that his right gets fixed. There is no fluctuation from that time onwards. From that time onwards he ceased to be a coparcener and becomes a co-owner with the other dividing members of the divided share and his specific share he can deal with and dispose of, gift away as he likes. It continues to be ancestral property and if there are coparceners in his own divided family they would have an interest in it.

(He refers to the evidence of Mr. Bashyam in 37/T (Special) at page 9 (bottom).)

There is clearly a right in the coparcener to demand a partition.

(He refers to page 54 of Mr. Bashyam's evidence. He refers to page 118 to 119 of Mr. Iyer's evidence.)

In respect of that share, so long as there are no other coparceners he is free to dispose.

It is quite clear that a coparcener has a tangible interest. Even if it is not so, the fact remains he can convert his interest into a tangible interest and that would be property he is competent to dispose of.

Further hearing on 2nd August 1949.

(Sgd.) M. SINNETHAMBY,
Additional District Judge.

In the District Court, Colombo.

37 & 38/T (Special)

2nd August 1949.

Appearances as before.

No. 22. Further Address by Counsel for the Original Respondent, 2nd August 1949,

Mr. Weerasuriya Crown Counsel continues his address in reply :

On the last date in dealing with Arunachalam, Jr.'s case reference was made to the [1942] 2 All England Reports p. 496 at 497. The position is whatever the interest may be which a coparcener has in a coparcenary property it is always open to him, by a unilateral act, even against the wishes of the other coparceners, to give notice of an intention to divide and the effect of such notice is from that point onwards his share is ascertained with reference to the number of coparceners and from that point onwards he has a definite share in the property which can be converted into a separate property.

He cites (1902) I.L.R. 25 Madras p. 690 at 716 (2nd para.). This is judicial authority for what has been stated by both experts. The word " separate " is used to mean that he gets separated from that family. If a coparcener can by his unilateral act convert his coparcenary interest into a separate interest then the [1942] 2 All England Reports case will apply. As a general proposition it would apply to every case where the dividing member is the only male person of his own family subject however to the qualification that the property will become coparcenary property in the event of coparceners being born into that family.

The earlier submission of the Crown was that the present Appellants are liable to pay the estate duty of the son's estate by virtue of the provisions of section 25 of Cap. 187 because they are the people who are shown to be in possession and enjoyment of the property. To this learned Counsel for the Appellants contended that if section 25 applied then section 73 also would apply. The reply to that is that section 73 cannot apply because of section 79 which is the section which states which provisions of Cap. 187 will apply to estates in respect of which questions of estate duty arise under the old Ordinance. It contemplates that in the case of persons dying during that period their estate already by virtue of the provisions of the old Ordinance became liable to pay estate duty and any estate duty which is unpaid at the date of commencement of the new ordinance, will be assessed, paid, collected or refunded in accordance with the provisions of the new ordinance and such provisions, as far as they are not inconsistent with the provisions of sections 1 to 17 of the Estate Duty Ordinance No. 8 of 1919, shall have application. Under the provisions of Ordinance No. 8 of 1919 the estate of Arunachalam, Jr., became liable to pay estate duty and therefore to apply section 73 of Cap. 187 would be to apply a section which is inconsistent with the provisions of Ordinance No. 8 of 1919 : to that extent it will be inapplicable. On that point the court has heard the submissions of the Crown earlier at pages 18 and 19.

With regard to the estate of Arunachalam, Sr., there are two judgments which are relied on by the Appellants more than any of the other cases, namely, the 1945 A.I.R. Federal Court case reported at page 25 and A.I.R. (1941) Privy Council page 120. As regards the former the submissions of the Crown are at pages 34 and 35. The Crown is not concerned

as to whether the judgment is right or wrong, but with the basis of the judgment. If the expression " self-acquired property " and " separate property " are used synonymously why was the learned judge at every point in his judgment at pains to emphasise that " separate property " is used there in a special sense. The material part of the judgment commences at page 32. The judge at the outset says :

> " In cases covered by the Methakshara school of Hindu law the expression ' separate property ' has sometimes been used in a limited sense. There is also what is known as ' acquired property '."

The observations in the second column are also important in deciding in what sense it was held that it was not separate property. The whole page 33 is important, particularly the second para., 2nd column. The difference between the position of a person owning self-acquired property and that of a person who happens to have the property as sole surviving coparcener for the time being is shown by the fact that in the latter case his rights of full owner will be reduced to that of a coparcener : that point is emphasised. See also page 38, 1st column. See the terms of the decree at the very end of the judgment at page 46, 2nd column. If the Crown's submission is correct then this judgment is not helpful to the Appellants and it will be no authority at all for the contention that the property in the hands of Arunachalam, Sr., was not separate property.

The other important case that was relied on by the Appellants is (1941) A.I.R. (P.C.) page 120. Great reliance was placed on that case because the Appellants contended that that case shows that although a person may have right of alienation of property, although he may not be holding property in common, although there may not even be a right of maintenance, still it does not necessarily follow that that property is his separate property. What was held in that case was regarded an impartible estate and the Privy Council held that the holder for the time being of that estate was not the owner of that impartible property but the property belonged to the joint family. In the case of impartible estate it devolves on the senior male of the senior line : It is open to the holder for the time being to alienate but notwithstanding that power to alienate the Privy Council held that it was not his property but it was the property of the joint family. In view of that it is necessary, therefore, to consider the actual basis on which this case was decided. The court will see that in that part of the judgment at page 123, first column, the Privy Council draws attention to the fact that in an impartible estate even though other members of the family have as a matter of custom, a right to maintenance they cannot demand a partition and the holder had a free power of alienating the property ; still there is one fundamental feature of coparcenary property, in that, succession is by survivorship. That is what they emphasised. Therefore they held if one had to decide whether the property was separate property of the holder or the joint property of the family, in view of that feature it must be regarded as joint family property. It is consistent with what Mulla also says at page 615, continuing from para. 587. Therefore the Crown has no quarrel with the court which holds that if any one of these fundamental features is present, one must regard that property as joint family property and not separate property. This judgment also will not help the Appellants because in this particular case the property in the

In the District Court, Colombo.

No. 22. Further Address by Counsel for the Original Respondent, 2nd August 1949, *continued.*

hands of Arunachalam, Sr., had not one single feature of the three characteristics referred to here which would give any excuse for holding that it is joint family property.

The Appellants also relied on this very case in regard to another matter which was decided, that is although the property remained the joint family property still the income from that property was the separate income of the holder. There is nothing inherently fantastic in the proposition that although property itself may be joint family property the income may be the separate property of an individual person. The Privy Council held that in this particular case that is so. Therefore the Appellants used this judgment to nullify the effect of the judgments cited by the Crown namely 1937 A.I.R. (P.C.) 36, another judgment in the same volume at page 239 and also judgment of the Madras High Court in this very case reported in A.I.R. (1945) Madras page 122 where in all these cases it was held that certain income in the hands of the sole surviving coparcener was his separate income. The Appellants say that even if income derived by a sole surviving coparcener from the property is held to be separate property still that does not help the Crown because there is the 1941 A.I.R. Privy Council case where it was held that the income may be the separate income of the holder although the property from which the income so derived is the joint family property. That may be so. As a general proposition that is conceded but what is important to keep in mind is that in these cases reported in 1937 A.I.R. Privy Council page 36 and page 239 they held that the income was the separate property of the person receiving the income, because the property from which that income was derived was also separate property. So that there is a clear distinction between these two cases and the judgment in the 1941 Privy Council case. As regards those cases the Crown has made its submissions at length at pages 32 and 33 of the addresses.

The Crown relies on this 1941 A.I.R. Privy Council case to show that even though the income may be regarded as the separate income of the person who derives it the fact that there are other members of the family who are entitled to maintenance from the joint family property does not have the effect of making that income joint income. The Crown relies on this case because the Appellants contended that the property in the hands of Arunachalam, Sr., as sole surviving coparcener is joint family property. They say it is joint family property because there were female members who were living who had a right of maintenance and the widows had the right to make an adoption. There are other grounds, namely, it is ancestral property and they relied on certain judgments. Certainly as regards the right of maintenance and as regards power of adoption the fact that there are persons having those powers make the property joint family property. The submission of the Crown is that the right of maintenance does not convert the property into joint family property. It has been so held by the Privy Council in the A.I.R. 1941 Privy Council case and also in the 1937 A.I.R. Privy Council case at page 36 as well as at page 239.

As regards the other cases the Crown has already made its submissions at pages 29, 30, 31 and 32 going up to page 37 of the addresses.

To sum up the position as regards Arunachalam, Sr., there were property in his hands a sole surviving coparcener. His son had left a widow with a power of adoption : at least not with a power of adoption but his son's widow has adopted with the consent of Arunachalam, Sr., while he was alive. After he died in his will he gave his widow power to adopt and also gave his son's widow the power to adopt. The Appellants say that as long as there are widows who can by law bring into existence a coparcener that property remains coparcenary property. The Crown's submission will be, if one understands the basis of the decision in the 1941 A.I.R. Privy Council page 36 and page 239, if the 1941 A.I.R. Privy Council judgment is properly understood, there is nothing in that case which takes away the value of these other cases.

Learned Counsel for the Appellants also referred to the case reported in 1943 A.I.R. (P.C.) page 194 in order to show that in that judgment there are references to property in the hands of the sole coparcener and family property. The question as to what was the nature of the property in the hands of the sole coparcener did not arise directly in that case. The question was when a joint family came to an end and that was the main question in that case. Learned Counsel referred to page 200. There again the Privy Council is having in mind a point of time when they are describing the property after an adoption has taken place. It is interesting to note that in this same judgment in an earlier passage (column 1 at page 199) that property is referred to in these terms : " If then the plaintiff's adoption is valid can it be held it does not take effect upon the property which had belonged to the joint family . . ." Sometimes even eminent judges use certain loose language when they are dealing with matters which are not directly in issue in the case. Therefore one cannot place reliance on an observation like this to be picked from a long judgment. Here is a case where property in the hands of a sole surviving coparcener is loosely referred to as family property.

Learned Counsel for the Appellants also referred to the case reported in 34 Indian Appeals page 107. He referred to the passage at page 113. In that case too there was one coparcener who may be regarded as the sole surviving coparcener but there were certain widows with power of adoption and one of the widows made an adoption with the result that in place of one coparcener there were two. Learned Counsel said that because there was a reference to joint property in those terms therefore it is a decision in effect that even before the adoption took place the property in the hands of the sole surviving coparcener is joint family. Here again the Privy Council was considering the matter from a point of time after the adoption.

Learned Counsel for the Appellants cited the case reported in 51 Bombay Law Reporter page 140 at p. 146 and he said this is a judgment where the court held that property in the hands of the sole surviving coparcener continues to be joint family property. If that is the effect of the judgment the court will not accept that in view of the other decisions. This is a decision of the Bombay High Court and in view of the decisions of the Madras High Court cited by the Crown the court will not accept that as setting out the correct law.

With regard to the Mysore Bonds learned Counsel for the Appellants argued that in the case of bonds there must be evidence ; it must be

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No. 22. Further Address by Counsel for the Original Respondent, 2nd August 1949, *continued.*

established by evidence that at the place where the bond was found those bonds are negotiable and he cited some older cases which certainly seem to hold that there must be evidence ; either there must be some statute for making the bonds negotiable or in the absence of statutory provision there must be evidence that by custom of the trade these bonds were negotiable.

Whatever may have been the effect of those earlier judgments the question is whether today it is necessary that there should be evidence in view of the case which learned Counsel for the Appellants himself cited, namely [1902] 2 K.B. p. 144. See page 155 of that judgment where the learned judge says " In my opinion that time has passed . . ." 10

In view of that pronouncement the question arises assuming these are bonds, whether it is necessary that there should be evidence of negotiability. Even if it is necessary that there should be evidence it should be of a slight nature especially where the rule regulating the issue of the bonds provides for negotiation by endorsement and delivery. The court's attention was drawn to the Book of Rules. When a Bond is negotiated outside India such negotiation would be recognised in India according to the Rules and if evidence is necessary, the evidence the court will require on that point is very slight. The Crown's submission is that that evidence is already there. See evidence of Ramasamy Iyengar page 21 under cross- 20 examination. He says the bonds are negotiable and one must take that as evidence relating to its negotiability whatever the bonds are—that is if evidence is necessary. The Crown's main submission is that they are not really bonds but they are promissory notes and the negotiability of promisory notes has never been in question in recent times. As far as the law of Ceylon is concerned the promissory note, whether made in India or in any other place outside Ceylon, if situate within Ceylon, becomes negotiable by reason of the Bills of Exchange Ordinance. Bills of Exchange and promissory notes are negotiable by statute. See Halsbury Vol. II (Hailsham's edition) p. 604 para. 825. In Ceylon what corresponds to the 30 English Act is Cap. 68. Learned Counsel for the Appellants stated that in Ceylon a document in the form of a promissory note can be a negotiable instrument only by act of legislature. The submission of the Crown is that such legislation is contained in Cap. 68.

Learned Counsel stated as a second proposition that the negotiability conferred by the Bills of Exchange Ordinance is only for documents which are within the jurisdiction of this country, that is, documents executed within this country. To say that the Bills of Exchange Ordinance only applies to documents which are executed within this country is not a correct statement of law because there is ample evidence in the Ordinance 40 itself that it is intended to apply to all bills of exchange and promissory notes which are for the time being situated in Ceylon irrespective of whether they were executed outside Ceylon or not. See section 4 (1) which speaks of an Inland Bill. There is a distinction drawn between an Inland Bill and a Foreign Bill but still they are subject to the provisions of the Ordinance if they are situated in Ceylon. Section 8 says what Bills are negotiable and section 31 defines negotiation. Section 38 provides for the rights and powers of the holder of a bill after negotiation. The Court's attention is particularly drawn to para. (*c*) of section 38 which deals with cases of defective title in the holder. Section 8 deals with 50

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promissory notes. That classifies what a promissory note is. Look at the evidence. In Document A10 those bonds are referred to as promissory notes. They have been referred to in the evidence as bonds and promissory notes, but strictly speaking they are promissory notes. They are referred to as promissory notes in the Book of Rules. It is of course open to the court to hold that they may not be promissory notes even if they are referred to as promissory notes. But the court will see page 2 of the Booklet para. 2 (2). Having regard to what this booklet says about the promissory notes in question and the definition of " promissory notes " in the Bills of Exchange Ordinance it is clear that these are promissory notes within the meaning of section 84 (1). Section 84 (4) again draws a distinction between an inland note and a foreign note. Section 90 makes all the provisions relating to bills of exchange applicable to promissory notes subject to certain exceptions. Therefore it is the submission of the Crown that all the provisions as to negotiability apply to promissory notes and therefore the notes in question are property in Ceylon within the meaning of the Estate Duty Ordinance.

As regards Mysore Bank deposits of Rs.100,000/– the court has already heard the submissions of the Crown. See pages 19 to 21 of the addresses.

With reference to [1900] Q.B.D. p. 450 Mr. Chelvanayagam states that Lord MacNaughten's judgment has been followed in 1935 Appeal Cases page 280 and 1936 Appeal Cases page 569.

The 1940 All England Reports case is also reported in Law Reports (1943) Chancery p. 12. Federal Court judgment (1949) 97 Madras Law Journal page 18.

At this stage errors are corrected by consent.

Statements of payments of estate duty in respect of the two estates are supplied. The Crown states that although copies were served they have not verified this. If there is any correction to be made Crown Counsel undertakes to bring it to my notice with the consent of the other side.

Between pages 169 and 189 of the proceedings from the mere numerical numbers appearing thereon there would appear to be certain pages missing. Actually this is not so but by an error instead of starting with page 170 the proceedings of the 3rd December 1948 has started with page 189.

Mr. Chelvanayagam moves that he be permitted to take back the Mysore bonds in order to collect interest and so on an undertaking to put in photographs of these bonds in the record. Crown Counsel has no objection to this course. I shall accordingly allow it.

Judgment on 17th October 1949.

(Sgd.) M. SINNETHAMBY,
Additional District Judge.

In the District Court, Colombo.

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No. 23.

JUDGMENT (apart from Answers to Issues).

November, 1949.

District Court 37 & 38/T (Special)

JUDGMENT.

In these two appeals, 38/T (Special) and 37/T (Special) the administrators of the estate of one Rm. Ar. Ar. Rm. Arunachalam Chettiar appeal against the assessment imposed by the Commissioner of Estate Duty in respect of the Estate of the said Rm. Ar. Ar. Rm. Arunachalam Chettiar and in respect of the estate of his son, who bears the same name. For convenience, hereafter the father will be referred to as Arunachalam Chettiar (Sr.) and the son as Arunachalam Chettiar (Jr.). Before the proceedings commenced it was considered convenient for the two cases to be consolidated and for evidence to be led only in one case with a copy of it filed in the other. I propose to follow a similar course in my judgment, dealing with both cases together, but answering the issues in each case separately. Estate Duty has been paid as assessed in full and in these proceedings the Appellants seek to recover the amounts so paid from the Crown.

The pedigree of the family, so far as is relevant to this case is as set out in document marked A, and filed of record. The deceased Arunachalam Chettiar's grandfather was also one Arunachalam Chettiar. He was for convenience referred to in evidence as No. 1. He died leaving two sons, Ramanathan Chettiar and Soma-sunderam Chettiar, who separated according to the evidence. Somasunderam Chettiar carried on business under the now famous Vilasam of Ar. Ar. Sm. His son Sunderasan Chettiar is one of the executors to the Will of Arunachalam Chettiar (Sr.) Ramanathan Chettiar carried on business under the name of Rm. Ar. Ar. Rm. He married twice. By his first wife he had a daughter Alamelu Achchy, who is dead, and Arunachalam Chettiar (Sr.) who was born in 1883. Arunachalam Chettiar (Sr.) continued to carry on the business of his father as the head of a joint family, of which the male members were himself and his son Arunachalam Chettiar (Jr.) who was born in 1901 and died in 1934. Ramanathan Chettiar married a second time one Sivagamy Achchy, who is alive. Arunachalam Chettiar (Sr.) married first Valliammai Achchy, who is dead and to whom was born Arunachalam Chettiar (Jr.), and three daughters, Umaiyal Achchy, Sivagamy Achchy and Unnamalai Achchy. After the death of his first wife he married Letchumi Achchy, but had no children by her. When Arunachalam Chettiar (Jr.) died in 1934, he married a third wife Natchiar Achchy while his second wife was alive, with the object of getting a son. Natchiar Achchy, however, gave birth only to two daughters, one of whom died during the lifetime of Arunachalam Chettiar (Sr.) and the other, after his death.

Case No. 37/T (Special) deals with the estate of Arunachalam Chettiar (Jr.). At the time of his death the Estate Duty Ordinance which was in force was Ordinance No. 8 of 1919, and it is sought by the Crown to fix liability on that estate for payment of duty either under section 8 (1) (*a*),

which deals with competency to dispose, or section 8 (1) (*b*), which deals with the cesser of an interest. Under section 7 property which passes on the death of a person is rendered liable to taxation. Sections 8 (1) (*a*) and 8 (1) (*b*), only deal with properties which, though they do not actually pass, are deemed to have passed for the purposes of the Ordinance. It is the contention of the Crown that that portion of the properties of the joint family which Arunachalam Chettiar (Jr.) would have been entitled to on a partition, is liable to be taxed by reason of the fact that he was competent to dispose of it and/or that on his death there was a cesser of an interest with a corresponding benefit accruing to the surviving members of the family. In order to find out, therefore, whether the interest of Arunachalam Chettiar (Jr.) in the family property was of such a nature as to come within the scope of the Ordinance, it is necessary to examine the nature of a coparcener's interest in joint family property. The admissions make it clear that just before Arunachalam Chettiar (Jr.) died, the property in respect of which estate duty was imposed and recovered, was the joint property of a Hindu undivided family.

Arunachalam Chettiar (Sr.) and Arunachalam Chettiar (Jr.) are both Natukottai Chettiars of South India and it is common ground that they are governed by the Hindu Law of the Mitakshara School. It is, of course, settled law that on the death of a coparcener, the other coparceners take by survivorship, and that there is in point of fact no passing of an estate : it has been held in India that in such a case there is no estate to administer. A.I.R. 1939 Madras 562. When one coparcener dies he leaves no estate in joint Hindu family property which can " pass " in the sense in which that term is ordinarily understood ; there are for instance several decisions of the Indian Courts to the effect that although a father may make gifts of affection to his daughters of movable coparcenary property, yet such gifts when they are made by will are invalid, the reason being that the right of the coparcener vests by survivorship at the moment of the testator's death and there is accordingly nothing upon which the will can operate. Vide section 355 of Mayne at p. 465.

Two legal experts gave evidence in this case. One Mr. Bashyam, who was Law Member of the Prakasam Government in Madras for the Appellant, and the Advocate-General of Madras Mr. Raja Iyer for the Crown.

According to Mr. Bashyam, when a coparcener dies a change takes place in the ownership of the property which he as a coparcener was entitled to take on partition. This change is brought about by an extinction of his own rights and a corresponding enlargement of the rights of the other coparceners. This theory of the law was considered by the Federal Court in 1941 A.I.R. 72 at p. 77. The Federal Court therein dealt with the question of whether " The Hindu Women's Right to Property Act " was *intra vires* the legislature or not. What the Court considered was whether the change that takes place on the death of a coparcener came within the term " succession " and " devolution " with which matters only the legislature were empowered to deal. This is how the Chief Justice puts it :—

> " The question raised is whether these words (' devolution,' ' succession '), which *prima facie* imply the passing of an interest

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from one person to another, can include the change which takes place under the Mitakshara Law to the extent of the interest possessed by the male members of a joint Hindu family in the joint property when one of these members dies."

The learned Chief Justice goes on to refer to the danger involved in borrowing terms from the English law to describe the legal effects of changes that take place under the Mitakshara Law. He concedes that the effect of the death of one of the owners of a joint family property is that in a sense there is only an extinction of the deceased person's interest and the shares of the survivors whose pre-existing interest extend over the whole property, are increased only because of the diminution in the number of sharers. Then he says the argument is that those words " devolution " and " succession " cannot be used to include the change that does take place when one coparcener dies. He, however, is of the view that these words are used in the Constitution Act in a wider sense and are intended to include such a change. To meet the argument that the words " devolution " and " succession " cannot be held to include cases where the deceased person's interest does not pass, that it merely extinguishes or lapses, he goes on to say that the theory of extinction does not exactly describe the position which arises on the death of a member of the Mitakshara joint family. He then refers to attaching creditors' rights, alienees' rights, and observes that results of this kind are wholly inconsistent with the theory of extinction, and that eminent text writers and Judges have used one or the other of these terms to include the " accession of right which takes place on the death of one of the members of the Mitakshara joint family." For these reasons he comes to the conclusion that the Hindu Women's Right to Property Act is not *ultra vires*. As I understand this judgment, what the Federal Court wants to establish was that the terms " devolution " and " succession," though they do not exactly describe the change that takes place on a coparcener's death, have been used both by text writers and Judges to include that change, though imperfectly, and that the terms as used in the Act must be interpreted to cover such changes.

The true nature of the property of an undivided family has been the subject of several judicial decisions. The earliest of these cases are reported in 9 Moore's Indian Appeals (*Shuvagunga's* case), and 11 Moore's Indian Appeals (*Appoovia's* case). The 9 Moore's Indian Appeals case dealt with what is known in Indian Law as an impartible estate, which cannot be the subject to partition among coparceners, but in the course of its judgment the Privy Council considered the general law as established by the Mitakshara school. In the course of its judgment the Privy Council enunciated the following principle, which appears at page 615 of the Report :—

> " There is coparcenaryship between the different members of a united family and survivorship follows upon it. There is community of interest and unity of possession between all the members of the family, and upon the death of any one of them the others may well take by survivorship that in which they had during the deceased's lifetime a common interest and a common possession."

In 11 Moore's Indian Appeals the rights of an individual coparcener were considered, and Lord Westbury, in a judgment which has now become classic, makes the following observations :—

> " According to the true notion of an undivided family in Hindu Law, no individual member of that family, while it remains undivided, can predicate of the joint undivided property that he, that particular member, has a definite share. No individual member of an undivided family could go to the place of the receipt of rent and claim from the collector or receiver of the rents a definite share. The proceeds of undivided property must be brought, according to the theory of an undivided family, to the common chest or purse and there dealt with according to the modes of enjoyment of the members of that family."

The rights of an individual member in respect of the income of joint family property are set out in Mayne, under section 298, page 380, wherein it is stated that—" the other members of the family, so long as the family is undivided, have only a right to maintenance. They cannot call for an account except as incident to their right to a partition ; nor can they claim any specific share of the income ; nor even require that their maintenance or the family outlay should be in proportion to their income. An absolute discretion is vested in the karta or manager."

Reference was made to this passage in Mayne by the experts, and also to a passage in page 339, paragraph 265, wherein Mayne sets out the nature of the " succession " that takes place when a member of a Hindu family dies. This is what he says :—

> " There is in the Mitakshara Law no such thing as succession properly so called in an undivided Hindu family. A Hindu family consists of males and females. Daughters born into the family are members of it till marriage, and women married into the family are equally members. The whole body of such family constitutes a sort of corporation, some of the members of which are coparceners, that is, persons who on partition would be entitled to demand a share, while the others are only entitled to maintenance. Each person is simply entitled to reside and to be maintained in the family house ; when he dies his claims cease and as others are born their claims arise. But the claims of each spring from the mere fact of their entrance into the family, not from their taking the place of any particular individual. Deaths may enlarge the beneficial interest of the survivors by diminishing the number who have a claim upon the common funds, just as births may diminish their interest by increasing the number of claimants. The joint family property continues to devolve upon the members of the family for the time being by survivorship and not by succession."

Under section 265, Mayne refers to the fact that the coparceners' interests in the property is a fluctuating interest and until partition their rights consist merely in a common enjoyment of the common property. Thereafter, in paragraph 266 Mayne draws a distinction between the

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coparcenary and the general body of the undivided family. This has been referred to by the experts in their evidence and it is admitted that the property as such vests only in the coparceners, the other members being entitled only to a right of residence and maintenance, the coparcenary being limited to the male member in unbroken male descent.

The distinction is to be drawn between the right to maintenance of a coparcenary and the right to maintenance of a non-coparcenary member. The former's right is based upon ownership, which, however, is indefinite and fluctuating, but in the case of the other members it is based merely upon a right to be maintained, a right which may in certain circumstances be made a charge upon the property, but until that is done it is not in the nature of a real right. The position has been set out by the Privy Council in a recent reported case in 1941 A.I.R. (P.C.) p. 120. This was an income tax case brought by the Commissioner of Income Tax against Dewan Bahadur Krishna Kishere. The judgment of the Privy Council was delivered by Sir George Rankin, a former Chief Justice of the Calcutta High Court. The case related to certain impartible estates and the question was whether the income of that estate was the income of the family or the income of the owner. In this connection their Lordships discussed the general law relating to the rights of members of the coparcenary and made the following observations at page 126 :—

> " In partible property under the Mitakshara the right of members of the coparcenary while the family is joint is characterised by unity of ownership (community of interest) and unity of possession. This has often been stated and expounded—cf. the judgment of the Board delivered by Turner, L.J., in the first *Shivagunga* case, 9 M.I.A. 539 at p. 611, and by Lord Westbury in 11 M.I.A. 75 at p. 89. Before partition the right of brother, son or nephew of the karta may be called and often is called a right to be maintained, but it is the same right as the karta has himself. Unity of possession is the basis of their right, which is a right to live upon the fruits of their own property. The karta has no special interest therein : there is community of interest and each coparcener is in joint possession of the whole. The right of son or nephew in the income is not a right to an exact fraction of the income : the karta may well spend more on a son whose family is large or who has special aptitude or necessities. But, however wide his discretion within the extensive range of family purposes, he has no right to apply any part of the income to other purposes ; and is liable in appropriate proceedings to make good to the other members their shares of any sums which he has actually misappropriated. For this purpose it is irrelevant to consider whether and in what circumstances the remedy is available apart from partition : the question is of right not of remedy. The various powers of management as karta, though given even to the father, confer on him no larger interest in the income or the corpus and no larger rights of enjoyment on his own behalf."

In the second column of the same page the Privy Council referring to coparcener's right to maintenance speaks of it as that of a co-sharer to

enjoy his property and live upon his own property by way of joint possession. Referring to the right of maintenance of the female members and minor children, at page 127 the following observation is made :—

> " The Hindu Law is familiar not only with persons such as wives, unmarried daughters and minor children for whose maintenance a Hindu has a personal liability whether he has any property or none, but also with cases in which the liability arises by reason of inheritance of property and this is a liability to provide maintenance out of such property."

It will thus appear from the above references that a Hindu family the only person who can legally deal with the property is the karta, and that also, only for family purposes. He can also deal with it with the consent of all the other coparceners. Reference to the karta's right is to be found in Mayne, sections 360 and 361. The karta or managing member is entitled to make an alienation in the following three cases :—

(1) In time of distress ;

(2) For the benefit of the family ; and

(3) For pious purposes.

No other member of the family can, in strict Hindu Law, alienate. It will, therefore, appear that according to the theories of Hindu Law as set out above, a coparcener has no power of disposition, but in the course of its development the Hindu Law, as enunciated by the Judges, has recognised alienations made in certain circumstances. The learned Expert who gave evidence for the Crown admitted that in strict law no alienation was recognised under the Mitakshara. This has also been restated when the exceptions were considered by both the Madras High Court and the Privy Council. In, for instance, 11 Indian Appeals 181 at p. 195, the Privy Council, in considering the rights of a coparcener to alienate, made the following observations :—

> " Their Lordships are not disposed to extend the doctrine of the alienability by a coparcener of his undivided share without the consent of his co-sharers beyond the decided cases."

Then follows a quotation from an earlier case to the following effect :—

> " There can be little doubt that all such alienations, whether voluntary or compulsory, are inconsistent with the strict theory of a joint and undivided family governed by the Mitakshara law, and the law as established in Madras and Bombay has been one of gradual growth founded upon the equity which a purchaser for value has to be allowed to stand in his vendor's shoes and to work out his rights by means of a partition."

Their Lordships continued to observe :—

> " The question, therefore, is not so much whether an admitted principle of Hindu Law shall be carried out to its apparently logical consequences, as what are the limits of an exceptional doctrine established by modern jurisprudence."

They refused, in this particular case, to extend recognition to an alienation by will. It is clear from the above that the power of alienation is recognised

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in certain specific cases, only as exceptions to the general rule that under the Mitakshara Law there can be no alienation by a coparcener of his interest; and these exceptions have been founded upon equity in favour originally only of a judgment creditor who had attached a coparcener's interest in the joint family property, and later extended to the case of an alienee who has given value. Vide section 379 of Mayne. In point of fact in *Deendyal's* case, which was decided in the Privy Council and which is referred to in 1933 A.I.R. Madras 158, the Privy Council recognised the alienee's rights only in equity as a person who had parted with money and as such, received something in exchange.

The Crown placed much reliance upon the observation of Bashyam Iyengar J. in 25 Madras p. 690, wherein the learned Judge stated that a legal estate was transferred. This observation was, however, regarded as *obiter* in the *Maharajah of Bobbili's* case, 1915 A.I.R. Madras 453, wherein the learned Judges held that the purchaser had no vested interest and that he had no right to claim mesne profits. Whatever the basis on which the courts arrived at these decisions in Madras there has been a difference of opinion as to the point of time at which the alienee's share in the joint family property should be computed: whether it should be as at the date of alienation or at the time of action. It was discussing this question that the Judges in several cases, such as *Iyagiri* v. *Iyagiri* (25 Madras 690), *Shanmugamudali's* case (1914 A.I.R. Madras 440), *Maharajah of Bobbili's* case (1933 A.I.R. Madras 159, and 52 Law Weekly 915), commented upon and discussed the nature of a coparcener's rights in the joint property. In some of the earlier cases, such as in *Iyagiri's* case, they seemed to consider that the coparcener had a present vested interest, but later cases seem to indicate that an alienee from a coparcener only has a right in personam. In the 1933 A.I.R. case, which was argued for the Appellants by Mr. Raja Iyer, it was held that though alienation was inconsistent with Hindu Law, the alienee was given a right in equity to step into the shoes of his vendor and claim a partition. The law seems to be now settled that the share which the alienee is entitled to, should be computed as at the time of alienation. *Vide* in this connection 1 Madras Law Journal 431. It has, however, been held that even if the alienation has been in respect of a share, the alienee cannot claim that share as of right; he may ask that it be allotted to him in the proceedings that he takes, and the court may allot that portion to him if it thinks it just.

The Crown also placed reliance upon the fact that when a coparcener becomes insolvent his share in the coparcenary property vests in the official receiver under the Indian Insolvency Act. This, of course, is special legislation and is undoubtedly recognised by the Indian Courts. *Vide* 1946 A.I.R. Madras 503, where it was also held that the subsequent enlargement of his share by the death of another coparcener also vests in the assignee. These decisions appear to be based upon recognition of exceptions to the general principles known to Mitakshara Law. It has, however, in the same case been held that if for any reason an adjudication is annulled, the property which vested in the Official Receiver immediately reverts to its original state as joint family property and not as separate property of the coparcener, whom it was sought to make insolvent. It has also been held that an insolvent does not cease to be a member of a

joint Hindu family merely because of an adjudication. The Crown also relied upon the case reported in 35 Madras 47 in which the Full Bench of the Madras High Court enforced an agreement to sell entered into by a coparcener, and held that the vendee was entitled to the share at the time of the agreement unaffected by subsequent diminishing or enlargement by births or deaths in the family. Reference was also made to the change that has undergone in the coparcener's property when he becomes a convert : his share he can then take away with him. Mulla, section 334. It must be conceded that the effect of these decisions is to establish some sort of right vesting in the coparcener. He is, undoubtedly, an owner of property. But this ownership is of a peculiar nature. It does not give him the same rights that a co-owner as known to our Law has. It only gives him a right to maintenance, the amount given depending on the needs of the family and not in proportion to the share he would be entitled to get on partition. In point of fact his right to maintenance is based upon the unity of ownership and unity of possession, but under the strict Mitakshara Law he is not entitled to alienate, though subsequently exceptions have been recognised with the progress of time ; and even this recognition is a recognition in equity in favour of a person who would otherwise be penalised. The recognitions certainly have not been in favour of the coparcener and the Courts have refused to extend these exceptions to, for instance, an alienee's alienee. 1921 A.I.R. Madras 384. If, as was suggested, a coparcener had a vested interest, he should be able to claim a definite share, but it has been held that he cannot, for instance, bring an action for mesne profits against the coparceners who are in possession. 1915 A.I.R. Madras 453. If, however, he had a definite share he should be able in law to do so. The law, however, has recognised his right to joint possession by allowing a claim for mesne profits if he has been kept out of possession. I.L.R. 5 Madras 236. As already stated, a coparcener cannot gift except with the consent of all the other coparceners ; nor can he devise by will even with their consent. Mulla, page 449. Furthermore, as has been pointed out, the Courts refused to extend the doctrine of alienability beyond the decided cases. *Vide* in this connection I.L.R. 5 Bombay (P.C.) 48. There is also the fact that under the Guardian and Wards Act, the Courts will not appoint a guardian in respect of a minor coparcener's interest in joint family property for the simple reason that in law he has no share, which is the basis on which an appointment can be made under the Act ; though, of course, by virtue of its inherent powers the High Court may appoint such a guardian in certain circumstances. Even with regard to the rights of a judgment creditor who has a decree against a coparcener, it has been held that if he is to obtain any benefit from the interest that his judgment debtor had in coparcenary property, he should proceed to attachment before the death of the coparcener. The attachment furthermore should be based upon a decree. If he fails to do so before the coparcener dies, his rights in respect of the coparcenary property disappear. *Vide* 1943 A.I.R. Madras 149 ; 1944 2 Madras Law Journal 509. This makes it clear that there is no specific interest or share which the coparcener has against which the execution creditor can proceed.

From the above it is quite manifest that the powers of disposal of the coparcener is of a very limited character. It is only recognised as a right in equity for the benefit of the alienee and not for the benefit of the alienor

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It is limited to alienations for value. The law does not recognise gifts, nor does it recognise devises and bequests made by will. Can it be said in these circumstances that the coparcener is " competent to dispose " of his share in coparcenary property within the meaning of section 8 (1) (*a*) of the 1919 Ordinance ? The words " competent to dispose " have been defined in the Ordinance in section 2 (2), wherein it is stated that a person shall be deemed competent to dispose of property if he has such an estate or interest therein or such general power as would, if he were *sui juris*, enable him to dispose of the property. A person who is *sui juris* has certainly got the power to alienate by way of gift or devise by will. A coparcener cannot do so and it seems to me quite clear that in respect of a coparcener's interest in the joint family property the coparcener is not competent to dispose of it. The expression was considered in the case reported in 38 N.L.R. 313. In this case, dealing with the rights of the karta, the Supreme Court held that even in his case he cannot be considered to be a man who is competent to dispose within the meaning of the 1919 Ordinance. A karta, as has been shown, has wider powers of disposal than the ordinary coparcener. The Supreme Court held that " a person who can alienate a legal necessity, can only gift within certain limits, and is accountable to others for the ancestral property in his hands, cannot be appropriately described as one who is free to dispose of that property as if he were *sui juris* or as he thinks fit."

The next heading under which the Crown sought to make Arunachalam Chettiar (Jr.'s) estate liable was under section 8 (1) (*b*), on the footing that on his death there had been a cesser of interest. Section 8 (1) (*b*) reads as follows :—

> " Property in which the deceased or any other person had an interest ceasing on the death of the deceased to the extent to which a benefit accrues or arises by the cesser of such interest " etc.

It was contended that a coparcener's interest was not merely a right to maintenance, that was a real right to property which could be attached or alienated, that by the death of a co-parcener some benefit accrued to the other coparceners, and to the extent of that benefit the Crown was entitled to tax the estate of Arunachalam Chettiar (Jr.). It was suggested that by the death of Arunachalam Chettiar (Jr.), Arunachalam Chettiar (Sr.) appeared, according to the contentions of the Crown, to have got absolute rights to the property whereas prior to that he had only a coparcenery interest. The Crown maintained that that was a benefit which accrued to Arunachalam Chettiar (Sr.) and to that extent the property was liable to taxation. Reference was made also to the 38 N.L.R. case already referred to. I think in that case the question whether there was a cesser of any interest was not canvassed. It was assumed that there had been a cesser and the decision proceeded on that basis. In this case, however, the whole question has been put in issue. Mr. Bashyam, who gave expert evidence for the assessee, took the view that there was no cesser of any interest as such ; that if there were any cesser at all it was only in respect of the coparcener's right to maintenance ; and, as in this case, there was no rationing among the coparceners, that no benefit as such accrued to the other coparceners, the estate being sufficiently large to maintain all the coparceners in luxury.

In considering this question, one has to consider the rights of coparceners to joint Hindu family property in abstract theory. Supposing there were several coparceners and, as happened in this case, the estate was large enough to maintain all, the karta, as was held in the 1941 A.I.R. (P.C.) case, has an absolute discretion as to the amount of maintenance he is to allow any member. The death of one member does not entitle any other member by virtue of that death alone to an increased share in the allowance given to him for maintenance; even if the karta is in a position to do so, he will be perfectly justified in refusing to do so. One cannot, therefore, say that in theory on the death of one coparcener a benefit accrues to another, except in cases where there has been rationing, and this would be so only in the case of very poor estates. Furthermore, it was argued on behalf of the assessee that the benefit referred to should be a benefit not to persons as such but to the property itself and that section 8 (1) (*b*) was really intended to cover cases similar to those in which a life interest is reserved in one person and the property is vested in another. In this respect the Ceylon Law is somewhat different to the English Law. Under the English Law, if I understand it aright, a person who has a life interest in a property is regarded as the owner of that property, while in Roman-Dutch Law such a person is only regarded as having certain rights while the ownership is in the reversioner or remainderman. Section 8 (1) (*b*) would, therefore, very appropriately be applied to a case where a person has a life interest in a property. On his death his interest would cease and the benefit would accrue to the property itself in the sense that the owner's rights of enjoyment of the property would be enlarged. Under the English Law, on the death of any person having a life interest the property would be regarded as having passed on his death to the remainderman, but such a principle cannot be applied to the Roman-Dutch Law conception of a life interest. It may even be that a person has some interest less than a life interest, as for instance, a right to be paid a certain specific sum out of certain property, such payment being made a charge upon that property. On his death the property will benefit to the extent of that charge, and therefore, the cesser of that interest would result in a benefit which should be liable to taxation under section 8 (1) (*b*). The point made by learned Counsel for the Assessee is that the benefit should be in respect of certain specific property, and in support of that he referred to Woolley on Death Duties (5th edition) at page 111, wherein the following observations appear :—

> " It is essential that if estate duty is to arise on the cesser of an annuity there must be some *property* which benefits by the cesser . . . . Hence, if *A* is under covenant to pay *B* an annuity of £100 a year for *B's* life, on *B's* death in *A's* lifetime no duty is payable, because no property as distinct from *A* personally is benefited by the cesser. If, however, *A's* covenant was further secured by charging the annuity on his land, duty would become payable to the extent to which the land benefited by ceasing to bear the annuity."

In the case of a member of a joint Hindu family, his right to maintenance is a variable indeterminate thing left entirely to the discretion of the karta. It is not a charge on any property, but, as has been held in several Indian cases referred to in section 705, page 843 of Mayne,

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" a Hindu widow or other person entitled to maintenance can sue to have it secured and be made a charge on the joint family property." It is only if this is done and the property is charged with the payment of that maintenance that on the death of that coparcener some benefit would accrue to the property. This was the argument put forward by learned Counsel for the assessee and I am inclined to agree with it. In the case of a Hindu coparcener entitled to maintenance which has not been converted into a charge on the joint family property, the maintenance is only in the nature of a personal claim to be maintained out of joint family property without reference to any particular property or to any specific class of properties. In this particular case it is only the Ceylon estate that is the subject-matter of the assessment. Why should it be assumed that the maintenance which Arunachalam Chettiar (Jr.) as a coparcener was entitled to, should have been paid out of his Ceylon estate and not out of his possessions in India, Penang, Singapore and elsewhere ? In the case of *Attorney-General* v. *Watson*—2 K.B. 1917 p. 427—this principle was recognised. At page 432, the following observations were made :—

> " The only reasonable view to take of section 2 of the Finance Act, 1894 (which is the same as our section 8), is that it brings within the ambit and scope of the Act every case in which an annuitant has a right to have recourse to the property out of which the annuity is payable . . . provided that by reason of the annuitant's death the benefit has accrued or arisen *to the property.*"

At page 431, the following observation appears :—

> " The object of the section is to make estate duty payable . . . Whenever there has been a cesser of an annuity by reason of the death of the annuitant, such cesser causes a benefit to accrue *to that property.*"

Furthermore, it has been held in *Earl Cowley's* case—Law Reports 1899 A.C. 198—that the interest should be a determinable interest. *Vide* page 212, wherein it is stated as follows :—

> " With the interest that ceases on death the Act is not directly concerned except in the one case where, without any passing of property, a gift accrues or arises by reason of the cesser of a determinable interest such as a charge that expires."

In the case of a coparcener's interest, one can hardly regard it as a determinable interest, nor can it be regarded as a charge. It is a variable interest ; it varies usually at the discretion of the karta. It is an interest which is difficult of valuation and which cannot be assessed in any specific sum of money. The only benefit that does accrue may be a benefit to a person or persons, and that was the basis on which questions were put by learned Counsel for the Crown to the Expert witnesses. For instance it was stated that on Arunachalam Chettiar (Jr.'s) death a benefit accrued to Arunachalam Chettiar (Sr.) who, in consequence of the death, was able to exercise enlarged powers of disposal. The question is whether it was intended to bring within the framework of the Ordinance an interest like the one under consideration, namely, that of a coparcener, but even if the intention was not there, if the words of the Ordinance make it clear that such an interest would come within its ambit, then the estate would become liable.

One way of considering whether the estate in question would come within the taxing ordinance is to consider whether it could be valued under the provisions with regard to valuation as set out in the Ordinance. *Vide Colquhoun* v. *Brooks*—1889, 14 Appeal Cases 493. In this case a person resident in the United Kingdom and engaged in a trade carried on entirely abroad, namely, Australia, had a portion of his share remitted to him in England: a larger portion remained in Australia. The question arose as to whether he was liable to income tax in this particular case in respect of the income that was not brought to the United Kingdom but was placed to the assessee's credit in Australia. In considering the matter the Privy Council considered the entirety of the Act and came to the conclusion that the Australian profits which did not come into the United Kingdom were not liable to tax. In the course of his judgment Lord Herschell made the following observations :—

> " It is beyond dispute that we are entitled and indeed bound, when construing the terms of any provision found in the statute to consider any other parts of the Act which throw light upon the intention of the legislature and which may serve to show that the particular provision ought not to be construed as it would be if considered alone and apart from the rest of the Act."

The Privy Council went on to hold that the Act had not provided the requisite machinery for assessing the duty on trade profits arising and remaining abroad, although in the words of the taxing section of the statute they would appear to be taxable and that, therefore, it was not intended to tax them. In the result the Privy Council came to the conclusion that the profits which remained in Australia were not liable to income tax. If we were to follow the same principle in regard to the taxing sections of the Estate Duty Ordinance in order to find out whether it was intended to bring within its scope the interest a coparcener has in family property, one would be confronted with the same difficulties that confronted the Judges in the Privy Council case just referred to when they considered the provisions for valuing the foreign income of the individual.

Section 17 of the Ordinance No. 8 of 1919 deals with the valuing of property. The sub-section (6) deals with the valuation of an interest ceasing on death. Under section 6 (*b*) if the interest extended to less than the whole income, as in this case, it shall be such proportion to the value of the property as corresponds to the proportion of the income which passes on the cesser of interest. In this particular case it is impossible to value the coparcener's interest in terms of money because it is a variable interest. The right to maintenance a coparcener has is not a fixed right. As already stated, it is at the discretion of the karta variable and indeterminable. It cannot be fixed in order that its proportion to the whole income may be ascertained. The death of one coparcener may not affect it, while the birth of another may likewise have no effect. The interest which is taxable under the Ordinance relates to income which ceases on the death of any particular person. It should be an interest which could be valued in terms of money, and the benefit should be a similar benefit. There is no provision for valuing such of the personal benefits as may accrue to one coparcener

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on the death of another until partition. No coparcener can predicate of the joint property that he has any particular share. It cannot, therefore, be even said that a share passes on his death. Furthermore, under section 17 (1) (*b*), the Commissioner of Stamps is authorised to deduct all debts and encumbrances incurred or created by the deceased for lawful consideration. Under this provision debts of a deceased coparcener may be considered in assessing the property that passes on the death of a coparcener. In the case of a joint Hindu family, in strict law no debts can be incurred by an individual coparcener except in respect of his separate property. All debts, on the other hand, can be incurred by the karta provided of course they are for family benefit. Yet, under the valuing sections it would appear that if it were intended to include within the Ordinance property of the nature of a coparcener's interest, on a coparcener's death it would not be possible to deduct even a share of the debts which were incurred by the karta, though such debts might have been incurred for the benefit of the deceased coparcener either solely or along with other coparceners. Viewed in that light it seems to me that the Estate Duty Ordinance No. 8 of 1919, was never intended to and did not in fact bring within its scope, the estate of a Hindu undivided family or of the interest which a coparcener had in such property. I therefore, hold that in the case of Arunachalam Chettiar (Jr.) there was no estate which was liable to tax either on the footing that Arunachalam Chettiar (Jr.) was competent to dispose of it, or on the footing that he had an interest in property which ceased on his death.

Several other defences were raised to the right of the Crown to recover tax on the estate of Arunachalam Chettiar (Jr.), but in view of my findings on the above it is not necessary to consider these matters. I may, however, say that section 73 of the 1938 Ordinance, Cap. 187, in my view cannot be applied to the estate of Arunachalam Chettiar (Jr.). I agree with the argument advanced by learned Crown Counsel with regard to the inapplicability of section 73 of Cap. 187 to the estate of Arunachalam Chettiar (Jr.) as outlined by him in the course of his address on the 2nd of August, 1949.

In the case of Arunachalam Chettiar (Sr.) which is the subject of appeal in case No. 38/T (Special) the position is somewhat different. At the date of his death, according to the admissions, he was the sole surviving coparcener of a Hindu undivided family and the property he left was property which, during the time of the existence of the son, formed the property of a Hindu undivided family of which he and his son were coparceners. The Crown contends that the property being separate property, he was full owner of it and that on his death it passed under the will in terms thereof to his executors he was, therefore, liable to pay estate duty under the Ordinance of 1938, Cap. 187, in respect of the entire property. For the assessee, on the other hand, it was contended that despite the fact that he was the sole surviving coparcener the property was still the property of a Hindu undivided family and that there was a Hindu family in existence consisting of himself, the widow of his son, his step-mother and his two wives and daughter. It has been conceded by the Crown that a Hindu family may consist of one male member and several females, or of females only. In fact this was decided in A.I.R. 1945 Allahabad 286.

The question that arises for decision is whether the property which Arunachalam Chettiar (Sr.) had in his hands on the death of his son is property which, on his death, passed either to his heirs or to his executors. If property passed, then it would definitely be liable for duty unless it comes within the exception created by section 73. It was contended by the assessee that property in the hands of Arunachalam Chettiar (Sr.) came within the exception created by section 73 of the Ordinance and that, therefore, it is not liable to taxation.

Section 73 provides that when a member of a Hindu undivided family dies no duty is payable in respect of the joint property of that Hindu undivided family. The question for decision is whether after the death of Arunachalam Chettiar (Jr.) the property which, while he was alive, was admittedly property of a Hindu undivided family, after his death continued to be the joint property of a Hindu undivided family or whether it was Arunachalam Chettiar (Sr.'s) separate property. If the former, section 73 would apply; if the latter, it would not, and the whole estate would become liable for duty on the death of Arunachalam Chettiar (Sr.). Mulla, in section 221 deals with incidents of joint possession of a coparcener's property, and in section 222, deals with separate property, which property, he says, belongs to him. On his death it passes by succession to his heirs and not by survivorship. His absolute power is similar to that of an owner. If, therefore, it can be shown that the property which Arunachalam Chettiar (Sr.) had at the time he died was property in respect of which he could have exercised all the rights of ownership as known to our law, it would be property which passed on his death and it would be property in respect of which estate duty would become payable. Ownership as known to our Law connotes the existence of three rights, namely, (1) the right to possess, (2) the right to use, and (3) the right to alienate. It may be possible to exercise ownership over a thing without possession and without use, but one cannot own property over which one has no power of alienation. In considering this question, therefore one has to consider the rights which Arunachalam Chettiar (Sr.) had over the property in relation to his powers to possess, use and alienate. If these powers were restricted if they were limited to the rights which a karta of a Hindu undivided family property has, then obviously the property will not be liable to tax. If it falls into a class of property between one and the other the Court will have to consider whether the powers possessed by Arunachalam Chettiar (Sr.) over the property were of such a nature as to entitle the Court to regard the property as his own and as property which passed on his death. Even if the Court considers that the property cannot be held to have passed on his death, the Court may nevertheless have to consider whether it can be deemed to have passed under section 6 (*a*) of Cap. 187, by virtue of the powers of alienation which were vested in Arunachalam Chettiar (Sr.).

Section 73 provides for exemption from taxation of property proved to be the joint property of a Hindu undivided family. The first question for decision is what meaning should be attached to the term " property of the Hindu undivided family."

Arunachalam Chettiar (Sr.) and the females formed the family. There was property which just prior to Arunachalam Chettiar (Jr's) death was

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property of a Hindu undivided family of which these self-same females, Arunachalam Chettiar (Sr.), and Arunachalam Chettiar (Jr.) were members. Did the death of Arunachalam Chettiar (Jr.) have such an effect on the property as to make it no longer the property of that family but the property of an individual? The term "property of a Hindu undivided family" has been used not only in the Ceylon Ordinance but, as would appear from the cases that have been cited, in the Income Tax Act in force in India and in several other enactments and judgments. Mr. Raja Iyer stated that the term "property of a Hindu undivided family" was synonymous with the term "coparcenary property," his contention being that the title to the property was vested in the coparceners and that the female members had no right to the property as such, their right to maintenance being of a personal nature and not a charge upon the property, similar to the right that every Hindu wife has against her husband irrespective of whether he has property or not, and if he has property, irrespective of whether that property is family property or separate property. Mr. Bashyam, however, expressed a different view. He said that it is possible to contemplate in law the existence of family property which was not coparcenary property. He for instance said that a family may have joint family property which is not coparcenary property, and gave as an example property which was gifted to the family from outsiders. It seems to me that if property is gifted to the family it at once becomes coparcenary property and family property in that sense. In section 281, Mayne makes the following observations :—

> "Where the members of a joint family acquire property by or with the assistance of joint funds or by their joint labour or their joint business *or by a gift or grant* made to them as a joint family, such property is the coparcenary property of the persons who have acquired it."

Mulla, in section 220, says that "joint family property is synonymous with coparcenary property." Mr. Bashyam also gave the instance of members of the family earning money and putting it into the family funds. He said that in such a case it would be joint family property and not coparcenary property. On this point the authorities are clear that if members of a joint family blend their individual earnings with joint family property, the property would be coparcenary in which every coparcener would have a coparcenary interest and over which the karta only would have control. I accordingly prefer to accept the exposition of the law as given by Mr. Raja Iyer, namely, that the term joint family property when used in any enactment must be read to mean coparcenary property. That this is so is further evidenced from the observation of Mayne, in section 281, page 359, wherein he says that all property not held in coparcenary is separate property.

In regard to separate property different rules of succession would apply, and when in an Estate Duty Ordinance exemption is provided for joint family property, it must in my view clearly be intended to cover only the property of the family which is vested in the coparceners. The only right of the female members is the right to maintenance, but that is a right which is liable to be defeated by a transfer to a bona fide purchaser for value without notice of the existence of that right unless or until the right has been made a charge upon the property. Mulla,

section 569. Even in the case of a transfer to a purchaser with notice of the claim, the widow's right is liable to be defeated unless the transfer was made with the intention of defeating the widow's right and the purchaser had notice of such intention. The widow's right is of an indefinite character, enforceable only like any other liability in respect of which no charge exists. Mr. Raja Iyer referred to this passage in the course of his evidence. Mr. Bashyam seemed to contend that the property vested in the family as a unit but that the coparceners, like the widows, had only a right to maintenance. Mr. Raja Iyer expressed a different view, namely that the property vested in the coparceners, their right to maintenance being based upon rights in the property as co-sharers, while the right to maintenance of the female and other members was of a personal nature and not a charge upon the property. Both relied upon the case reported in 1941 A.I.R. (P.C.) at p. 126. It seems to me that the observations in this case support Mr. Raja Iyer's view and not Mr. Bashyam's. The coparceners' right is based upon the unity of ownership and the unity of possession. This is made clear in the case which is reported in 1937 A.I.R. (P.C.) 36, wherein it is stated that there is no ownership in the family as distinct from the individual. In the same case the right of a sole surviving coparcener was considered and it was held that the property a man has acquired (from his father) does not belong to a Hindu family merely by reason of his having a wife and daughter. This was another judgment of the Privy Council delivered by Sir George Rankin. In the course of his judgment he makes the following observations :—

> " A man's wife and daughter are entitled to be maintained by him out of his *separate property* as well as out of property in which he has a coparcenary interest, but the mere existence of a wife or daughter does not make ancestral property joint."

He then goes on to discuss the meaning to be attached to the word " interest " and states—

> " But if the father's obligations are increased his ownership is not divested, divided or impaired by marriage or the birth of a daughter. This is equally true of ancestral property belonging to himself alone as of self-acquired property."

He, therefore, places ancestral property in the hands of a sole surviving coparcener in the same position as separate property. Mr. Bashyam while conceding that this authority was against his contentions, suggested that if it were viewed in the way in which he desired the Court to view it, it could be explained. His contention was that in deciding this case the Privy Council went on the footing that the persons whose property was under consideration, namely, Kanji and Sewdas, were subject to the Benares School of Hindu Law and according to the Benares School a gift from the father to the son is the son's separate property. He, therefore, suggested that the Privy Council in this case went on the footing that the property of Kanji and Sewdas, though it was ancestral was nonetheless, according to the school of law to which they belonged, namely, the Benares School, separate property and, therefore, liable to taxation as separate property and not as family property.

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According to the facts of the case Moolji and Porshottam were brothers who had separated, and Kalyanji an outsider. They started business without ancestral funds. Moolji had two sons, Kanji and Sewdas, who were separate from each other. A brother of Kalyanji was taken into the business, and likewise Moolji's sons Kanji and Sewdas were also taken into the business at a later date. Moolji gifted certain interests he had in the business to his sons Kanji and Sewdas. It was, therefore, property which they obtained from their ancestor. At this time there was a difference of opinion in the Indian Courts as to whether a gift from a father to a son was the separate property of the son or whether it would be ancestral property in his hands. Mr. Bashyam would interpret the case on the footing that the Privy Council considered it to be their separate property according to the Benares School. But a careful study of the judgment makes it quite clear that in making the observations already quoted, the Privy Council went on the footing that for the purposes of the present case Kanji's and Sewdas' "interest was ancestral so that if either had a son the son would have taken an interest therein by birth." On that footing they came to the conclusion that the property in the hands of Kanji and Sewdas was their separate property because they had no male descendant living at the time of the assessment. Kanji and Sewdas had separated from their father and the gift in their hands though ancestral was in this case held to be their separate property although each had at that time living a wife who was capable of bringing a son into existence at any subsequent point of time. In a subsequent case reported in the same volume at page 239, this decision was followed and the Privy Council held that the income derived by a sole surviving coparcener is liable to taxation as his separate income on the footing that the property in those circumstances should be regarded as separate property. That case negatives the interpretation which Mr. Bashyam tried to put upon the case reported at page 36.

The assessees' contention, supported by the evidence of Mr. Bashyam, is that once property is ancestral it must be regarded as joint family property unless and until the family as a unit ceases to exist. This, they contend, can never occur so long as there is a mother in existence who is capable in nature or in law to beget a son. Mr. Bashyam expressed the view that this conception of the nature of property in the hands of a sole surviving coparcener was given by the authorities, and relied chiefly upon the Privy Council case reported in 1943 A.I.R. (P.C.) at p. 196. Mr. Raja Iyer also relied upon the same case in support of the opposite view which he expressed, namely, that in the hands of a sole surviving coparcener the property is separate and not joint. It will be necessary to consider this case a little in detail. It was an action brought by an adopted son Anant, adopted by the widow Gangabai to her husband Bhikkappu after the death of her son Keshaw. Before Keshav's death Bhikkappu had died. After Keshav's death his ancestral property went by inheritance to a collateral by the name of Shankar, the Defendant in this case. Thereafter Gangabai adopted Anant and in her capacity as guardian brought this action against Shankar for a recovery of property which belonged to her husband and his family. The Bombay High Court held that as the coparcenery which existed at the time of Bhikkappu had come to an end on the death of Keshav and the family property had vested by succession on the heir

Shankar, the subsequent adoption by Bhikkappu's widow though valid would not revive the coparcenery, or divest Keshav's heir of the coparcenery property. Sir George Rankin delivered the judgment of the Board and he held that during Keshav's lifetime the right to deal with the family property as his own would not be impaired by the mere possibility of an adoption, and cited with approval the judgment reported in 52 Madras 398. He went on to say that in his lifetime the adoption by the widow of a collateral coparcener would have divested him of part of his interest and as the right to adopt subsisted after his death, it will qualify the interest which would pass by inheritance from him. He also quoted with approval a judgment of the High Court of Nagpur wherein it is stated that the family cannot be brought to an end while there is still a potential mother if that mother in the way of nature or in the way of law brings in a new male member, and a judgment of the Board delivered by Mr. Amir Ali wherein he stated that the adopted son is the continuator of his adoptive father's line exactly as a " aurasa " son and that an adoption, so far as the continuity of the line is concerned, has a retrospective effect. Whenever the adoption may be made there is no hiatus in the continuity of the line. Sir George Rankin in the Privy Council case continued to state that Bhikkappu's widow's " power to adopt " could not have been exercised in his (Keshav's) lifetime and if exercised after his death, cannot as their Lordships think, be given any less effect than would be attached to an adoption made after his death by the widow of a predeceased collateral. The family property must vest in the adopted son on the same principle, displacing any title based merely on inheritance on the line from the last surviving coparcener. In the result he came to the conclusion that although during his lifetime Keshav had rights of dealing with the property unimpaired by the mere possibility of an adoption after his death by his mother, still the property which on his death passed by inheritance to Shankar, vested on the adoption of Anant by Gangabai on Anant, displacing the title which Shankar had to it, a title based merely on inheritance. This case, it seems to me, is only authority for the proposition that the family cannot be regarded as at an end so long as there is a potential mother capable of giving birth to a son by way of nature or in law by adoption ; till then the family cannot be extinguished ; but it is no authority for the proposition that so long as there are females in the family capable of bringing a son into existence the property in the hands of the sole surviving coparcener at all points of time is family property. On the contrary, the judgment quoted with approval the decision in 52 Madras 398, and this, it seems to me, confirms the principle established in that case. In the 52 Madras Case the facts were as follows : The 1st Defendant and his son Abbulu formed a joint Hindu family : the son gave his wife an authority to adopt : a month afterwards the son Abbulu died and four days after that the father, who was then the sole surviving coparcener of a Hindu family which consisted at least of one other female member, namely, the widow of Abbulu, settled practically the whole of the family property on his daughters ; within two months thereof Abbulu's widow adopted the Plaintiff and the suit was brought on behalf of the Plaintiff who was a minor, claiming a half share on partition with his adoptive grandfather who died while the suit was pending ; the Plaintiff on his grandfather's death claimed the entirety of the family property. The question that arose was whether the Plaintiff received

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practically nothing in view of the gift to the daughters or whether his adoption related back to the date of his adoptive father's death and so defeated the grandfather's settlement. The High Court came to the conclusion that the last surviving male member of a Hindu family was a *full owner* of all the family properties in spite of an unexercised power of adoption possessed by the widow of a deceased member, and that such a survivor can gift the properties absolutely without a son subsequently adopted being entitled to question it. The theory of relation back they held has only to do with establishing a line of succession to the adoptive father and has nothing to do with the powers of the last male holder to deal with the property as full owner.

Learned Counsel for the Appellants at first contended that in respect of this very same estate the Federal Court has held that the estate left by Arunachalam Chettiar (Sr.) was joint family property and not his separate property. In the course of his argument learned Counsel for the Appellants later explained that though the decision does not expressly declare it to be so, that is the effect of it. Justice Wardachariar who delivered the judgment of the Court on this point did come to the conclusion that the estate left by Arunachalam Chettiar (Sr.) was not his separate property *within the meaning of the Hindu Women's Right to Property Act.* What he held was that the term " separate property " as used in the Act should be limited to that species of separate property which is known as self-acquired property. He then drew a distinction between self-acquired property and the other kinds of separate property, such as the one obtained on partition by a sole surviving coparcener, and stated that in the case of self-acquired property the owner's powers of disposition remains undiminished unless he voluntarily throws it into the common stock ; whereas in the other kinds of separate property his power of disposition gets reduced the moment a son is born to him or if the widow of a predeceased coparcener takes a boy in adoption. He then went on to analyse the Act and to ascertain the scope of the Act by reference to the defects which it set out to remedy and came to the conclusion that what was intended was separate property in the narrow sense, namely, self-acquired property. Dealing with the sole surviving coparcener, he spoke of his right as his rights as full owner till a son is born and that it has the potentiality of becoming joint family property. Commenting on this Mr. Raja Iyer stated that the mere fact that the expression " potentiality " has been used, indicates that until the son is born that property must necessarily be separate property over which the coparcener enjoyed rights as full owner. The order made in the case at page 46 makes it clear that what the Court intended was that the property left by Arunachalam Chettiar (Sr.) was not separate property in the sense that it was self-acquired property. It certainly did not hold that it was joint family property.

In this particular case Arunachalam Chettiar (Sr.) was the last surviving coparcener. If the law as expounded in the 52 Madras Case is correct, he had full powers of alienation ; he could have gifted it by act *inter vivos* ; he could have alienated it for value ; he might even have destroyed it. A son adopted subsequently has no power to question his acts ; nor could he displace the title that an alienee got from Arunachalam Chettiar (Sr.). This may be taken to be the correct law as it has been

distinctly approved of by the Privy Council in the 1943 case. The only instance in which the Courts have recognised the power of an adopted son displacing the title which passed from a sole surviving coparcener is limited to those cases in which the title passed by *inheritance*. Keshav's case (1943 A.I.R. (P.C.) 196) was followed in 1948 A.I.R. (P.C.) 165. In that case the Hindu family consisted of two widows, *A* and *B*, of two deceased brothers. The last surviving coparcener was the son of the widow *A*, and on his death she succeeded to the estate. Subsequently she adopted *C*, who came into possession of the family properties. 28 years thereafter the other widow adopted son *D* to her husband. It was held, following the decision of the Privy Council case referred to, that *D* was entitled to recover a half share of the family properties. In this case too he displaced a title based merely on inheritance.

Mr. Bashyam recognised the power of a sole surviving coparcener to dispose of the property as he desired, whether by act *inter vivos* or by will, but he said that this was based upon the theory that being sole surviving coparcener he had no other coparcener to consult, as under the Hindu Law any one coparcener can with the consent of all the other coparceners validly alienate coparcenery property; as he was the sole surviving coparcener there was no one else to consult and he could, therefore validly effect an alienation. He said that this theory, however, was his own and that there was no authority on which he could base it. A somewhat similar view, however, appears to have been stated by the Judge who delivered the judgment in the 20 Weekly Reporter case at page 189, wherein it was held that the distinction between joint and separate property is of a temporary and not of an abiding character. As long as it is separate property and in the condition of self-acquired property the holder, it was stated, has no one to consult in regard to the disposal of it except himself, but the moment it passes by descent it becomes joint family property. This theory of consent, however, in view of subsequent decisions made after the judgment was delivered in the 20 Weekly Reporter case, does not appear to me to be sound. If the position is that the sole surviving coparcener is no better off than one of several coparceners who has the consent of the others to alienate then it seems to me he would not be able to devise or bequeath any property by will because it is clear and well established that under the Mitakshara Law a coparcener cannot even with the consent of all his other coparceners bequeath or devise by will the share he would get on partition of joint family property. But the decided cases show that a sole surviving coparcener can dispose of his property by will. This was accepted as the law by both the Experts. The theory of consent, therefore, must fail.

The only basis on which it would be possible to explain the powers of a sole surviving coparcener to deal with property as he deems fit, whether by act *inter vivos* or by will, is on the basis that he enjoys the right of a full owner until the contingency of an addition of a male member, whether in law or by nature, arises. Once that contingency has arisen his powers as full owner cease to exist. Vide section 400 of Mayne, page 513, and section 499 of Mulla, page 552, wherein it is specifically stated that a bequest of family property is valid as against a son adopted after his death. In I.L.R. 50 Madras 508 the son was adopted before the death of the adoptive

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father, but there was an agreement entered into with regard to the disposition of the family properties between the adoptive father and the natural father of the adopted son. It was held that despite the agreement the son on adoption took a coparcener's interest in the family property and the agreement as against the adopted son would be invalid. In the same case it was stated that if the adoption had been made subsequent to the death of the adoptive father, the agreement with regard to the disposition of the properties would have been valid as against the adopted son. That the powers of a sole surviving coparcener over property which was once coparcenery property is the same as that which he has over his separate property is established in the case reported in I.L.R. 29 Madras 437. In that case a son, Narayya, who was the sole surviving coparcener was adopted into another family leaving a mother who was entitled to maintenance out of the family property which vested in Narayya solely and exclusively. Narayya was adopted by Papamma. The question was whether Narayya was divested of his property, the property which belonged to the family of which his natural mother and he were members, by reason of his being adopted into another family. The estate which was vested in him as sole surviving coparcener was referred to as the Medur estate, and in the course of their judgment the High Court made the following observations :—

> " There is no question but that when one of several coparceners leaves his natural family by being adopted into another family, he at once loses all his rights in the coparcenary property and he cannot thereafter claim to inherit or to succeed to any property by virtue of his relationships in his ancestral family. It is also conceded on the other hand that if he were possessed of any self-acquired property at the time of his adoption, his right to it would be unaffected by the adoption."

Dealing with the Medur estate the Court observed :—

> " The Medur estate was not the self-acquired property of Narayya. Nor was it at the time of adoption coparcenery property in which any other person had a share. It was ancestral partible property which vested *solely and absolutely* in him because he was the only surviving member of the joint family to which it previously belonged."

They held that the ancestral estate which had become vested in a person solely and absolutely prior to his adoption was not divested by reason of the adoption and that Narayya took the Medur estate along with him to his adoptive family. The fact that the mother had a claim to maintenance did not influence the Judges to come to a contrary decision.

In 56 Madras 1933 at page 1, the position of the widow of a sole surviving coparcener in relation to the Income Tax Act was considered and in the course of the judgment the learned Judge of the Madras High Court, dealing with the income of the sole surviving coparcener who held what was joint family property, stated that he was unable to agree with the suggestion that inasmuch as he was holding joint family property it would be exempt from taxation. Nor would he agree to the suggestion that the sole surviving coparcener received the income of the estate as a member of an

undivided family. The rights of the sole surviving coparcener to bequeath family property and the effects of subsequent adoption by a widow were also considered in A.I.R. 1946 (Nagpur) 203. That case followed the decision in *Keshav's* case and there are copious quotations from the judgment of Sir George Rankin in that case. They held that the legatees of the deceased coparcener had a preferential right to the property bequeathed to them as against an adopted son, adopted by the widow after the death of her husband. As against the absolute powers which a sole surviving coparcener enjoys in respect of what once was coparcenary property it was urged by learned Counsel for the assessee that these powers are limited and cannot be regarded as the same as those enjoyed by a full owner. It was, for instance, stated that a sole surviving coparcener cannot eject a widow from the ancestral house; nor could an alienee from the sole surviving coparcener do so. This is certainly so and so is supported by the passage in Mayne, in section 703, but there is this qualification: that this restriction is removed if other adequate provision is made for the residence of the widows. Furthermore, the restriction is limited only to the ancestral house, and the properties involved in this case do not include the ancestral house which is situated in India and does not form part of the Ceylon estate with which we are dealing. With regard to properties other than the ancestral house the powers of disposition of the sole surviving coparcener are absolute. With regard to the right to maintenance of the widow, that matter was considered in A.I.R. 1947 (P.C.) 8, and in A.I.R. 1947 (P.C.) 143. In these cases it was held that her right to maintenance does not form a charge on the property of the family but it may be made a charge on specific portions of the family property not exceeding her husband's share and that until such charge has been made it is more or less in the nature of a moral obligation which may be ripened into a legal one on the creation of a charge either by agreement or by decree of court. So long as no charge is created, then the rights of the sole surviving coparcener are, as has already been stated, absolute. The relevant passages in Mayne and Mulla have already been referred to.

What we have to consider in this case is the nature of the property as it existed at the time of Arunachalam Chettiar (Sr's) death. At that time there were three widows and a step-mother and a daughter in existence who formed the members of the family. Two widows were his own, the other being his son's widow. By his last will he gave them power to adopt and that adoption would have taken place only after his death. In point of fact it took place in 1945. Questions were raised as to the validity of the adoption, but in view of my findings in Arunachalam Chettiar (Jr's) case I do not think it necessary for me to go into this matter now. It was not obligatory on the widows to adopt and the power may never have been exercised at all. In any event on the date of death of Arunachalam Chettiar (Sr.) there was no male member brought into the family in law or nature who could take an interest in the coparcenary property. It was, therefore, at that point of time at least, the absolute property of Arunachalam Chettiar (Sr.) subject to the potentiality of it becoming joint family property in the event of Arunachalam Chettiar (Sr.) having a son. The eventuality did not occur, so that at the time of his death the property, it seems to me, must be regarded as his own and not the property of the joint Hindu family.

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As against this it was also urged on behalf of the assessee that the income of the property may be regarded as belonging to Arunachalam Chettiar (Sr.) but that the ownership of the property itself was in the joint family. In support of this contention reference was had to income tax cases dealing with impartible estates, and an analogy was drawn to the decisions in those cases wherein it has been held that although the income of an impartible estate is the income of the holder, still the property from which the income is derived is joint family property and would devolve by survivorship on the senior male member in the senior line under the rule of primogeniture. Reliance was placed chiefly upon the Privy Council decision in 1941 A.I.R. at p. 120, which has already been referred to. Therein Sir George Rankin held that the income of the holder of an impartible estate is his personal income though the property is not his own property but the property of the family. He however, made it clear that the ownership in the family is by reason of the fact that the property is ancestral. Impartible estates are the creatures of custom. The incidents of an impartible estate were considered and explained in the case reported in 1932 A.I.R. (P.C.) 217 at p. 222, and Sir Dinshah Mulla who delivered the judgment of the Privy Council made the following observations :—

> " Impartibility is essentially the creature of custom. In the case of ordinary joint family property the members of the family have :
>
> (1) the right of partition ;
>
> (2) the right to restrian alienations by the head of the family except for necessity ;
>
> (3) the right to maintenance ; and
>
> (4) the right of survivorship.
>
> The first of these cannot exist in the case of an impartible estate, though ancestral, from the very nature of the estate. The second is incompatible with the custom of impartibility . . . To this extent the general law of the Mitakshara has been superseded by custom and the impartible estate, though ancestral, is clothed with incidents of self-acquired and separate property, but the right of survivorship is not inconsistent with the custom of impartibility. This right still remains and that is what was held in *Baijnath's* case. To this extent the estate still retains its character of joint family property and its devolution is governed by the general Mitakshara law applicable to such property. Though the other rights which a coparcener acquires by birth in joint family property no longer exist, the birthright of the senior member to take by survivorship still remains."

It will thus be seen that in the case of impartible estates which appear to have been originally created by grants from the British Government, the impartible nature of the property was imposed by custom. Certain other rights were also imposed by custom, for instance, the right sometimes of certain male members to be allowed maintenance, but once it left the hands of the original grantee it became ancestral property in the hands

of the person who "succeeded," and the succession was based upon Mitakshara Law. In the 1941 A.I.R. (P.C.) case this fact was recognised. Sir George Rankin says :

> "It has been settled law that property though impartible may be the ancestral property of a joint family and in which case the successor falls to be designated according to the ordinary rule of the Mitakshara."

Later, he goes on to state that "the general law of the Mitakshara regulates all beyond the custom" and that the custom of impartibility does not touch the succession since the right of survivorship is not inconsistent with the custom. Thus the estate retains the character of joint family property and devolves by the general law upon that person who, being in fact and in law joint in respect of the estate, is also senior member in the senior line. He goes on to state :

> "Though the co-ownership of the joint member may be *in a sense* carrying no present right of joint possession, if the question be whether the Hindu undivided family or the present holder is the owner of the estate, the answer of the Hindu law is that it is joint family property."

In that case some house property and some interest on investments were considered separately and His Lordship went on to contrast the income of an impartible estate with that of a joint estate. In the case of a joint estate the income equally with the corpus forms part of the family property, and if the owner mixes his own earnings with the family property his own earnings share the character of joint family property. With regard to the rights to maintenance of junior members in impartible estates, that too was held to be the result of custom and not by reason of any right to joint possession which such junior member has with the senior member. Dealing with an impartible estate His Lordship went on to say that though "it may be excessive to say that there is no coparcenery, it is certain that there is no joint possession." It will thus be seen that it is as a result of custom which has been established and is now recognised and taken judicial notice of, that in the case of impartible estates the property, though joint family property, is governed by the rules of the Mitakshara only in respect of succession, and in respect of all other matters the Hindu Law is superseded by custom. The holder is even entitled to alienate the impartible estate and to take the income thereof and deal with it as he pleases, but on his death the property will devolve according to the law governing family property. Junior members have no right to maintenance except in so far as it has been established by custom and their right to maintenance is not based on any rights to joint possession as in the case of a coparcener, but is merely a right similar to that of a Hindu widow based upon custom. The analogy of a holder of an impartible estate would not, therefore, apply to a sole surviving coparcener. The impartible estate is still joint family property subject to certain rights which are vested in the holder and which have been established by custom, but in the case of a sole surviving coparcener it has been held by judicial authority that he is in the position of an absolute owner subject to the rights of maintenance of the widows of deceased coparceners. I am accordingly of the view that the estate in the hands of a sole surviving coparcener at

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No. 23. Judgment (apart from Answers to Issues), 8th November 1949, *continued.*

the time of his death is his separate property. It has been so stated by Mayne, who in section 481, at page 595, states that the Mitakshara Law of inheritance (not survivorship) applies exclusively to property which was held in absolute severalty by its last owner. Such property will include self-acquisitions of the owner, property inherited by him from his collaterals, property which was allotted to him on partition, and property which was vested in him exclusively as the last surviving coparcener. It is true that Mulla in section 230 (7) qualifies this and states that property held by a sole surviving coparcener is separate property where there is no widow in existence who has power to adopt, but the decisions make it clear that the powers of a sole surviving coparcener over family property are the same as those he has over his self-acquired property even if there is a widow in existence, provided at the relevant time the widow has in point of fact not adopted. Mayne appears to set the law out more correctly.

Even if it is considered that an estate left by a sole surviving coparcener will not come under the definition given to " Ceylon estate " in the Ordinance and does not pass on his death, it seems to me that the property must necessarily be held to be property which under section 6 (*a*) must be " deemed to pass " for the reason that it undoubtedly is property which the deceased at the time of his death was competent to dispose. The relevant time in this case is the date of death of Arunachalam Chettiar (Sr.). The liability to estate duty arises on his death. At that time there was no son in existence. Arunachalan Chettiar (Sr's) powers of disposition, at least with regard to the Ceylon estate which did not include the ancestral house, were unlimited. He could have gifted the property ; he could have alienated it for value ; he could have bequeathed or devised it by will. There was absolutely no restriction on his powers of alienation, and he certainly would come within the definition of the term " competent to dispose " as set out in section 77 (2). It seems to me, therefore, that the Ceylon estate of Arunachalam Chettiar (Sr.) is liable to the payment of estate duty and I so hold.

Even if it is considered that Arunachalam Chettiar (Sr's) property is property in respect of which estate duty is payable, learned Counsel for the Appellants contended that the Estate Duty Department could not include in the Ceylon estate certain Mysore Government promissory notes to the value of 10 lakhs which the executors found lying in Ceylon at the time of the death of Arunachalam Chettiar (Sr.). The Appellants' contention is that these notes have not been established to be negotiable in Ceylon. Learned Counsel for the Appellants conceded that the Ceylon estate would include property found in Ceylon including chattels. In *Attorney-General* v. *Buwens* 4 M. & W. 172 it was held that certain Russian, Danish and Dutch bonds were regarded as mortgage securities within the United Kingdom and had been held and transferred by delivery only and in respect of which the bearers had always been deemed to be legally entitled to the principal moneys were assets which should be administered in the British Courts. In that case the principle was laid down that judgment debts were assets where the judgment is recorded, leases where the land lies, specialty debts where the instruments happen to be, and simple contract debts where the debtor resides at the time of the testator's death, and that bills of exchange and promissory notes would ordinarily

be mere evidence of title; but if an instrument is created of a Chattel nature capable of being transferred by acts done in England and sold for money in England, such an instrument is in effect a saleable chattel and follows the nature of other chattels as to jurisdiction. Reference is then made to a person dying in England, all his property consisting of foreign bills of exchange well known to be subjects of commerce and saleable on the Royal Exchange, and it was considered that in such a case the English Courts would have jurisdiction to administer. The test seems to be whether the instrument could be regarded as a chattel and in the case of foreign bonds whether they were negotiable. Relying on this very same case, Green on Death Duties at page 584 (2nd edition) states that if " Foreign negotiable instruments are in this country and can be sold and effectually transferred by acts done here, they are British assets in their character as saleable chattels." Dymond on Death Duties, at page 90, expresses a similar view. " Any foreign security, if it has the character of negotiability and the title to it can be validly transferred without any act having to be done abroad, by mere delivery, or endorsement and delivery, it is in the nature of a chattel and comes within the jurisdiction of the place where it is situate." Learned Counsel for the Appellants cited several authorities dealing with foreign bonds. These bonds were not in the form of promissory notes or negotiable instruments. They were, in each case, in the form of contracts giving the holders thereof certain rights. The title to some of them were known to be capable of transfer by mere delivery and the Courts held that in these cases it was necessary to prove not only that the bonds were in England but that they had the character of negotiability before they could be regarded as English assets. This is what is referred to in Dicey in Rules 176 and 177, Conflict of Laws (1932 edition). In order to make a document a negotiable instrument, rule 177 states that it should be made so either by Act of Parliament or by the custom of the Mercantile world. Applying the same rules to Ceylon any documents found in Ceylon should be made negotiable either by legislative enactment or by custom for the Ceylon Courts to exercise jurisdiction. In the case of the promissory notes in question, they are not in form similar to any of the bonds referred to in the various cases cited by learned Counsel for the Appellants. They are pure and simple promissory notes within the definition given to a promissory note in the Bills of Exchange Ordinance. The Ordinance itself makes such a document negotiable so that even applying rule 176, the conclusion must necessarily be that the Mysore Government promissory notes are negotiable instruments made so by legislative enactments. Learned Counsel for the Appellants contended however, that the Legislative Enactments relating to Bills of Exchange only apply to documents made in Ceylon, but this is certainly not so. The Ordinance refers to foreign bills and draws a distinction between foreign and inland bills. It also provides for a certain procedure to be adopted in the case of foreign bills as distinct from inland bills in order to make the drawer and endorsers liable thereon. This Mysore Government promissory note complies in form with the requirements of the Bills of Exchange Ordinance. It does contain cages for endorsements and a record of half-yearly payments, but these would not in my view affect the character of the document which under the Bills of Exchange Ordinance would be negotiable instruments in Ceylon. Of course, the endorsements all appearing on the note in their relevant cages, are to pay a certain person designated therein or order. With regard to

In the District Court, Colombo.

No. 23. Judgment (apart from Answers to Issues), 8th November 1949, *continued.*

the proper method of endorsement that must be adopted in the case of Bills and other documents made in one country and endorsed in another, Dicey in " Conflict of Laws," makes it clear that it is the law where the endorsement is made which would govern the question as to whether the endorsement is regular. These Mysore Government notes, therefore, even on the death of Arunachalam Chettiar (Sr.) could have been negotiated in Ceylon by his administrators to whom letters of administration had issued. They are negotiable instruments and it seems, therefore, that following the rule laid down in Green on Death Duties as they can be sold and effectively transferred by acts done in Ceylon they are Ceylon assets in the nature of saleable chattels. I accordingly hold that they form part of the Ceylon estate of Arunachalam Chettiar (Sr.)

Before answering the issues framed in each case, I should like to express my indebtedness to learned Counsel who appeared on either side for their exhaustive analysis of the law relating to the various questions that arose in this case. It is mainly foreign law with which this Court does not normally deal, and by reason thereof these cases have proved to be of more than unusual difficulty.

No. 24. Answers to Issues, 8th November 1949.

No. 24.

ANSWERS TO ISSUES.

I answer the issues in 37/T (Special) as follows :—

(1) and (2) In view of my answers to subsequent issues I have not considered it necessary to discuss this matter.

(3) No.

(4) (A) Yes.

(B) He was not entitled to any definite share but he could on a partition have asked for a definite share.

(C) He had a coparcener's interest in the assets of the joint family, but it was not of such a nature as passed on his death within the meaning of the Ordinance.

(5) Yes.

(6) No.

(7) Does not arise.

(8) Section 73 of Cap. 187 will not apply to Arunachalam Chettiar (Jr's) estate.

(9) (A) Yes.

(B) No. No question of estoppel arises. In one case it is an income tax matter, and in the other, it is an estate duty matter. Vide in this connection 45 N.L.R. 230.

(10) Does not arise in view of my answer to (3).

(11) This has been abandoned by the Appellants and I would accordingly answer it in the negative.

(12) This issue was not pressed by Appellants and I accordingly answer it in the negative.

(13) Liability to pay interest was conceded by the Appellants and I would accordingly answer the issue in the affirmative.

(14) No.

(15) No.

(16) No. I have not discussed this matter, but it seems to me that this Court has powers to order a refund particularly in view of the Supreme Court decision in *K. M. N. S. P. Natchiappa Chettiar's* case decided in this Court in case No. 10/Special.

(17) Yes.

In the course of the proceedings a statement was submitted which was admitted to be correct, showing that the amount actually paid as estate duty amounts to Rs.283,213/24. I would accordingly enter judgment for the Appellants in that sum with legal interest from date of action till date of decree, and thereafter on the aggregate amount of the decree until payment in full. The Administrators will be entitled to the costs of these proceedings.

(Sgd.) N. SINNETAMBY,
Addtl. District Judge.

Judgment delivered in open Court in the presence of Mr. Kadirgamar for Appellant and Mr. Trevor de Saram for the Crown.

(Sgd.) N. SINNETAMBY,
Addtl. District Judge.

8.11.49.

In the Supreme Court.

No. 25.

PETITION OF APPEAL.

No. 25. Petition of Appeal, 17th November 1949.

IN THE SUPREME COURT OF THE ISLAND OF CEYLON.
D.C. Colombo.

Case No. 37/Special.

IN THE MATTER of an APPEAL under the Estate Duty Ordinance.

1. V. RAMASWAMI IYENGAR, and
2. K. R. SUBRAMANIA IYER, Administrators of the Estate in Ceylon of RM. AR. AR. RM. ARUNACHALAM CHETTIAR, deceased of Devakottai, South India . . . . . Appellants

Vs.

THE HONOURABLE THE ATTORNEY-GENERAL OF CEYLON . . Respondent

THE HONOURABLE THE ATTORNEY-GENERAL OF CEYLON . . Respondent–Appellant

Vs.

1. V. RAMASWAMI IYENGAR, And
2. K. R. SUBRAMANIA IYER, Administrators of the Estate in Ceylon of RM. AR. AR. RM. ARUNACHALAM CHETTIAR, deceased of Devakottai, South India . . . . . Appellants–Respondents.

To: The Honourable the Chief Justice and the other Justices of the Honourable the Supreme Court of the Island of Ceylon.

This 16th day of November, 1949.

The petition of appeal of the Attorney-General the Respondent-Appellant above named appearing by Clifford Trevor de Saram, his Proctor states as follows :—

1. The Appellants-Respondents appealed to the District Court of Colombo under section 34 of the Estate Duty Ordinance (Cap. 187) against the assessment of estate duty, under section 22 and the other provisions of the Estate Duty Ordinance No. 8 of 1919, payable in respect of the estate in Ceylon of the deceased Rm. Ar. Ar. Rm. Arunachalam Chettiar.

2. The case went to trial before the Additional District Judge of Colombo on the following issues :—

(i) Are the Appellants the proper persons on whom an assessment in respect of the alleged estate of Rm. Ar. Ar. Rm. Arunachalam (Junior) can in law be made ?

(ii) Are the Appellants liable to pay any estate duty on the said estate ?

(iii) Did the deceased leave an estate in Ceylon liable to estate duty ?

(iv) (*a*) Was the deceased a member of an undivided Hindu Family which carried on business in Ceylon of money lender, rice merchants etc. under the vilasams of Rm. Ar. Ar. Rm. and Ar. Ar. Rm ?

(iv) (*b*) Was the deceased not entitled to any definite share in the assets of the said family ?

(iv) (*c*) Did whatever interest the deceased have in the assets of the said family cease on his death ?

(v) Was all the property that has been assessed as liable to pay estate duty the joint property of a Hindu undivided family of which the deceased was a member ?

(vi) If any portion of issue No. iv or if Issue No. v is answered in favour of the Appellants is estate duty payable on the property that has been assessed ?

(vii) If issue No. vi is answered in favour of the Respondent what is the value of the interest of the deceased in the property that has been assessed ?

(viii) If issue No. v is answered in favour of the Appellants is the alleged estate in question exempt from estate duty by virtue of Section 73 of Chapter 187 ?

(ix) (*a*) Had the Crown for purposes of Income Tax accepted the position of the deceased that all his income in Ceylon was the income from the joint property of an undivided Hindu family of which he was a member ?

(ix) (*b*) If so, is the Crown estopped from denying that the said estate is joint property of an undivided Hindu family ?

(x) Are the items referred to as " the amount in deposit in the Bank of Mysore " and " the debt by the firm of T. N. V. of Negapatam " liable to be included among the assets which are liable to duty ?

(xi) Are the Appellants entitled to claim a reduction of Rs.15,206/– being Income Tax for the year 1934/35 from the total value of the estate assessed as liable to duty ?

(xii) Are the Appellants entitled to a reduction in terms of section 20 sub-sections (3) to (5) of Ordinance No. 1 of 1938 in respect of immovable property which has been assessed as liable to duty ?

(xiii) Are the Appellants liable to pay interest on the assessed duty for any period anterior to the date of assessment ?

(xiv) On the death of the deceased did any property pass within the meaning of the Estate Duty Ordinance of 1919 or 1938 ?

(xv) If issue No. xiv is answered in the negative is any estate duty payable ?

In the Supreme Court.

No. 25. Petition of Appeal, 17th November 1949. *continued.*

(xvi) Has any claim for a refund of estate duty been made to the Commissioner of Estate Duty in terms of section 58 of the Estate Duty Ordinance (Cap. 187) ?

(xvii) (*a*) If the answer to Issue xvi is in the negative is it open to the Court to make an order for a refund in terms of paragraph (*b*) of the prayer in the petition of appeal ?

(xvii) (*b*) In any event is it open to the Court in these proceedings to make an order against the Defendant or the Commissioner of Estate Duty in terms of paragraph (*b*) of the prayer in the petition of appeal ?

(xviii) What amount if any of the duty paid is payable ?

3. After trial the learned Judge answered as follows the following of the above issues :—

Issue (iii)	No.
Issue (iv) (*a*)	Yes.
Issue (iv) (*b*)	He was not entitled to any definite share but he could on partition have asked for a definite share.
Issue (iv) (*c*)	He had a coparcener's interest in the assets of the joint family, but it was not of such a nature as passed on his death within the meaning of the Ordinance.
Issue (v)	Yes.
Issue (vi)	No.
Issue (viii)	Section 73 of Chapter 187 will not apply to Arunachalam Chettiar (Junior's) estate.
Issue (ix) (*a*)	Yes.
Issue (ix) (*b*)	No.
Issues (xi) & (xii)	No.
Issue (xiii)	Yes.
Issues (xiv) & (xv)	No.
Issue (xvi)	No.
Issues (xvii) (*a*) & (xvii) (*b*)	Yes.

And in view of the answers to the above issues he did not specifically answer issues Nos. (i), (ii), (vii) and (x); and by his order dated the 8th November 1949 he entered judgment for the Appellants-Respondents in the sum of Rs.283,213/24 as representing the amount of estate duty paid by the Appellants-Respondents together with legal interest as specified in the said order and cost of the proceedings.

4. The Attorney-General is dissatisfied with the said order and judgment and appeals therefrom on the following grounds and on such other grounds as may be urged at the hearing of the appeal :—

(A) The said order and judgment are contrary to law and the weight of evidence ;

(B) The property assessed for estate duty is property which passed on the death of the deceased Rm. Ar. Ar. Rm. Arunachalam Chettiar under the provisions of the Estate Duty Ordinance No. 8 of 1919 and became liable to the payment of estate duty under the said Ordinance ;

(C) The interest of each of the several coparceners in the property of a Hindu undivided family is property passing on death within the meaning of sections 7 and 8 of the said Ordinance ;

(D) The learned Judge came to a wrong conclusion in holding on the evidence led before him that the deceased's interest in the coparcenary estate of the Hindu undivided family of which he was a member was not a definite share ;

(E) In any event in view of the finding of the learned Judge with regard to Issue No. iv (*b*) namely that the deceased could on partition have asked for a definite share of the coparcenary estate, the learned Judge came to a wrong conclusion in holding that the interest which the deceased had in the said estate was not property which passed on his death under the provisions of the said Ordinance ;

(F) The learned Judge has failed to give due weight to the evidence adduced on behalf of the Crown as regards the nature of the interest of one of several coparceners in the property of a Hindu undivided family ;

(G) It is not open to the Court in these proceedings to make any order save and except an order specifying the amount of estate duty, if any, which is payable.

Wherefore the Respondent-Appellant prays :—

(A) That the said order and judgment of the learned Judge be set aside ;

(B) That order be made maintaining the assessment of estate duty payable as made by the Commissioner of Estate Duty ;

(C) For costs ; and

(D) For such other order as justice may require.

(Sgd.) TREVOR DE SARAM,
Proctor for Respondent-Appellant.

In the Supreme Court.

No. 26.

JUDGMENT.

No. 26. Judgment, 12th October 1953.

S.C. No. 235 M of 1951. D.C. Colombo No. 37 (Special).

IN THE MATTER of an APPEAL under the Estate Duty Ordinance.

THE ATTORNEY-GENERAL OF CEYLON . Appellant

Vs.

V. RAMASWAMI IYENGAR and another, Administrators of the Estate in Ceylon of Rm. Ar. Ar. Rm. ARUNACHALAM CHETTIAR, deceased, of Devakottai, S. India . . . . . Respondents.

Present: GRATIAEN J. AND GUNASEKARA J.

Counsel: Walter Jayawardene C.C. with V. Tennakoon C.C. and G. F. Sethukavalar C.C. for the Appellant.

H. V. Perera Q.C. with S. J. V. Chelvanayagam Q.C., Peri Sunderam and S. Sharvananda for the Respondents.

Argued on: 14th, 15th, 16th, 17th, 18th, 21st, 22nd, 23rd, 24th and 25th September 1953.

Decided on: 12th October 1953.

GRATIAEN, J.

This is an appeal by the Crown against a judgment of the learned District Judge of Colombo rejecting a claim for estate duty in respect of the estate in Ceylon of a person to whom I shall refer for convenience as "Arunachalam Chettiar (jnr.)." He died in India on 9th July 1934, and the assessees are the administrators of the estate of his father "Arunachalam Chettiar (snr.)," whom himself died subsequently in 1938.

The assessees had paid under protest to the Commissioner of Estate Duty a sum of Rs.283,213/24 representing the duty claimed from them in respect of the son's estate, the property being described in the formal notice of assessment as "the deceased's interest in the business of Rm. Ar. Ar. Rm. and Ar. Ar. Rm." which had been carried on in Ceylon. On the basis of the learned Judge's decision on their appeal against the assessment, he entered a decree ordering the Crown to refund this amount, with interest, to the assessees.

The case for the Crown is that the Commissioner's assessment should be restored, subject to the qualification that, upon a correct valuation of the deceased's property which is claimed to have attracted estate duty in Ceylon, the Commissioner's computation must be reduced to Rs.214,085/19 together with interest at 4% from 10th July 1935. Mr. Jayawardene explained that the Commissioner had erroneously taken into account the value of certain assets situated outside this country.

Arunachalam Chettiar (jnr.) predeceased his father at a time when the Estate Duty Ordinance No. 8 of 1919 was in operation. The property

assessed for payment of estate duty on the deceased's estate had, prior to and until the time of his death, been the joint property of a Hindu undivided family of which he and Arunachalam Chettiar (snr.) were the only " coparcenary members " (I have advisedly inserted this phrase within inverted commas for reasons which will emerge in a later part of my judgment). The Crown claims that the deceased had an " interest " in this joint property which " passed " on his death within the meaning of section 7 of the Ordinance or, in the alternative, that an undivided half-share of the joint property must be " deemed to have passed " on his death within the meaning of either section 8 (1) (*a*) or section 8 (1) (*b*).

Section 7 of the Ordinance, which corresponds to section 1 of the Finance Act, 1894, of England, is in the following terms :—

> " In the case of every person dying after the commencement of this Ordinance, there shall, save as hereinafter expressly provided, be levied and paid, upon the value of all property settled or not settled, which passes on the death of such person, a duty called ' estate duty,' at the graduated rate set forth in the schedule to this Ordinance."

Sections 8 (1) (*a*) and 8 (1) (*b*), which corresponds to Sections 2 (1) (*a*) and 2 (1) (*b*) respectively of the English Act, are in the following terms :—

> " Property passing on the death of the deceased shall be deemed to include the property following, that is to say :—
>
> (*a*) Property of which the deceased was at the time of his death competent to dispose.
>
> (*b*) Property in which the deceased or any other person had an interest ceasing on the death of the deceased to the extent to which a benefit accrues or arises by the cesser of such interest, inclusive of property the estate or interest in which has been surrendered, assured, divested or otherwise disposed of, whether for value or not, to or for the benefit of any person entitled to an estate or interest in remainder or reversion in such property unless that surrender, assurance, divesting or disposition was *bona fide* made or effected three years before the death of the deceased, and *bona fide* possession and enjoyment of the property was assumed thereunder immediately upon the surrender, assurance, divesting or disposition, and thenceforward retained to the entire exclusion of the person who had the estate or interest limited to cease as aforesaid, and of any benefit to him by contract or otherwise, but exclusive of property the interest in which of the deceased or other person was only an interest as holder of an office, or recipient of the benefits of a charity, or as a corporation sole."

It is also necessary, in order to understand the scope of the provisions of Section 8 (1) (*a*) and 8 (1) (*b*) respectively, to example sections 2 (2) (*a*) (corresponding to section 22 (2) (*a*) of the Act) and section 17 (6) (corresponding to section 7 (7) of the Act).

> " 2. (2) (*a*) For the purpose of this Ordinance—
> A person shall be deemed competent to dispose of property if he has such an estate or interest therein or such general power as would, if he were *sui juris*, enable him to dispose

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of the property; and the expression 'general power' includes every power or authority enabling the donee or other holder thereof to appoint or dispose of property as he thinks fit, whether exercisable by instrument *inter vivos* or by will, or both, but exclusive of any power exercisable in a fiduciary capacity under a disposition not made by himself."

"17 (6) The value of the benefit accruing or arising from the cesser of an interest ceasing on the death of the deceased shall—

(*a*) If the interest extended to the whole income of the property, be the value of that property; and

(*b*) If the interest extended to less than the whole income of the property, be such proportion of the value of the property as corresponds to the proportion of the income which passes on the cesser of the interest."

The acceptance or rejection of the case for the Crown must ultimately depend upon the true nature of the interest which a "coparcenary member" of a Hindu undivided family enjoys in the joint property so long as the family retains its undivided status. Before this question is answered, however, it will be convenient to examine the circumstances in which property *actually* "passes" on a man's death within the meaning of section 7, or, in the alternative, *notionally* "passes" on his death so as to attract duty either under section 8 (1) (*a*) or section 8 (1) (*b*). Fortunately, there are authoritative rulings of the English Courts to guide us as to the meaning of the corresponding sections of the English Act. In the quotations which follow, I propose to substitute the sections of the local enactment for the corresponding sections which the Judges had interpreted in England :—

(A) "The principle on which the (Ordinance) was founded is that whenever property *changes hands* on death, the State is entitled to step in and take toll as it passes without regard to its destination or to the degree of relationship, if any, that may have subsisted between the deceased and the person or persons succeeding. Section (7) gives effect to that principle . . . Section (8) is merely subsidiary and supplemental. If a case comes within section (7), it cannot also come within section (8). The two sections are mutually exclusive . . . headed 'With regard to *property passing on death*, be it enacted as follows' (Section 8 might with equal propriety be headed 'And with regard to *property not passing on death*, be it enacted as follows') . . . Section (8) does not apply to an interest which passes on the death of the deceased. That is already dealt with in the earlier section" *Per* Lord Macnaghten in *Cowley* v. *C.I.R.* (1899 A.C. 198).

(*b*) "The expression 'passing on death' (in section 7) is evidently used to denote some *actual change in the title or possession of the property as a whole* which takes place at death . . . Section (8), by providing that property passing at the death shall *be deemed to include certain kinds of property which do not in fact pass*, artificially enlarges the ambit of the expression '*property passing on death*'" —*per* Lord Parker.

" By section (7) and (8) a tax is imposed whenever to use very untechnical language, a death occurs, *and somebody in consequence, gets property which he had not before ;* and this tax is imposed on the property according to its value, irrespective of the question of the kind of interest which the *new taker* gets, and of his or her relation to the deceased "—*per* Lord Dunedin, in *A.-G.* v. *Milne* (1914) A.C. 765.

(C) " The scheme of the [Ordinance] seems to be this. First of all, when a man dies, a graduated duty is to be laid upon the property passing on his death (section 7). Secondly, it is to be levied on property which does not pass on his death, but which by his death is in some way *either set free or altered in the course of its destination* (section 8) "—*per* Lord Phillimore in *Neville* v. *I.L.R.* [1924] A.C. 385.

(D) " For the purpose of fulfilling the word ' passes ' in section (7) . . . there must be at the death the property in existence which, upon the death, *continues and passes on to the successor* "—*per* Hanworth, M.R. in *A.-G.* v. *Quixley* [1929] 98 L.J.K.B. 652.

(E) " The [Ordinance] is only concerned with *beneficial interests capable of valuation*, since the object of the [Ordinance] is to levy revenue "—*per* Maugham L.J. in *Scott* v. *I.R.C.* [1935] Ch. 246 affirmed in [1937] A.C. 174.

(F) " In order to test whether it can be said that property ' passed ' on death (section 7), one must *compare the position as regards the person beneficially interested in the property immediately before the death with the position immediately afterwards* "—*per* Lord Russell of Killowen in *Burrel* v. *A.-G.* [1937] A.C. 286. In other words there must be " an alteration in rights as distinguished from the mere possibility of an alteration "—*per* Clauson L.J. in *re Hodson's Settlement* [1939] Ch. 343.

(G) The phrase " competent to dispose " in section 8 (1) (*a*) " is not a phrase of art and taken by itself and quite apart from the definition clause it conveys to my mind the ability to dispose *including, of course, the ability to make a thing your own* . . . The language of the definition clause seems to me beyond doubt to cover the case of a legatee to whom a legacy has been given and who is in a position *either to take it or to transfer it to somebody else or to disclaim it as he thinks fit* "—*per* Lord Greene M.R. in *Re Parsons* [1943] Ch. 12.

(H) With regard to the phrase " cesser of interest " in section 8 (1) (*b*), " the [Ordinance] gives some assistance in determining what is meant by an ' interest.' The section comes into operation if the property does not pass under section (7). So, an interest is *some right* with regard to the property, e.g. an annuity payable out of the income to it, *which can* cease without the property passing. Then, a benefit to someone must accrue or arise by the cesser of the interest "—*per* Lord Reid in *Coatts & Co.* v. *C.I.R.* [1953] 2 W.L.R. 364.

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According to the Crown, the property in respect of which the estate duty had been claimed is his " share " in the Ceylon assets of the joint property of the Hindu undivided family of which he was a " Coparcener " at the time of his death. That " share " it is contended, represents " some real and definite proprietary interest which could be the subject of a legal transfer of property." The argument proceeds on the footing that " the proprietary interest " which the deceased " acquired " by birth into his family (A.I.R. 1931 (P.C.) 118 at 120) was, by operation of the Mithakshara law as it is applied in the Madras Presidency, transmitted on his death to the sole surviving " coparcener " Arunachalam Chettiar (snr.).

If the fundamental proposition can be established, I do not doubt that the deceased's share " changed hands " in the fullest sense of the term upon his death, and therefore " passed " to his father within the meaning of section 7 of the Ordinance.

The assessees do not dispute that if, as alleged by the Crown, there was an actual " passing " of the property from the deceased to his father upon his death, the father would in the first instance have been accountable for estate duty computed on the value of that property. In that event, they, as the administrators of the father's estate, concede their liability to the extent of the reduced amount which the Crown now claims to be due from them, namely, Rs.214,085/19 and interest.

What precisely is the " interest " which a " coparcenary member " enjoys in the joint property of an undivided Hindu family ? The persons concerned were Nattukottai Chettiars, and, being Hindus resident in S. India and domiciled in India, were admittedly governed on questions of personal law by the Mithakshara law as it is administered in the Madras Presidency. The problem therefore introduces an extremely difficult question of foreign law which must nevertheless be regarded as a " question of fact " of which the Courts in Ceylon cannot take judicial notice. Our decision must be based upon the evidence of the qualified experts who have testified in the actual case, and upon the references to textbooks and judicial decisions which are incorporated in their evidence.—*Lazard Bros. & Co.* v. *Midland Bank Ltd.* [1933] A.C. 289.

Two distinguished members of the Madras Bar have given evidence explaining the incidence of the Mithakshara law as it is administered in Madras. Their competency as experts and the honesty of their respective opinions are not challenged. Both agree that the " strict Hindu Law " is to be found in the translations of the ancient texts, and that the modifications to which it has been subjected from time to time in Madras are correctly explained in recognised textbooks, and elucidated (in particular contexts) in decisions of the Privy Council and the superior Courts of India. Nevertheless, these two experts have arrived at ultimate conclusions which are in sharp conflict with one another. In the result we are left in the invidious position of having to " decide as best we can on the conflicting evidence " upon issues with which, I regret to confess, we are completely unfamiliar.—*The Sussex Peerage* case (1884) 11 C. & F. 85 at 116.

It is necessary, before I proceed further, to place on record the agreement arrived at by learned Counsel who appeared before us, and for whose assistance we are very much indebted, that certain additional decisions of the Privy Council and of the Courts of India concerning the Mithakshara law should be treated as having been incorporated in the evidence already

on record. I have examined these authorities and tried to understand them, but do not refer to each of them specifically in the judgment which follows. (A list of the additional authorities has, at our request, been filed of record.)

To describe the deceased as a " coparcener " in relation to the joint property is but to adopt a convenient term in the process of attempting to analyse a legal concept which has no precise equivalent in this country. The term certainly cannot be equated in all respects to the term " coparcener " as it is understood in English law. (A.I.R. 1921 (P.C.) 62 at 68.) Indeed, the problem before us cannot satisfactorily be solved by the mere selection of appropriate words.

Mayne's Hindu Law (2nd Edn.) sec. 264 explains that when one speaks of a Hindu joint family as constituting a " coparcenary," one includes those members of the family who " by virtue of relationship, have the right to enjoy property, to restrain the acts of each other in respect of it, to burden it with their debts, and at their pleasure to enforce a partition. Outside this body there is a fringe of persons possessing inferior rights such as that of maintenance. The whole body of such a family, consisting of males and females, constitutes a sort of corporation, some of the members of which are " coparceners " that is, persons who on partition would be entitled to demand a share, while the others were entitled only to maintenance. So long as the family retains its undivided status, its joint property continues to " devolve " upon the " coparceners " for the time being " by survivorship and not by succession "—Sec. 265.

What, then, are the " interests " of a " coparcener " in the joint property of the undivided family to which he belongs ? Turner L.J. pronouncing the judgment of the Privy Council in (1863) 9 Moore's I.A. 543 at 611, refers to the property as " *the common property of a* united family . . . There is community of interest and unity of possession between all the (' coparceners ') members of the family ; and upon the death of any one of them, the others may well take by survivorship that in which they had during the deceased's lifetime a common interest and a common possession." Similarly, in the judgment pronounced in (1866) 11 Moore's I.A. 75 at 89, Lord Westbury said " According to the true notion of an undivided family in Hindu Law, no individual member of that family, while it remains undivided, can predicate of the joint and undivided property that he, that particular member, has a certain definite share. No individual member of an undivided family could go to the place of the receipt of the rent, and claim to take from the collector or receiver of the rents, a certain definite share. The proceeds must be brought, according to the theory of the undivided family, to the common chest or purse, and then dealt with according to the modes of enjoyment of the members of the undivided family."

I conclude from these observations that, under the strict Mitakshara law, no part of the joint property can be the subject of individual ownership by any members in definite shares unless and until there has been *either* a separation of the family which automatically results in a division of title (and is almost invariably accompanied by an actual partition) *or* at least a division of the title, by mutual agreement, in respect of a particular property which had previously been the subject of joint enjoyment (in which latter event the undivided status of the family, and its collective ownership of the rest of the joint property, is not affected). As a third

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alternative, a division of title may also take place if one " coparcener," after due notice to the others, unequivocally separates himself from the family leaving the rest of the property (i.e. apart from his share) available to the family which retains its undivided status. It is only upon one or other of these events that there arises, in relation to the entirety of the common property or a particular asset (as the case may be) what Lord Westbury described as " a separation in interest and in right." In other words, so long as the undivided status of the family subsists, the interest of a " coparcenary " member in the joint property of the family of which he remains a member " is not individual property at all "—*per* Sir Arthur Wilson pronouncing the judgment of the Board in (1903) I.L.R. 25 All. 407 at p. 416. When property is held in coparcenary by a joint Hindu family, " there are ordinarily three rights vested in the coparceners: (1) the right of joint enjoyment (2) the right to call for partition, and (3) the right to survivorship." ((1881) 4 I.L.R. Mad. 250.) The property is managed by the head of the family, i.e. the *karta* who has, within certain prescribed limits, a wide discretion in the exercise of his general powers of management, and as " the individual enjoyment of the ' coparceners' is ousted by his management," their right of joint enjoyment is virtually limited to the right to receive maintenance from the *karta:* A.I.R. 1918 (P.C.) 81 at 82. They may also, of course, restrain him from acting beyond the scope of his legitimate functions, and in certain matters, e.g. the alienation of joint property except for " family necessity "—the power of alienation must be exercised by all the " coparceners " collectively.

Before the strict Mitakshara law was modified so as to meet the demands of a developing society, any alienation by an individual " coparcener " whether gratuitously or for value, was wholly null and void, and one gathers that this is still the position in some parts of India. In due course, however, the rigid rule of earlier times was relaxed in Madras and in certain other States. The rights of the creditors of individual " coparceners " first received recognition, so that an execution-purchaser of " the right, title and interest of " and individual " coparcener " was held by the Privy Council to have " acquired *a right limited to that of compelling the partition which the debtor might have compelled, had he been so minded, before the alienation took place* "—1877 I.L.R. 3 Cal. 198. It was considered, apparently, that this limited concession could be made in the name of equity and good conscience without unduly interfering with the peculiar status and rights of the undivided family. Two years later, the Privy Council also accepted it as settled law in the Presidency of Madras that one " coparcener " may dispose of ancestral undivided estate for value, *even by private contract or conveyance*, " to the extent of his own share "—(1879) I.L.R. 5 Cal. 148 at 166. Such alienations were inconsistent with the strict theory of a joint and undivided Hindu family, but the judgment pronounced by Sir James Colville points out that the law, as established in Madras and Bombay, had been " one of gradual growth, *founded upon the equity, which a purchaser for value has, to be allowed* to stand in his vendor's shoes and work out his rights by means of a partition."

In Madras, the purchaser's equities are " worked out " by allotting him at the ultimate partition a share (but not necessarily the particular property which he had purported to acquire) out of the *corpus* which his vendor would have received *at the date of the transfer* (*and not merely at*

the date of actual partition)—(1902) I.L.R. 25 Mad. 690. Indeed his claim is not defeated even by the death of his vendor before the partition has taken place—A.I.R. 1952 Mad. 419. It logically followed that the claims of the official assignee of the estate of an insolvent " coparcener " should receive similar recognition—A.I.R. 1925 (P.C.) 18. In these respects, then, it must be conceded that some inroads have been made into the doctrine of survivorship which is an essential feature of the strict joint Hindu family system, because the improvident acts of one " coparcener " might well operate to the detriment of the other members of the larger group. Does it follow that, by some gradual process of erosion to which the strict law of earlier times has been subjected by the impact of equitable doctrines a " coparcener " must now be regarded as himself continuously enjoying a definite vested " share " in the joint property, and that this " share " may be freely alienated (albeit, the Crown concedes, only for value) without first effecting a separation of the united family or at least a division in the title to a particular asset of the joint property ? If this be the correct position, the only relevant distinction which now exists between the position of a Hindu " coparcener " and his counterpart in England would be that the former's rights are transmitted upon his death to his surviving " coparceners," whereas the latter's rights are transmitted to his legal heirs. In either case, there would necessarily be a " passing " of property within the meaning of Section 7 of the Ordinance.

With respect, I find myself unable to accept the proposition (which may appear to receive some support from the language of judicial pronouncement made in other contexts) that the gradual modification of the Mitakshara Law in Madras during the past century has converted the " interests " of " coparceners " in the Hindu joint family into *proprietary rights* such as we may properly concede to " co-owners " governed by the Roman–Dutch Law in this country. Still less do I subscribe to the view that Mithakshara " coparcener " *always* enjoyed in the joint estate a vested proprietary interest or a " share " equivalent to " real property." The judgment of the Privy Council pronounced by Sir George Rankin in A.I.R. 1941 (P.C.) 48 at 50 specially emphasises the fact that " what is loosely described as a ' share ' of a member of a Mitakshara family is really the share *which, if a* partition were to take place today would be a (fractional) share," and this fundamental distinction was reiterated in A.I.R. 1943 (P.C.) 1096 at 199. Indeed, if the position were otherwise, I fail to see why execution-purchasers and purchasers for value must still submit to a mere " working out " of their " equities " in subsequent proceedings for partition ; or why claims to proprietary rights by transferees (before partition) from such purchasers have never been recognised in any part of India. The conflict of opinion expressed by the experts called in the lower Court must now be examined. The assessees' expert, Mr. Bashyam, takes the view that, upon the authorities which he has cited, a Hindu undivided family is, and always was, regarded as " a unit in contradistinction to its individual members, and treated as a sort of corporation owning property just as under other systems of law individuals own property." Ownership, according to this witness, vests in the family as such, and every member is entitled to its enjoyment. Under the Hindu Law there is no such thing as succession of property. The joint members of the family take whatever they take by survivorship ; in fact, *there is no question of taking, they had the right, that is, they had what they had before the death.*

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If this be so, no " passing " of property on the death of Arunachalam Chettiar (Jnr.) within the meaning of section 7 could possibly take place.

As against this view, Mr. Rajah Aiyar, who was the expert called by the Crown, considered that, upon a correct understanding of substantially the same authorities as those relied on by Mr. Bhashyam, " a joint family is not a corporation in the sense that, as a unit, it possesses property apart from the coparceners who constitute the coparcenary . . . The property is *vested in the coparceners as individuals* each having with the others a unity of ownership and unity of possession. In Mitakshara family during the continuance the interests of the coparceners are necessary fluctuating interests, but *despite the fluctuations a coparcener has what might be called a real interest* which persons who are merely entitled to maintenance have not . . . A coparcener has proprietary interests in the property and that *proprietary interest is taken by the other members* upon his death." Upon that view of the matter, there would be an actual " passing " of property under section 7, and the alternative submissions with regard to a notional passing under either section 8 (1) (*a*) or section 8 (1) (*b*) would not arise.

I now approach, with considerable diffidence, the task of arriving at my own decision on this " question of fact " upon which such distinguished professional gentlemen have failed to agree. In favour of Mr. Raja Aiyar's opinion certain phrases contained in some judicial decisions doubtless tend to support the theory of transmissable individual proprietary interest which is vested at all material times in a " coparcener." For instance, the judgment pronounced in A.I.R. 1931 (P.C.) 118 at 120 mentions "the proprietary interest " which each member " acquires by birth," and A.I.R. 1927 (P.C.) 159 reference is made to the "present ownership" of the " coparceners " who are described in a passage as co-owners. Similarly, the High Court of Patna has recently ruled that a Hindu undivided family cannot *as a unit* be adjudicated insolvent because, *inter alia* " the ownership of the family property *belongs to the individual members who* are existing at the time in undivided shares." A.I.R. 1947 Pat. 665.

On the other hand, Mr. Bhashyam's theory of " corporate " ownership in relation to the joint property (as contrasted with " individual " ownership) is by no means novel. Apart from the passage in Mayne's Hindu Law sec. 265 to which I have previously referred, Bashyam Ayyengar J. in (1901) 25 I.L.R. Mad. 144 at 154 described the joint property of an undivided Hindu family as being " owned by the family *as a corporate body.*" In A.I.R. 1941 (P.C.) 120 it was decided that, even in the *impartible* estate of a joint Hindu family, the head of the family (whose individual powers so greatly exceed those of the *karta* of a partible estate that they even include an unfettered power of disposition while the family is undivided in status) could not, for income tax purposes, be regarded as the " owner " of the property ; he was in truth the " owner " of the income arising from it, but the property was nevertheless " *the property of the joint family.*" Similarly, in A.I.R. 1937 (P.C.) 36 at 38 the judgment of the Board, also pronounced by Sir George Rankin, reminds us that, in certain circumstances property belongs to the family as distinct from the individual " in the eye of the Hindu law." In A.I.R. 1948 (P.C.) 9 reference is made to " the view of some eminent Hindu lawyers that a joint Hindu family, in its true nature

a corporation capable of a continuous existence in spite of fluctuating changes in its constitution." It was considered sufficient, however, in that particular case to decide that, for the purpose of entering into a partnership transaction, the family may properly be regarded as "*an entity capable of being represented by its manager*" i.e. the *Karta*. (The Indian Courts have subsequently decided that such a transaction could only take place through the agency of the *karta*, because "a joint Hindu family, though at times spoken of by Judges as a corporation, cannot be taken as a legal person in *the strict sense of the term* so as to constitute a partnership between an individual on the one hand and a real corporation on the other" (1952) 21 Indian Tax Reports 474.)

I venture to take the view that these apparently conflicting theories are not incapable of reconciliation. An undivided family obviously does not possess all the attributes of a *juristic person* capable as such of suing and being sued in the Courts, of being adjudicated insolvent, or of entering into commercial transactions except through the medium of an agent who is a legal *persona* in the strict sense of the term. To this extent therefore, the doctrine of "semi-personality" has not received full recognition in the Courts. Nevertheless, "Many of the advantages of corporate life" may be enjoyed today by an unincorporated association of persons "capable of a continuous existence in spite of fluctuating changes in its constitution" without the gift of legal personality by the State.—Paton: Jurisprudence (2nd Edn.) p. 341. This can be achieved by various means, for example where a "semi-personality" operates through the agency of a legal *persona*, or where "a hedge of trustees" is established to afford "a convenient protection behind which the corporate life may flourish"—Paton: Jurisprudence (2nd Edn.) p. 342. In the latter case, "the property (of the quasi-corporation) is deemed by the law to be vested, not in its true owners, but in one or more determinate persons of full capacity, who hold it in safe custody on behalf of these . . . multitudinous persons *to whom it in truth belongs*. The law is thus enabled to assimilate collective ownership to the simpler form of individual ownership" Salmond: Jurisprudence (10th Edn.) p. 337.

This method of approach suggests to my mind a logical solution which, without "laying an axe at the roots" of the joint family system of Mitakshara law, preserves that system in its substantial integrity without in any way ignoring the modifications introduced from time to time for the protection of *bona fide* purchasers for value and others in that category. The following passage, based on Mitakshara 1 P.l. 28 to 30, appears in one of the judgments pronounced in A.I.R. 1952 Mad. 419 F.B. at p. 439, and lends support to this idea:

> "The family property is held in trust for the members then living and thereafter to be born."

Applying this line of reasoning, I would say that, so long as the status of a Hindu undivided family remains intact, and *so long as there has been no division of title or separation of interests in respect of the whole or any part of the joint property*, the true relationship is as follows:—

1. The "co-parceners" for the time being collectively hold the joint property for the benefit of all the members then living (including themselves) and of members thereafter to be born;

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to this extent, the undivided family, in spite of fluctuating changes in its constitution, may properly be regarded as corporate " entity " which is " the true owner " of the property to the exclusion of its individual members ;

2. That the male " co-parceners " for the time being constitute at any particular point of time a " hedge of trustees " who, while enjoying community of interest and unity of possession in the property hold it collectively—indeed, as a sub-division of the larger group—for the benefit of the entire family ; the powers attaching to the management of the property, and the obligations towards the individual members who constitute the undivided family are centred in the *karta* who is the head of the family for the time being ; but in certain respects the power of alienation can only be exercised by all " co-parceners " acting collectively ;

3. that upon the death of any male " co-parcener " his " interest " is automatically extinguished, and the property *continues* to be held by the surviving " co-parceners " for the benefit of the undivided family ; in other words, the interest which they enjoy upon his death is in truth a " pre-existing interest " no more and no less (see A.I.R. 1941 (P.C.) 72 at 78).

The position as set out above represents, in my opinion, the true distinction between the property rights of the family unit on the one hand and of its individual " co-parcenary " members on the other, so long as the family remains undivided in status. This distinction is preserved until there has occurred either a complete or partial " division of title or separation of interests " between the " co-parcenary " members, in one or other of the modes recognised by the Mitakshara law. The " co-parceners " are no doubt invested with power to remove the " hedge " which protects the property rights of the so-called " corporation ". It is also possible, as an alternative, to pass some part of the property over the protecting " hedge ". But, generally speaking, the concept of individual ownership of joint property is ruled out while the corporate existence of the family remains intact.

In this view of the matter, it follows that, during the lifetime of Arunachalam Chettiar (Jr.) there had been neither a complete nor a partial division of title or separation of interests in the joint property of the undivided family of which he was at all material times a " co-parcenary " member. Upon his death, therefore, no effective change occurred in the title or possession of the joint property belonging to the undivided family. His father who survived him did not, in consequence of that event, receive any " property " which he did not have before.

In the result, section 7 does not apply.

The circumstances that, upon the death of Arunachalam (Jr.) his father became the *sole surviving* " co-parcener " does not in my opinion, introduce an alteration of property rights. For, although the *powers* which a sole surviving " co-parcener " over the joint property became, according to Mitakshara law, virtually unfettered except by moral considerations, nevertheless the death of Arunachalam (Jr.) did not operate either to disrupt the undivided family or to bring about an extinction of the beneficial ownership of that family in the property.

The surviving " co-parcener " still continued, as he had previously done, to hold the property in fact and in law for the benefit of the family. After we reserved our judgment on this appeal, the consequences of a man becoming the " sole surviving co-parcener " of what was previously " the joint property of a Hindu undivided family " was more fully discussed during the argument in the connected appeal (S.C. 236 of 1951 D.C. Colombo 38 Special). I see no reason to alter the views which I have ventured to express in my present judgment.

A question was raised in this Court for the first time as to whether, in regard to the *immovable property* which forms part of the estate sought to be taxed, the *lex situs* brings into operation section 7 of the Wills Ordinance (Cap. 49) and/or section 18 of the Partition Ordinance (Cap. 56). These sections were introduced for the purpose of preventing the share of a *co-owner*, in the strict sense of the term from devolving by survivorship instead of by succession on his death. The intention, apparently, was to exclude the incidence of " joint tenancy " under the English law, but these sections have no relevancy to the " devolution " of a " co-parcener's " interests in any part of the joint property of a Hindu undivided family.

I have so far concluded that an actual " passing " of property did not take place within the meaning of Section 7. I therefore proceed to consider whether there was at any rate a *notional* " passing " under section 8 (1) (*a*) or section 8 (1) (*b*). The latter section can more conveniently be disposed of first. Was there a " cesser " of the deceased's (or anyone else's) " interest " in the property upon his death, and if so, did a " benefit accrue or arise " to his father by reason of that cesser ? The precise nature of an " interest," whose cesser attracts estate duty if the second condition laid down by section 8 (1) (*b*) is also fulfilled, can only be understood by an examination of the connected section 17 (6). The deceased or someone else must have enjoyed in respect of the property a *beneficial interest capable of valuation in relation to the income which the property yields.*

In the present case, the deceased did not enjoy during his lifetime an interest which " extended " either to the whole or to a fractional part of the income. A.I.R. 1941 (P.C.) 120 at 126. He merely had a right to be maintained by the *karta* out of the common fund to an extent which was at the *karta's* absolute discretion ; in addition he could, if excluded entirely from the benefits of joint enjoyment, have taken appropriate proceedings against the *karta* to ensure a recognition of his future maintainance rights and also to obtain compensation for his earlier exclusion. I find it impossible to conceive of a basis of valuation which, in relation to such an " interest," would conform to the scheme prescribed by section 17 (6). Nor do I think that, upon a cesser of that so-called " interest," a " benefit " of any value can be said to have accrued to the surviving " co-parcener " when the deceased's " interest " lapsed. Section 8 (1) (*b*) is therefore inapplicable to the present case. There remains the alternative submission which was based on section 8 (1) (*a*). The arguments presented on behalf of the Crown, if I correctly understood them, were to the following effect :

(A) that (having regard to the recognition now given to the rights of purchasers for value) a " co-parcener " is at any point of

In the Supreme Court.

No. 26. Judgment, 12th October 1953, *continued.*

time " competent to dispose " of a fractional share of the joint property *for value*, the appropriate fraction being ascertained by reference to the total number of " co-parceners " then alive ;

(B) that, in the alternative, a " co-parcener " may at any time from an unilateral intention to separate himself from the undivided family and to communicate that decision to the other " co-parcener " ; he would thereupon become vested with a " definite and certain share " of which he would be " competent to dispose " in any way he pleased.

I reject the first of these submissions. An alienee for value does not become vested immediately with a definite share *in specie* of any part of the joint property. No share is " carved out," so to speak, of the joint property until the Court has subsequently " worked out the equities " between the purchaser and the non-alienating " co-parceners " in appropriate partition proceedings. Before that occurs, it cannot be said that there is actually in existence any " property " of which a " co-parcener " is " competent to dispose " within the meaning of section 8 (1) (*a*). I have assumed in this connection, although I do not hold, that the section is satisfied if a man can " dispose of " specific property only for valuable consideration but not in any other way.

With regard to the alternative submission, I concede that, upon the communication of his unilateral decision to separate himself in status and title from the undivided family, a " co-parcener " immediately becomes " competent to dispose " of the definite share which he thus acquires for the first time. A.I.R. 1916 (P.C.) 104. But no such " competence " exists until the necessary disposing qualification (i.e., by the formation of an intention followed by its communication to the others) has first been attained. In the facts of the present case, Arunachalam Chettiar (Jr.) had, until he died, formed no intention to separate himself from the family ; still less had he communicated such an intention to his father ; in the circumstances, he enjoyed at best an option (which he could have exercised) of attaining competency to dispose of a fractional share of the property, and that option, being personal, died with him. A man is not " competent " to do something until he has first placed himself in a position to do it effectively.

Mr. Jayawardana relied strongly on the decision of Luxmoore J. in *Re Penrose* [1933] Ch. 793, where a person was held to be " competent to dispose " of property within the meaning of section 5 (2) of the Finance Act, 1894, of England, if he can achieve that result by taking " *two steps instead of one* " namely, by an appointment to himself, followed by a subsequent gift by way of disposition. The necessity of visualising such a succession of acts by a person in order to qualify himself for " competence to dispose " of property no longer seems to arise in England, because the Court of Appeal has since decided that " the ability to make a thing your own " is by itself sufficient to satisfy the requirements of section 5 (2) of the Act—*In re Parsons* [1943] Ch. 12.

The ruling in *Penrose's* case (*supra*) cannot in any event assist the Crown in the present case. For the purposes of section 8 (1) (*a*), " competence to dispose " must exist at *a single moment of time*, namely, the moment immediately preceding a man's death. Section 5 (2) of the Finance Act 1894 of England, on the other hand, contemplates a *period*

of time within which, no doubt, there is scope for a number of separate and distinct acts to take place in a given order of succession. Section 8 (1) (*a*), by way of contrast, does not apply unless the formation of an intention to separate and the communication of that intention to others, have both *preceded* the effective " disposition " of property of a " co-parcener." I do not think that either the words of the section or the spirit of the Ordinance require a Court, for the purpose of sanctioning the imposition of estate duty, to contemplate *a notional synchronisation of a succession of distinct events.* The *Penrose* case must not be regarded as deciding that the deceased person concerned was competent to dispose of the fund " *at the time of his death.*" Moreover, I do not find myself compelled to place a construction on section 8 (1) (*a*) which would have the effect of attracting estate duty where a deceased person did not in fact dispose of any property before he died, and where, in consequence, his interest in that property lapsed upon his death without consequential benefit accruing to anyone who survived him. The Ordinance was not enacted to impose a penalty for the non-disposition of rights which become extinguished on death.

Finally, the present assessee could not be made accountable in the present case for any estate duty levied under section 8 (1) (*a*). The original machinery for the assessment and collection of duty payable under the Ordinance had, before any assessment was made, been superseded by the machinery laid down in the later Estate Duty Ordinance (Cap. 187—see sec. 79). Under section 24 of the new Ordinance, the " executor " of a deceased estate is the person primarily accountable for duty levied on property which he was "competent to dispose" at his death. The assessees in this case are the administrators only of the deceased father's estate, and were not " executors " of the deceased because, even if the definition of that term in section 77 were called in aid by the Crown, neither they nor Arunachalam Chettiar (Sr.) had " taken possession or intermeddled with " the *deceased's property* after his death. Such " interests " as the deceased enjoyed in the joint property during his lifetime were automatically extinguished when he died. A man cannot intermeddle with something that does not exist.

In the result, I would hold that the Crown's claim to estate duty fails, because there was neither an actual " passing " of property under section 7 nor a notional " passing " of property under section 8 upon the death of Arunachalam Chettiar (Jr.). The appeal must accordingly be dismissed with costs.

It is no longer necessary to deal with the assessees's contention (which was submitted in appeal before us with very little enthusiasm) that section 73 of the new Ordinance operates retrospectively so as to exempt the joint property of a Hindu undivided family even in the case of " co-parceners " dying before 1st April 1937. Section 73 of the new Ordinance does not appear to me to have any relevancy either way to the consideration of this appeal.

(Sgd.) E. F. N. GRATIAEN,
Puisne Justice.

Gunasekara, J.

I agree.

(Sgd.) E. H. T. GUNASEKARA,
Puisne Justice.

In the Supreme Court.

No. 27.
Decree, 20th October 1953.

No. 27.

DECREE.

ELIZABETH THE SECOND, Queen of Ceylon and of Her other Realms and Territories, Head of the Commonwealth.

IN THE SUPREME COURT OF THE ISLAND OF CEYLON.

The Honourable the ATTORNEY-GENERAL OF CEYLON . . . . . Respondent-Appellant

Against

1. V. RAMASWAMI IYENGAR and
2. K. R. SUBRAMANIA IYER, Administrators of the estate in Ceylon of RM. AR. AR. RM. ARUNACHALAM CHETTIAR, deceased of Devakottai South India . . . . . Appellants-Respondents.

Action No. 37/Special.

District Court of Colombo.

This cause coming on for hearing and determination on the 14th, 15th, 16th, 17th, 18th, 21st, 22nd, 23rd, 24th & 25th September and 12th October 1953 and on this day, upon an appeal preferred by the Respondent-Appellant before the Hon. Mr. E. F. N. Gratiaen, K.C., Puisne Justice and the Hon. Mr. E. H. T. Gunasekara, Puisne Justice of this Court in the presence of Counsel for the Appellant and Respondents.

It is considered and adjudged that this appeal be and the same is hereby dismissed with costs.

Witness the Hon. Sir Alan Edward Percival Rose, Kt., Q.C., Chief Justice, at Colombo the 20th day of October in the year of our Lord One thousand Nine hundred and Fifty three and of Our Reign the Second.

(Sgd.) W. G. WOUTERSZ,
Dy. Registrar, S.C.

(Seal.)

In the Supreme Court.

No. 28.
Application for Conditional Leave to Appeal, 19th October 1953.

No. 28.

APPLICATION for Conditional Leave to Appeal to the Privy Council.

D.C. Colombo Case No. 37/T (Special) S.C. No. 235 (F) of 1951

IN THE SUPREME COURT OF THE ISLAND OF CEYLON.

IN THE MATTER of an APPLICATION for Conditional Leave to Appeal under the Appeals (Privy Council) Ordinance Cap. 85.

THE HONOURABLE THE ATTORNEY-GENERAL OF CEYLON . . . . . Appellant

Vs.

1. V. RAMASWAMI IYENGAR, and
2. K. R. SUBRAMANIA IYER, Administrators of the Estate in Ceylon of RM. AR. AR. RM. ARUNACHALAM CHETTIAR deceased of Devakottai, South India . . . . . Respondents.

THE HONOURABLE THE ATTORNEY-GENERAL OF CEYLON . . . . Appellant-Appellant

Vs.

1. V. RAMASWAMI IYENGAR and
2. K. R. SUBRAMANIA IYER, Administrators of the Estate in Ceylon of RM. AR. AR. RM. ARUNACHALAM CHETTIAR deceased of Devakottai, South India . . . . Respondents-Respondents.

To: The Honourable the Chief Justice and the other Judges of the Supreme Court of the Island of Ceylon.

This 19th day of October 1953.

The humble petition of the Attorney-General, the Appellant-Appellant above named, appearing by Behram Kaikhushroo Billimoria, his Proctor, states as follows :—

1. That feeling aggrieved by the judgment and decree of this Honourable Court pronounced on the 12th day of October 1953, the above-named Appellant-Appellant is desirous of appealing to Her Majesty the Queen in Her Privy Council.

2. That the said judgment is a final judgment and the matter in dispute on the appeal is of the value of over Rs.5,000/–.

Wherefore the Appellant-Appellant prays for Conditional leave to Appeal against the said judgment of this Court dated the 12th day of October 1953 to Her Majesty the Queen in Her Privy Council.

(Sgd.) B. K. BILLIMORIA,
Proctor for Appellant-Appellant.

In the Supreme Court.

No. 29. Judgment granting Conditional Leave to Appeal, 18th February 1954.

No. 29.

JUDGMENT granting Conditional Leave to Appeal to the Privy Council.

Applications Nos. 483 and 484 of 1954.

IN THE MATTER of APPLICATION for Conditional Leave to Appeal under the Appeals (Privy Council) Ordinance (Cap. 85) in S.C. Nos. 235 and 236 of 1951.

THE ATTORNEY-GENERAL OF CEYLON
Appellant-Appellant

Vs.

V. RAMASWAMI IYENGAR and Another, Administrators of the Estate in Ceylon of RM. AR. AR. RM. ARUNACHALAM CHETTIAR, Deceased, of Devakottai, S. India . . . Respondents-Respondents. 10

Present : GRATIAEN, A.C.J. and GUNASEKARA, J.

Counsel : W. Jayawardena, C.C. with G. F. Sethukavalar C.C. for the Attorney-General.

H. V. Perera, Q.C. with S. J. V. Chelvanayagam Q.C. and S. Sharvananda for the Respondents.

Argued on : 12th February, 1954.

Decided on : 18th February, 1954. 20

GRATIAEN, A.C.J.

The Crown has applied for leave to appeal to Her Majesty in Council against two judgments of this Court pronounced on 12th October, 1954. In one case, the judgment affirmed a decree of the District Court of Colombo (passed under section 40 of the Estate Duty Ordinance) directing the Crown to refund to the Respondents a sum of Rs.214,085/19 (together with interest) representing an amount wrongly levied by the revenue authorities upon an assessment of estate duty. In the other case, the judgment set aside a decree in favour of the Crown in connected proceedings and substituted a decree directing the Crown to refund to the 30 Respondents (together with interest) a sum of Rs.700,402/65.

The applications were resisted on the ground that, in the Respondents' submission, neither judgment had been pronounced in " a civil suit or action " within the meaning of section 3 of the Appeals (Privy Council) Ordinance (Cap. 85). In my opinion there is no substance in this objection.

We were referred to earlier rulings of this Court to the effect that a judgment in Insolvency proceedings could not be regarded, for the purposes of an application for leave to appeal to the Privy Council, as having been pronounced in " a civil suit or action "—*In re Ledward* (1859) 3 Lor. 234, 40 *In re Keppel Jones* (1877) Ram. 379, *In re de Vos* (1899) 3 Br. 331, and *Sockalingam Chetty* v. *Manikam* (1930) 32 N.L.R. 65. In the most recent

of these authorities, Drieberg, J., pointed out that *Ledward's* case (*supra*) was a binding decision of a Collective Court. I respectfully agree that, *as far as Insolvency proceedings are concerned*, it is not permissible to question the correctness of the ruling in *Ledward's* case. On the other hand, the very brief judgment of the Collective Court makes it impossible to ascertain precisely the grounds of the decision. It would therefore be unsafe to attribute to it a *ratio decidendi* capable of application or legitimate extension to judgments of the Courts exercising jurisdiction under other statutory enactments.

There is no right of appeal to the Privy Council from a judgment of this Court on a case stated under the Housing and Town Improvement Ordinance—*Soertsz* v. *Colombo Municipal Council* (1930) 32 N.L.R. 62, *Sangarapillai* v. *Chairman, C. M. C.* (1930) 32 N.L.R. 92. Similarly, with regard to a judgment on a case stated under the Income Tax Ordinance (i.e. before that Ordinance was recently amended to meet the difficulty): *Rm. Ar. Ar. Rm.* v. *The Commissioner of Income Tax* (1935) 37 N.L.R. 447. The principle is clear enough. When a Court exercises jurisdiction which is " merely consultative in character," or makes a determination in the nature of an " award " in proceedings " which from beginning to end were ostensibly and actually arbitration proceedings," its decision cannot be equated to a judgment pronounced in " a civil suit or action "—*Rangoon Botatoung Co.* v. *Collector, Rangoon* (1922) L.R. 39 T.A. 197, *Secretary of State for India* v. *Chelikani Rama Rao* (1916) L.R. 43 I.A. 192 at 198, *Tata Iron Steel Co.* v. *Chief Revenue Authority, Bombay* (1923) L.R. 50 I.A. 212.

The functions exercised by the Courts under the Estate Duty Ordinance must now be examined. An assessee " appeals " from the Commissioner's Determination to the appropriate District Court, and his appeal " shall be deemed to be and may be proceeded with *as an action between the Appellant as Plaintiff and the Crown as Defendant* " (Section 40). The District Judge's decision is reached after trial on the issues which properly arise, and a decree is duly passed which may *inter alia* direct one party or the other to make a payment in accordance with the determination of the correct amount of duty payable under the Ordinance. A further appeal lies to this Court against " any decree or order " so made (section 43), and this Court is then empowered to enter a money decree in conformity with its decision on the appeal. At every stage, therefore, the characteristic features of a litigation in regular civil proceedings before a Court of Record we prominently observed: the prayer for relief against an alleged wrong; the *litis contestatio*; the framing of issues in order to clarify the nature of the dispute; the hearing of evidence; and then the Court's determination followed by the passing of an effective decree granting or refusing, wholly or in part, the relief asked for; eventually, the hearing of an appeal (if one is preferred by the party aggrieved) to a superior Court of record which may affirm, vary or modify the original decree. If the final judgment pronounced on such an appeal is not a judgment in " a civil suit or action " within the meaning of the Appeals (Privy Council) Ordinance, I really do not know what contrary description it can accurately be said to attract.

In the past, the statutory right of appeal to the Privy Council in estate duty cases (the other requirements being also satisfied) has never

In the Supreme Court.

No. 29. Judgment granting Conditional Leave to Appeal, 18th February 1954, *continued.*

been questioned. I concede that " mere assumptions *sub silentio* are not to be taken as authoritative " and should not followed if they are manifestly wrong; Allen: Law in the Making (5th Ed.) p. 312. But in this context the " assumption " is not based on error, and is justified by a ruling of the Judicial Committee of the Privy Council in *Commissioner of Stamps, Straits Settlements* v. *Oei Tjong Suang* (1933) A.C. 378 at 399 which is precisely in point. It was there held that a decision of the Court of Appeal of the Straits Settlements exercising jurisdiction in an estate duty case (under a colonial enactment based, like our local Ordinance, on the Finance Act, 1894 of England) was " *not a mere award of an administrative character but a judgment or determination made by the Court in a civil cause* " so that an appeal lay as of right to the Privy Council under the Colonial Charter.

I would therefore allow the applications of the Crown subject to the usual conditions which apply to cases in which the Crown is petitioner. The Respondents must pay the costs of the argument in each application.

(Sgd.) E. F. N. GRATIAEN,
Acting Chief Justice.

Gunasekera, J.

I agree.

(Sgd.) E. H. T. GUNASEKARA,
Puisne Justice.

In the Supreme Court.

No. 30.
Decree granting Conditional Leave to Appeal, 18th February 1954.

No. 30.

DECREE granting Conditional Leave to Appeal to the Privy Council.

S.C. Application No. 484.

ELIZABETH THE SECOND, Queen of Ceylon and of Her other Realms and Territories, Head of the Commonwealth.

IN THE SUPREME COURT OF THE ISLAND OF CEYLON.

The Honourable THE ATTORNEY-GENERAL OF CEYLON . . . Appellant-Appellant

against

1. V. RAMASWAMI IYENGAR, and
2. K. R. SUBRAMANIA IYER, Administrators of the estate in Ceylon of RM. AR. AR. RM. ARUNACHALAM CHETTIAR deceased of Devakottai, South India

Respondents-Respondents.

Action No. 37/T (Special) (S.C. 235) (Final).

District Court of Colombo.

IN THE MATTER of an Application dated 19th October, 1953 for Conditional Leave to Appeal to Her Majesty the Queen in Council by Appellant-Appellant above-named against the decree dated 12th October, 1953.

This cause coming on for hearing and determination on the 18th day of February, 1954, before the Hon. Mr. E. F. N. Gratiaen, Q.C. Acting Chief Justice and the Hon. Mr. E. H. T. Gunasekara, Puisne Justice of this Court, in the presence of Counsel for the Appellant and Respondents.

It is considered and adjudged that this application be and the same is hereby allowed upon the condition that the applicant do within one month from this date :—

Deposit in terms of provisions of section 8 (a) of the Appellate Procedure (Privy Council) Order with Registrar a sum of Rs.300/– in respect of fees mentioned in Section 4 (b) and (c) of Ordinance No. 31 of 1909 (Chapter 85).

Provided that the applicant may apply in writing to the said Registrar stating whether he intends to print the record or any part thereof in Ceylon, for an estimate of such amounts and fees and thereafter deposit the estimated sum with the said Registrar.

Witness the Hon. Mr. E. F. N. Gratiaen, Q.C., Acting Chief Justice of Colombo, the 25th day of February in the year of our Lord One thousand Nine hundred and fifty-four and of Our Reign the Third.

(Sgd.) W. G. WOUTERSZ,
Dy. Registrar, S.C.

(Seal)

In the Supreme Court.

No. 31. Application for Final Leave to Appeal, 5th March 1954.

No. 31.

APPLICATION for Final Leave to Appeal to the Privy Council.

IN THE HONOURABLE THE SUPREME COURT OF THE ISLAND OF CEYLON.

IN THE MATTER of an APPLICATION for Final Leave to Appeal under the Appeals (Privy Council) Ordinance Cap. 85.

THE HONOURABLE THE ATTORNEY-GENERAL OF CEYLON . . . . . Appellant-Appellant

Vs.

1. V. RAMASWAMI IYENGAR, and
2. K. R. SUBRAMANIA IYER, Administrators of the Estate in Ceylon of RM. AR. AR. RM. ARUNACHALAM CHETTIAR, deceased of Devakottai, South India . . . . Respondents-Respondents.

D. C. Colombo Case
No. 37/T (Special)
S.C. No. 235 (F) of
1951
S.C. Application
No. 484.

To : The Honourable the Chief Justice and the other Justices of the Supreme Court of the Island of Ceylon.

This 5th day of March 1954.

The HUMBLE PETITION of the Appellant-Appellant above named appearing by Behram Kaikhushroo Billimoria, his Proctor, sheweth as follows :—

1. That the Appellant-Appellant on the 18th day of February 1954 obtained conditional leave from this Honourable Court to appeal to Her Majesty the Queen in Her Privy Council against the judgment of this Court pronounced on the 12th day of October 1953.

2. That the Appellant-Appellant has in compliance with the condition on which such leave was granted deposited on the 1st day of March 1954 in terms of the provisions of Section 8 (*a*) of the Appellate Procedure (Privy Council) Order with the Registrar of this Court a sum of Rupees three hundred (Rs.300/–) in respect of fees mentioned in Section 4 (2) (*b*) and (*c*) of Ordinance 31 of 1909 (Cap. 85).

Wherefore the Appellant-Appellant prays that he be granted final leave to appeal against the said judgment of this Court dated October 12th 1953 to Her Majesty the Queen in Her Privy Council.

(Sgd.) B. K. BILLIMORIA,
Proctor for Appellant-Appellant.

In the Supreme Court.

No. 32.
Decree granting Final Leave to Appeal, 28th May 1954.

No. 32.

DECREE granting Final Leave to Appeal to the Privy Council.

S.C. Application No. 115.

ELIZABETH THE SECOND, Queen of Ceylon and of Her other Realms and Territories, Head of the Commonwealth.

IN THE SUPREME COURT OF THE ISLAND OF CEYLON.

THE HONOURABLE THE ATTORNEY-GENERAL OF CEYLON . . . . Appellant-Appellant

against

1. V. RAMASWAMI IYENGAR, and
2. K. R. SUBRAMANIA IYER, Administrators of the estate of Ceylon of RM. AR. AR. RM. ARUNACHALAM CHETTIAR deceased of Devakottai, South India . . . . Respondents-Respondents.

Action No. 37/T (Special) S.C. 235 (Final).

District Court of Colombo.

IN THE MATTER of an APPLICATION by the Appellant above named dated 8th March, 1954 for Final Leave to Appeal to Her Majesty the Queen in Council against the decree of this Court dated 12th October, 1953. This cause coming on for hearing and determination on the 28th day of May, 1954 before the Hon. Sir Alan Edward Percival Rose, Kt., Q.C., Chief Justice and the Hon. Mr. M. C. Sansoni, Puisne Justice of this Court, in the presence of Counsel for the Applicant.

The applicant has complied with the conditions imposed on him by the Order of this Court dated 18th February, 1954, granting Conditional Leave to Appeal.

It is considered and adjudged that the Applicant's application for Final Leave to Appeal to Her Majesty the Queen in Council be and the same is hereby allowed.

Witness the Hon. Sir Alan Edward Percival Rose, Kt., Q.C., Chief Justice at Colombo, the 4th day of June in the year of Our Lord One thousand Nine hundred and Fifty-four and of Our Reign the Third.

(Seal)

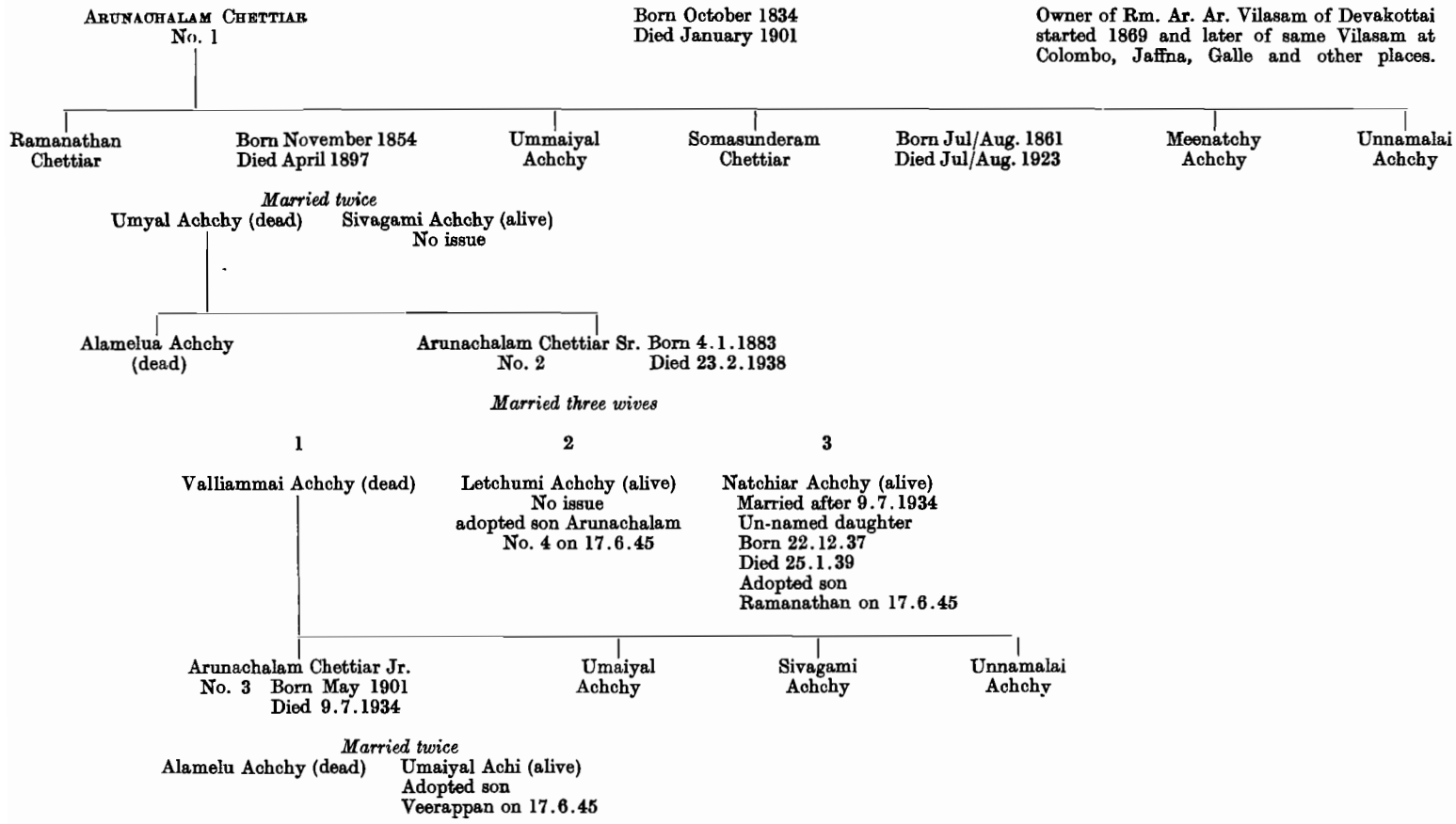
(Sgd.) W. G. WOUTERSZ,
Dy. Registrar, S.C.

EXHIBITS.

A1

PEDIGREE.

GENEALOGICAL TABLE.



Exhibits.

A7.

Mysore Government 5% Loan 1955, 1st November 1930.

[Sic]

A7

MYSORE GOVERNMENT 5% LOAN 1955 for Rs.1,000.

GOVERNMENT OF HIS HIGHNESS THE MAHARAJA OF MYSORE.

THE 5 PER CENT. LOAN 1955.
(Free of Income Tax.)

No. 001321. Rs.1,000.

Dated Bangalore, the 1st November *1950*.

THE GOVERNMENT OF HIS HIGHNESS THE MAHARAJA OF MYSORE hereby promise to pay to

Comptroller, Mysore Government

or order at the Government Treasuries of the Mysore State, on the 1st November, 1955 the sum of

Rupees one thousand only

and to pay to the said Treasuries interest on such sum from 1st November 1930 to 31st October 1955 at the rate of 5 per cent. per annum such interest to be paid by equal half yearly payments on the 1st May and the . . .

All endorsements upon this note must be made clearly and distinctly within the plate mark.

Cross endorsements are strictly prohibited.

Vernacular endorsements must be literally translated into English immediately below the endorsements.

Record of Payment of half yearly Interest of Rs.25–0–0 with date and place of payment and disburser's initials for the half year ending

	30th April	31st October
1931	1. Paid	2. Paid
1932	3. Paid	4. Paid
1933	5. Paid	6. Paid
1934	7. Paid	8. Paid
1935	9. Paid	10. Paid
1936	11. 59.36 Madras	12. Madras
1937	13. Madras	14. 56.37 Madras
1938	15. 88.42	16. 88.42 Madras
1939	17. 88.42 Madras	18. 88.42 Madras
1940	19. 88.42 Madras	20. 88.42 Madras
1941	21. 88.42 Madras	22. 88.42 Madras
1942	23. Not legible	24. Not legible
1943		
1944	27. Madras 40/44	28. Madras 25/44
1945	29. Madras 9/45	30. Madras 21/45
1946	31. Madras 25/46	32. Madras 27/46
1947	33. Madras 33/47	34. Madras 70/47
1948	35. Madras 38/48	36. Madras
1949.	37. Madras	

Exhibits.

A7. Mysore Government 5% Loan 1955, 1st November 1930, *continued.*

1. Pay Bank of Mysore Ltd. or order

(Sgd.) . . .
Comptroller, Mysore Government
Eastern Bank Ltd. or Order
for the Bank of Mysore

(Sgd.) . . .
Manager

2. Pay Rm. Ar. Ar. Rm. Arunachalam Chettiar or order.

(Sgd.) . . .
Manager

3. Succession Certificate granted by the District Judge, Bangalore, Division to Messrs. V. Ramaswami Iyengar and K. R. Subramania Iyer, Receivers in Misc case no. 33 of 1941—42 is registered as No. Sc. 422 in Vol. 111.

(Sgd.) . . .
Assistant Comptroller.

A6.

MYSORE GOVERNMENT 4% LOAN 1953–63 for Rs.25,000.

Exhibits.

A6. Mysore Government 4% Loan 1953–63, 1st December 1933.

GOVERNMENT OF HIS HIGHNESS THE MAHARAJA OF MYSORE

THE 4 PER CENT. CONVERSION LOAN, 1953–63
(Free of Income Tax)

No. 002070 Rs.25,000/–

Dated Bangalore, the 1st December 1933.

THE GOVERNMENT OF HIS HIGHNESS THE MAHARAJA OF MYSORE
Hereby promise to pay to
Comptroller Mysore Government
or order at the Government Treasuries of the Mysore State on the 1st December 1963 or on such other date as may not less than three months prior to its occurrence be notified in the Mysore Government Gazette but which Government undertake shall not be before the 1st December 1953
Rupees Twenty-five thousand only

Illegible Illegible
Rs.25,000/– No. 002070

(Sgd.) MIRZA M. ISMAIL,
Dewan.

(Sgd.) M. VENKATASALYENGAR,
Comptroller.

All endorsements on this note must be made clearly and distinctly within the plate mark.

Cross endorsements are strictly prohibited.

Vernacular endorsements must be literally translated into English immediately below the endorsements.

Record of payment of half-yearly Interest of Rs.500.00

with date and place of payment and disburser's initials :

For the half-year ending	31st May	30th November
1934	Paid	Paid
1935	Paid	Paid
1936	Paid	Madras
1937	Madras	64.37
1938	81.42	81.42
	Madras	Madras
1939	81.42	81.42
	Madras	Madras
1940	81.42	81.42
	Madras	Madras
1941	81.42	81.42
	Madras	Madras
1942	Madras	Madras
1943	Madras	Madras
1944	Madras	Madras
1945	Madras	Madras
1946	Madras	Madras
1947	Madras	Madras
1948	Madras	Madras

1. Pay Bank of Mysore Ltd. or order
(Sgd.) .....
Comptroller, Mysore

2. Pay Eastern Bank Ltd. or order
For the Bank of Mysore Ltd. (Sgd.).....
for Manager

3. Pay the Mercantile Bank of India Ltd. or order
(Sgd.) .....
for the Eastern Bank Ltd.

4. Pay the Eastern Bank Ltd. or order.
The Mercantile Bank of India Ltd.

5. (Sgd.) .....
Manager, Madras.

6. Pay Rm. Ar. Ar R Arunachalam Chettiar or Order
(Sgd.) .....

7. Succession Certificate granted by the District Judge, Bangalore Division to Messrs. V. Ramaswami Iyengar and E. R. Subramaniam Iyer, Receivers in this case No. 33 of 41–42 is registered as SC 42 in Vol. III.
(Sgd.) .....
Assistant Comptroller.

Exhibits.

A8.

Mysore Government 3½% Loan 1951–58, 15th December 1934,

A8.

MYSORE GOVERNMENT 3½% LOAN 1951–58 for Rs.1,000.

GOVERNMENT OF HIS HIGHNESS THE MAHARAJA OF MYSORE.

THE 3½ PER CENT. LOAN 1951–58.
(Free of Income Tax.)

No. F. 000278 Rs. 1000

Dated Bangalore the 15th December 1934.

THE GOVERNMENT OF HIS HIGHNESS THE MAHARAJA OF MYSORE hereby promise to pay to Mansari Lakshmiah or order at the Government Treasuries of the Mysore State on the 15th December 1958 or on such . . . as may not less than three months prior to its occurrence be notified to the Mysore Government Gazette but which . . . shall not be before the 15th December 9151.

Rupees one thousand.

All endorsements upon this note must be made clearly and distinctly within the plate mark.

Cross endorsements are strictly prohibited.

Vernacular endorsements must be literally translated into English immediately below the endorsements.

Record of Payment of half-yearly Interest Rs.17–8–0 with date and place of payment and disburser's initials.

	For the half year ending 14th June 242	14th December 119
1935	1. Hyderabad Residency 12th August 1935	2. Hyderabad Residency 1st May 1936
1936	3. Hyderabad Residency 16th June 1936	4. Madras 54/37
1937	5. 37/37 Madras	6. 38/37 Madras
1938	7. 62/42 Madras	8. 62/42 Madras
1939	8. 62/42 Madras	10. 62/42 Madras
1940	11. 62/42 Madras	12. 62/42 Madras
1941	13. 62/42 Madras	14. 62/42 Madras
1942	15. 27/42 Madras	16. 15/42 Madras
1943	17. 14/43 Madras	18. 36/44 Madras
1944	19. 9/44 Madras	20. 20/44 Madras
1945	21. 18/45 Madras	22. 34/45 Madras
1946	23. 20/46 Madras	24. 28/46 Madras
1947 [Sic]	25. 29/47 Madras	26. 15/*74* Madras
1948	27. 33 Madras	28. 35 Madras

A13.

CITATION in D.C., Colombo, No. ED/A 300.

Exhibits.

A13. Citation in D.C. Colombo No. ED/A 300, 2nd March 1936.

IN THE DISTRICT COURT OF COLOMBO.

IN THE MATTER OF THE ESTATE of the late Rm. Ar. Ar. Rm. Ar. Arunasalam Chettiar Deceased.

A. R. MANICKAM CHETTIAR,
Person-Accountable.

No. ED/A300.
2.3.36.

10 The Commissioner of Stamps, by his memo No. ED/A 300 of 21.2.36 moves to issue citation on the person accountable to deliver statement and declaration.

Issue citation for 2.4.36.

D.J.

Issued
2.3.36

2.4.36

Case called. 2nd April 1936.

(1) Statement & Declaration.

20 (2) Citation served on citees.

Proxy filed.

Objections on 21.5.36.

(Intld.) G.C.T.
D.J.

21.5.36

Case called. 21st May 1936.

Objections filed

Fix for inquiry for 9th July.

(Intld.) G.C.T.
30 D.J.

9.7.36

The Commissioner of Stamps moves to withdraw the application on the ground that the affidavit for the citation has not been signed by the Commissioner of Stamps, as required by the rules framed by the Ordinance as recently pointed out by a Ruling of the Supreme Court. 9th July 1936.

The application is dismissed with costs which I fix at Rs.31/50. In these terms I make no order to payment of costs of citation by either party.

(Intld.) G.C.T.
40 D.J.

Exhibits.

A13. Citation in D.C. Colombo No. ED/A 300, 9th July 1936, *continued.*

IN THE DISTRICT COURT OF COLOMBO.

IN THE MATTER of the late Rm. Ar. Ar. Rm. Ar. Arunasalam Chettiar.

Estate No. ED/A 300.

To : Ar. Manickam Chettiar attorney and manager of Rm. Ar. Ar. Rm. Arunachalam Chettiar of 245 Sea Street, Colombo.

2nd March 1936. Whereas the Commissioner of Stamps has made application to this Court under section 31 of the Estate Duty Ordinance No. 8 of 1919, for issue of Citation on you for failing to furnish him with the statement of property and declaration due under section 21 of the Estate Duty Ordinance No. 8 of 1919.

You are hereby required to deliver such statement and make such declaration before the 2nd day of April 1936.

You are further required to appear before this Court at 11 a.m. on the 2nd day of April 1936 and to state whether you have done so or to show cause to the contrary.

By Order of Court.
(Sgd.) T. THIAGARAJAH,
for Secretary.
2.3.36.

6th July 1936.

IN THE DISTRICT COURT OF COLOMBO.

IN THE MATTER of the Estate of Rm. Ar. Ar. Rm. Ar. Arunachalam Chettiar, deceased.

Ar. Manickam Chettiar of Colombo.
No. ED/A 300. Party cited.

This 6th day of July 1936.

The amended statement of objections of party cited appearing by H. T. Ramachandra, his Proctor states as follows :

1. The party cited is not a person liable to account within the meaning of the Estate Duty Ordinance No. 8 of 1919.

2. The deceased died in South India, leaving a lawful widow surviving him.

3. This Court has no jurisdiction to entertain this application under section 31 of Ordinance No. 8 of 1919.

4. The deceased left no properties belonging to him and left no estate which is liable to Estate Duty.

5. The application made by the Commissioner of Stamps is not supported by any evidence and as such is bad in law.

6. The application made by the Commissioner of Stamps has not been signed by him and the citation issued upon the Citee should be withdrawn.

Exhibits.

A13. Citation in D.C. Colombo No. ED/A 300, 6th July 1936, *continued.*

7. The Citee was not served with notices as required by law and consequently is not in default.

(Sgd.) H. T. RAMACHANDRA,
Proctor for Party Cited.

True copy of the Journal
Citation and Amended statement of
objections filed of record in D.C. Colombo
Case No. ED/A 300.

(Sgd.) . . .
Secretary
D.C. Colombo.
16.7.46.

(Certified copy filed in D.C. Colombo No. 37 Est. Spl.)

A9.

A9. Mysore Government 3% Loan 1956–61, 20th April 1936.

MYSORE GOVERNMENT 3% LOAN 1956–61 for Rs.5,000.

GOVERNMENT OF HIS HIGHNESS THE MAHARAJA OF MYSORE.

THE 3 PER CENT. LOAN 1956–61.
(Free of Income Tax.)

G000046 Rs.5000/–

Dated Bangalore the 20th April 1936.

THE GOVERNMENT OF HIS HIGHNESS THE MAHARAJA OF MYSORE
hereby promise to pay to
the Bank of Mysore
or order at the Government Treasuries of the Mysore State on the 20th April 1961 or on such earlier date as may not less than three months prior to its occurrence be notified in the Mysore Government Gazette but which Government undertake shall not be before the 20th April 1956.

All endorsements upon this note must be made clearly and distinctly within the plate mark.

Cross endorsements are strictly prohibited.

Vernacular endorsements other than Kannada must be literally translated into English immediately below the endorsement under authentication.

Record of payment of half-yearly Interest of Rs.75–0–0– with date and place of payment and disburser's initials.

For the half year ending	19th April	19th October
1936		1. 21/36 Madras
1937	2. 33/37 Madras	3. 37/37 Madras

Exhibits.

A9. Mysore Government 3% Loan 1956–61, 20th April 1936, *continued.*

1938	4. 178/42 Madras	5. 178/42 Madras
1939	6. 178/42 Madras	7. 178/42 Madras
1940	8. 178/42 Madras	9. 178/42 Madras
1941	10. 178/42 Madras	11. 178/42 Madras
1942	12. 77/42 Madras	13. 83/42 Madras
1943	14. 83/43 Madras	15. 25/43 Madras
1944	16. 93/44 Madras	17. 36/44 Madras
1945	18. 43/45 Madras	19. 20/45 Madras
1946	20. 104/46	21. 65
1947	22. 76/47 Madras	23. 64/47 Madras
1948	24. 83/48 Madras	25. Madras
1949	26. Madras	

Pay the Eastern Bank Ltd. or order for the Bank of Mysore.

(Sgd.) . . .

2. Pay Rm. Ar. Ar. Rm. Arunachalam Chettiar or order for the Eastern Bank Ltd.

(Sgd.) . . .

3. Succession certificate granted by the District Judge Bangalore Division to Messrs V. Ramaswami Iyenger and R. Subramania Iyer Receivers in Misc. Case No. 33 of 31–42 is registered as No. Sc 422 in Vol. 111.

A14. Letter, Commissioner of Income Tax to Sitaram and Venkataram, 7th November 1936,

A14.

LETTER, Commissioner of Income Tax to Sitaram and Venkataram.

Copy.

33/398

Department of Income Tax
Estate Duty & Stamps.
Colombo,
November 7, 1936.

Rm. Ar. Ar. Rm.

Appeals 1934/35 and 1935/36.

Gentlemen,

With reference to the appeal heard by me on the 4th instant, I have the honour to inform you that my decision is as follows :—

The profits of Rm. Ar. Ar. Rm. are the profits of a Hindu Undivided Family and as such are taxable under section 20 (9) of the Ceylon Income Tax Ordinance.

I shall be glad, therefore, if you will endeavour to come to a settlement with the Assessor in regard to the other points of Appeal so that the Assessments may be finally settled.

I am, Sir,
Your obedient servant,
(Sgd.) .....
Commissioner of Income Tax.

Messrs. Sitaram & Venkatram,
205 Sea Street,
Colombo.

(Original filed in D.C. Colombo No. 37 Est. Spl.)

Exhibits.

A2.
Last Will of Arunachalam Chettiar, 9th January 1938.

A2.

LAST WILL OF ARUNACHALAM CHETTIAR.

TRANSLATION

On an Indian Stamped Paper of the value of twelve annas bearing No. 1338 dated 27th–2–1938 bought of S. Letchumeniyer Vendor of Devakottai in the name of Sundaresan Chettiar Executor of the Estate of Rm. Ar. Ar. Rm. of Devakottai.

COPY OF DOCUMENT

DOCUMENT NO. 1 OF 1938

Prayers for the Grace of God " Siva."

The Last Will left by me Rm. Ar. Ar. Rm. Arunachalam Chettiar son of Ramanathan Chettiar Esquire Nattukottai Chettiar, Saivite, Money Lender, Zamindar of Poyttivayal and Niraimangalan of Devakottai, Tiruvadanai Pirkha, Ramnad District with my full consciousness and with good motive.

For some time prior to the date hereof I have diabetes complaint whereby boils appeared at various places of the body, and after being operated some of them have been cured and some of them are about to be cured. Whereas I felt that I should make proper arrangement concerning my family matters and things and concerning the management of my Estate, I have appointed (1) A. R. S. M. S. Sundaresab Chettiar son of Somasundaram Chettiar Esquire, my uncle (Younger brother of my father) Nattukottai Chettiar, Saivite, Money-Lender, of Devakottai and (2) S. T. L. R. M. Arunachalam Chettiar son of Ramaswamy Chettiar Esquire and my aunt (sister of my father) my " Mappillai " (son-in-law), Nattukottai Chettiar, Saivite, Money-Lender of Devakottai, who are most faithful to me and on whom I have full confidence as Executors for the purpose of performing the matters and things mentioned hereunder.

After my life time, the Executors shall take charge of my Estate and Trusts belonging to me as Trustee and manage the same on mutual consultation and perform all matters and things mentioned herein.

I reserve to myself my full power and right to alter and cancel this Last Will and I have left this Last Will without anything contrary affecting the said right.

This Last Will shall remain in force after my life-time.

Now in my family there are Sivahamy Achi my step-mother, Letchumi my second wife, Nachiya my third wife, Umaiyal widow of late Arunachalm Chetty (son of my first wife) and the infant daughter of my third wife of about one month old who is to be named ; and there are also Alamelu Achy my elder sister and Umaiyal, Sivahamy and Unnamulai the married daughters of my first wife.

Whereas there are no male heirs in my family and whereas there are two wives and a daughter-in-law it is necessary to perpetuate my lineage with good understanding and satisfaction of the above respective persons (my two wives and daughter-in-law) in accordance with the usage and custom of our community, the Executors, on consultation with the respective persons aforesaid, shall choose satisfactory boys and cause a boy to be adopted to Lakshmi, one boy to Nachiar and a boy to Umayal. I have hereby given my full consent and authority for the said purpose.

Exhibits.

A2. Last Will of Arunachalam Chettiar, 9th January 1938, *continued.*

The Executors shall pay maintenance expenses etc. to the daughter of my third wife and provide her with the necessary jewels. And the Executors themselves shall be the supporters and guardians of the said adopted boys, shall put them in school and do all other functions, and shall provide them with jewels. The Executors themselves shall arrange and celebrate the marriage of and other such functions to the said daughter of my third wife and the said adopted boys ; and they (the said Executors) shall give the said daughter in marriage to a bride-groom of good rank and character after giving her dowry " Seer Murai " (household utensils, things etc.) jewels and other things after having due consideration of our family status and circumstances past and future.

The Executors shall give to Sivahamy Achchi my step-mother each and every month at Rs.50/- Rupees fifty per month for the maintenance and for the expense of worshipping and pilgrimage and each and every year at six " Pothi " of paddy from the paddy of our village for yearly consumption commencing from the date on which this Last Will will come into force till her life-time ; in addition to this, for donation, charity and other expenses at discretion and for adopting a boy to the family of her father and for the expenses of marriage of the said adopted boy, the said Executors shall write off in the expenses account of our Estate Rs.30,000/- Rupees Thirty thousand as on the date on which this Last Will will come into force and credit the same (in the account opened) in her name allowing interest at the Rangoon current rate, and pay the same as and when occasion arises.

The said Executors shall give to Letchimi my second wife, Nachiya my third wife and Umaiyal my daughter-in-law to each and every one of them for maintenance each and every month at Rs.50/- Rupees fifty per month commencing from the date on which this Last Will will come into force till the date of the said adoption, and thereafter to each and every one of them at Rs.100/- Rupees one hundred per month till the adopted boys were provided to live separately after their marriage, and thereafter to each and every one of them at Rs.50/- Rupees Fifty per month till their respective life-time ; and the said Executors shall give to each and every one of the said three persons for expenses of pilgrimage worshipping etc. at Rs.350/- Rupees three hundred and fifty per year commencing from the date on which this Last Will will come into force till their respective life time, and the said Executors shall give to each and every one of them for yearly consumption at six " Pothi " of paddy from the paddy of our village each and every year.

The Executors shall give to the adopted boys commencing from the date on which they were provided to live separately sums necessary for their respective family expenses on debiting the same (in the accounts opened) in their respective names.

From and out of the dowry money, personal money etc. of Letchumi my second wife, Nachiar my third wife and Umaiyal my daughter-in-law, deducting the sums spent by them for charity etc., the balance sums remaining after their life-time their respective adopted boys shall own, possess and enjoy.

The said Executors shall give each and every month to Umaiyal, Sivahami and Unnamulai my daughters commencing from the date on which this Last Will come into force and to the daughter of my third

wife commencing from the date on which she would be provided to live separately after her marriage at Rs.20/- Rupees twenty per month till their respective life-time.

The Executors shall give the moneys which are in credit in the account of the Estate in the name of Umaiyal, Sivahamy and Unnamulai my daughters and the moneys which are in the Bank and other places in their respective names through us; in addition to this, the Executors shall write off in the expense account of Saigon of our Estate at Rs.75,000/- Rupees seventy-five thousand separately to be paid to each and every one of my four daughters and credit the same (in the accounts opened) in their respective names and pay the same with interest at the Saigon current rate to Umaiyal, Sivahamy and Unnamulai on the said sum to be credited in their respective names commencing from the date on which this Last Will will come into force and to the fourth daughter on the sum to be credited in her name commencing from the date of her marriage. The Executors shall give to the said respective persons such of the jewels which are in our possession of the jewels made for them on the occasion of their marriage and thereafter.

The Executors shall write off in the expense account of our Estate as on the date on which this Last Will will come into force Rs.25,000/- Rupees twenty-five thousand for donation, charity and other expenses at discretion of my elder sister as intended by us and Credit it (in the account opened) in her name and to her order allowing interest at the Rangoon current rate and pay the same to her on demand.

The Executors shall perform all the necessary " Seer Murai " (functions and celebrations) in accordance with the customs and manners of our community to my elder sister and to my daughters during the Deepavalai, Sankaranthi and other yearly festivals and during other functions and ceremonies held in their respective houses, in accordance with the customs and manners of our community on the respective occasions after having due consideration of our family status and shall write off in the expense account of the Estate the moneys so spent on that behalf.

Whereas I am desirous of helping the family of the sons of A. R. A. R. S. M. Somasunderam Chettiar Esquire my uncle (younger brother of my father) the Executors shall write off in the expense account of our estate at Rs.37,500/- Rupees thirtyseven thousand and five hundred separately to each and every one of the four persons namely (1) A. R. S. M. A. R. Arunachalam Chettiar (2) for the late A. R. S. M. R. M. Ramanathan Chettiar's family Unnamulai his widow (3) A. R. S. M. S. Sundarasan Chettiar and (4) A. R. S. M. L. Letchumanan Chettiar, and Credit the same (in the accounts opened) on account of their respective families in their respective names as on the date on which this Last Will will come into force and pay the same with interest thereon at the Rangoon current rate from the date aforesaid for the use of their respective families.

Whereas I am desirous of helping for the progress of the family of R. M. A. R. R. M. Arunachalam Chettiar grand-son of the elder brother of my grand-father the Executors shall write off in the expense account of our Estate Rs.25,000/- Rupees twenty five thousand and credit the same (in the account opened) in his name on account of the family as on the date on which this Last Will will come into force, and pay the same with interest thereon at the Rangoon current rate from the said date for the progress of his family as and when occasion arise.

Exhibits.

A2.
Last Will of Arunachalam Chettiar, 9th January 1938, *continued.*

The Executors shall as usual perform the religious functions namely Abishoham, Arachannai etc. which are being performed as usual up to this date by writing off the expenses incurred thereof in the charity account of the estate then and there in various religious centres and in the local temples during the various festivals of Vinayaga-Sathurthi etc. in addition to this, the Trustees shall at their discretion give petty charities to the extent of Rs.1,500/– Rupees one thousand five hundred per year.

If new buildings should be created for the comfort of the family the said Executors shall at their discretion erect the said buildings. The Executors shall at their discretion provide the necessary carriages car etc. for the comfort of the family members and for the comfort of the Estate. And the Executors shall provide separate cooking arrangement in the Estate for the supply of the persons who come on matters concerning the Estate.

The Executors shall manage the hereditary Trust Rights belonging to me and to my heirs in the charities arranged by my ancestors and by me as per accounts and records and as per Trust Declaration Bonds executed by me, the hereditary Trust Rights belonging to me separately and jointly and severally in the charities arranged by me and by others, the hereditary Trust Rights belonging to me and to my heirs in the charities arranged by others as per accounts and documents and the charities by others as per accounts and documents and the charities based on leasehold interest, and the money lending transactions, movable and immovable properties etc. concerning them (the said rights, charities and interest) and complete such acts which are to be completed in them and perform effectually such acts which are to be performed effectually in them ; the said Executors shall execute the decrees concerning the said charities, take further proceedings in pending cases, file necessary cases and do all necessary things concerning them according to circumstances and necessity and so manage also.

In British India, French Cochin China and other places I am carrying on money-lending transactions, businesses, partnerships, industries, Mills and other industries and in the course of the said business own shares and deposits in companies and Banks, Government Security Bonds of India, Mysore, Ceylon, etc., amounts due on promissory notes, bonds, " Othi " mortgagees, lease and other bonds, buildings, house-lands, rubber, tea, coconut and other estates, villages of my own and of " Othi " and lease rights, Pettivayal and Niraimangalam Zamin, and other immovable properties and jewels, silver wares and other movable properties ; besides there are decrees and pending cases concerning the amounts due to the Estate in various Courts ; the Executors shall manage all the said properties as directed herein with due regard to the circumstances, continue such ones which are to be continued, wind up such ones which are to be wound up, recover such ones which are to be recovered, withdraw the deposits from the Banks, pay off such liabilities which are to be paid off, purchase such ones which are to be purchased sell such ones which are to be sold, exchange such properties which are to be exchanged, and settle matters. Regarding the said matters, if it becomes necessary to waive any sums in the outstanding after having due consideration of the circumstances the Executors shall do so and recover the same, if it so happens to sell such properties which are to be sold after having due consideration of the circumstances at a cost less than the purchase price or at a cost more than the purchase

price the Executors shall also sell accordingly. Besides, the Executors shall pay off at their discretion the amounts belonging to others which are credited in our Estate Account and also manage and pay off certain of the Trust Amounts which are managed by us as Trustee.

For effectually performing and managing all the aforesaid matters as per aforesaid directions the said Executors shall perform all such matters which are to be performed by appearing as Parties before the Civil, Criminal, Land Revenue, Revenue, Income Tax and Insolvency Courts of India, Burma, Ceylon, Federated Malay States, French Cochin China, Mysore and other places and before all the said Courts of the said respective countries and before the Official Receiver Official Assignee, Registration Office, Accountant General Office, Post Office, Public Debt Office, Local Board, Municipalities, Corporation, Consul Vice Consul, Consular Agent, Public Trustee, Administrators and all other Public Offices and before the said public offices of the said respective countries either in person or by their attorneys or by Vakils, Proctors, Solicitors, Barristers, Counsels and other appropriate persons of the said respective countries on signing and granting " Vakkalath " (Proxy) and other authorising document after having due consideration of the circumstances and manage accordingly.

For more effectually performing all the aforesaid matters as per aforesaid directions the said Executors shall hereby have full authority and right to appoint necessary agents, officers and employees for the said Estate, to give them sufficient power according to their respective responsibilities, to check and take charge of the accounts, documents, cash, jewels, etc., concerning the properties, firms, etc., of the said Estate from the present agents, officers, etc., and from the agents, Officers etc., who would be hereafter appointed by the said Executors, to grant discharge (release) to the said persons, to dismiss the said persons, to give bonus to the said persons and to perform all other necessary matters of advantage to the Estate according to the necessity and circumstances for the purposes of performing the said matters further at their discretion.

The Executors shall with the amount which is in the Credit in the account of our Estate concerning the temple " Thiru-Uthara-Kesa Mangai " include the amount due as per agreement of A. S. S. P. L. P. R. Periakaruppan Chettiar of Arimalam and further write off in the expense account of the Estate Rs.35,000/– Rupees Thirty five thousand as on the date on which this Last Will will come into force and Credit the same in the account concerning the said temple, and allowing interest at the Rangoon current rate commencing from the said date spend the said amount for the rebuilding of the " Swamy " temple.

The said three adopted boys shall in equal shares own, possess and enjoy the movable and immovable properties, cash, jewels, silverwares, utensils, etc., concerning the Estate above referred to. Immediately after each and every one of the adopted boys become majors they and the Executors shall jointly manage according to the aforesaid directions ; the Executors shall jointly (with the said majors) manage the charity concerns and the Trust concerns and immediately after all the (adopted) boys become majors the Executors shall give charge of the Estate, Trust concerns and charity concerns unto the said majors. The said majors shall with unity and jointly manage the estate till they find it convenient to do so and they shall divide the Estate when they find it convenient to do so.

Exhibits.

A2. Last Will of Arunachalam Chettiar, 9th January 1938, *continued.*

All the members of my family shall live in harmony and happily with unity enjoy more and more prosperity from generation to generation with all the blessings.

(Sgd.) ARUNACHALAM CHETTY,
Devakottai.

8.1.38.

Witnesses :—

A. R. S. M. A. ARUNACHALAM CHETTY
Devakottai.

M. L. R. M. LETCHUMANAN CHETTY
Devakottai.

A. R. S. M. L. LETCHUMANAN CHETTIAR
Devakottai.

A. L. S. P. P. L. SUBRAMANIAM CHETTIAR
Devakottai.

V. E. R. M. K. KRISHNAN CHETTY OF ARIAKUDI
(presently of) Devakottai.

A. L. V. R. S. T. VEERAPPA CHETTIAR
Devakottai.

A. L. S. T. R. M. A. R. R. M. ARUNACHALAM CHETTY
Devakottai.

VAINAGARAM V. RAMANATHAN CHETTIAR
Devakottai.

M. R. N. R. M. R. M. RAMANATHAN CHETTIAR
Devakottai.

S. K. R. S. K. R. S. M. KARUPPAN CHETTY OF OKKOOR
(presently at) Devakottai.

R. M. K. T. KATHIRESAN CHETTY
Devakottai.

K. M. A. R. OLAGAPPA CHETTIAR OF SOCKALINGAMPUTHOOR
(presently at) Devakottai.

R. M. A. R. R. M. ARUNACHALAM CHETTY
Devakottai.

K. M. N. N. S. SAMINATHAN CHETTIAR OF SEMBANUR
(presently at) Devakottai.

This was written by :

Subramania Iyer son of Kuppuswamy Aiyer Esquire of Pillangudi presently of Devakottai who is also a witness.

No stamps.

Copy of endorsements and Certificates :

Presented at my residence in Sathirather Veethi Devakottai between 9 and 10 a.m. on the 9th day of January 1938 :—Arunachalam Chetty.

Execution admitted by Arunachalam Chetty son of Ramanatham Chettiar, Nattukottai Chettiar, Zamindar Status, Devakottai.

Known in person to the Sub Registrar.
9th January 1938.

A. MUTHUVELU,
Sub Registrar.

Registered as Document No. 1 of the year 1938 in Book 3 Volume 19 pages 17 to 27.
10th January 1938.

A. MUTHUVELU,
Sub Registrar.

In the Original (Last Will) (a) (b) (c) (j) corrected, (d), (g) (h) (i) (k) (o) struck off (e) similar to this (f) (l) (m) (n) interlined and in the Registration (l) struck off.

A.M.

Copied by :—P. S. Maria Ponniah, Clerk.

Examined by :—D. Muthuswamy Iyanger : Clerk.

Reader :—P. S. Maria Ponniah, Clerk.

Examiner :—A. Muthuvelu—10.1.1938.
Sub Registrar.
True Copy.

Manuscript portion added by
(Sgd.) (Not legible.)
Clerk.

(Sgd.) P. S. MARIA PONNIAH,
Clerk (Reader).

Examined by
(Sgd.) (Not legible.)
Clerk, Examined.
2.3.38.

(Sgd.) A. MUTHUVELU,
2.3.38.
Sub Registrar.

The seal of the Sub Registrar of Devakottai.
No. 67 of 1938.

Copy of document No. 1 of 1938 of Book 3 S.R.O.
Devakottai.

Application presented
Search completed
Stamped paper called for
Stamp produced
} 1.3.38

Copy ready—Copy delivered 2.3.38.

Translated by me

(Sgd.) S. H. S. JOSEPH,
Sworn Translator District Court Colombo.
30.5.38.

Exhibits.

R5.

R5. Letter, Receivers to Commissioner of Income Tax, 5th October 1938.

LETTER, Receivers to the Commissioner of Income Tax.

K. Ramaswami Aiyengar, Vakil,
and
K. R. Subramania Iyer, Advocate.
Receivers
of the Estate of
late
Rm. Ar. Ar. Rm. Arunachalam Chettiar
of Devakotta.

Devakottai.
Date 5th Octr. 1938.

To

The Commissioner of Income Tax
Estate Duty and Stamps,
Colombo.

Ref. E.D./A–452—Estate of Rm. Ar. Ar. Rm. Arunachalam Chettiar, deceased.

Sir,

We are appointed Receivers to the Estate of late Rm. Ar. Ar. Rm. Arunachalam Chettiar by the Subordinate Judge's Court, Devakotta in O.S. 93 of 38. We have herewith sent a public copy of the order appointing us Receivers to the said estate.

Messrs. AR. S. M. S. Sundaresan Chettiar and St. L. Rm. Arunachalam Chettiar who were in management of the estate as executors of the deceased Arunachalam Chettiar have sent to us your communication dated 19th September '38 in response to the letter dated 15th August '38 sent by them to you requesting for grant of further time to furnish declaration of property in respect of the above estate. We note that you were pleased to grant time till the 15th October '38 to furnish the necessary declaration.

In the said suit O.S. 93 of 38 Subordinate Judge's Court Devakotta which was filed by the daughter-in-law of the deceased Arunachalam Chettiar for partition of estate, challenging the truth and validity of the will put forward by the said two gentlemen and on her application in I.A. 370 of 38 to appoint a Receiver to the whole estate inclusive of foreign firms etc., we have been appointed Receivers. Since we took charge only on the 18th August 1938, we find it very difficult to furnish you the declaration of property within the time granted by you namely 15th October '38.

We request you to be good enough to extend the time for furnishing the declaration of property till the 15th November 1938.

(Sgd.)
We have the honour to be
Sir,
Your most obedient servants,
(Sgd.)
Receivers.
6.10.38.

Encl :
A certified copy of the order
of appointment.

R6.

Exhibits.

R6. Enclosure to R5, 18th August 1938.

ENCLOSURE TO R5 : Certified Copy of Order of Appointment.

IN THE COURT OF THE SUBORDINATE JUDGE OF DEVAKOTTA.

I.A. No. 370 of 38 in No. 93 of 38.

UMAYAL ACHI . . . . Petitioner (Plaintiff)

Against

(1) LAKSHMI ACHI (2) NACHIAR ACHI (3) A. R. S. M. S. SUNDARASAN CHETTIAR (4) C. T. L. R. M. ARUNACHALAM CHETTIAR

Respondents (Defendants).

WHEREAS it appears to this Court that in the above suit it is just and convenient to appoint Receivers of the properties in suit and belonging to the estate of late Rm. Ar. Ar. Rm. Arunachalam Chettiar of Devakotta inclusive of trust properties and all jewels and cash.

IT IS HEREBY ORDERED that Messrs. V. Ramasamy Iyenger Vakil and K. R. Subramania Iyer advocate Devakottai be and hereby are appointed the receivers of the said property and of the rents issues and profits thereof under Order XL of the Code of Civil Procedure 1908 with all powers under the provisions of that order, except that they shall not without leave of the Court (1) grant leases for a term exceeding three years or (2) institute suits in any court (except suits for rent) or (3) institute appeals in any Court (except from a decree in a rent suit) where the value of the appeal is over Rs.1000/– or (4) expend on the repairs of any property in any period of two years more than half of the net annual rental of the property to be repaired, such rental being calculated at the amount at which the property to be repaired would be let when in a fair state of repair provided that such amount shall not exceed Rs.1000/–.

AND IT IS FURTHER ORDERED that the parties to the above suit and all persons claiming under them do deliver up quiet possession of the properties moveables and immoveables belonging to the aforesaid estate inclusive of trust properties, together with all leases agreements for lease, account books, papers memoranda and writings relating thereto to the said receivers.

AND IT IS FURTHER ORDERED that the said receivers do immediately take possession of the said property, jewels, cash movables, valuables etc. and immovables and collect the rents, issues and profits of the said immovable property and that the tenants and occupiers do attorn and pay their rents in arrear and growing rents to the said receivers.

AND IT IS FURTHER ORDERED that the said receivers shall have power to bring and defend suits in their own name and shall also have power to use the names of the Plaintiffs and Defendants where necessary.

AND IT IS FURTHER ORDERED that the receipt or receipts of the said receivers shall be a sufficient discharge for all such sums of money or property as shall be paid or delivered to them as such receivers.

Exhibits.

R6. Enclosure to R5, 18th August 1938, *continued.*

AND IT IS FURTHER ORDERED that the said receivers be entitled to retain in their hands a sum of Rs.2000/- for current expenses but subject thereto shall pay their net receipts as soon as the same come to their hands into the Imperial Bank, Trichinopoly to the credit of this suit. They shall once in every month by the 5th date file their accounts and vouchers in Court, the first account to be filed on 5th September 1938. They shall be entitled to a pay of Rs.250/- each per mensum initially now and afterwards Rs.250/- per mensem each with liberty to apply for more.

AND IT IS FURTHER ORDERED that the said receivers do on taking immediate delivery of the jewels and other valuables deposit them into the Imperial Bank Trichinopoly.

The receivers will enter on their duties and take possession at once and they are permitted to furnish security of Rs.35000/- each in three weeks.

Given under my hand and seal of the Court this, the 18th day of August 1938.

(Sgd.) R. VEMBU IYER,
Subordinate Judge.

Exhibits.

A15. Notice of Assessment, 31st October 1938.

A15.

NOTICE OF ASSESSMENT.

J.N. 72352–800 (1/38)

Form No. 236/F2 1/38.

THE ESTATE DUTY ORDINANCE No. 1 OF 1938

NOTICE OF ASSESSMENT

File No. ED/A300–AJ. 2943.

Charge No. 8208.

RM. AR. AR. RM. AR. ARUNACHALAM CHETTIAR, deceased.

To Messrs. V. Ramasamy Iyengar, Vakil and K. R. Subranamia Iyer
c/o C. Sevaprakasam Esq., Proctor S C, 349 Dam Street, Colombo.

TAKE NOTICE that the estate duty in respect of the Estate of the deceased abovenamed has been assessed as follows :

ASSETS

Deceased's interest in the business of Rm. Ar. Ar. Rm. & Ar. Ar. Rm. estimated at	2,150,000.00
Deductions	Nil
Net value	2,150,000.00

ESTATE DUTY

Exhibits.

A15.
Notice of Assessment, 31st October 1938, *continued.*

Duty on Rs.2,150,000.00 at 10% 215,000.00

With interest from 10.7.1935 at 4% per annum.

The above amount is payable by you on or before the 12th December 1938 and should be remitted to the Commissioner of Estate Duty. This form should accompany your remittance.

If you object to the above assessment you must give notice of appeal in writing within 30 days of the date hereof, stating the grounds of objection.

(Sgd.) Not clear
Assessor Estate Duty.
MAW

Colombo, 31st October 1938.

True copy.

(Sgd.) WILSON & KADIRGAMAR,
Proctors for Appellants.

A16.

NOTICE OF ASSESSMENT.

Exhibits.

A16.
Notice of Assessment, 10th November 1938.

COPY.

THE ESTATE DUTY ORDINANCE No. 1 OF 1938

NOTICE OF ASSESSMENT

File No. ED/A 300–AJ–2943.

Charge No. 8208.

RM. AR. AR. RM. AR. ARUNACHALAM CHETTIAR deceased.

To Messrs. V. Ramasamy Iyengar, Vakil and K. R. Subramania Iyer (as Receivers of the Estate of late Rm. Ar. Ar. Rm. Arunachalam Chettiar) c/o C. Sevaprakasam Esqr., Proctor S C 349 Dam Street, Colombo.

TAKE NOTICE that the estate duty in respect of the estate of the deceased above named has been assessed as follows :

ASSETS

Deceased's interest in the business of Rm. Ar. Ar. Rm. & Ar. Ar. Rm. estimated at	2,150,000.00
Deductions	Nil
Net value	2,150,000.00

Exhibits.

A16. Notice of Assessment, 10th November 1938, *continued.*

ESTATE DUTY

Duty on Rs.2,150,000.00 at 10% 215,000.00
With interest at 4% per annum from 10.7.1935.

NOTE.—The notice dated the 31st October 1938 is hereby cancelled.

The above amount is payable by you on or before 21st December 1938 and should be remitted to the Commissioner of Estate Duty. This form should accompany your remittance.

If you object to the above assessment you must give notice of appeal in writing within 30 days of the date hereof, stating the grounds of objection.

(Sgd.) L. G. GUNASEKERA,
Assessor Estate Duty.

Colombo, 10th November 1938.

(Original filed in D.C. Colombo No. 37 Est. Spl.)

Exhibits.

A12. Statement of Objections to Notice of Assessment, 8th December 1938.

A12.

STATEMENT OF OBJECTIONS to the Notice of Assessment.

(COPY)

8th December, 1938.

From : (1) V. Ramaswami Aiyangar – Objectors.
(2) K. R. Subramania Iyer –
(Receivers of the Estate of the late Rm. Ar. Ar. Rm. Arunasalam Chettiar)
C/o Messrs. Wilson & Kadirgamar,
Gaffoor Buildings,
Colombo.

To :
The Commissioner of Estate Duty,
Colombo.

The statement of objections of the objectors abovenamed to the notice of assessment dated 10th November 1938 in respect of the alleged Estate of Rm. Ar. Ar. Rm. Ar. Arunasalam Chettiar, deceased.

1. The objectors state that they are not the proper persons against whom assessment in respect of the alleged estate of Rm. Ar. Ar. Rm. Ar. Arunasalam Chettiar (deceased) can in law be made.

2. The objectors are not liable to pay any estate duty on the alleged estate of the said deceased.

3. The said deceased left no estate in Ceylon, liable to estate duty.

4. The said deceased was a member of an undivided Hindu family, which carried on the business of a Money Lender, Rice Merchant, etc., under the vilasam of Rm. Ar. Ar. Rm. and Ar. Ar. Rm. in Ceylon, and the deceased was not entitled to any definite share in the assets of the said family. The interest therein, if any, ceased on his death.

Exhibits.

A12.
Statement of Objections to Notice of Assessment, 8th December 1938, *continued.*

5. No estate duty is payable on the joint property of a Hindu undivided family, when a member of such family dies.

6. The value of the alleged estate of the said deceased is nil. The objectors state that the amount at which it has been valued is fictitious and grossly exaggerated.

7. The objectors are unable to state fully their objections to the value put upon the alleged estate, as no particulars are mentioned therein and no details given as to what properties were valued and how they were valued.

8. The objectors are willing to set out their objections more fully to the value as soon as the Assessor intimates to them as to what the properties are which he has regarded as constituting the alleged estate of the said deceased. The objectors themselves are not aware of any properties that belonged to the said deceased and that form part of his alleged estate in Ceylon.

9. The objectors were not called upon at any time to make a declaration containing a full and true statement of particulars relating to the alleged estate of the said deceased person.

10. The objectors state that the assessment is bad and invalid in law, as the said deceased died and left no estate belonging to him on which any duty is payable.

11. On the death of the said deceased, no property passed to any person.

12. The said deceased was a domiciled Indian and was governed by the Mitakshara School of Hindu Law.

13. The objectors state that under section 73 of Ordinance No. 1 of 1938 no estate duty can be charged upon the alleged estate of the deceased as he was only a member of an undivided Hindu family and the property was joint.

14. The objectors plead as matter of law that the Commissioner of Estate Duty, Income Tax and Stamps is estopped in law from claiming any estate duty as he has always accepted the position of the deceased as a member of an undivided Hindu family that owned joint properties in Ceylon to wit :—the business carried on under the vilasam of Rm. Ar. Ar. Rm. and Ar. Ar. Rm. and assessed Income Tax on that basis.

(Sgd.) V. RAMASWAMI IYENGAR.

(Sgd.) K. R. SUBRAMANIA IYER.
Receivers of the Estate of the late Rm. Ar. Ar. Rm. Arunasalam Chettiar.

8.12.38.

(Original filed in D.C. Colombo No. 37 Est. Spl.)

Exhibits.

A3.
Affidavit, 4th February, 1939.

A3.

AFFIDAVIT filed in District Court, Colombo. No. 8727/T.

IN THE DISTRICT COURT OF COLOMBO.

No. 8727/T.

IN THE MATTER of the ESTATE of RM. AR. AR. RM. ARUNACHALAM CHETTIAR of Devakottai in South India, Deceased.

1. V. RAMASWAMI IYENGAR and
2. K. R. SUBRAMANIAM IYER, both of Devakottai in South India and presently of Sea Street in Colombo . . . . . Petitioners

and

1. LAKSHMI ACHI
2. NACHIAR ACHI

Widows of the deceased RM. AR. AR. RM. ARUNACHALAM CHETTIAR

3. UMAYAL ACHI—(Widow of the deceased RM. AR. AR. RM. AR. ARUNACHALAM CHETTIAR
4. A. R. S. M. S. SUNDARESAN CHETTIAR and
5. C. T. L. R. M. ARUNACHALAM CHETTIAR all of Devakottai in South India . . . . Respondents.

We, V. RAMASWAMI IYENGAR and K. R. SUBRAMANIAM IYER both of Devakottai in South India and presently of Sea Street in Colombo do hereby solemnly sincerely and truly declare and affirm as follows :—

1. We are the Receivers duly appointed by the Subordinate Judge's Court of Devakottai in respect of the Estate of the late Rm. Ar. Ar. Rm. Arunachalam Chettiar.

2. Rm. Ar. Ar. Rm. Arunachalam Chettiar above named carried on business in Colombo within the jurisdiction of this Court under the vilasam of " Rm. Ar. Ar. Rm." as a Banker and Money Lender and under the vilasam of " Ar. Ar. Rm." as a Rice Merchant.

3. The said Arunachalam Chettiar died in Devakottai South India on the 23rd day of February 1938 leaving an Estate over Rs.2,500/- in Ceylon.

4. The said Arunachalam Chettiar was an Indian domiciled in India and a Hindu governed by the Mitakshara School of Hindu Law.

5. The heirs to his estate according to the law of domicile are his two widows to wit: Lakshmi Achi, the 1st Respondent, and Natchiar Achi, the 2nd Respondent, who married the deceased after his marriage with the 1st Respondent, and his son Rm. Ar. Ar. Rm. Ar. Arunachalam Chettiar's widow to wit :—Umayal Achi, the 3rd Respondent.

6. The said Arunachalam Chettiar also left surviving him four daughters to wit (1) Oomayal (2) Sivagami (3) Unnamalai who have all been settled in marriage and dowried and (4) an unnamed baby girl by the 2nd Respondent who died on the 25th day of January 1939.

Exhibits.

A3.
Affidavit, 4th February 1939, *continued.*

7. It is alleged that the said Arunachalam Chettiar left a Last Will and Testament executed by him in Devakottai on 8th January 1938 whereby the deceased appointed the 4th and 5th Respondents as Executors.

8. The 4th and 5th Respondents are resident in India and have not come to Ceylon though they made an application to the Hon'ble the Supreme Court of the Island of Ceylon and obtained an order conferring sole testamentary jurisdiction on this Court.

9. The said Umayal Achi the 3rd Respondent abovenamed claiming to be an heir to the Estate of the deceased instituted action No. O.S. 93 of 1938 in the Subordinate Judge's Court of Devakottai for a partition and administration of the entire estate of the deceased between the 1st and 2nd Respondents abovenamed and herself alleging that the deceased died intestate, that the Last Will and Testament was not made by him, that his signature was obtained by undue influence on the part of the 4th and 5th Respondents. She further pleaded that the deceased had died at least partially intestate.

10. Pending the trial of the action the 3rd Respondent applied to the learned Sub-Judge of Devakottai for the appointment of a Receiver to take charge of the assets of the deceased in India and Ceylon and in other places.

11. The 1st Respondent supported the application for appointment of a Receiver while the 2nd, the 4th and the 5th Respondents opposed the same.

12. The learned Sub-Judge of Devakottai made an order appointing us as Receivers of all the assets of the deceased in India Ceylon and other places.

13. We have taken charge of the estate of the deceased.

14. The assets of the deceased in Ceylon consist of cash in banks, Government Bonds, and other securities and immovable properties (Trade Assets) and their rents and profits.

15. The deceased had as his agent in Ceylon one Swaminathan Chettiar. As far as we have been able to ascertain from him, the assets of the deceased are as set out in the schedule hereto annexed.

16. It is necessary and expedient that the assets of the deceased as consisting of debts due upon Bonds and Promissory Notes should be collected and deposited for ultimate distribution according to law.

17. The decision of the case No. O.S. 93 of 1938 of the Subordinate Judge's Court of Devakottai will settle the question whether the deceased died testate or intestate or partially testate and partially intestate.

18. The decision of the said Court will to the best of our belief bind all the parties concerned and interested in the Estate of the deceased as all the parties are natives of Devakottai and are resident within the jurisdiction of the said Court.

19. Pending the ultimate decision of the said case we are advised that we must apply to this Court for grant of Letters of Administration limited for the purpose of collecting and depositing the moneys due upon Promissory Notes and Mortgage Bonds and the rents and profits of the immovable properties in the Imperial Bank or some other Bank appointed by the Court or in the Colombo Kachcheri and to take all necessary steps

Exhibits.

A3. Affidavit, 4th February 1939, *continued.*

to collect preserve and protect the estate and to generally safeguard the assets of the estate in Ceylon or in the alternative for a grant of Letters and Colligenda to us.

20. It is necessary that actions should be instituted for the recovery of debts and profits and for the recovery of movables and immovables and that pending actions be continued.

21. None of the heirs or next of kin are resident in Ceylon and the 4th and 5th Respondents are resident in India.

22. We annex hereto true copies of (1) the alleged Last Will and Testament marked " A " (2) Translation of the said Last Will marked " B " (3) The plaint in case No. O.S. 93 of 1938 in the Subordinate Judge's Court of Devakottai marked " C " (4) The Order appointing us as Receiver marked " D " (5) Order of the Honourable the Supreme Court of Ceylon conferring sole Testamentary Jurisdiction on this Court marked " E."

23. The Sub-Judge of Devakottai has ordered us to apply for the 1st 3rd 4th and 5th Respondents have consented to the grant to us Letters of Administration Limited for the purpose of collecting and depositing the moneys due to the Estate and to take all necessary steps to collect preserve and protect the estate and to generally safeguard the assets of the estate in Ceylon or for Letters ad Colligenda as will appear from the true copy of the report No. 54 made by us and annexed hereto marked " F."

24. We having been appointed Receivers by the Sub-Judge of Devakottai and we make this applcation to this Court for the grant of Letters of Administration limited for the purposes aforesaid or for Letters ad Colligenda.

THE SCHEDULE above referred to.

	MOVABLE ASSETS OF THE FIRM OF	RM. AR.	AR. RM.
1.	Cash in hand		Rs.124,487.44
2.	Moneys in Banks		45,329.04
3.	Ceylon Government 3½% Bonds		300,000.00
4.	Shares in Joint Stock Companies		85,870.50
5.	Moneys out in Mortgages		1,102,475.09
6.	Moneys out on Promissory notes and other accounts		287,502.34
7.	Moneys due on decrees		122,140.00
8.	Total amounts appearing in the books under the heading " doubtful loans accounts comprising outstandings the recovery of which is doubtful " ..		2,000.00
9.	Other doubtful loans		10,000.00
10.	Household goods, jewelleries Motor Cars etc. ..		2,027.00
11.	Stock of rubber coupons purchased 40,000 Lbs. at market price as at the date of death—25½ cts. per lb. ..	Rs.10,200.00	
	Advance to Eastern Bank *re* purchase of Bonds	5,566.41	
	Sundry Advances	12,387.68	
			28,154.09

Exhibits.

A3.
Affidavit, 4th February 1939, *continued.*

Movable Assets of the Firm Ar. Ar. Rm.

12.	Cash in hand		85,479.79
13.	Moneys in Banks		47,838.74
14.	Moneys out on Bills and Promissory notes		18,986.96
15.	Doubtful debts		2,467.07
16.	Furniture and fixtures		100.00
17.	Other assets		1,117.53
18.	Rice sold at Galle but not accounted for in the books		977.50
19.	Stock of rice as on 23.2.38		
	Big Samba 900 bags at Rs. 12/25 per bag	11,025.00	
	Small Samba 645 bags at 12/62½ per bag	8,143.13	
			19,168.13

Immovable Properties

Properties situated within the Municipality of Colombo

No. of House	Name of Street	Value Rs. cts.
97–99	Sea Street	12,000.00
142	do.	8,000.00
176–184	Jampettah Street	10,000.00
355	Grandpass	13,000.00
278, 280, 282, 284, 280 (1–18)	Layards Broadway	
108	Parakrama Road	4,000.00
303	Layards Broadway	7,000.00
303 (1–6)	do.	
118, 120	Parakrama Road	
190, 190/1, 192	Layards Broadway	9,000.00
146, 148, 150, 152, 154, 156, 158, 160, 162, 164, 164 (1–5)	Galkapanawatta Road	8,000.00
42, 44, 46, 54	Baseline Road	7,000.00
430, 436 & 438	Demetagoda Road	12,000.00
213	Deans Road	5,000.00
181 (5–26)	Deans Road	10,000.00
4, 6, 8, 5, 7, 9, 11	Wilson Street	12,000.00
11 (1–6)	Belmont Street	
121, 127	Hultsdorp Street	
30	2nd Fishers Lane	2,000.00
21 (5–26), 27 and 29	Leachman Lane	12,000.00
15, 17	42nd Lane Wellawatta	15,000.00
364	Modera Street	2,000.00
86	Alutmawatta Wall's Lane	7,000.00
40, 42, 44, 46 (1–15), 48, 50	Sea Beach Road	8,000.00
47 (2–7)	Brassfounder Street 5/8th share	2,000.00

Exhibits.

A3. Affidavit, 4th February 1939, *continued.*

PROPERTIES SITUATED OUTSIDE THE MUNICIPAL LIMITS

282A Galkissa within the U D C Limits of Dehiwela Mt. Lavinia	7,500.00
House at Bankshall Street within the U D C Limits of Jaffna	6,000.00
House at Vannarponnai within the U.D.C. Limits of Jaffna	300.00
House at Changuveil in Jaffna District	5,000.00
House at Vaddukoddai in Jaffna District	5,000.00
Land at Annalai Thivu Jaffna District	100.00
Boutique at Yatiyantota	100.00
Desicating Mills with buildings at Katunayake	7,000.00

ESTATE ETC.

Puwakgahahena Estate Ciruulla	10,000.00
Welikele Estate Kurunegala	3,000.00
Wettuyaya Estate (including Sundarampitiyehena and Puwakkotuwakumbura) Kurunegala	17,500.00
Petiyagoda Estate Kurunegala	3,000.00
Manawery Estate Rajakadaluwa	9,000.00
St. Clive Estate Nawalapitiya	150,000.00
Rajadevi Estate Avissawella	5,000.00
Mahadevi Estate Warakapola	12,000.00
Pettah Estate Wariapola	3,000.00
Welgama Estate Homegama	25,000.00
Thanmakeni Wannankani and Thanchangakadu Estates Pallai Jaffna District (1/2 share) .. .. .. (other half of the above property was held by the deceased in trust for the Thiruvadanai temple South India)	40,000.00
Wandunaba Estate Kattimahena (5/11 share)	15,000.00
Providence Estate Ambalangoda (40/195 share)	17,000.00
Rubber land at Dodampe Ratnapura District (81/357 share)	1,000.00
Walpola Estate, Bombugamana Negombo District ..	4,000.00
Land at Hendela	1,000.00
Land at Dodampe Ratnapura District (81/357 share) ..	100.00
Padmadevi Estate in Ratnapura District	500.00
	2,798,221.21
Total value of assets as above	Rs.2,798,221.21
Less Liabilities	7,409.33
Nett Value	2,790,811.88

(Sgd.) V. RAMASWAMI IYENGER.

(Sgd.) K. R. SUBRAMANIAM.

Signed and affirmed to at Colombo on this 4th day of February 1939.

Before me,

(Sgd.) M. J. APPASWAMY.

True copy.

Exhibits.

A11.

LETTER, Assessor, Estate Duty, to Wilson and Kadirgamar.

A11. Letter, Assessor, Estate Duty, to Wilson and Kadirgamar, 18th April 1939.

(Copy)

ED/A.300 (LGG)

Department of Income Tax
Estate Duty & Stamps,
Colombo.

18th April, 1939.

Estate of Rm. Ar. Ar. Rm. Ar. Arunachalam Chettiar, deceased.

Gentlemen,

With reference to the interview held in this office on the 18th March, 1939, I shall be glad if you will be so good as to forward a declaration and statement setting out the assets and liabilities of the Hindu Undivided Family of which the deceased was a member. On receipt of this declaration, the Commissioner's determination under section 37 will be communicated to you.

I am, Gentlemen,
Your obedient servant,
(Sgd.) L. G. GUNASEKERA,
Assessor—Estate Duty.

Messrs. Wilson & Kadirgamar,
P.O. Box No. 224,
Colombo.

(Original filed in D.C. Colombo No. 37 Est. Spl.)

R2B.

AUDITORS' REPORT, Messrs. Rm. Ar. Rm. and Ar. Ar. Rm., with Annexures.

R2B. Auditors' Report, 10th July 1939.

Messrs. Rm. Ar. Rm. & Ar. Ar. Rm., Colombo.

REPORT

Re Debtors' Accounts balances to be transferred to properties accounts, shown in the balance Sheet of Messrs. Rm. Ar. Ar. Rm., Colombo—Rs.63,811.04.

The above figure comprises the following three items :—

1.	A. L. M. Abdul Careem Account	31,354.74
2.	Saraswathi Senathiraja Account	8,209.25
3.	P. Navaratna Nonal Account	24,247.05
		63,811.04

The firm had taken over the mortgaged properties in realisation of the loans due by the above debtors but did not close their accounts to

Exhibits.

R2B. Auditors' Report, 10th July 1939, *continued.*

the respective properties accounts. The first two items are shown separately in the Schedule of House Properties Capital Account and the last item is shown in the Schedule of Estates Capital Account.

Income from House Properties and Estates :—

We have prepared the statements of account in respect of the income from estates and houses for the period from 1.4.34 to 30.6.34 for the purpose of convenience in making the necessary adjustments in regard to stock of produce and coupons, income receivable and expenses due to be incurred.

The balance sheets of estates and house properties incorporate the income therefrom only up to 30th of June 1934.

Cash on hand shown in the balance sheet of Messrs. Rm. Ar. Ar. Ar. Rm., Colombo :—

Cash balance as per books	326.50
Less : Petty Cash expenses	77.28
Shown in the balance sheet	249.22

We have examined the books of account of the Colombo firm and obtained the necessary information and explanations in the preparation of the statements of accounts annexed hereto. We certify, subject to our remarks made above, that the statements of account agree with the books and information and explanations furnished to us and that they are correct to the best of our knowledge and belief.

(Sgd.) Illegibly.

10.7.39.

Annexures.

Computation of capital of firm in Ceylon, Messrs. Rm. Ar. Rm., Colombo.

COMPUTATION OF CAPITAL OF THE FIRM IN CEYLON

	Rs.
As per balance sheet of Messrs. Rm. Ar. Ar. Rm. Colombo	37,88,325.90
As per balance sheet of the Firm's House properties ..	1,71,499.91
As per Balance Sheet of the Firm's Estates	2,97,440.84
As per balance sheet of Messrs. Ar. Ar. Rm., Colombo ..	38,197.82
	42,95,464.47
Less :	
Assets out of Ceylon as per balance sheet of Messrs. Rm. Ar. Ar. Rm. Colombo	1,40,120.25
Capital of the Firm in Ceylon	41,55,344.22

MESSRS. RM. AR. AR. RM., COLOMBO.

BALANCE SHEET AS AT 9TH JULY, 1934.

LIABILITIES.			ASSETS.			
Capital Account as at 1.4.34 ..	38,87,875.78		In Ceylon.			
Add : Saigon Branch Account ..	25,000.00		Furniture Fixtures and live stock as per valuation			300.00
Deity Account	28.22		Richshaw as per valuation			100.00
	39,12,904.00		Jewels as per books			590.00
Less : Net Loss as per profit & Loss Account	60,767.06		Stock of Silver Bars as per valuation			13,653.50
	38,52,136.94		Loans and Current Accounts :			
Less : Debtor's accounts balances to be transferred to properties accounts shown under properties ..	63,811.04		Secured Loans—Good—as per Schedule A	3,98,442.35		
		37,88,325.90	Secured Loans—doubtful of interest arrears as per Schedule B ..	2,18,940.19		
Loans payable as per Schedule H ..	5,777.33		Unsecured Loans—Good—as per Schedule C	5,15,766.26		
Sundry creditors as per Schedule I ..	17,962.57		Unsecured loans ; doubtful of interest arrears as per Schedule D	53,404.80		
Estates Current Account	2,689.03		Doubtful—Secured & Unsecured—as per Schedule E	8,982.87		
						11,95,536.47
			Fixed Deposits with Banks as per Schedule F		61 –	23,78,014.58
			Houses Current Account			2,116.55
			Sundry Debtors and Advances as per Schedule J			15,053.32
			Cash :			
			Cash at Banks as per Schedule G	69,020.91		
			Cash on hand	249.22		
			Out of Ceylon as per books :			
			Fixed deposit with Bank of Mysore Ltd. Bangalore	1,00,000.00		
			Nagapatam T.N.V.	40,120.25		
						1,40,120.25
	38,14,754.83					38,14,754.83

Exhibits. — Auditors' Report, 10th July 1939. — *Annexures, continued.* — Balance Sheet.

MESSRS. RM. AR. AR. RM., COLOMBO.

PROFIT AND LOSS ACCOUNT FOR THE PERIOD FROM 1.4.34 TO 9TH JULY 1934.

To Rent, rates and repairs :					By Interest :				
As per books		20.00			As per books				33,514.80
Add : Rent payable	191.50				,, Accrued interest adjusted as per statements :				
Rates	68.75				On secured loans ..	53,619.98			
		260.25			On unsecured loans ..	30,277.79			
			280.25		On fixed deposits with banks	22,014.61			
To Stationery & lighting :					On current accounts with banks	61.72			
As per books		125.17					105,974.10		
Add : Lighting charges payable ..		12.20						139,488.90	
			137.37		,, Net profit on Silver Bars Account ..		13,653.50		
To Salaries :					*Less :* Account balance		13,015.14		
As per books		65.07						638.36	
Add : Payable		718.69			,, Sundry profits				23.13
			783.76		,, Excess recoveries on debtor's accounts ..				5,788.21
,, Miscellaneous expenses :									
As per books		500.86							
Add : Allowances payable		45.59							
			546.45						
,, Messing expenses			276.63						
,, Postage			21.57						
,, Telephone expenses :									
As per books		3.05							
Add : Payable		.75							
			3.80						
To Telegrams			6.95						
,, Travelling expenses			9.47						
Carried forward									145,938.60

Brought forward			145,938.60		
,, Litigation expenses, Mt. Lavinia Bungalow electric installation charges and sundry expenses		1,925.98			
,, Charities and Deity expenses		7.50			
,, Loss on J. H. Rasiah Joseph Estates ..		58.89			
,, Income tax :					
As per books	17,000.00				
Add :	16,603.40				
		33,603.40			
,, Interest :					
As per books	250.25				
Add : Payable as per schedule ..	119.67				
		369.92			
,, Loss on valuation of Furniture, fixtures & Livestock :					
As per books	543.47				
Less : as per valuation	300.00				
		243.47			
,, Loss on valuation of Richshaw :					
As per books	323.00				
Less : As per valuation	100.00				
		223.00			
To Irrevocable Loans as per Schedule E ..		168,039.00			
,, Irrecoverable advances as per Schedule K		168.25	By Net loss		60,767.06
		Rs.206,705.66			206,705.66

Exhibits.
R2B.
Auditors' Report, 10th July 1939.
Annexures.
Profit and Loss Account 1st April to 9th July 1934, *continued.*

MESSRS. RM. AR. AR. RM., COLOMBO.

SCHEDULE A—SECURED LOANS (LOANS DUE TO THE FIRM ON MORTGAGES)—GOOD.

L.F.	Name of Debtors	A/c. balance as at 9.7.34	Rate of interest	Date from which int. is due	Amount of Interest	Remarks
191.	Colombo, S. S. N. R. M. Open Security Account ..	49,500.00	10½	1. 3.34	1,927.80	
194.	Negmbo, S. T. K. N. S. R. M. Ramanathan Chettiar ..	11,500.00	6	10. 2.34	287.50	
195.	Negombo, S. Kr. A. Kn. Athappa Chettiar	20,000.00	6	17. 1.34	580.00	
196.	Negombo, A. N. T. L. Lakshamana Chettiar	3,500.00	6	7. 3.34	72.92	
201.	J. D. Dharmadasasena	12,000.00	12	9. 7.34	4.00	
202.	A. M. Nagoor Meera & Sons	35,000.00	10½	10. 2.34	1,531.25	
203.	Chinnatambi Sainambu Nachiar, H. N. M. M. Haniffa & N. M. M. Ishak	20,000.00	10½	10. 2.34	875.00	
204.	M. A. M. Hanji Mohomod Ibrahim Saheb	20,000.00	10½			Interest received up to
205.	Mutwal, Antony Francis Jurien	10,000.00	12	21. 3.34	370.00	18.7.34
207.	Colombo A. P. Casie Chetty	5,000.00	12	28. 5.34	71.67	
208.	Colombo, S. L. M. M. Yusoof	22,000.00	11	15. 6.34	168.06	
209.	Colombo, S. P. Petchimuttu Chetty	27,000.00	10½	19. 6.34	165.38	
210.	Beruwala F. I. Fernando	2,250.00	12	21. 6.34	14.25	
211.	Akrakumbura, R. M. Mohomod Gahni & M. Ahamed Mohideen	4,475.00	13	1. 5.34	113.12	
212.	Colombo Abdul Razaak Mohomod Sali-Security Account	2,500.00	13½	8. 7.34	2.38	
214.	K. Muthiah Kangany of Martandi	4,500.00	12	—	—	Interest received in advance up to
218.	Kadugannawa, L. A. Siriwardana & M. Babu Reddiar	7,797.53	12¾	1.12.31	3,275.38	20.7.34
219.	Kalutara North, S. C. Fernando	44,443.92	11½	1. 4.34	1,423.13	
222.	Kalutara, A. D. de Fonseka	9,768.06	12	17. 2.32	3,456.00	
223.	Colombo, J. B. M. Perera & J. G. de S. Wijeratna and his wife	27,815.51	13	1. 1.30	38,787.82	
224.	S. L. M. M. Razik & Abdulla Kasia Umma	4,022.85	13½	25. 4.34	114.00	
225.	Colombo, A. W. Perera	599.50	12	21.12.31	380.32	
232.	Mr. & Mrs. Perianayagam Arunachalam	1,150.00	12	—	—	Interest received in advance up to 29.7.34
	Totals	3,44,822.37			53,619.98	
	Add interest due	53,619.98				
	Total	3,98,442.35				

Messrs. RM. AR. AR. RM., COLOMBO.

Schedule B—Secured Loans—Loans Doubtful of Interest Arrears.

L.F.	Name of Debtors	A/c. balance as at 9.7.34	Rate of interest	Date from which int. is due	Remarks
192.	Colombo, P. L. S. P. S. Karuppan Chettiar	9,000.00	6	17. 3.34	Mortgaged properties no sufficiently worth.
193.	do. P. L. S. P. L. Karuppan Chettiar	9,000.00	6	10. 9.33	do.
	do.	7,500.00	6	14. 9.33	
206.	Colombo, Mr. & Mrs. G. L. Cooray	96,061.05	11	19. 1.33	
213.	Moratuwa, J. Joselyn de Silva and her sons E. R. de Silva & J. F. L. de Silva	2,362.50	12	7.10.33	Claim for interest disputed.
215.	N. Ratnasabapathy	10,899.76	—	1. 1.31	
220.	Colombo, S. L. M. Ahiya	13,711.45	—	14. 1.32	Sued debt-mortgaged properties not sufficiently worth.
227.	Kalatuwa, A. D. Paulis Appuhami Open Security Account	70,405.43	10	31.10.30	
	Total	2,18,940.19			

Exhibits.

R2B.
Auditors' Report, 10th July 1939.

Annexures.

Profit and Loss Account, 1st April to 9th July 1934, *continued.*
Schedule B. Secured Loans.

MESSRS. RM. AR. AR. RM., COLOMBO.

SCHEDULE C—UNSECURED LOANS—LOANS AND CURRENT ACCOUNTS—GOOD.

L.F.	Name of Debtors	A/c balance as at 9.7.34	Rate of int.	Date from which int. is payable	Amount of interest	
91.	Messrs. K. S. P. S. & A. R. K. N., Colombo, loan ..	10,000.00	6% with commission	10. 6.34	66.90	
92.	O. L. K. K. M. Colombo Loan	15,000.00	8% and commission	5. 7.34	—	Commission paid in advance up to 2nd Sept. & so no interest is adjusted.
94.	K. K. M. Kurunegala—loan	1,139.46	10% & commission	13. 6.34	9.54	
95.	O. L. K. K. N. Colombo—loan	25,000.00	8% & commission	12. 6.34	126.75	
96.	A. V. R. A. Colombo—Current account	99,000.00	4½	1. 4.34	1,220.55	
101.	M. T. T. K. A. V. S. T., Negombo—current account ..	5,463.31	C/a rate plus 2%	1. 4.34	95.81	
102.	St. K. N. S. St., Negombo do. ..	900.00	do.	1. 4.34	16.58	
105.	S. K. Rm. Rm. Kochchikade do. ..	10,264.09	do.	1. 4.34	184.78	
106.	S. P. L. Kochchikade do. ..	22,000.00	do.	1. 4.34	403.59	
111.	M. Y. A. Puttalam do. ..	18,579.54	do.	1. 4.34	337.10	
113.	V. K. V. Negombo do. ..	9,700.84	6 & 12	19. 5.33	1,036.20	
115.	V. E. R. M. K. Karur	13,008.12	5⅝%	21. 6.34	38.62	
	PROMISSORY NOTES.					
151.	M. C. Abdul Rahim & Bros.	10,000.00	12	1. 6.34	130.00	
152.	T. A. de S. Wijeratna	2,750.00	11	—		Interest received up to 31.7.34.

154.	A. M. Nagoor Meera & Sons	3,780.00	13½	1. 6.34	56.75	
155.	W. M. A. Mazeed	1,000.00	12	1. 6.34	13.00	
156.	W. M. A. Wahid	2,000.00	12	1. 6.34	26.00	
157.	Dr. S. C. Paul	11,500.00	12	6. 7.34	15.33	
158.	M. A. Mohomod Ismail	5,000.00	12	2. 6.34	63.33	
160.	J. L. Roche & Bros.	750.00	14¼	1. 6.34	11.58	
161.	S. D. Carnolis	80.32	13½ & 12	16.12.32	228.73	
163.	Colombo, P. Sithambaram Pillai	10,826.22	9	1. 4.34	299.81	
166.	S. B. de Silva & S. R. de Silva	6,130.78	12	2. 5.34	141.90	
167.	Colombo, Ibrahim Bin Ahamed & Ahamed Bin Ibrahim	39,365.03	12 & 10	1. 6.32	19,981.92	
168.	Rawanna Mawanna & Co.	1,22,138.90	12	23. 3.34	5,049.55	
170.	P. S. T. Vaithilingam Pillai & A. P. S. T. Ponnambalam Pillai	15,111.34	10	1. 4.34	446.35	
174.	S. Kr. A. K. N. Athappa Chettiar	6,000.52	6	18. 1.34	173.00	
176.	S. S. Sattayappa Mudlaiyar—loan against Rice bags account	16,000.00	7	26. 6.34	41.22	
177.	M. R. S. Irulappa Pillai—loan against rice bags account	settled A/c	9	12. 5.34	62.90	
185.	Beruwala F. I. Fernando	1,000.00		—	—	Lent on cheque—Interest deducted in advance.
186.	M. C. Abdul Rahim & Bros.	500.00		—	—	do.
241.	M. C. Abdul Rahim & Bros.	1,500.00	12		—	Interest received in advance.
	Totals	4,85,488.47			30,277.79	
	Add : Interest receivable	30,277.79				
	Total	5,15,766.26				

MESSRS. RM. AR. AR. RM., COLOMBO.

SCHEDULE D—UNSECURED LOANS—LOANS AND CURRENT ACCOUNTS DOUBTFUL OF INTEREST ARREARS.

L.F.	Name of Debtors	A/c balance as at 9.7.34	Rate of interest	Date from which int. is due	Remarks
93.	P. R. M. Colombo—Loan	425.00	13½	27. 9.33	
97.	Pr. Kr. M., Colombo—Loan	5,917.67	C/a rate	15. 4.30	Sued in Devakottai Sub-Court.
98.	Ar. Rm. N., Colombo—loan account	4,287.30	do.	6. 4.30	do.
102.	An. T. L., Negombo	75.00	No interest		
103.	S. Rm. Sm. Negombo—Loan	13,635.17		1. 4.31	Sued in Siva-ganga Sub-Court O.S. No. 83 of 1933.
105.	S. Kr. A. Kn., Kochchikade	18.47	No interest		
109.	Sp. N. Sp. Madampe—Current Account ..	3,666.68	—	1. 4.31	Sued in Sivaganaga Sub-Court.
109.	K. P. S. T. Madampe—Current Account ..	307.49	—	1. 4.31	Sued Colombo D.C. 48712.
112.	M. Y. N., Puttalam—Current account	7,974.96	—	1. 4.31	D.C. Colombo 48300.

PROMISSORY NOTES DOUBTFUL OF INTEREST ARREARS.

162.	T. Cornelis Appuhamy—D. C. Senanayaka surety	76.36	—	—	
165.	Moratuwa, J. G. Fernando	140.30	15	6. 1.33	D.C. Colombo 53040.
171.	M. Naser	100.00	—	12. 3.34	
172.	K. Balasingham	119.02	12	18.12.33	
173.	Panadura, P. A. L. Dias & E. S. Rudric (two loans)	16,661.38	13½ & 10	26.11.31 & 2. 1.32	D.C. Colombo 47805 & 47128.
	Total	53,404.80			

MESSRS. RM. AR. AR. RM., COLOMBO.

SCHEDULE E—SECURED & UNSECURED—DOUBTFUL DEBTS WITH AMOUNTS CLAIMED AS BAD.

L.F.	Name of Debtors	A/c balance as at 9.7.34	Bad debt	Expected recovery	Remarks
4.	N. SV. V. SV.	4,549.29	4,549.29	—	
104.	Kn. Rm. Rm., Negombo	5,192.92	5,192.92	—	Claimed as bad for Income Tax assessment year 1934–35.
104.	Rm. K. P. Negombo	897.02	897.02	—	do.
110.	Rm. M. V. Madampe	8,211.21	3,211.21	5,000.00	do.
	LOANS OUT ON PROMISSORY NOTES :				
172.	Colombo, S. N. Mohomod Aboobucker & S.N. Shkeu Thambi Marikar	4,749.22	2,907.53	1,841.69	do.
174.	D. C. Senanayaka	1,424.45 52,523.95	1,424.45 52,523.95	—	do.
175.	J. B. M. Perera	864.00	864.00	—	do.
	LOANS OUT ON MORTGAGES :				
215.	Don Philip A. Wijeyawardana	4,952.71	3,011.53	1,941.18	do.
		5,029.50	5,029.50	—	do.
216.	Proctor, J. R. Rasiah Joseph & his wife	200.00	—	200.00	Recoverable doubtful debt balance after claiming bad debt.
216.	Jampetta Street. D. R. Jayatillaka ..	33,599.77	33,599.77	—	
		1,859.30	1,859.30	—	Claim for bad debt made for Income Tax assessment year 1934–35.
221.	Colombo, Ismail Marikar Sabi Umma and her husband	1,278.72	1,278.72	—	Claim for bad debt made for Income Tax Assessment year 1934–35.
225.	K. C. Dias	1,024.55	1,024.55	—	do.
230.	Kurunegala Dist. Egonis Appuhamy ..	1,405.76	1,405.76	—	do.
	Carried forward ..				

Exhibits.
R2B.
Auditors' Report, 10th July 1939.
Annexures.
Profit and Loss Account, 1st April to 9th July 1934.
Schedule E. Secured and Unsecured Doubtful Debts.

L.F.	Name of Debtors	A/c balance as at 9.7.34	Bad debt	Expected recovery	Remarks
	Brought forward ..				
242.	S. L. Naina Marikar	1,086.36	1,086.36	—	
242.	Felix Constantine & A. P. Mahomod ..	3.55	3.55	—	
243.	N. K. N.	861.21	861.21	—	Claim bad debt made for Income tax Assessment year 1934–35.
	Douglas Scott & Co.	3,215.38	3,215.38	—	
	A. C. Abeywardana	5,109.90	5,109.90		
	V. M. R. M.	9,093.11	9,093.11	—	
	Kandana G. A. Mendis	1,081.35	1,081.35	—	
	Arthur Weerakoon	1,049.13	1,049.13	—	
	F. W. Rodrigo & F. A. Rodrigo	1,901.34	1,901.34	—	
	A. R. Mohamed Cassim & Bros. ..	1,837.25	1,837.25	—	
	M. A. Arulanandam	1,808.50	1,808.50	—	
	Joseph Costa & Bros.	731.07	731.07	—	
	P. A. Kerthiratha & Bros.	1,146.30	1,146.30	—	
	NKN.	63.00	63.00	—	
	A. R. (Ana Rawanna)	151.00	151.00	—	
	S. A. N.	14,595.97	14,595.97	—	
	P. A. Kerthiratna	20.18	20.18	—	
	H. A. P. Chandrasekera	451.30	451.30	—	
	S. S. V. & Co.	5,053.60	5,053.60	—	
	TOTALS	177,021.87	168,039.00	8,082.87	

MESSRS. RM. AR. AR. RM., COLOMBO.

SCHEDULE F—FIXED DEPOSITS WITH BANKS.

	Names of Banks	A/c balance as at 9.7.34	Rate of Interest	Date from which int. is due	Amount of interest
	L.F. 120				
	Imperial Bank	1,90,000.00	2	29. 3.34	1,064.52
	do.	1,40,000.00	2	30. 3.34	776.71
	do.	1,00,000.00	2	12. 9.34	1,653.42
10	do.	3,50,000.00	2	29. 9.33	5,460.96
	do.	40,000.00	2	7.11.33	537.72
	do.	45,000.00	2	4. 9.33	746.75
	do.	1,20,000.00	2	27. 3.34	685.48
	Chartered Bank	1,10,000.00	2¾	29. 3.34	847.41
	do.	1,00,000.00	2¾	30. 3.34	762.84
	do.	50,000.00	2¾	18. 4.34	312.04
	do.	25,000.00	2¾	21. 4.34	150.69
	do.	50,000.00	2¾	23. 4.34	293.84
	do.	70,000.00	2¾	10. 5.34	320.83
20	do.	30,000.00	2¾	10. 6.34	68.75
	do.	80,000.00	2¾	31.12.33	1,154.25
	do.	50,000.00	2½	14. 3.34	401.54
	do.	40,000.00	2½	28. 3.34	282.88
	do.	25,000.00	2½	14. 3.34	200.77
	National Bank	50,000.00	2½	3.11.33	857.31
	do.	25,000.00	2½	13.11.33	410.81
	do.	16,000.00	2½	28.11.33	246.48
	Mercantile Bank	50,000.00	2¾	24. 4.34	289.44
	do.	50,000.00	2	24.10.33	710.50
30	do.	50,000.00	2	28.11.33	616.21
	Hongkong & Shanghai Bank ..	50,000.00	2¾	21. 4.34	300.75
	do. ..	25,000.00	2½	8. 8.33	576.34
	do. ..	32,000.00	2½	16. 8.33	719.27
	do. ..	53,000.00	2¾	29.12.33	772.67
	do. ..	40,000.00	2¾	30.12.33	580.14
	Indian Bank	30,000.00	3½	1. 7.34	37.97
	do.	14,000.00	3½	1. 7.34	
	do.	7,500.00	2	do.	
	do.	12,500.00	2	do.	
40	do.	35,000.00	2	do.	157.32
	do.	21,000.00	3	do.	
	do.	30,000.00	3	do.	
	do.	1,50,000.00	2½	do.	
	Totals	23,56,000.00			22,014.61
	Add: Interest receivable	22,014.61			
	Total	23,78,014.61			

Exhibits.

R2B. Auditors' Report, 10th July 1939.

Annexures.

Profit and Loss Account, 1st April to 9th July 1934, *continued.*

Schedule J. Sundry Debtors and Advances.

MESSRS. RM. AR. AR. RM., COLOMBO.

SCHEDULE J—SUNDRY DEBTORS AND ADVANCES.

	A/c balance as at 9.7.34	
Tiruothira Kosmangai litigation advance account		470.27
Old Kathiresan Temple building advance Account	13,883.78	
Less : rent adjusted	191.50	
		13,692.28
Kegalle, Asst. Govt. Agent		255.00
Director of Electrical Undertakings		30.00
N. Ramanatha Pillai		100.00
Venkatachalam Chettiar		132.01
P. L. S. P. L.		200.00
Cook Raman		.10
Richshaw Man, Subban		1.00
Sundry advances :		
A. R. Mainkkam Chettiar		78.61
K. Muthuramalingam		60.86
A. Shanmugavel		33.19
Total		15,053.32

Schedule G. Cash at Banks.

MESSRS. RM. AR. AR. RM., COLOMBO.

SCHEDULE G—CASH AT BANKS.

	A/c balance as at 9.7.34	Rate of interest	Date from which int. is due	Amount of interest
Imperial Bank	574.09	No interest		—
Chartered Bank	524.86	1%	1. 7.34	0.13
Eastern Bank	67,860.24	1%	31. 5.34	61.59
Totals	68,959.19			61.72
Add : Interest receivable	61.72			
Total	69,020.91			

MESSRS. RM. AR. AR. RM., COLOMBO.

SCHEDULE H—LOANS PAYABLE.

L.F.	Name of Creditors	A/c balance as at 9.7.34	Rate of interest	Date from which int. is payable	Amount of Interest
68.	Thiruvadanai Temple Trust	1,722.37	—	19.10.30	69.57
71. & 72.	Colombo Sea Street, Sri Muthuvinayagar Temple ..	1,127.16	—	1. 4.34	14.30
72.	Old Kathiresan Temple, Sea Street, Colombo	1,345.99	—	1. 4.34	34.49
	do.	1,358.52	—		
74.	Meenakshipuram, A. S. S. P. L. P. R.	103.62	—		1.31
	Totals	5,777.66			119.67
	Add : Interest payable	119.67			
	Total	5,777.33			

Exhibits.

R2B. Auditors' Report, 10th July 1939.

Annexures.

Profit and Loss Account 1st April to 9th July 1934, *continued.*

Schedule H. Loans Payable.

Exhibits.

R2B. Auditors' Report, 10th July 1939.

Annexures.

Profit and Loss Account, 1st April to 9th July 1934, *continued.*

Schedule I. Sundry Creditors.

MESSRS. RM. AR. AR. RM., COLOMBO.

SCHEDULE I—SUNDRY CREDITORS.

Names of Creditors	*A/c balance as at* 9.7.34
Old Kathiresan Temple Mahamai Account	39.65
M. B. Mahomod	75.00
Electrical Department for lighting charges due	12.20
Telephone Charges	.75
Rates payable	68.75
Bank of Chettinad	1.42
Old Kathiresan Temple	900.00
Cook Krishnan	52.60
Sivaratri Fund	102.52
Income Tax payable	16,603.40
For Salaries	106.28
Total	Rs.17,962.57

Details of Salaries Payable.

MESSRS. RM. AR. AR. RM., COLOMBO.

DETAILS OF SALARIES PAYABLE.

A. R. Manickam Chettiar	240.62
S. Muthukumaraswamy Pillai	259.88
K. Muthuramalingam	73.31
A. Shanmugavel	76.98
A. L. Sundararajan	67.90
Total	Rs.718.69

Schedule K. Irrecoverable Advances.

MESSRS. RM. AR. AR. RM., COLOMBO.

SCHEDULE K—IRRECOVERABLE ADVANCES.

Names of Debtors	*A/c balance as at* 9.7.34
Kalpili Subbiah	67.54
V. Vadivel	81.79
Vesrappa Chetty	18.92
Total	Rs.168.25

MESSRS. RM. AR. AR. RM., COLOMBO—HOUSE PROPERTIES.

BALANCE SHEET AS AT 9TH JULY 1934.

LIABILITIES			ASSETS		
Head Office Capital Account :			House Properties as per valuation ..		165,500.00
As per books		275,498.25	Sundry debtors		2,520.05
Add : Debtors' accounts balances in the money-lending books to be transferred to houses-accounts, as shown in the statement :—			Cash :		
			At Bank :		
Saraswathi Senathiraja Account	8,209.25		As per books	8,409.60	
A. L. M. Abdul Carrem Account	31,354.74		*Add :* Interest receivable	19.45	
	39,563.99			8,429.05	
Nett Profit :			Cash on hand	62.19	
Up to 31.3.34	6,329.95				8,491.24
As per P. & L. Account	4,208.05				
	10,538.00				
Less : advance rents received shown under sundry creditors ..	2,032.50				
	8,505.50				
		48,069.49			
Less : Loss on valuation of properties as per statement		152,067.83			
		171,499.91			
Sundry Creditors		2,894.83			
Money-lending Department Current Account		2,116.55			
		176,511.29			176,511.29

Exhibits.
R2B.
Auditors' Report, 10th July 1939.
Annexures, *continued.*
House Properties.
Balance Sheet as at 9th July 1934.

MESSRS. RM. AR. AR. RM., COLOMBO—HOUSE PROPERTIES.

PROFIT AND LOSS ACCOUNT FOR THE PERIOD FROM 1.4.34 TO 30TH JUNE 1934.

To Net Profit		4,208.05	By Net Income accrued prior to 1.4.34 :		
			Received	1,037.32	
			Receivable	563.90	
					1,591.22
			,, Net Income as per statement :		
			Total of rents received	1,733.60	
			Add : Total of rents receivable ..	1,966.15	
				3,699.75	
			Less : Rates, repairs & other Expenses :		
			Expended .. 345.14		
			Rates payable.. 763.23		
				1,108.37	
					2,591.38
			,, Interest receivable on Indian Bank current account		19.45
			,, Sundry Profit		6.00
		4,208.05			4,208.05

MESSRS. RM. AR. AR. RM., COLOMBO—HOUSE PROPERTIES.

DETAILS OF INCOME FROM HOUSE PROPERTIES.

Description of Properties	Rents up to 30.6.34 received from 1.4.34 to 9.7.34	Rents receivable to 30.6.34	Rates repairs & other expenses	Rates payable	Remarks
No. 97, Sea Street	155.00	77.50	46.00	62.50	
,, 99, Sea Street	113.50	—	—	27.50	
,, 142, Sea Street	70.00	140.00	—	—	
Nos. 47 (2 to 7), Brassfounder Street—⅝th share ..	26.25	52.50	16.79	12.19	
Nos. 176 & 184, Jampettah Street, Colombo	—	243.00	—	40.00	
No. 42/16, Baseline Road	24.00	12.00	—	2.00	
,, 44/18 do.	48.00	—	16.00	6.00	
,, 46/20 do.	39.00	11.00	—	6.00	
,, 54/22 do.	81.00	25.00	17.50	8.00	
Nos. 21 (5 to 26) 27 & 29, Leechman's Lane—Old Nos. G 7 (11 to 30) 15 & 17	325.00	162.50	—	150.00	
Nos. 303 (1 to 6), Layards Broadway	25.00	45.00	—	26.00	
No. 190, Layards Broadway	112.50	—	—	18.75	
,, 190/1 do.	30.00	30.00	—	6.25	
No. 192, do.	75.00	37.50	3.12	15.00	
,, 303, do.	50.00	25.00	—	12.50	
,, 30, 2nd Fisher's Lane	65.00	32.50	16.20	34.98	
Nos. 146, 148, 150, 152, 154, 156, 158, 160, 162, 164 & 164 (1 to 5), Galkapanawatte Road	—	375.00	—	97.00	
No. 15, 42nd Lane, Wellawatta	280.00	—	57.50	35.00	
,, 17, do.	140.00	70.00	55.00	35.00	
No. 128, Modora Street	36.00	18.00	35.24	7.14	
,, 282A, Mount Lavinia	—	—	56.53	—	Vacant.
,, 86, Alutmwatte, Walls Lane	—	—	20.00	—	Vacant.
,, 108, Parakrama Road	—	120.00	—	17.50	
Nos. 118 & 120, Parakrama Road	32.00	40.00	5.26	15.25	
,, 121 & 127, Hultsdorf Street, 5, 7, 9, 11 & 11 (1 to 6) Belmont Street and 4, 6 & 8 Wilson Street	—	420.00	—	126.87	
No. 162, Yatiyantota Boutique	6.35	29.65	—	1.80	
Totals	1,733.60	1,966.15	345.14	763.23	

Exhibits.
R2B.
Auditors' Report, 10th July 1939.
Annexures.
House Properties, *continued.*
Details of Income.

MESSRS. RM. AR. AR. RM., COLOMBO—HOUSE PROPERTIES.

SCHEDULE OF HOUSE PROPERTIES CAPITAL ACCOUNT.

Assessment numbers and situation	Assessment amount	Annual rent	Account balance as at 9.7.34	Valuation
Nos. 97 & 99 Sea Street, Colombo	1,800.00	1,350.00	40,100.00	12,000.00
No. 142, Sea Street, Colombo	800.00	840.00	16,000.00	8,000.00
,, 86, Walls Lane, Alutmawatte, Colombo	Vacant	—	23,966.00	7,000.00
,, 128, Modera Street, Colombo	214.00	216.00	2,702.50	2,000.00
No. G 7 (11 to 30), 15 & 17, Leechmans Lane, Slave Island, Colombo	2,920.00	1,950.00	20,321.00	12,000.00
No. 15 & 17, 42nd Lane, Wellawatte, Colombo	1,400.00	1,680.00	27,854.27	15,000.00
No. 108, Parakrama Road, Colombo	450.00	480.00	6,348.00	4,000.00
Nos. 303, 303 (1 to 6), Layards Broadway, Colombo Nos. 118 & 120, Parakrama Road, Colombo ..	1,045.00	888.00	10,452.85	7,000.00
Nos. 16, 18, 20 & 22, Baseline Road, Borella, Colombo ..	600.00	840.00	9,393.56	7,000.00
No. 30, 2nd Fishers Lane, Colombo	500.00	390.00	4,713.59	2,000.00
Nos. 146, 148, 150, 152, 154, 156, 158, 160, 162, 164 & 164 (1 to 5), Galkapanawatte Road, Colombo	1,920.00	1,500.00	6,626.00	8,000.00
(taken from Saraswathie Senathiraja—Debtor's account balance in money-lending department's books to be transferred to the property account)	—	—	8,209.25	
Nos. 4, 6 & 8, Wilson Street, Colombo ,, 5, 7, 9, 11 & 11 (1 to 6), Belmont Street, Colombo ,, 121 & 127, Hultsdorf Street, Colombo	2,250.00	1,680.00	17,286.00	12,000.00
Nos. 176 & 184, Jampottah Street, Colombo	800.00	972.00	18,218.50	10,000.00
Nos. 190, 190/1 & 192 Layards Broadway, Colombo	800.00	1,140.00	9,002.82	8,500.00

Nos. 21, 23, 25, 25 (3 to 16), 27 & 31, Dam Street, Colombo. No possession—½ share. (taken from A. L. M. Abdul Careem—debtor's account balance in money-lending department's books to be transferred to the property account)	—	—	31,354.74	25,000.00
Nos. 47 (2 to 7), Brassfounder Street, Colombo—⅝th share ..	306.25 for ⅝th share	315.00 for ⅝ share	1,038.00	2,000.00
PROPERTIES OUTSIDE MUNICIPAL LIMITS:				
No. 282A, Mount Lavinia	—	—	19,740.00	7,500.00
House at Bankshall Street in Jaffna	—	—	22,214.25	6,000.00
House at Vannarponnai in Jaffna—No possession	—	—	1,200.00	300.00
No. 162, Boutique at Yatiyantota	—	—	483.50	100.00
House at Changuveli in Jaffna District House at Vaddukoddai in Jaffna District } No possession ..	—	—	20,343.00	10,000.00
Land at Annalai Thivu in Jaffna District ..	—	—	—	100.00
Totals			317,567.83	165,500.00

Loss on valuation .. Rs.152,067.83

Exhibits.

R2B. Auditors' Report, 10th July 1939.

Annexures.

House Properties.

Schedule of House Properties Capital Account, *continued.*

Exhibits.

R2B. Auditors' Report, 10th July 1939.

Annexures.

House Properties, *continued.*

Schedules of Sundry Creditors and Debtors.

MESSRS. RM. AR. AR. RM., COLOMBO—HOUSE PROPERTIES.

SCHEDULE OF SUNDRY CREDITORS.

Creditors for advance rents		2,032.50
Creditors for rates payable		763.23
Co-owners in Brassfounder Street House		99.10
TOTAL	Rs.	2,894.83

SCHEDULE OF SUNDRY DEBTORS.

Sundry debtors for rents receivable		1,966.15
Sundry debtors for net income accrued prior to 1.4.34		553.90
TOTAL	Rs.	2,520.05

MESSRS. RM. AR. AR. RM., COLOMBO—ESTATE PROPERTIES.

BALANCE SHEET AS AT 9TH JULY 1934.

LIABILITIES			ASSETS			
Head Office Capital			Estates as per valuation			275,100.00
As per books		398,169.95	Stock of produce and coupons			6,874.75
Add :			Sundry debtors and advances as per Schedule A			2,391.83
Debtor's account balance in the money-lending department's books to be transferred to estate account as shown in the statement	24,247.05		Money-lending department current account			2,689.03
Net Profit up to 31.3.34	6,729.00		*Cash :*			
Net Profit as per P. & L. Account	15,611.84		At Bank—			
		46,587.89	As per books	11,830.24		
		444,757.84	*Add :* Interest receivable	28.56		
Less :				11,858.80		
Loss on valuation of estates as per statement		147,317.00	*Less :* Bank charges adjusted	3.75		
		297,440.84			11,855.05	
Thiruvadanai Temple Trust :			Cash on hand		157.55	
As per books		1,522.47				12,012.60
Add : Interest payable		33.53				
		1,556.00				
Sundry Creditors as per Schedule B		71.37				
		Rs. 299,068.21			Rs.	299,068.21

Exhibits.
R2B.
Auditors' Report, 10th July 1939.
Annexures, *continued.*
Estate Properties.
Balance Sheet as at 9th July 1934.

MESSRS. RM. AR. AR. RM., COLOMBO—ESTATE PROPERTIES.

PROFIT AND LOSS ACCOUNT FOR THE THE PERIOD FROM 1.4.34 TO 30TH JUNE 1934.

To Bank Charges payable	3.75	By Net Profit accrued prior to 31.3.34 received during the period	8,502.92
,, Interest payable to Thiruvadana Temple Trust	33.53	,, Net Profit as per statement	7,117.64
,, Net Profit	15,611.84	,, Interest receivable from Indian Bank	28.56
	15,649.12		15,649.12

MESSRS. RM. AR. AR. RM., COLOMBO—ESTATE PROPERTIES.

SCHEDULE OF ESTATE CAPITAL ACCOUNT.

Names of Estates, Situation, Acreage, etc.	Nature of Crop	Crop for the year to 31.3.34	A/c balance as at 9.7.34	Valuation
1. St. Clive, Shoreham, St. James Mount, Koladeniya Estates and Gabalwattomangadahena now forming one property called and known as St. Clive Estate—Situated in the village of Ambagamuwa, Nawalapitiya—Total acreage 542 acres of which about 304 acres mature and rest not planted	Tea	74,458 lbs. assessment under Tea Control Ordinance 86,070 lbs.	188,073.50	150,000.00
2. Vathuyayawatte Estate including Sundarampitiyahena and Puwakottuwakumbura called and known as Vathuyayatte Estate—Situated in Akurumullegedara, Henopola and Godawita Villages Dambadeni Hat Pattu, in the District of Kurunegala—Total 105 acres of which about 60 acres mature, about 10 acres immature and rest not planted	Coconut	100971 nuts	28,485.25	15,000.00
3. Welikale Estate—Situated at Godawita Village in Dambadeni Hat Pattu in Roko Pattu Korale in the District of Kurunegala—Total 14 acres—fully mature	Coconut	21753 nuts	3,500.00	2,500.00
4. Pettah Estate—Situated in Kalawanagama Dewamedi Hat Pattu of Dewamedde Korale in the District of Kurungala —Total 57 acres of which 15 acres mature and rest jungle	Coconut	14666 nuts	6,493.75	3,000.00

5. Petiyagoda Estate—Situated at Godawita Village in Damabedeni Hat Pattu in the District of Kurunegala—Total 16 acres 3 roods of which about 10 acres mature and rest not planted	Coconut	23177 nuts	4,973.50	2,500.00
6. Land called Kadurugahawatte Manaweriyakele, Punchihena, Weehen Pathaha, Dewalewatta, Dewalewattehena & Mahadewalekele called and known as Manaweri Estate—situated at Manaweriya in Anavulundan Pattu of Pitigal Korale North in the District of Chilaw—Total 30 acres of which about 28 acres mature and rest immature	Coconut	83153 nuts	15,350.00	8,000.00
7. Land called Puwakgahalanda—Situated at Digampola in Yatigaha Pattu of Hapitigam Korale in the District of Negombo—undivided 1/4th share of 190 acres fully mature about 188 acres coconut and 2 acres rubber	Coconut	79420 nuts for firm's share	20,966.75	9,000.00
8. Lands called Godapinnahenyaya now called Rajadevi Estate—situated in the village of Taldua in Atulugam Korale of three Korales in the District of Kegalle—Total 22 acres fully mature	Rubber	3410 lbs. no regular tapping	1,005.13	5,000.00
9. Lands called Mukalannagawa, Hena Ellegawehena, Tennepita Hena, Hurigolla Hena, Kadumboriyagahamula and Pitadeniya Hena called and known as Mahadevi Estate—Situated in the villages of Weligalla, Niyadandupola, Niwatuwa and Hopitiya in Kirwali Pattu, Peligal Korale of the four Korales in the District of Kegalle—Total 143 acres of which about 50 acres mature rubber and rest jungle land	Rubber	13233 lbs. not fully tapped	3,143.57	12,000.00
10. Land called Galpottedolehenyaya, Ottukumburaehenyaya Horehenyaya etc.—Situated at Dodampe in Uda Pattu of Kuruwita Korale in the Ratnupura District—Total 25 amunams of paddy sowing excluding therefrom 1/3rd share—about 20 acres	Rubber	Managed by S.O.R.M., Colombo		
Land called Galabandawehenyaya—Situated at Dodampe aforesaid—about 185 acres		No possession	4,087.25	1,100.00
Out of these two lands 81/375 undivided shares				
11. All that Estate called and known as Providence Estate—situated at Karandeniya and Indiketiya in the District of Galle (Ambalangoda)—Total 343 acres of which 301 acres rubber, 11 acres coconut and rest paddy fields 40/195 undivided shares	Rubber and Coconut	Managed by the Bank of Chettinad Ltd. Colombo	40,124.10	17,000.00
		Carried forward ..		

Exhibits.
R2B.
Auditors' Report, 10th July 1939.
Annexures.
Estate Properties.
Schedule of Estate Capital Account, *continued.*

Names of Estates, Situation, Acreage, etc.	Nature of Crop	Crop for the year to 31.3.34	A/c balance as at 9.7.34	Valuation
		Brought forward ..		
12. All that Estate called and known as Wandurebe Estate—situated in the villages of Kattimahana, Kanubochchiya and Wandurebe in Katugampola Hatpattu, Katugampola Korale in the Districts of Kurungela and Chilaw—Total 115 acres—fully mature—5/11ths undivided share—Taken from P. Navaratna Nonal—Debtor's account balance in Money-lending department's books to be transferred to this property account	Coconut	No possession	24,247.05	13,000.00
13. All that Estate called and known as Thanmakkerny Estate situated in the villages of Thanmakkerny and Soranpattu in the Parish of Pulpoppallai in the Division of Pachchiliaippali in the District of Jaffna All that Estate called and known as Thachchankadu Estate situated as aforesaid All that Estate called and known as Vannankerny Estate situated as aforesaid PALLAI, JAFFNA DISTRICT Total 692 acres of which about 500 acres mature, about 100 acres immature and rest not planted Undivided half share—The other undivided half share owned by the firm for and on behalf of the Thiruvadanai Temple Trust in India	Coconut		76,701.00	35,000.00
14. Land called Hedawakagha Kurunduwatte—Situated at Hendela in Ragam Pattu of Alut Kuru Korale in the District of Colombo—Total about 5 acres		No possession	2,054.00	1,000.00
15. Land called Padmadevi—Situated in the village Mitihela in the Palle Pattu of Kuruwiti Korale in the Ratnapura District—Total about 55 acres		No possession	2,164.90	500.00
16. Uttuvana Land—Situated in Kegalle District—17 acres 2 roods 25 perches	Rubber, coconut and forest	No income	1,047.25	500.00
		TOTALS .. .. .. Rs.	422,417.00	Rs. 275,100.00
		Loss on valuation .. Rs.	147,317.00	

Exhibits.

R2B. Auditors' Report, 10th July 1939.

Annexures.

Estate Properties, *continued.*

Sundry Debtors and Advances.

MESSRS. RM. AR. AR. RM., COLOMBO—ESTATE PROPERTIES.

SCHEDULE A—SUNDRY DEBTORS AND ADVANCES.

	Name of Debtors	*Amount*
	St. Clive Estate, Superintendent—D. R. Wisidagama	1,063.74
	Vathuyaya Estate, Superintendent—T. Muthukumar	22.59
	Variapolai Estate, Superintendents—Abilinu and Chinniah Chettiar	20.48
10	Bank of Chettinad Ltd., Colombo	1,191.02
	Messrs. K. S. P. S., Colombo	64.65
	Tharmakerny Estate, Superintendent—Arunachalam Pillai	29.35
	TOTAL .. Rs.	2,391.83

Sundry Creditors.

SCHEDULE B—SUNDRY CREDITORS.

	K. D. Nicholas Appuhami	4.23
	Manaveri Estate Conductor	24.36
	Mahadevi Estate Conductor, Perumal Kangani	31.78
	Rajadevi Estate Conductor, Perumal Kangani	11.00
20	TOTAL .. Rs.	71.37

Details of Income.

MESSRS. RM. AR. AR. RM. . . . (torn).

DETAILS OF INCOME . . . (torn).

Names of Estates	Gross Receipts: Income as per A/c up to 9.7.34	Gross Receipts: Income receivable from 1.4.34 to 30.6.34	. . . (torn)
St. Clive Estate	7,362.00	617.10	. . . (torn)
30 Kurunegala Vathuthuyaya Estate, including Pettiagoda Estate	28.27	15.55	. . . (torn)
Kurunegala, Variapolai Pettah Estate ..	50.50	—	
Velikkalai Estate	—	—	
Rajakathulavai Manaveri Estate	94.59	—	
Providence Rubber Estate	—	112.28 (Apportioned out . . . torn by the Bank of . . .)	
Girivulai Poovakkalandai Estate—Undivided one-fourth share	138.75	159.41	
Mahadevi Estate	868.40	—	
40 Rajadevi Estate	174.35	—	
Uttuwana Land	—	—	
Tanmakeny, Tachchankadu and Vannankeny Estate	1,233.65	—	
TOTALS	9,950.51	904.34	

Messrs. AR. AR. RM., COLOMBO.

BALANCE SHEET as at 9th July 1934, incorporating the Assets of the Kandy Branch.

Liabilities				Assets			
Capital Account :				Furniture and Fixtures as per valuation ..			100.00
Kuttalam Mills Current account—				Stock of Rice—			
Cost of consignments adjusted ..		97,817.00		At Colombo		12,912.00	
Jaffna Agency Account		4,640.35		At Kandy		1,688.25	
Deity Accounts		11.77					14,600.25
		102,469.12		Sundry Debtors—Good—			
Less : Account balance as per books ..		16,638.84		As per Schedule A		18,815.06	
		85,830.28		As per Schedule B		3,530.29	
Less :				Galle Agent, M. K. M. P. R.		1,152.54	
Net Loss up to 14.1.34	28,609.49						23,497.89
Net Loss as per P. & L. Account	19,022.97			Doubtful debts expected to realise as per Schedule C			1,670.00
		47,632.46		Sundry advances as per Schedule E ..			400.93
			38,197.82	Cash—			
Sundry Creditors as per Schedule F ..			4,617.13	At Colombo		1,973.72	
				At Kandy		572.16	
		Rs.	42,814.95				2,545.88
						Rs.	42,814.95

MESSRS. AR. AR. RM., COLOMBO.

TRADING ACCOUNT FOR THE PERIOD FROM 14.1.34 TO 9TH JULY 1934.

To Opening Stock of Rice			24,158.51	By Sales of Rice—		
,, Purchases and Consignments—				At Colombo	114,302.94	
Cost of Consignments adjusted ..	97,817.00			At Galle	10,275.56	
Purchases	5,420.41			At Kandy	22,723.70	
			103,237.41			147,302.20
,, Railway freight, Customs Duty, weighing, measuring, rebagging, etc. charges			39,057.85	By Stock of Rice—		
				At Colombo Rs. (1076 bags @ 12/- per bag)	12,912.00	
				At Kandy	1,688.25	
						14,600.25
				,, Net loss		4,551.32
			166,453.77			166,453.77

Messrs. AR. AR. RM., COLOMBO.

PROFIT AND LOSS ACCOUNT for the period from 14.1.34 to 9th July 1934.

To Net Loss from Trading Account ..			4,551.32	By Interest receipts, Commission etc.	108.07
,, Store rent and taxes—				,, Brokerage recoveries	33.51
As per books	662.30			,, Sundry profits at Kandy	45.52
Add : Payable	15.98			,, Excess recoveries from debtors	1.90
			678.28	,, Nett Loss	19,022.97
,, Salaries and allowances—					
As per books	247.00				
Add : Payable	502.83				
			749.83		
,, Messing expenses—					
As per books			255.00		
,, Stationery expenses			41.33		
,, Postage			35.39		
,, Subscription to Trade Association ..			5.00		
,, Law charges			89.65		
,, Sundry commission			4.50		
,, Miscellaneous expenses			106.55		
,, Loss on valuation of furniture & fixtures—					
As per books	338.56				
Less : As per valuation	100.00				
			238.56		
,, Furniture and fixtures account at Kandy written off			22.24		
,, Bad debts claimed in Colombo account as per Schedule C			10,346.23		
,, Bad debts claimed in Kandy shop account as per Schedule D ..			2,088.09		
			19,211.97		19,211.97

Exhibits.

R2B. Auditors' Report, 10th July 1939.

Annexures.

Messrs. Ar. Ar. Rm., Colombo.

Profit and Loss Account, 14th January to 9th July 1934, *continued.*

Schedule A. Good Debts, Colombo Business.

Messrs. AR. AR. RM., COLOMBO.

Schedule A—Good Debts in Colombo Business.

	L.F.	*Names of Debtors*	*Amount*
	284	Chidambaram, P. A. T. Thillai Nayagam Pillai	1,719.56
	286	Agent, Venkatachalam Chettiar	110.00
	288	Negombo, B. P. M. Mohammed & Bros.	602.52
	291	Negombo, S. M. M. Minnar	190.63
	293	Negombo, T. K. Shahul Hameed	199.22
	295	Negombo, A. M. Abdul Hameed	211.69
10	297	Negombo, S. M. Mohamed Kasim	104.64
	299	Negombo, N. K. S. Seku Davood	950.20
	301	Negombo, V. C. Mamnu	90.64
	303	Negombo, A. K. M. Lebbai Sahibu	206.25
	304	Negombo, K. M. M. Mohamed Kasim	1.56
	305	Negombo, M. A. I. Thathuris	403.13
	306	Negombo, P. G. Perera	212.50
	308	Negombo, A. M. K.	235.30
	309	Negombo, K. S. M.	69.32
	310	Kochchikade, M. P. K. Kunjan Mohamed	97.65
20	314	Maradana, B. P. M. Mohamed & Bros.	416.60
	317	Maradana, K. A. Abdul Hadjee	1,548.60
	322	Maradana, S. Assan Aboobucker & Co.	822.08
	326	Maradana, P. S. Seeni	468.77
	329	Maradana, S. M. Meera Sahib	413.04
	333	Maradana, K. Mohamed Ally	58.31
	334	Maradana, E. M. M.	183.61
	336	Maradana, N. M. Sultan Ganny	75.48
	336	Maradana, K. A. S.	69.94
	339	Demetagoda, B. Mammu	121.88
30	340	Kochchikade, R. S. K. M.	101.56
	352	Kotahena, S. J. S. John Singham	476.13
	356	N. V. P. Naina Pillai	201.56
	362	Chalmers Granary, V. P. V. Muthu Pillai	201.56
	357	S. M. A. Abdul Hameed	607.82
	359	St. John's Street, J. S. Fernando	407.83
	361	4th Cross Street, M. S. Muthukumarasamy Pillai	806.25
	363	Maradana, 2nd Division, A. K. Abbu	320.97
	367	Colombo, S. K. M.	3,148.14
	369	Colombo, A. P. Mammu	206.25
40	370	Bambalapitiya, K. M. Meera Sahib	218.34
	371	Colombo, P. K. A. Pitchai Ganny	298.13
	372	Colombo, S. M. Mohideen	80.82
	350	Maravila, G. D. H. Henric	203.13
	379	Slave Island, Police Superintendent	232.50
	437	Chilaw, M. Devadas Nadar	119.38
	438	Dematagoda, P. K. Pakku	101.57
	273	Kandy, N. M. Muthiah Chettiar	1,500.00
		Total .. .. .. Rs.	18,815.06

Messrs. AR. AR. RM., COLOMBO.

50

Schedule B—Good Debts in Kandy Branch.

Schedule B. Good Debts, Kandy Business.

L.F.	*Names of Debtors*	*Amount*
47	Sheki	6.61
51	Subbiah, K. P.	25.00

Carried forward .. ..

Exhibits.	*L.F.*	*Names of Debtors*	*Amount*
		Brought forward	
R2B. Auditors' Report, 10th July 1939.	53	A. T. K. R.	8.00
	56	N. M. M.	127.66
	57	Anandavally Thotam, N. M. M.	91.46
	58	Morakkapatty, Thotam, P. L. V. R. T.	392.75
	60	T. K. Arunachalam Pillai	20.00
Annexures.	60	A. S. T. of Pallakai	37.25
	61	Senanayake	30.00
	61	Subramaniam Pillai	25.07
Messrs. Ar. Ar. Rm., Colombo.	69	K. A. M. Senevaratne	31.31
	74	D. A. Devanayagam Pillai	1.75
	77	D. V. S. Chandrasekera	189.11
	83	N. S. Avanna	7.30
Profit and Loss Account, 14th January to 9th July 1934.	84	Kattwagla, M. S. Syed Ebrahim	398.74
	105	P. Karuppiah	3.15
	116	Periannan Pillai	23.25
	148	M. P. R. M.	34.25
	149	S. Selliah Kangani	9.62
	165	M. P. R. M.	11.25
	166	M. R. Manickam Chettiar	731.20
Schedule B. Good Debts, Kandy Business, *continued.*	168	M. P. P. L. M. T. T.	34.13
	169	A. R. A. Ramanathan	26.58
	170	S. Shahul Hameed	33.25
	171	A. R. S. P.	5.00
	173	R. Deivasigamani	7.88
	173	P. Muniyandi Kangani	3.88
	174	A. Ramalinga Aiyar	12.83
	175	N. M. A.	64.08
	176	K. A. Kareem Saheb	106.24
	177	A. A. C. Wickremeratne	1.75
	178	K. M. Mohideed Pitchai	160.92
	181	K. M. V. Silva	243.62
	183	P. K. Meanna	37.26
	185	D. L. Hide	145.16
	186	P. S. Fernando	100.00
	189	Chinniah Chettiar	275.00
	112	A. L. A. R.	67.99
		TOTAL .. .. .. Rs.	3,530.29

MESSRS. AR. AR. RM., COLOMBO.

SCHEDULE C—BAD DEBTS CLAIMED IN COLOMBO BUSINESS.

Schedule C. Bad Debts, Colombo Business.

L.F.	Names of Debtors	A/c balance as at 7.7.54	Bad debt claimed	Expected recovery
307	Negombo, K. K. Sheku Dawood	248.28	198.28	50.00
307	Do. K. N. Abdul Majeed	444.86	444.86	—
308	Do. M. S. Sheku Dawood	522.18	522.18	—
308	Do. M. S. Sheika Marikar	738.93	738.93	—
331	Maradana, M. C. Ibrahim Kunju	507.76	487.76	20.00
334	Maradana, P. Mohideen Kutty	943.46	943.46	—
334	Do. V. K. M.	215.25	215.25	—
336	Do. Ana Kana Sena	85.31	85.31	—
337	Dematagoda, A. K. S. Sheku Dawood	24.72	24.72	—
337	Do. P. A. Mahomed	59.75	54.75	5.00
342	Do. A. M. S. Syed Mahomed	86.13	61.13	25.00
344	Wolfendhal Street, A. V. Mammu	293.00	293.00	—
	Carried forward			

L.F.	Names of Debtors	A/c balance as at 7.7.54	Bad debt claimed	Expected recovery
	Brought forward ..			
344	5th Cross Street, K. Mohideen	379.69	379.69	—
345	New Moor Street, M. Hameed	70.23	70.23	—
345	Colpetty, M. Khader Batcha	300.64	300.64	—
345	Dehiwala, M. Meera Mohideen	118.91	118.91	—
345	Slave Island, S. S. M.	334.72	329.72	5.00
346	Do. M. K. N.	33.12	33.12	—
346	Do. M. S.	35.00	35.00	—
346	Colombo, M. M. Sheku Dawood	99.23	84.23	15.00
347	Do. M. A. M.	249.16	249.16	—
347	Grandpass, M. S. S. Shahul Hameed	538.42	538.42	—
347	Do. K. M. M.	215.46	215.46	—
348	Do. S. A. S.	77.23	77.23	—
348	Kuliyapattiy, M. K. Mahomed	154.65	154.65	—
348	Chilaw, K. A. Abdul Majeed	85.83	85.83	—
344	St. John Street, A. Edwin Fernando	270.23	270.23	—
373	Bankshall Street, N. Carnolis Fernando	394.07	394.07	—
425	Broker Mayandi	21.36	21.36	—
283	Chidambaram, P. Kathiresan Pillai	1,719.24	1,719.24	—
347	M. A. Mohomed Haniffa	463.92	313.92	150.00
364	Manning Market, Mrs. R. J. Fernando	1,852.85	452.85	1,400.00
337	Maradana, N. M. M.	432.64	432.64	—
	TOTALS	12,016.23	10,346.23	1,670.00

Exhibits.

R2B.
Auditors' Report, 10th July 1939.

Annexures.

Messrs. Ar. Ar. Rm., Colombo.

Profit and Loss Account, 14th January to 9th July 1934.

Schedule C. Bad Debts, Colombo Business, *continued.*

MESSRS. AR. AR. RM., COLOMBO.

SCHEDULE D—BAD DEBTS CLAIMED IN KANDY BRANCH.

Schedule D. Bad Debts, Kandy Business.

L.F.	Names of Debtors	A/c balance as at 7.7.54	Bad debt claimed	Expected recovery
43	Kandy, N. P. L. N. Velupillai	34.00	34.00	—
46	S. Sockalingam	12.25	12.25	—
47	S. T. Vythilingam	4.00	4.00	—
48	S. V. S. P. Subbiah Chettiar	19.10	19.10	—
48	K. R. Malayandi Chettiar	12.50	12.50	—
49	S. M. Sahabdeen	59.30	59.30	—
50	S. M. Hydroos	44.36	44.36	—
50	Karuppiah	10.36	10.36	—
51	D. Ramanuja Aiyar	11.06	11.06	—
52	A. Sornam Servai	18.75	18.75	—
54	Driver James	7.75	7.75	—
55	S. S. R. M.	35.31	35.31	—
65	M. Kasin Abbas	62.00	62.00	—
65	Thailamnah	28.95	28.95	—
68	George E. de Silva	38.00	38.00	—
75	P. M. K.	140.56	140.56	—
78	Pathmanantha Store, Chinnathurai	117.50	117.50	—
115	Kandy, A. Subbiah	7.00	7.00	—
119	O. Naina Mahomod	.01	.01	—
121	V. J. de Silva	6.30	6.30	—
151	Kattugastota, K. M.	1,165.95	1,165.95	—
153	M. S. V. A. R.	7.81	7.81	—
160	Parkiriswamy Sholagar	48.63	48.63	—
161	D. W. S. Vythiatileke	32.80	32.80	—
165	Nallamuthu Pillai	31.25	31.25	—
179	A. Arunachalam	11.50	11.50	—
184	M. B. Alukvella	121.09	121.09	—
	TOTALS	2,088.09	2,088.09	

Exhibits.

R2B. Auditors' Report, 10th July 1939.

Annexures.

Messrs. Ar. Ar. Rm., Colombo.

Profit and Loss Account, 14th January to 9th July 1934, *continued.*

Schedule E. Sundry Advances.

Schedule F. Sundry Creditors.

Messrs. AR. AR. RM., COLOMBO.

Schedule E—Sundry Advances.

Colombo, Fort Commission		324.00
Galle, V. E. L. S.		1.15
Galle, P. L. RM. M.		29.47
Galle, V. S. A. R. M.		3.83
J. S. Saibu		24.50
Salli Kunju		8.82
Subramanian		.96
Ramalingam Thevar		7.10
Subbiah Pillai		1.10
Total	Rs.	400.93

Schedule F—Sundry Creditors.

Sea Street, P. L. A. R.		3,931.15
Narasingampettai, P. R. Y. P. L.		7.36
Thiruvaduthurai, Govindaswamy Pillai		78.00
W. J. Fonseka		51.86
B. Mahomod Ibrahim		23.46
Broker, A. Abdul Rahiman		60.89
Broker, P. S. Mohamed Sali		25.32
Broker, S. Kanda Pillai		10.07
Broker, Somupillai		12.80
Broker, Rowther Nainamalai		69.18
Broker, V. Mohamed Nana		6.74
Broker, Mohideen Kuppai		.94
Galle, S. Murugiah Pillai		5.59
Store Rent and taxes		15.98
Kalimuthu		3.00
Sundarappier		147.96
Chinniah		166.83
Total	Rs.	4,617.13

Details of Salaries and Allowances.

Details of Salaries and Allowances.

Govindaswamy		18.00
Kalimuthu		3.00
Sundarappier		315.00
Chinnaih		166.83
Total	Rs.	502.83

Exhibits.

R2A.

DECLARATION OF PROPERTY on Death of Rm. Ar. Ar. Rm. Ar. Arunachalam Chettiar.

R2A. Declaration of Property on Death of Rm. Ar. Ar. Rm. Ar. Arunachalam Chettiar, 29th July 1939.

ED/A 300.

DECLARATION.

I declare that to the best of my knowledge, information and belief the statements contained in the accompanying Accounts and in the Schedule attached thereto are true and correct and that I have disclosed all the Assets and liabilities in Ceylon of the Hindu Undivided Family of which Rm. Ar. Ar. Rm. Ar. Arunachalam Chettiar was a member at the time of his death, to wit: the 9th day of July 1934.

Colombo, 29th July 1939.

(Sgd.) illegibly.
Receiver,
Estate of Rm. Ar. Ar. Rm. Arunachalam Chettiar.

ED/A 300.

Statement setting out the Assets and Liabilities of the Hindu Undivided Family of which Rm. Ar. Ar. Rm. Ar. Arunachalam Chettiar was a member at the time of his death.

A17.

LETTER, Assessor, Estate Duty, to the Receivers.

A.17. Letter, Assessor to the Receivers, 22nd August 1939.

ED/A 300. [COPY]

Department of Income Tax
Estate Duty & Stamps
Colombo.

August 22, 1939.

By Registered Post.

ESTATE OF RM. AR. AR. RM. AR. ARUNACHALAM CHETTIAR, DECEASED.

Gentlemen,

With reference to your Proctors' letter dated the 31st July 1939 forwarding the statement of accounts I have the honour to request you to furnish me with a declaration in duplicate on form No. 225. Please also give the particulars of immovable property in form No. 251. Copies of these forms are enclosed herewith.

I am, Gentlemen,
Your obedient servant,
(Sgd.) L. G. GUNASEKERA,
Assessor, Estate Duty.

Messrs. V. Ramaswami Aiyangar and
K. R. Subramania Iyer
(Receivers of the Estate of the late Rm. Ar. Ar. Rm. Arunachalam Chettiar)
c/o Messrs. Wilson & Kadirgamar
P.O. Box No. 224, Colombo.

(Original filed in D.C. Colombo No. 37 Est. Spl.)

Exhibits.

R1.

R1. Declaration of Property on Death of Rm. Ar. Ar. Rm. Ar. Arunachalam Chettiar, 7th November 1939.

DECLARATION OF PROPERTY on Death of Rm. Ar. Ar. Rm. Ar. Arunachalam Chettiar.

Form No. 225.

File No. ED/A 300.

Please quote File No. in any communication relating to this return.

ESTATE DUTY ORDINANCE (Cap. 187)

DECLARATION OF PROPERTY REQUIRED UNDER SECTION 29 (1).

This form is prescribed by the Commissioner of Estate Duty under section 75 of the Estate Duty Ordinance(Cap. 187).

Every executor, that is to say, every person who takes possession of or intermeddles with the property of a deceased person, or has applied or is entitled to apply to a District Court for the grant of probate or letters of administration, is required to furnish a declaration on this form (in duplicate), WITHIN SIX MONTHS of the date of death of the deceased.

Failure to comply with this requirement is punishable under section 59 of the Ordinance with a fine which may extend to Five Hundred Rupees.

A full and true statement must be made of all particulars and information required on this form, and the value of any property as at date of death must be stated to the best of the declarant's knowledge, information and belief.

Heavy penalties are incurred under sections 61 and 62 of the Ordinance by every person who :—

(1) without reasonable excuse omits or understates the value of any property or makes an incorrect statement, or

(2) makes a false statement with a fraudulent intent to evade duty.

A GENERAL

Name of deceased—RM. AR. AR. RM. AR. ARUNACHALAM CHETTIAR.

Date and place of death—9th July 1934—Courtallam Tinnevelly District, S. India.

Age and occupation of deceased—33 The Hindu Undivided Family of which the deceased was a member, carried on the business of Bankers, Money Lenders and Merchants in Ceylon.

Domicile of deceased—India.

Whether deceased left a Last Will (if so, a certified copy should be annexed)—Left no Will.

Name and address of executor—No Executor but as notice was served on us as the Receivers of the Estate of Rm. Ar. Ar. Rm. Arunachalam Chettiar, deceased (Father) our address is c/o Messrs. Wilson & Kadirgamar, Proctors, Times Building, Fort Colombo.

Name and address of Proctor acting for Receivers—Messrs. Wilson & Kadirgamar, Proctors & Notaries, Times Building, Fort Colombo.

Name of District Court and number of testamentary case—Nil.

	PARTICULARS OF PROPERTY (1) Full details of each item should be given on a separate schedule. (2) Where there is no property under a particular item the word "NIL" should be entered.	As per Schedule No.	Value at Date of Death Rs.	c.
B	CEYLON ESTATE, MOVABLES IN CEYLON			
1.	Cash in the house			
2.	Money in Banks (including Ceylon Savings Bank and Post Office Savings Bank)—			
	(*a*) Current Accounts, with interest to date of death			
	(*b*) Fixed Deposits, with interest to date of death			
3.	Ceylon Government Stocks or Funds			
4.	State Mortgage Bank Debentures, Ceylon Savings Certificates			
5.	Money in other financial institutions, such as Provident, Building and Co-operative Societies, &c.			
6.	Stocks, Shares or Debentures of Companies (A Broker's valuation report should be annexed)			
7.	Uncashed dividends and interest accrued due on items 3 to 6			
8.	Money out on Mortgages and interest thereon to date of death			
9.	Money out on bonds, bills, promissory notes and other securities, and interest thereon to date of death			
10.	Other debts			
11.	Policies of Insurance and bonuses (if any) thereon payable on the death of the deceased			
12.	Saleable value of other Policies of Insurance			
13.	Household goods, jewellery, motor cars, &c.			
14.	Value at date of death of businesses owned solely by deceased. (A Balance Sheet and accounts should be annexed)			
15.	Goodwill of the above businesses			
16.	Value at date of death of deceased's share of businesses carried on in partnership (A Balance Sheet and accounts should be annexed)		NIL	
17.	Share of Goodwill of businesses in partnership			
18.	Rents accrued due at date of death			
19.	Arrears of Salary or pension			
20.	Amount due as legacy or undistributed share of the estate of , deceased			
21.	Annuities, donations, bonuses and other sums payable under the rules of any provident, mutual benefit society or lodge or friendly society			
22.	Movable property including cash, gifted by the deceased within five years of his death			
23.	Any other movable property not included in the above items			
C	CEYLON ESTATE, MOVABLES OUTSIDE CEYLON (To be entered in this space in the case of a person domiciled in Ceylon.)			
24.	Movables in the United Kingdom. (A copy of the Inland Revenue Affidavit should be annexed)			
25.	Movables in other countries			
	Total of movables			
D	CEYLON ESTATE, IMMOVABLES IN CEYLON			
26.	Immovable property owned absolutely by deceased			
27.	Immovable property in respect of which deceased had a life interest created by a third party, or the interest of a fiduciary under a *fideicommissum*. (The deed creating such interest should be annexed)			
	Carried forward			

Exhibits.

R1. Declaration of Property on Death of Rm. Ar. Ar. Rm. Ar. Arunachalam Chettiar, 7th November 1939, *continued.*

PARTICULARS OF PROPERTY (1) Full details of each item should be given on a separate schedule. (2) Where there is no property under a particular item the word "NIL" should be entered.	As per Schedule No.	Value at Date of Death Rs.	c.
Brought forward ..			
28. Value of unsold crops, tea and rubber coupons and other income accrued at date of death			
NOTE.—			
(*a*) Full particulars of immovable property under items 26, 27 and 30 should be entered on Form 261 attached hereto. Further copies of this form may be had on application.			
(*b*) The value entered should be the declarant's estimate of the market value of the property as at date of death of the deceased, and not merely the value appearing on the title deeds relating to the property.			
(*c*) Relief is provided by section 20 of the Estate Duty Ordinance in respect of the value of land situate in rural areas and of undivided shares. No deduction is to be made in respect of this relief in estimating the market value; the necessary deductions will be made by the Assessor when the assessment of duty is made.		NIL	
29. Leasehold property			
30. Immovable property gifted by deceased by deed of donation, transfer or settlement liable to duty			
(The deed or deeds should be annexed.)			
NOTE.—Property gifted is liable to duty where :—			
(*a*) The gift was within five years of the death, or in the case of a gift for a religious, charitable or public purpose within one year of death, or			
(*b*) life interest or power of revocation is reserved, even though the gift was made over five years before the death.			
Total of immovables ..			

	As per Schedule No.	Value at Date of Death Rs.	c.
E CEYLON ESTATE, OTHER PROPERTY (Not included in the above items.)			
31. Property held in trust for the deceased or purchased by him in the name of a third party			
32. Property of which the deceased was at the time of his death competent to dispose			
33. Property subject to an annuity limited to cease on the death of the deceased			
34. Property taken as a *donatio mortis causa*			
35. Property vested in the deceased and any other person jointly so that the beneficial interest passes to such other person on the death		NIL	
36. Any other property liable to estate duty not included in the above items			
Total ..			
Total of immovables ..			
Total of movables ..			
Total assets of Ceylon estate ..			

Exhibits.

R1. Declaration of Property on Death of Rm. Ar. Ar. Rm. Ar. Arunachalam Chettiar, 7th November 1939, *continued.*

		As per Schedule No.	Value at Date of Death Rs.	c.
F	DEDUCTIONS FROM CEYLON ESTATE			
37.	Funeral expenses .. .. (The cost of mourning or tombstone or of customary alms-giving and commemoratory ceremonies cannot be deducted.)			
38.	Mortgage debts, as per particulars below :—			

No. and Date of bond	Name of Notary	Property mortgaged	Creditor's Name (state relationship to deceased (if any)	Creditor's Address	Names of joint debtors (if any)

39.	Other debts .. .. (Full particulars to be given.)		NIL	
	Total deductions ..			

NOTE.

As against columns B, C, D, E, F and G nil is shown as the deceased left no property of his own. In the statement of accounts the nett value of the property in Ceylon belonging to the Hindu Undivided Family, of which the deceased was a member, is given as required. The nett value is shown in Column I (exempt property), as there is no other column in the form in which it can be shown.

The Objectors contend that the deceased left no property in Ceylon liable to Estate Duty, as the property in Ceylon shown in the statement of Accounts, belonged to the Hindu Undivided Family consisting of the deceased and his father Rm. Ar. Ar. Rm. Arunachalam Chettiar (since deceased) and their wives.

No property passed on the death of the deceased and no Estate Duty is payable.

(Sgd.) illegibly.

(Sgd.) illegibly.

STATEMENT.

Under Section 7 of Ordinance No. 1 of 1938.

A half share of the following properties are Trust Property :— (1) Thanmakerny, (2) Thachchankadu and (3) Vannankerny Estates.

(Sgd.) illegibly.

(Sgd.) illegibly.

Exhibits.

R1.
Declaration of Property on Death of Rm. Ar. Ar. Rm. Ar. Arunachalam Chettiar, 7th November 1939, *continued.*

		As per Schedule No.	Value at Date of Death Rs.	c.
G	ESTATE OUTSIDE CEYLON, ASSETS			
40.	Property in the United Kingdom	Not	Applicable.	
	(A copy of the Inland Revenue Affidavit should be annexed)			
41.	Property in other countries		Nil.	
	NOTE.—Movables should be entered in this space only in the case of persons domiciled outside Ceylon. Immovables should be entered in all cases.			
	Total assets outside Ceylon ..			
H	ESTATE OUTSIDE CEYLON, DEDUCTIONS			
42.	Funeral expenses incurred outside Ceylon and debts due to non-resident persons	Not	Applicable.	
	Net estate outside Ceylon ..			
I	EXEMPT PROPERTY			
43.	Movables			
44.	Immovables			
	(Full details of the grounds on which exemption from duty is claimed together with deeds or other documents should be furnished.)			
I	EXEMPT PROPERTY			
	The nett value of the Ceylon properties of Rm. Ar. Ar. Rm. and Ar. Ar. Rm. Firms belonging to the Hindu Undivided Family of which the deceased was a member as per statement of accounts forwarded and *vide* note annexed.		41,55,344	22
43.	Movables			
44.	Immovables			
	Half share of Thanmakerny, Thachchankadu and Vannankerny estates held in trust as per statement annexed		35,000	
	(Full details of the grounds on which exemption from duty is claimed together with deeds or other documents should be furnished.)			

DECLARATION.

We declare that to the best of our knowledge, information and belief the statements contained in this form and in the accounts forwarded and in the schedules attached thereto are true and correct and that we have disclosed all the assets and liabilities in Ceylon of the Hindu Undivided Family of which Rm. Ar. Ar. Rm. Ar. Arunachalam Chettiar was a member at the time of his death to wit : the 9th day of July 1954.

(Sgd.) Illegibly.

(Sgd.) Illegibly.

Receivers of the Estate of Rm. Ar. Ar. Rm. Arunachalam Chettiar, Deceased.

Dated this 7th day of November, 1939.

Exhibits.

R1.
Declaration of Property on Death of Rm. Ar. Ar. Rm. Ar. Arunachalam Chettiar, 7th November 1939, *continued.*

NOTICE OF ASSESSMENT.

Charge No.....

To : .....

Take notice that the estate duty in respect of the estate of..... .....deceased, has been assessed as follows :—

The above amount is payable by you on or before....., and should be remitted to the Commissioner of Estate Duty. This form should accompany your remittance.

If you object to the above assessment you must give notice of appeal in writing WITHIN 30 DAYS of the date hereof, stating the grounds of objection.

.....
Assessor, Estate Duty.

CERTIFICATE.

In terms of Section 49 of the Estate Duty Ordinance (Cap. 187) I certify that the estate duty amounting to Rupees..... and cents..... (Rs. .....) with interest Rs.....has been paid, or that the payment thereof has been secured to my satisfaction, or that no estate duty is payable.

.....
for Commissioner of Estate Duty.

Date :.....

Form No. 225.

File No. ED/A 300. Rl.

Please quote File No. in any communication relating to this return.

ESTATE DUTY ORDINANCE (Cap. 187).

DECLARATION OF PROPERTY REQUIRED UNDER SECTION 29 (1).

This form is prescribed by the Commissioner of Estate Duty under section 75 of the Estate Duty Ordinance (Cap. 187).

Every executor, that is to say, every person who takes possession of or intermeddles with the property of a deceased person, or has applied or is entitled to apply to a District Court for the grant of probate or letters of administration, is required to furnish a declaration on this form (in duplicate), WITHIN SIX MONTHS of the date of death of the deceased.

Failure to comply with this requirement is punishable under section 59 of the Ordinance with a fine which may extend to Five Hundred Rupees.

A full and true statement must be made of all particulars and information required on this form, and the value of any property as at date of death must be stated to the best of the declarant's knowledge, information and belief.

Exhibits.

R1.
Declaration of Property on Death of Rm. Ar. Ar. Rm. Ar. Arunachalam Chettiar, 7th November 1939, *continued.*

Heavy penalties are incurred under sections 61 and 62 of the Ordinance by every person who :—

(1) without reasonable excuse omits or understates the value of any property or makes an incorrect statement, or

(2) makes a false statement with a fraudulent intent to evade duty.

A GENERAL

Name of deceased—RM. AR. RM. AR. ARUNACHALAM CHETTIAR.

Date and place of death—9th July 1934—Courtallam, Tinnevelly District, S. India.

Age and occupation of deceased—33—The Hindu Undivided family of which the deceased was a member, carried on the business of Bankers, Money Lenders and Merchants in Ceylon.

Domicile of deceased—India.

Whether deceased left a Last Will (if so, a certified copy should be annexed)—Left no Will.

Name and address of executor—No executor, but as notice was served on us as the Receivers of the Estate of Rm. Ar. Rm. Arunachalam Chettiar, deceased (Father), our address is c/o Messrs. Wilson & Kadirgamar, Proctors, Times Building, Fort Colombo.

Name and address of Proctor acting for Receivers—Messrs. Wilson & Kadirgamar, Proctors, and Notaries, Times Building, Fort Colombo.

Name of District Court and number of testamentary case—Nil.

PARTICULARS OF PROPERTY (1) Full details of each item should be given on a separate schedule. (2) Where there is no property under a particular item the word "NIL," should be entered.	As per Schedule No.	Value at Date of Death Rs.	c.
B CEYLON ESTATE, MOVABLES IN CEYLON			
1. Cash in the house			
2. Money in Banks (including Ceylon Savings Bank and Post Office Savings Bank)—			
(*a*) Current Accounts, with interest to date of death ..			
(*b*) Fixed Deposits, with interest to date of death ..			
3. Ceylon Government Stocks or Funds			
4. State Mortgage Bank Debentures, Ceylon Savings Certificates			
5. Money in other financial institutions, such as Provident, Building and Co-operative Societies, &c.			
6. Stocks, Shares or Debentures of Companies (A Broker's valuation report should be annexed)			
7. Uncashed dividends and interest accrued due on items 3 to 6			
8. Money out on Mortgages and interest thereon to date of death		NIL.	
9. Money out on bonds, bills, promissory notes and other securities, and interest thereon to date of death			
10. Other debts			
11. Policies of Insurance and bonuses (if any) thereon payable on the death of the deceased			
12. Saleable value of other Policies of Insurance			
13. Household goods, jewellery, motor cars, &c.			
14. Value at date of death of businesses owned solely by deceased. (A Balance Sheet and accounts should be annexed) ..			
15. Goodwill of the above businesses			
16. Value at date of death of deceased's share of businesses carried on in partnership. (A Balance Sheet and accounts should be annexed)			
Carried forward ..			

	PARTICULARS OF PROPERTY (1) Full details of each item should be given on a separate schedule. (2) Where there is no property under a particular item the word "NL," should be entered.	As per Schedule No.	Value at Date of Death Rs.	c.
	Brought forward ..			
17.	Share of Goodwill of businesses in partnership			
18.	Rents accrued due at date of death			
19.	Arrears of Salary or pension			
20.	Amount due as legacy or undistributed share of the estate of deceased			
21.	Annuities, donations, bonuses and other sums payable under the rules of any provident, mutual benefit society or lodge or friendly society			
22.	Movable property including cash, gifted by the deceased within five years of his death			
23.	Any other movable property not included in the above items			
C	CEYLON ESTATE, MOVABLES OUTSIDE CEYLON (To be entered in this space in the case of a person domiciled in Ceylon.)			
24.	Movables in the United Kingdom. (A copy of the Inland Revenue Affidavit should be annexed)			
25.	Movables in other countries			
	Total of movables ..			
D	CEYLON ESTATE, IMMOVABLES IN CEYLON			
26.	Immovable property owned absolutely by deceased ..			
27.	Immovable property in respect of which deceased had a life interest created by a third party, or the interest of a fiduciary under a *fideicommissum*. (The deed creating such interest should be annexed)			
28.	Value of unsold crops, tea and rubber coupons and other income accrued at date of death		NIL	
	NOTE.— (*a*) Full particulars of immovable property under items 26, 27 and 30 should be entered on Form 261 attached hereto. Further copies of this form may be had on application. (*b*) The value entered should be the declarant's estimate of the market value of the property as at date of death of the deceased, and not merely the value appearing on the title deeds relating to the property. (*c*) Relief is provided by section 20 of the Estate Duty Ordinance in respect of the value of land situate in rural areas and of undivided shares. No deduction is to be made in respect of this relief in estimating the market value ; the necessary deductions will be made by the Assessor when the assessment of duty is made.			
29.	Leasehold property			
30.	Immovable property gifted by deceased by deed of donation, transfer or settlement liable to duty .. .. (The deed or deeds should be annexed.)			
	NOTE.— Property gifted is liable to duty where :— (*a*) The gift was within five years of the death, or in the case of a gift for a religious, charitable or public purpose within one year of death, or (*b*) life interest or power of revocation is reserved, even though the gift was made over five years before the death.			
	Total of immovables ..			

Exhibits.

R1.
Declaration of Property on Death of Rm. Ar. Ar. Rm. Ar. Arunachalam Chettiar, 7th November 1939, *continued.*

		As per Schedule No.	Value at Date of Death Rs.	c.
E	CEYLON ESTATE, OTHER PROPERTY (Not included in the above items)			
31.	Property held in trust for the deceased or purchased by him in the name of a third party			
32.	Property of which the deceased was at the time of his death competent to dispose			
33.	Property subject to an annuity limited to cease on the death of the deceased			
34.	Property taken as a *donatio mortis causa*			
35.	Property vested in the deceased and any other person jointly so that the beneficial interest passes to such other person on the death			
36.	Any other property liable to estate duty not included in the above items			
	Total ..			
	Total of immovables ..			
	Total of movables ..			
	Total assets of Ceylon estate ..			
F	DEDUCTIONS FROM CEYLON ESTATE		Nil.	
37.	Funeral expenses .. .. (The cost of mourning or tombstone or of customary almsgivings and commemoratory ceremonies cannot be deducted.)			
38.	Mortgage debts, as per particulars below :—			

No. and Date of bond	Name of Notary	Property mortgaged	Creditor's Name (state relationship to deceased (if any)	Creditor's Address	Names of joint debtors (if any)

39.	Other debts .. .. (Full particulars to be given.)			
	Total deductions ..			

STATEMENT.

Under Section 7 of Ordinance No. 1 of 1938.

A half share of the following properties are Trust property :— (1) Thannakerny, (2) Thachchakadu and (3) Vannakerny Estates.

(Sgd.) illegibly.

(Sgd.) illegibly.

NOTE.

As against columns B, C, D, E, F and G nil is shown as the deceased left no property of his own. In the statement of Accounts the nett value

of the property in Ceylon belonging to the Hindu Undivided Family of which the deceased was a member, is given as required. The nett value is shown in column I (Exempt property), as there is no other column in the form in which it can be shown.

The Objectors contend that the deceased left no property in Ceylon liable to Estate Duty, as the property in Ceylon shown in the statement of Accounts, belonged to the Hindu Undivided Family consisting of the deceased and his father Rm. Ar. Ar. Rm. Arunachalam Chettiar (since deceased) and their wives.

No property passed on the death of the deceased and no Estate Duty is payable.

(Sgd.) illegibly.

(Sgd.) illegibly.

		As per Schedule No.	Value at Date of Death Rs.	c.
G	ESTATE OUTSIDE CEYLON, ASSETS			
40.	Property in the United Kingdom			
	(A copy of the Inland Revenue Affidavit should be annexed.)	Not	Applicable.	
41.	Property in other countries		Nil.	
	NOTE.—Movables should be entered in this space only in the case of persons domiciled outside Ceylon. Immovables should be entered in all cases.			
	Total assets outside Ceylon ..			
H	ESTATE OUTSIDE CEYLON, DEDUCTIONS			
42.	Funeral expenses incurred outside Ceylon and debts due to non-resident persons			
	Net estate outside Ceylon ..			
I	EXEMPT PROPERTY			
43.	Movables			
44.	Immovables			
	(Full details of the grounds on which exemption from duty is claimed together with deeds or other documents should be furnished.)	Not	Applicable.	
I	EXEMPT PROPERTY			
	The nett value of the Ceylon properties of Rm. Ar. Ar. Rm. and Ar. Ar. Rm. Firms belonging to the Hindu Undivided Family of which the deceased was a member as per statement of accounts forwarded and *vide* note annexed.		41,55,344	22
	Movables			
44.	Immovables			
	Half share of Thanmakerny, Thackchankadu and Vannankerny estates held in trust as per statement annexed		35,000	00
	(Full details of the grounds on which exemption from duty is claimed together with deeds or other documents should be furnished.)			

Exhibits.

R1. Declaration of Property on Death of Rm. Ar. Ar. Rm. Ar. Arunachalam Chettiar, 7th November 1939, *continued.*

DECLARATION.

We declare that to the best of our knowledge, information and belief the statements contained in this form and in the accounts forwarded and in the schedules attached hereto are true and correct and that we have disclosed all the assets and liabilities in Ceylon of the Hindu Undivided Family of which Rm. Ar. Ar. Rm. Arunachalam Chettiar was a member at the time of his death to wit : the 9th day of July, 1954.

(Sgd.) Illegibly.

(Sgd.) Illegibly.

Receivers of the Estate of Rm. Ar. Ar. Rm. Arunachalam Chettiar, Deceased.

Dated this 7th day of November, 1939.

NOTICE OF ASSESSMENT

Charge No.....

To .....

Take notice that the estate duty in respect of the estate of..... ....., deceased, has been assessed as follows :—

The above amount is payable by you on or before....., and should be remitted to the Commissioner of Estate Duty. This form should accompany your remittance.

If you object to the above assessment you must give notice of appeal in writing WITHIN 30 DAYS of the date hereof, stating the grounds of objection.

.....

Assessor, Estate Duty.

CERTIFICATE.

In terms of Section 49 of the Estate Duty Ordinance (Cap. 187), I certify that the estate duty amounting to Rupees..... and cents..... (Rs. .....) with..... interest Rs. .....has been paid, or that the payment thereof has been secured to my satisfaction, or that no estate duty is payable.

.....

for Commissioner of Estate Duty.

Date :.....

Exhibits.

R3.

Letter, S. K. Srinivasan and Co. to Assessor, Estate Duty, 26th November 1940.

R3.

LETTER, S. K. Srinivasan and Company to Assessor, Estate Duty Department.

K. Srinivasan & Co.

Telephone No. 4850.
202, Sea Street,
Colombo.

26th November, 1940.

Ref. 826/ED 4.
The Assessor—Estate Duty,
Department of Estate Duty,
Colombo.

RE ESTATE OF RM. AR. AR. RM. AR. ARUNACHALAM CHETTIAR, DECEASED.

Your Ref. ED/A 300.

Dear Sir,

With reference to a sum of Rs.16,603.40 claimed as Income Tax payable in the Profit & Loss account of the firm, we wish to state as follows, in regard to the adjustment of the liability :—

The firm received the notice of assessment dated the 21st of August 1933 levying tax of Rs.17,000/- on estimated taxable income of Rs.170,000. They duly paid the tax of Rs.17,000 in terms of the notice of assessment and preferred appeal against the assessment.

The liabilities to Income Tax arose in respect of the years of assessment 1932/33, & 1933/34 as stated below :—

Year of assessment 1932/33	7,592.40
Year of assessment 1933/34	10,804.60

The liability in respect of the year of assessment 1932/33 was settled on appeal. In respect of the year of assessment 1933/34, the return was submitted by the firm on the 3rd of July 1934, showing a net assessable profit of Rs.62,859.62. The assessment was made by the Income Tax Department levying tax of Rs.10,973.90 by their notice of assessment dated 18th September 1934, which assessment was later revised to Rs.10,804.60.

In respect of the year of assessment 1934/35, based on the profits for the year to 31st March 1934, Tax liability of Rs.15,206.40 arose.

The amount of tax payable was adjusted at Rs.16,603.40 as per the following particulars :—

Year of Assessment 1932/33	Rs.	7,592.40
Year of Assessment 1933/34		10,804.60
Year of Assessment 1934/35		15,206.40
		33,603.40
Less : Tax paid for the year of assessment of 1932/33 on estimated assessment		17,000.00
	Rs.	16,603.40

Exhibits.

R3. Letter, S. K. Srinivasan and Co. to Assessor, Estate Duty, 26th November 1940, *continued.*

Here, we have to state that the sum of Rs.15,206.40 included in the amount of tax adjusted as payable is of the nature of a reserve for tax liability on the basis of the profits for the year to 31st March 1934. The Income Tax return for the year of assessment 1934/35 based on the profits of the year to 31st March 1934 was not made before the date of death. So, the said amount may have to be deleted. As regards the amounts of tax adjusted as payable for the years of assessment 1932/33 and 33/34, we should think that the liabilities arose on the submission of the returns to the Income Tax department before the date of death.

Yours faithfully,
S. K. SRINIVASAN & CO.
27/11/40.

A18. Additional Notice of Assessment, 9th May 1941.

A18.

ADDITIONAL NOTICE OF ASSESSMENT.

THE ESTATE DUTY ORDINANCE No. 1 OF 1938.

ADDITIONAL NOTICE OF ASSESSMENT.

File No. ED/A 300.
Charge No. 8208/37.

RM. AR. AR. RM. AR. ARUNACHALAM CHETTIAR, DECEASED.

To Messrs. V. Ramasamy Iyengar & K. R. Subramania Iyer c/o Messrs. Wilson & Kadirgamar, Proctors S.C., P.O. Box No. 224 Colombo.

TAKE NOTICE that the estate Duty in respect of the estate of the deceased abovenamed has been assessed as follows :—

ASSETS

Value of business of Rm. Ar. Ar. Rm. & Ar. Ar. Rm. as per Balance Sheet ..			4295464.00
Add amount disallowed on a/c of income tax	Rs. 15206		
Interest due and claimed as bad on accrued loans in Sch. B	47690		
Interest due on unsecured loans shown in Sch. D	20825		
Bad debts claimed in Sch. E	168039		
	251760		
Amount allowed as bad debts	180000		
	71760		
Increase by offl. valn. of the immovable properties list 1	54600		
			126360.00
Add half share of Thannakerny, Thachchankadu and Vannakerny Estates ..			35000.00

A18.
Additional Notice of Assessment, 9th May 1941, *continued.*

Interest due on Fixed Deposit in Bank of Mysore and loan due from T. N. V. ..	13050.00
	4469874.00
Deceased's half share	2234937.00
ESTATE DUTY	
Duty on Rs.2,234,937/- at 10%	223493.70
Duty due as per previous assessment ..	215000.00
Additional duty	8493.70

with interest at 4% per annum from 10.7.35.

The above amount is payable by you on or before 20th June 1941 and should be remitted to the Commissioner of Estate Duty. This form should accompany your remittance.

If you object to the above assessment you must give notice of appeal in writing within 30 days of the date hereof, stating the grounds of objection.

(Sgd.) L. G. GUNASEKERA,
Assessor Estate Duty.

Colombo, 9th May 1941.

A19.

LETTER, Wilson and Kadirgamar to the Commissioner of Estate Duty.

A19.
Letter, Wilson and Kadirgamar to Commissioner of Estate Duty, 27th May 1941.

Colombo,
27th May 1941.

The Commissioner of Estate Duty,
Colombo.

Dear Sir,

File No. ED/A 300—Charge No. 8208/37.

RM. AR. AR. RM. ARUNACHALAM CHETTIAR Decd., Son.

With reference to the additional notice of Assessment dated 9th May 1941 in respect of above estate and the interview Mr. Kadirgamar had today with Mr. L. G. Gunasekera, Assessor, Estate Duty, we note that the above assessment is your Final Assessment and that if our clients object to the above assessment Notice of Appeal should be given in writing within the prescribed time stating the grounds of objections.

We also note that in view of the above Final Assessment the previous assessment is cancelled.

We shall be glad if you will as arranged kindly confirm the above so that our clients may act accordingly.

Yours faithfully,
(Sgd.) WILSON & KADIRGAMAR.

(Original filed in D.C. Colombo No. 37 Est. Spl.)

Exhibits.

A21.
Statement of Objections against Assessment, 2nd June 1941.

A21.

STATEMENT OF OBJECTIONS against Assessment.

Colombo.
2nd June 1941.

File No. ED/A 300.
Charge No. 8208/37.

From :

1. V. RAMASWAMI AIYANGAR . . . } Appellants.
2. K. R. SUBRAMANIA IYER . . . }

Administrators of the Estate of the late RM. AR. AR. RM. ARUNACHALAM CHETTIAR, c/o Messrs. Wilson & Kadirgamar, Times Building, Fort Colombo. 10

To :

The Commissioner of Estate Duty, Colombo.

The Appellants above-named hereby give notice of objection against the assessment dated 9.5.41 in respect of the alleged estate of Rm. Ar. Ar. Rm. Ar. Arunachalam Chettiar, deceased, on the following among other grounds that may be urged at the hearing of the appeal.

1. The Appellants state that they are not the proper persons against whom assessment in respect of the alleged estate of Rm. Ar. Ar. Rm. Ar. Arunachalam Chettiar (deceased) can in law be made. 20

2. The Appellants are not liable to pay any estate duty on the alleged estate of the said deceased.

3. The said deceased left no estate in Ceylon liable to estate duty.

4. The said deceased was a member of an undivided Hindu family which carried on the business of a moneylender Rice Merchant etc., under the vilasam of Rm. Ar. Ar. Rm. and Ar. Ar. Rm. in Ceylon and the deceased was not entitled to any definite share in the assets of the said family. The interest therein, if any, ceased on his death.

5. No estate duty is payable on the joint property of a Hindu undivided family when a member of such family dies. 30

6. The value of the alleged estate of the said deceased is nil. The Appellants state the amount at which it has been valued is fictitious and grossly exaggerated.

7. The Appellants state that the assessment is bad and invalid in law as the said deceased died and left no estate belonging to him on which any duty is payable.

8. On the death of the said deceased no properties passed to any person.

9. The said deceased was a domiciled Indian and was governed by the Mitakshara School of Hindu Law. 40

10. Under Section 73 of the Estate Duty Ordinance Chapter 187, no Estate Duty can be charged upon the Estate of the deceased as he was a member of a Hindu Undivided Family and because,

(A) the movable properties sought to be charged with duty were the joint properties of that Family, and

(B) the immovable properties sought to be charged if it had been movable properties would have been the Joint properties of that Family.

11. The Appellants plead as a matter of law that the Commissioner of Estate Duty, Income Tax and Stamps is precluded in law from claiming any estate duty as he has always accepted the position of the deceased as a member of the undivided Hindu family that owned joint properties in Ceylon to wit :—the business carried on under the vilasam of Rm. Ar. Ar. Rm. and Ar. Ar. Rm. and assessed Income Tax on that basis.

Without prejudice to the objection set out above the Appellants state :—

12. (A) That the Assessor is not correct in valuing the assets of the business at Rs.4,295,464. The value of the assets is only Rs.4,155,344.

(B) That the Assessor should not include the sum of Rs.100,000/– in fixed deposit in the Bank of Mysore and the sum of Rs.40,120/25 due by the firm of T.N.V. of Negapatam and the sum of Rs.13,050/– being the interest on the above said amounts as part of the assets consisting of the Ceylon estate of the deceased Rm. Ar. Ar. Rm. Arunachalam Chettiar.

(C) The said sums are not in Ceylon and cannot be deemed to be assets in Ceylon in any sense of the term.

(D) That the Assessor cannot assess the value of a business but can only assess the Ceylon estate of the deceased, if any, and levy duty thereon.

13. The Appellants state that the Assessor is in error in adding the sum of Rs.15,206/– being Income Tax for the year 1933/34. The said sum was a liability at the time the deceased died but was ascertained later.

14. (A) The Appellants state that the deceased had no interest in a half share or in any share of Thanmakerny Thachchankadu and Vannankerny Estates.

(B) Half share of the said estate of Thanmakerny etc., were held by his father, Rm. Ar. Ar. Rm. Arunachalam Chettiar, as a trustee for Tirvadanai Temple Trust.

(C) In 1921 on the security of the said Thanmakerny etc., estates, the deceased's father had advanced as a loan to one Murugesu Kadiruvele a sum of Rs.120,000/– of which Rs.60,000 was advanced from joint family funds and Rs.60,000/– from the funds belonging to the Tiruvadani Tirupani Trust of which the deceased's father was a trustee. The said fact had been admitted and declared by the deceased's father in his trust declaration deed dated 11.1.1928 executed by him in India and duly registered. A suit was filed in the District Court of Jaffna, No. 23588 for the recovery of the balance due and the claim was settled at Rs.146,000/– and the said estates were purchased by the deceased's father by a sale deed dated 13th January 1930 for the benefit of the joint family and the said trust in equal moieties for a consideration of Rs.150,000/– of which Rs.146,000/– was by way of settlement of the said claim and Rs.4,000/– by cash payment of which Rs.2,000/– was paid out of the said trust funds. If the whole of the said Thanmakerny etc., estates is deemed to belong to the joint family it is submitted the said joint family will be indebted to the said trust to the extent of Rs.75,000/– and consequently a reduction to that extent from the value of the said estate should be made.

Exhibits.

A21. Statement of Objections against Assessment, 2nd June 1941, *continued.*

(D) The Appellants state that the Income Tax authorities in Ceylon have accepted the fact that half share of the said Thanmakerny etc., estates belongs to the said trust and they have imposed income tax on the said trust when the trust income was not exempted from taxation and have exempted the income from the same after the trust income was exempted from taxation. It is submitted that the assessor is precluded from including the half share of the said estate as part of the estate of the joint family.

15. The Appellants state that the Ceylon estate of the deceased, if any, is entitled to a reduction in terms of Section 20, sub-section 3 to 5 of Ordinance No. 1 of 1938 in respect of the immovable properties alleged to constitute the Ceylon Estate of the deceased.

16. The Appellants state that the estate is not liable to pay interest at the rate of 4% for a period anterior to the date of assessment.

(Sgd.) V. RAMASWAMI IYENGAR.
(Sgd.) K. R. SUBRAMANIA IYER.
Administrators of the Estate of the late
Rm. Ar. Ar. Rm. Arunachalam Chettiar.
(Sgd.) WILSON & KADIRGAMAR,
Proctors for Administrators.

Settled by
Messrs. N. Nadarajah & Peri Sunderam,
Advocates.

(Original filed in D.C. Colombo No. 37 Est. Spl.)

A22. Letter, Commissioner of Estate Duty to Administrators, 16th April 1942.

A22.

LETTER, Commissioner of Estate Duty to Administrators.

Estate Duty Office,
Colombo,
April 16, 1942.

Ref. ED/A.300.

Estate No. ED/A.300—RM. AR. AR. RM. AR.
ARUNACHALAM CHETTIAR, Deceased.

Gentlemen,

With reference to your letter dated the 27th February 1942 you are hereby notified under Section 37 of the Estate Duty Ordinance that I have determined to maintain the assessment subject to the exclusion of a quarter share of Thanmakerny, Thachchandu and Vannankerny Estates.

Yours faithfully,
(Sgd.) T. D. PERERA,
Commissioner of Estate Duty.

Messrs. V. Ramaswamy Iyengar
and K. R. Subramania Iyer,
c/o Messrs. Wilson & Kadirgamar,
P.O. Box No. 224,
Colombo.

Exhibits.

A23.
Amended Notice of Assessment, 29th April 1942.

A23.

AMENDED NOTICE OF ASSESSMENT.

THE ESTATE DUTY ORDINANCE NO. 1 OF 1938.
AMENDED NOTICE OF ASSESSMENT.

File No. ED/A 300.
Charge No. 8208/37.

RM. AR. AR. RM. AR. ARUNACHALAM CHETTIAR, deceased.

To Messrs. V. Ramasamy Iyengar & K. R. Subramania Iyer, c/o Messrs. Wilson & Kadirgamar, Proctors, P.O. Box No. 224, Colombo.

TAKE NOTICE that the estate duty in respect of the estate of the deceased above-named has been assessed as follows :—

ASSETS :

Nett value of estate as per assessment dated 9th May 1941	2234937.00
Less ¼ share of Thannakerny, Thachchankadu and Vannankerny Estates now excluded	17500.00
	2217437.00
Estate Duty on Rs.2,217,437/- at 10%	221743.70
Duty as per assessment dated 10.11.1938	215000.00
Amended additional duty payable with interest at 4% per annum from 10.7.1935	6743.70

The above amount of Rs.221743/70 is payable by you on or before 19th May 1942 and should be remitted to the Commissioner of Estate Duty. This form should accompany your remittance.

If you object to the above assessment you must give notice of appeal in writing within 30 days of the date hereof, stating the grounds of objection.

(Sgd.) L. G. GUNASEKARA,
Assessor, Estate Duty.

Colombo, 29th April, 1942.

Exhibits.

R4.

R4. Letter, Administrators to Commissioner of Income Tax, 29th January 1945.

LETTER, the Administrators to the Commissioner of Income Tax.

Estate of late Rm. Ar. Ar. Rm. Arunachalam Chettiar.

V. Ramaswamy Iyengar.

K. N. Subramania Iyer.

Devakottai,
29.1.45.

To the Commissioner of Income Tax.
Income Tax Office, Colombo.

Dear Sir,

Sub : Rm. Ar. Ar. Rm. Firm, Colombo—assessment year 1944–45—File No. 33/398.

With reference to the return of income to be submitted for the year of assessment 1944–45, we have the honour to return herewith the forms sent to us. We are unable to fill up the forms for the reasons hereunder mentioned. But we have instructed our auditors Messrs. S. K. Srinivasan & Co., Colombo to submit to you the statement of account showing the net income of Rm. Ar. Ar. Rm. Estate for the account year ending 31st March 1944. The net Income as computed in the statement of accounts which will be submitted to you by the Auditors with their report is Rs.1,22,398.57.

In our letter dated 9th February 1944 relating to the assessment year 1943–44 we have informed you that Umayal Achi the plaintiff in O.S. 93 of 38 Devakotta Sub Court has filed an appeal to the Federal Court and that it was pending. We have also mentioned to you in that letter about the decree of the Devakottai Sub Court and of the High Court of Madras on appeal from the said decree. Now in December 1944, the Federal Court has disposed of the appeal and has modified the decree of the High Court. We have not obtained copies of the judgment and decree of that court. But from what appears in the newspapers we have to infer that the right of the plaintiff in the estate has been considerably affected by that decision. But nonetheless our submission to you will be that the assessment will have to be made on the co-owners of the estate through us as administrators of the estate. We shall produce before you the copies of the judgment and decree of the Federal Court as soon as we obtain the same.

Yours faithfully,

(Sgd.) . . .

(Sgd.) . . .

Administrators.

LIST OF AUTHORITIES CITED in the Appeal and before the District Court, Colombo, filed at the Direction of the Appellate Court.

Exhibits.

List of Authorities.

	K. Bhashyam	Raja Iyer
(1926) A.I.R. Madras 72	196	
(1945) A.I.R. Madras 122	233, XXN. 218	284, 288
I.L.R. 52 Madras 398 = (1929) A.I.R. Madras 296	XXN. 220	275, 280, 303, 357, 282, 288, 295
A.I.R. (1948) Allah. 81	XXN. 220	
I.L.R. 56 Madras 1 = (1932) A.I.R. Madras 753	XXN. 237	291
A.I.R. 1944 Madras 340	233	
A.I.R. 1941, Pr. C. 48	236	
I.L.R. 28 Madras 344 (345)		244
(1941) A.I.R. Allahabad 120		256
I.L.R. 2 Bombay 498 (512)		265
I.L.R. 35 Madras 47		272
I.L.R. 29 Madras 437, 447		279, 282, 357
(1947) A.I.R. Pr. C. 8		293
I.L.R. 2 Bombay 494		293
(1946) A.I.R. Nagpur 203		297, 298
I.L.R. 50 Madras 508, (1927) A.I.R. Madras 471		302
I.L.R. 43 Bombay = 46 I.A.		303
A.I.R. (1948) Pr. C. 114		304
do. do. Pr. C. 165		366
(1930) A.I.R. Madras 109 = 57 M.L.J. 817 ..		306
12 Moore's I.A. 350		310
51 I.A. 157		313
(1940) A.I.R. Lahore 113		328
(1932) A.I.R. Pr. C. 216 (222)		330
I.L.R. 17 Mad. 316 (326)		334
20 Weekly Reports 191		278, 342, 356, 358, 374
(1935) A.I.R. Bombay		381, 360
A.I.R. 1934 Allah. 553		369, 395
A.I.R. (1922) or (1932) Allahabad 116		372
A.I.R. (1937) Patna 455		372
A.I.R. (1941) P.C. 48		373
I.L.R. 12 Cal. 493		373
20 Weekly Reports 194		375
(1939) A.I.R. Madras 562		377
11 Moore's Indian Appeals	102	540
do. do. 75 (80)	104	254
(1941) A.I.R. Pr. C. 120 (126)	183–185, 104	373, 380, 250, 253, 292, 315, 319, 322, 327, 328, 361
49 Indian Apps. 162 = I.L.R. 45 Madras ..	109	
I.L.R. 7 Madras 359	110	
53 I.A. 123 = I.L.R. 48 Allah. 313	111	274, 296
I.L.R. 25 Madras	118, 117 & 116	258
(1914) A.I.R. Madras 440 = I.L.R. 38 Madras ..	125 & 117	684
(1915) A.I.R. Madras 453 I.L.R. 39 Madras ..	119 & 118 & 117 & 120	265
referred to in 6 I.A. = I.L.R. 5 Cal. 148 ..		271
11 I.A. = I.L.R. 10 Cal. 626 ..		271
40 I.A. = I.L.R. 40 Cal. ..		
4 I.A. 247 = I.L.R. 3 Cal. 198	120 & 119	270
(1922) A.I.R. Madras 112	121	
(1927) A.I.R. Madras 471		
(1933) do. do. 158		
(1921) do. do. 384		
(1917) do. Pr. C. 128	123	

Exhibits.

List of Authorities, *continued.*

	K. Bhashyam	Raja Iyer
I.L.R. 53 Madras 84 = (1929) A.I.R. Madras 865	198 & 125	256, 260, 376
3 I.A. 154 (191) = I.L.R. 1 Madras 69	125	
(1945) A.I.R. Allahabad 286	127–126	240
See also I.L.R. 14 Bombay 463 (471)		
(1943) A.I.R. Pr. C. 196 = (1943) Alla. Law J. 574	153, 130, 129, 127, XXN. 201, 221	285, 304, 332, 336, 377
(1945) A.I.R. (Fed. C.) 25 (32)	200, 141, 132, 218, 231, 233	287, 288, 341, 349
46 I.A. 97 (107) = I.L.R. 43 Bombay 778 ..	133	
(1937) (A.I.R.) Pr. C. 36	141 XXN. 213, 214, 234, 237	397, 277, 284, 288, 279, 281, 357, 360, 376, 381, 392
(A.I.R.) 1945 A.I.R. Madras 122	143, 142	
(A.I.R.) 1941 Fed. C. 72	XXN. 192, 144	300
I.L.R. 1 Allahabad 105	146	264
9 Moore's I.A. 543 (611)	XXN. 176	255, 256, 301
I.L.R. 43 Allahabad 228 (243)	XXN. 177	301
(1943) A.I.R. Madras 149	XXN. 194	268
(1946) A.I.R. Madras 503	XXN. 195	269
(1947) 2 Madras Law Journal 509	XXN. 196	
(1935) A.I.R. Pr. C. 95		377
(1932) A.I.R. Madras 753		378
I.L.R. 5 Madras 230, 236		389
I.L.R. 7 Madras 564		389, 393
(1927) A.I.R. Pr. C. 56 = I.L.R. 51 Bombay 450		395
(1939) 7 I.T.R. 362		
(1952) A.I.R. Madras 362		
2 Indian Appls. 283 = I.L.R. 1 Cal. 153		
(1953) A.I.R. Madras 159		
(1940) A.I.R. Madras 664		
(1942) A.I.R. Nagpur 19		
(1940) A.I.R. Lahore 113		
(1921) A.I.R. Pr. C. 62		
(1934) A.I.R. Pr. C. 157		
I.L.R. 10 Allahabad 272 = 15 Indian Appl. 1		
I.L.R. 20 Allahabad 407 = 30 Indian Appls. 165 (170)		
27 N.L.R. 321 (324)		
20 N.L.R. 449 (461–2)		
4 Indian Appeals 447		
6 Indian Appeals 88		
(1925) A.I.R. Pr. C. 18 (26)		
51 Indian Appeals 368 (374)		
A.I.R. (1948) Pr. C. 8		

STATEMENT showing Payments of Estate Duty.

Exhibits.

Statement showing Payments of Estate Duty.

IN THE DISTRICT COURT OF COLOMBO.

IN THE MATTER of an APPEAL under the Estate Duty Ordinance.

1. V. RAMASWAMI IYENGAR AND ANOTHER
Administrators of the Estate of RM. AR. AR. RM. ARUNACHALAM CHETTIAR, decd.

v.

10 THE HON'BLE THE ATTORNEY-GENERAL OF CEYLON.

STATEMENTS OF PAYMENTS OF ESTATE DUTY.

26.5.1942	Rs.200,000.00	A25 & A27
3.6.1942	Rs. 15,000.00	A26 & A27
29.7.1942	Rs. 59,497.82	A28 & A29
21.9.1942	Rs. 16.97	A31
8.10.1942	Rs. 8,693.28	A33 & A34
18.12.1942	Rs. 5.17	A35
	Rs.283,213.24	

No. 37 EST.Spl.

No. 16 of 1955.

In the Privy Council.

ON APPEAL

FROM THE SUPREME COURT OF CEYLON

BETWEEN

THE ATTORNEY GENERAL OF CEYLON . . . . *Appellant*

AND

1. V. RAMASWAMI IYENGAR
2. K. R. SUBRAMANIA IYER,
Administrators of the Estate in Ceylon of Rm. Ar. Ar. Rm. Arunachalam Chettiar, deceased . . . . . *Respondents.*

RECORD OF PROCEEDINGS

T. L. WILSON & CO.,
6 WESTMINSTER PALACE GARDENS,
LONDON, S.W.1,
Solicitors for the Appellant.

LEE & PEMBERTONS,
46 LINCOLN'S INN FIELDS,
LONDON, W.C.2,
Solicitors for the Respondents.

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