

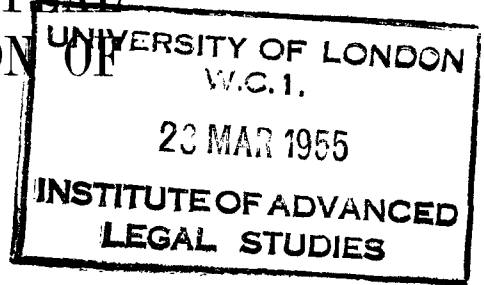
~~G.T.A. - G.T.F.:~~

38, 1954

In the Privy Council.

No. 31 of 1953.

ON APPEAL FROM THE COURT OF APPEAL
SUPREME COURT OF THE FEDERATION OF
MALAYA



BETWEEN

THE FIRM OF T.A.R.(T) ... (Plaintiffs) Appellants

AND

THE FIRM OF SV.KR. alias SEENA VANA KANA RUNA
(Defendants) Respondents.

38060

RECORD OF PROCEEDINGS

INDEX OF REFERENCE

No.	Description of Document.	Date.	Page.
IN THE HIGH COURT AT PENANG.			
1	Writ of Summons (including Statement of Claim)	7th October 1949 ...	1
2	Defence	5th December 1949...	4
3	Reply	11th April 1950 ...	5
4	Notes on Evidence :—	20th August 1951 ...	5
	Opening Speech of Mr. Pooley	20th August 1951 ...	6
<i>Plaintiffs' Evidence.</i>			
Evidence of :			
K.M.A.R.K.M. Kumaruppa Chettiar—			
	Examination	20th August 1951 ...	6
	Cross-examination	20th August 1951 ...	7
	Re-examination	20th August 1951 ...	12
	Examination by Court	20th August 1951 ...	13
	Further cross-examination	4th September 1951...	13

No.	Description of Document.	Date.	Page.
	<i>Defendants' Evidence.</i>		
	Evidence of :		
	(a) R. Vinaitherthan—		
	Examination	4th September 1951...	14
	(b) M. K. R. A. Anamalai Chettiar—		
	Examination	4th September 1951...	14
	Cross-examination	4th September 1951...	18
	Re-examination	4th September 1951...	24
	Further cross-examination	5th September 1951...	24
	Further re-examination	5th September 1951...	24
	Examination by Court	5th September 1951...	25
	(c) M. C. T. Sithambaram Chettiar—		
	Examination	5th September 1951...	25
	Cross-examination	5th September 1951...	25
	Re-examination	5th September 1951...	28
	(d) M. P. Muthupalaniappi Chettiar—		
	Examination	5th September 1951...	28
	Cross-examination	5th September 1951...	29
	Re-examination	5th September 1951...	29
	(e) R. M. M. R. M. Ramasamy Chettiar—		
	Examination	5th September 1951...	30
	Cross-examination	5th September 1951...	30
	Examination by Court	5th September 1951...	31
	Closing Speech of Mr. Hume	5th September 1951...	31
	Closing Speech of Mr. Pooley	5th September 1951...	32
5	Judgment	9th October 1951 ...	34
6	Order	9th October 1951 ...	37
	IN THE COURT OF APPEAL AT PENANG.		
7	Notice of Appeal	6th November 1951...	37
8	Memorandum of Appeal	22nd November 1951	38
9	Further Grounds of Appeal	(Undated)	39
10	Notes of Argument taken by Mathew, J. ...	22nd February 1952 ...	40
11	Notes of Argument taken by Murray-Aynsley, C.J.	22nd February 1952 ...	43
12	Notes of Argument taken by Pretheroe, J. ...	22nd February 1952 ...	47
13	Judgment of Mathew, C.J.	13th June 1952 ...	51
14	Judgment of Murray-Aynsley, C.J.	(Undated)	53
15	Judgment of Pretheroe, J.	21st March 1952 ...	56
16	Order	16th August 1952 ...	59
17	Order granting Conditional Leave to Appeal to Her Majesty in Council	6th October 1952 ...	<i>Not Printed</i>
18	Order granting Final Leave to Appeal to Her Majesty in Council	17th April 1953 ...	60

PLAINTIFFS' BUNDLE OF DOCUMENTS "A."

Exhibit Mark.	Description of Document.	Date.	Page.
"A"			
pp. 1-11	Power of Attorney T.A.AR.CT Kuppan Chettiar to Muthukaruppan Chettiar	4th April 1938 ...	61
p. 12	Form of original Thavannai Letter.		(In Original)
pp. 13-15	Power of Substitution Muthukaruppan Chettiar to Arunasalam Chettiar	16th April 1941 ...	67
p. 16	Translation of Thavannai Letter written in Tamil executed by Sithambaram Chettiar Attorney of SV.KR. in favour of Appellants. (For original see Exhibit "D.11.")	16th September 1941...	68
p. 17	Translation of pages 94 and 174 Appellants' Tamil Day Book	16th September 1941 and 14th June 1943 ...	69
p. 18	Translation of Entry No. 2 on page 20 of Appellants' Charities Trust Day Book	16th September 1941...	70
pp. 19 & 20	Translation of entries on page 129 of Appellants' Charities Trust Ledger	16th September 1941 to June 1943 ...	70
p. 21	Translation of page 47 of Appellants' Tamil Ledger Debit and Credit Account	...	72
p. 22	Translation of Thavannai Letter written in Tamil executed by Sithambaram Chettiar Attorney of SV.KR in favour of O.R.M. M.SP.SV. (For original see Exhibit "D.10.")	16th September 1941...	73
p. 23	Notice of Action from Appellants' Solicitors to Agent of O.R.M.M.SP.SV	3rd June 1948 ...	74
p. 24	Letter from Hogan Adams & Allan to Appellants' Solicitors	5th June 1948 ...	75
p. 25	Letter from Appellants' Solicitors to Respondents	26th June 1948 ...	76
p. 26	A.R. card signed by Sithambaram Chettiar		(In Original)
p. 27	Letter from Respondents' Solicitors to Appellants' Solicitors	27th July 1948 ...	76

DEFENDANTS' EXHIBITS.

Exhibit Mark.	Description of Document.	Date.	Page.
"D.1"	Envelope cover ... ..	... ..	See original
"D.2"	Entry on page 29 of Account Book of T.A.R.CT.	... ..	See original

Exhibit Mark.	Description of Document.	Date.	Page.
" D.3 "	Letter written in Tamil, Kuppan Chettiar to O.R.M.M.SP.SV	8th October 1945 ...	See original
" D.3.T "	Translation of Exhibit " D.3." ...	8th October 1945 ...	78
" D.4 "	Letter written in Tamil, Ramanathan of T.AR.CT.KR.RM to O.R.M.M.SP.SV	24th October 1945 ...	See original
" D.4.T "	Translation of Exhibit " D.4." ...	24th October 1945 ...	79
" D.5 "	Letter written in Tamil Kuppan Chettiar to O.R.M.M.SP.SV.	10th June 1947 ...	See original
" D.5.T "	Translation of Exhibit " D.5." ...	10th June 1947 ...	79
" D.6 "	Envelope Cover of Exhibit " D.5." ...	... ..	See original
" D.7 "	Letter written in Tamil by Kuppan Chettiar to O.R.M.M.SP.SV. enclosed in and sent with Exhibit " D.5."	10th June 1947 ...	See original
" D.7.T "	Translation of Exhibit " D.7." ...	10th June 1947 ...	81
" D.8 "	Cheque for \$5000 signed by T.AR.CT. Kuppan Chettiar	16th September 1941...	82
" D.9 "	Cheque for \$4000 signed by O.R.M.M.SP. SV Mayappa Chettiar	19th September 1941...	82
" D.10 "	Thavannai Letter written in Tamil executed by Sithambaram Chettiar Attorney of SV.KR. in favour of O.R.M. M.SP.SV. (For translation see " A " p. 22)	16th September 1941...	See original
" D.11 "	Thavannai Letter written in Tamil, executed by Sithambaram Chettiar Attorney of SV.KR. in favour of Appellants. (For translation see " A " p. 16)	16th September 1941...	See original
" D.12 "	Draft Thavannai Letter, written in Tamil, for \$2000 executed by the Attorney of SV.KR.M. in favour of O.R.M.M.SP.SV. (For translation see " B " p. 2)	16th September 1941...	See original
" D.13 "	Draft Thavannai Letter written in Tamil, for \$3000 executed by the Attorney of SV.KR.M. in favour of the Appellants. (For translation see " B " p. 1)	16th September 1941...	See original
" D.14 "	Copy Cablegram with form of receipt. (Text at Record page 16)	14th December 1941...	See original
" D.15 "	Summary of transactions made on joint account by the Appellants and the Respondents	—	Not transmitted from Malaya
" D.16 "	List of assets held jointly by the Appellants and the Respondents	—	Not transmitted from Malaya

DEFENDANTS' BUNDLE OF DOCUMENTS " B."

Exhibit Mark.	Description of Document.	Date.	Page.
" B "			
p. 1	Translation of Draft Thavannai Letter written in Tamil for \$3000 executed by the Attorney of SV.K.R.M. in favour of the Appellants. (<i>For original see Exhibit D.13</i>)	16th September 1941...	84
p. 2	Translation of Draft Thavannai Letter written in Tamil for \$2,000 executed by the Attorney of SV.KR.M. in favour of O.R.M.M.SP.SV. (<i>For original see Exhibit D.12</i>)	16th September 1941...	85
pp. 3 & 4	Translation of Entries written in Tamil, on page 46 in Ledger	... ..	86
pp. 5 & 6	Translation of Entries written in Tamil and marked " 1 " in the Ledger	... ..	88
pp. 7 & 8	Translation of Entries written in Tamil and marked " 2 " in the Journal	... ..	89

In the Privy Council.

No. 31 of 1953.

ON APPEAL FROM THE COURT OF APPEAL SUPREME COURT OF THE FEDERATION OF MALAYA

BETWEEN

THE FIRM OF T.AR.CT (Plaintiffs) Appellants

AND

THE FIRM OF SV.KR. alias SEENA VANA KANA RUNA
(Defendants) Respondents.

RECORD OF PROCEEDINGS

No. 1.

Specially Indorsed Writ of Summons.

In the High
Court at
Penang.

IN THE SUPREME COURT OF THE FEDERATION OF MALAYA.
IN THE HIGH COURT AT PENANG.

Civil Suit 1949 No. 192.

Between

The Firm of T.AR.CT. Plaintiffs
and

The Firm of SV.KR., alias SEENA VANA KANA RUNA ... Defendants.

No. 1.
Specially
indorsed
Writ of
Summons,
7th
October,
1949.

10 GEORGE THE SIXTH, by the Grace of God, of Great Britain, Ireland,
and the British Dominions beyond the Seas, King, Defender of the Faith,
To the Firm of SV.KR., alias Seena Vana Kana Runa, 17 Jalan Ibrahim
Sungei Patani.

We Command You, that within Sixteen days after the service of this
Writ on you, inclusive of the day of such service, you do cause an appearance
to be entered for you in our Supreme Court at Penang in a cause at the suit
of the Firm of T.AR.CT., 49 Macalister Road, Penang.

And Take Notice that in default of your so doing the Plaintiffs may
proceed therein to judgment and execution.

In the High Court at Penang.

Witness, The Hon'ble Sir Harold Curwen Willan, Knight, C.M.G., M.C., Chief Justice of the Federation of Malaya, at Penang, aforesaid, this 7th day of October, 1949.

(Sgd.) PRESGRAVE & MATTHEWS,
Plaintiffs' Solicitors.

No. 1.
Specially indorsed Writ of Summons, 7th October, 1949—
continued.

(Sgd.) J. W. D. AMBROSE,
Intd. G.K.A.,
Sr. Asst. Registrar,
High Court,
Penang.

10

N.B.—This Writ is to be served within twelve Calendar Months from the date thereof, or if renewed within six Calendar Months from the date of such renewal, including the day of such date and not afterwards.

The Defendant (or Defendants) may appear hereto by entering an appearance (or appearances) either personally or by solicitors at the Registrar's Office at Penang.

A Defendant appearing personally may if he desires enter his appearance by post and the appropriate forms may be obtained by sending a Postal Order for \$4.00 with an addressed envelope to the Registrar of the High Court at Penang.

20

STATEMENT OF CLAIM.

The Plaintiffs' claim is against the Defendants on Thavanai letter for \$3,000/- dated 16.9.41 made by the Defendants and payable on the 16th December, 1941, to the Plaintiffs as Trustees of the T.A.R.C.T. Charitable Trust with interest at $3\frac{3}{4}$ per cent. per annum.

The Plaintiffs claim as trustees of the T.A.R.C.T. Charitable Trust.

PARTICULARS.

1941.			
Sept. 16th.	To Principal	\$3,000.00	30
	„ interest on the principal sum of \$3,000/- from 16th September, 1941, to 16th December, 1941, being 3 months at $3\frac{3}{4}$ per cent. per annum	\$28.12 $\frac{1}{2}$	
	„ interest on the principal sum of \$3,000/- from 16.12.41 to 5.9.45, being 44 months and 20 days at 3 per cent. per annum	338.14	
	„ interest on the principal sum of \$3,000/- from 1.4.46 to 4.10.49, being 42 months and 4 days at $3\frac{3}{4}$ per cent. per annum	443.18 $\frac{1}{2}$	40
		<hr/>	
		\$3,809.45	

(Sgd.) PRESGRAVE & MATTHEWS,
Plaintiffs' Solicitors.

In the High
Court at
Penang.

No. 1.
Specially
indorsed
Writ of
Summons,
7th
October
1949—
continued.

TO WHOM IT MAY CONCERN.

Take Notice that the Writ served on you herewith is served on you as the person having the control or management of the Defendant firm of SV.KR., alias Seena Vana Kana Runa.

Dated at Penang this 7th day of October, 1949.

(Sgd.) PRESGRAVE & MATTHEWS,
Plaintiffs' Solicitors.

(Sgd.) J. W. D. AMBROSE.
Sr. Assistant Registrar,
Supreme Court,
Federation of Malaya.

10

No. 2.
Defence,
5th
December,
1949.

No. 2.
Defence.

DEFENCE.

1.—The Defendants deny that they are indebted to the Plaintiffs in the sum of \$3809.45, the amount demanded herein.

2.—On the 16th day of September, 1941 the Defendants approached one Annamalai Chettiar, agent of the Firm of O.R.M.M.SP.SV. of No. 140 Penang Street, Penang, for a loan of \$5000/- which sum he agreed to give on "thavannai" letters. 20

3.—The said Annamalai Chettiar gave the Defendants a cheque from O.R.M.M.SP.SV. Firm and the Defendants later gave the said Annamalai Chettiar two "thavannai" letters one in the name of Muthukaruppi Achi for \$2000/- and the other for \$3000/- in the name of T.AR.CT. Charitable Trust in accordance with instructions from the said Annamalai Chettiar.

4.—All interest on the said loan were paid to the said Annamalai Chettiar from time to time and on the 25th of June 1943 the Defendants paid to the said Annamalai Chettiar the principal and interest thereon due on the said loan and received back the "thavannai" letters duly cancelled. 30

5.—The Defendants therefore pray that this action be dismissed with costs.

Delivered at Penang this 5th day of December, 1949.

(Sgd.) ONG HUCK LIM,
Defendants' Solicitor.

No. 3.
Reply.

In the High
Court at
Penang.

REPLY.

No. 3.
Reply, 11th
April, 1950.

1.—The Plaintiffs join issue with the Defendants on their Defence.

2.—As to paragraph 2 of the Defence the Plaintiffs further say that on the 16th day of September 1941 the Plaintiffs' business in Penang was being managed by their pre-war agent named Arunasalam Chettiar who had full and sole authority to transact all business on their behalf. The Plaintiffs further say that Annamalai Chettiar the agent of the firm of
10 O.R.M.SP.SV. then of No. 140 Penang Street Penang had no authority or right whatsoever to interfere with the Plaintiffs' firm or to obtain any Thavannai letters on their behalf as alleged.

3.—As to paragraph 3 of the Defence the Plaintiffs say that the said Arunasalam Chettiar was killed in Penang during an air raid in December 1941 and that thereafter there was during the Japanese Occupation no agent or other person in Malaya representing the Plaintiffs or authorised or entitled to receive money or give valid receipts on their behalf.

4.—As to paragraph 4 of the Defence the Plaintiffs say that at no time was the said Annamalai Chettiar the agent of the Plaintiffs authorised
20 to receive money and give receipts on their behalf.

5.—The Plaintiffs claim further interest on the principal sum of \$3000/- at the rate of $3\frac{3}{4}$ per cent. per annum from the 4th day of October 1949 until payment or judgment.

Delivered at Penang this 11th day of April, 1950.

(Sgd.) PRESGRAVE & MATTHEWS,
Plaintiffs' Solicitors.

No. 4.

Notes on Evidence of the Hon. Mr. Justice Spenser Wilkinson.

20th August 1951

30 Mr. POOLEY for Plaintiffs.
Mr. ONG HUCK LIM for Defendants.

No. 4.
Notes on
Evidence
of the Hon.
Mr. Justice
Spenser
Wilkinson,
20th
August,
1951.

HUCK LIM :

Instructed to apply for an adjournment on ground that client wishes to bring in Mr. Hume as counsel. Mr. Hume is engaged in some other

In the High Court to-day, 4th September is available. So it would only be a matter of 2 weeks and I am prepared to pay costs. Case in nature of a test case. It will affect various other people up to \$82,000/-.

No. 4.
Notes on
Evidence
of the Hon.
Mr. Justice
Spenser
Wilkinson,
20th
August,
1951—
continued.

POOLEY :

I am instructed to oppose.
Case was fixed many months ago.
Ample time for Defendants to engage counsel if they wished.
As to this being a test case I admit there are other similar cases but no one has agreed to be bound by decision in this case.
Amount involved here is only \$3000.
This case was fixed in April or May.
My client wants to go on.

10

HUCK LIM :

Nothing to add.
Adjournment refused.

Opening
Speech of
Mr. Pooley.

POOLEY OPENS :

Claim on Thavanai letter.
Defence is denial of indebtedness.
(Reads defence.)
Particulars of cheque have been asked for.
I hand in letter with particulars.
Not entirely consistent with defence.
Two bundles of documents. One is Plaintiffs'.
Plaintiffs' bundle marked Ex. A.
(Huck Lim hands in Defendants' documents.)
Defendants' bundle-marked Ex. B.
Page 16 of Ex. A—Translation of relevant document.
On fact of purported discharge Annamalai states agent of another firm but purports to sign for T.AR.CT.
In 1941 firm of T.AR.CT. had its own agent. He was killed in 30 December, 1941.
Firm of T.AR.CT. had interest in property in name of O.R.M.M.SP.SV.
Agent of O.R.M.M.SP.SV. took possession of various documents belonging to T.AR.CT.
That gave him no right to receive any money or to give a valid receipt.
Defence does not mention ratification or agent of necessity.
Holding out—the only one pleaded in paras. 2 and 3.

20

Plaintiffs'
Evidence.

PLAINTIFFS' EVIDENCE.

—
Kuna Mana
Ana Runa
Kuna Mana
Kumarappa
Chettiar.
Examina-
tion.

CALLS :

P.W.1. KUNA MANA ANA RUNA KUNA MANA KUMARAPPA 40
CHETTIAR, affirmed, states in Tamil :
Present agent of firm of T.AR.CT.

Books of firm show that in 1941 \$3,000 lent to Defendant firm on a Thavanai letter. In the High Court at Penang.

At that date agent of T.A.R.C.T. firm was Arunasalam Chettiar.

He was killed by bombing during the war—I think it was in December, 1941. Plaintiffs' Evidence.

For period of Japanese Occupation no other agent was appointed.

It appears that books, papers and other documents of T.A.R.C.T. were taken into custody by the agent of O.R.M.M.SP.SV. No. 4. Notes on Evidence of the Hon. Mr. Justice Spenser Wilkinson, 20th August, 1951.

Their agent here was Annamalai Chettiar.

10 He made entries in the books of T.A.R.C.T. which purported to show repayment—in the journal and ledger of the Charity Trust Fund Account—of the \$3,000 due on the Thavanai letter.

(Entries shown at pages 19, 20 and 21 of Ex. A. Book is produced which shows change of handwriting after first item and in account translated at pages 19 and 20 of Ex. A).

The account on page 21 of Ex. A is the Defendants' book.

I say Annamalai had no authority to receive money on behalf of Plaintiff firm—no authority of any kind. Kuna Mana Ana Runa Kuna Mana Kumarappa Chettiar. Examination—continued.

CROSS-EXAMINED BY HUCK LIM :

20 I was first appointed agent of plaintiff firm in 1948. That is first time I came into this firm. Cross-examination.

Q. On what authority are you making all the statements which you have made now?—A. On authority of firm given to me by the partners.

Q. That is what you have heard from your principal?—A. I go by the entries in the book.

The former agent had a power of attorney.

I have no personal knowledge of what happened during occupation. I was not here. I was in India.

This is the first time I have come to Penang—i.e. in 1948.

30 Only the principals will know how the firm came to start the business in Penang.

Q. Do you know that this firm of T.A.R.C.T. was run with the firm of O.R.M.M.SP.SV.?—A. No, it was run separately. They had separate offices.

The deceased, Arunasalam Chettiar was in my firm. I do not know if he employed separate clerks.

Q. You know nothing about it?—A. You ask me what I know and I tell you.

40 Q. You know that your firm has a share in the assets and house of O.R.M.M.SP.SV.?—A. Yes—there is a share.

Q. Mortgages?—A. Yes—all are in the books of account.

Q. There are mortgages on town property?—A. (Witness refers to his books). There are many items.

Q. It amounts to \$129,000?—A. Yes.

Q. Your firm's share was \$36,920?—A. Details I do not know.

Q. Mortgages on rural area properties \$36,273.20? Your share was \$9,068.30?—A. I cannot say without looking through the books.

In the High
Court at
Penang.

Plaintiffs'
Evidence.

No. 4.
Notes on
Evidence
of the Hon.
Mr. Justice
Spenser
Wilkinson,
20th
August,
1951.

Kuna Mana
Ana Runa
Kuna Mana
Kumarappa
Chettiar.
Cross-exam-
ination—
continued.

Q. Your firm is claiming in another action for an account and payment ?
—*A.* Yes, we have filed a suit regarding collections made by them without authority.

I have not prepared a list for that action.

The amount of the share is different in different transactions—but one quarter share is in the firm.

Q. What about equitable charges in Penang ?—*A.* I cannot say ?

I ask Mr. Huck Lim about the defence.

HUCK LIM :

I have pleaded loan from Plaintiffs and repayment to Annamalai. 10

POOLEY :

No pleading of holding out, in that Annamalai authorised agent an agent of necessity.

Submit these points are not open.

I say we cannot have evidence that Annamalai was agent to receive money because it is not alleged.

HUCK LIM :

If Court holds against me that is the end of the case.

On considering the Reply I decide to let the evidence in.

Q. Have you not gone through the accounts since you came here ?— 20

A. Yes.

There are equitable charges in which my firm has a share.

Also pro-notes—all in their name.

Also charges on Kedah property.

Equitable charges on Kedah property.

Also charges on Perak property.

Also houses.

There also might be vacant land.

Straits Settlements Loan—there was money in that.

Q. At outbreak of war there was \$15,000 S.S. Loan ?—*A.* They asked 30 us to retain that and they retained it—after my arrival here.

Q. That \$15,000 belonged to Plaintiff firm and was bought in name of O.R.M.M.SP.SV. ?—*A.* There was no name in the bonds. They were bearer bonds. They were all sold. There were no names.

It appears in our books that it was our money with O.R.M.M.SP.SV.

I cannot trace the entry now.

Q. Your firm had about \$178,000 invested in name of O.R.M.M.SP.SV. ?
—*A.* Yes. There are many entries in the books of amounts paid into the Bank, etc., during Annamalai's time.

Q. Have you any complaint against that ?—*A.* Yes, that is the claim 40 we now make that he collected money without our permission. He collected money without our permission, and we now want the money from him.

Q. Moneys lent out in name of O.R.M.M.SP.SV your principal not objecting ?—*A.* After I have come here the collection have been authorised and now we are suing.

Collections made during Japanese time. We incurred a loss. It is his fault that he collected money without our permission.

BY COURT :

The money having been collected during Japanese time was used for their own purposes and towards end of Japanese occupation they made use of the money to buy provisions. And they entered in the accounts "Lost."

Q. You will admit that as regards securities, etc., in name of O.R.M.M.SP.SV. he had full authority to deal with them?—A. We do not admit that now and that is why we have instituted proceedings.

(Pooley points out that question may be taken in two ways).

10 My principal did not invest the money with O.R.M.M.SP.SV. for them to do business. If money was repaid they had no right to use it.

Q. Although Annamalai was alive and had a power of attorney yet money belonging to your firm was invested in name of O.R.M.M.SP.SV. ?—

A. Yes.

Q. So your principal implicitly trusted the agent of O.R.M.M.SP.SV. ?—A. What is meant by implicit trust.

Q. If you put property in my name do you trust me?—A. In this country it is a custom like and they did it accordingly.

Q. You came here as Annamalai had no authority at all?—A. What I say is that T.AR.CT. firm and himself had no connection at all.

20 Q. Yet \$178,000 is invested?—A. In the transaction with O.R.M.M.SP.SV. our share is included.

Q. Your money was given to him to invest in his firm's name?—

A. Arunasalam has collected current account with O.R.M.M.SP.SV. That is if T.AR.CT. wants money it gets money from O.R.M.M.SP.SV. and *vice versa*.

Q. In normal times if mortgagors or chargors paid the money to Annamalai would you have any objection?—A. They should give us our proportion in the transaction. They collected and credited the amount in our account.

30 Q. Annamalai did that during the occupation?—A. What we say is that as there was an agent of T.AR.CT. during the occupation what he did was without authority.

Q. If Annamalai did not collect who should?—A. After our coming later our agent could have collected.

Q. For all these years everything had to be left like that?—A. —

BY COURT :

If a debtor wanted to pay off I cannot say what should have been done.

40 Q. Your complaint is that repayments were in Japanese currency?—A. My complaint is that as an agent was dead at that time what he did was not right.

For our share an agent's permission had to be got.

Q. That \$178,000 was the bulk of your principal's assets?—A. That might be so.

Q. There is a T.AR.CT. Charitable Trust Fund?—A. There is in this case. There are other transactions also relating to this Charitable Trust.

In the High Court at Penang.

Plaintiffs' Evidence.

No. 4.

Notes on Evidence of the Hon. Mr. Justice Spenser Wilkinson, 20th August, 1951.

Kuna Mana Ana Runa Kuna Mana Kumarappa Chettiar. Cross-examination—*continued*.

In the High Court at Penang. Plaintiffs' Evidence. No. 4. Notes on Evidence of the Hon. Mr. Justice Spenser Wilkinson, 20th August, 1951. Kuna Mana Ana Runa Kuna Mana Kumarappa Chettiar. Cross-examination—*—continued.*

Q. The whole trust amounts to \$82,000 odd?—A. Yes.

Q. That money was lent out to different Chettiar in Penang in sums of \$2,000 to \$3,000 on Thavanai letters?—A. Yes.

Q. All were done under the direction of Annamalai Chettiar?—A. They were all during his time.

Q. Was the money lent out under the direction of Annamalai Chettiar?—A. No.

Q. How do you know—you were not here?—A. When I look at the accounts I see it is not so. The entries are not in his handwriting.

Q. Do you say on oath?—A. Some items were written by Arunasalam. 10 I don't know who the others were written by.

Q. Then how can you tell by looking at the account books?—A. Arunasalam is a capable man with experience and can use his own discretion. He might have lent money himself. I did not see it myself.

Q. The answer is you don't know what happened?—A. I know his handwriting in the accounts. I was not here at the time.

Q. I tell you it was done under the direction of Annamalai?—A. No.

Q. I put it to you that what I suggest is reasonable because \$178,000 of your firm's money was in his hands?—A. The \$178,000 was not given to him to do whatsoever he liked. 20

Q. Yes, but to invest for your principals, although you had an agent?—A. I think both of them together did the business—our agent and the agent of O.R.M.M.SP.SV.

Q. If that was so the investment would be in the name of O.R.M.M.SP.SV. Arunasalam and T.AR.CT. Annamalai Chettiar?—A. In transactions like mortgages the two might have put their heads together but in Thavanai transactions Arunasalam has personally done the business.

Q. Is that guess work opinion or not?—A. That is my opinion.

Q. I put it to you that your firm had only Arunasalam Chettiar in Penang and he was attached to the office of O.R.M.M.SP.SV?—A. Our 30 T.AR.CT. office was different from that of O.R.M.M.SP.SV.

In the accounts there are entries regarding rent.

In a house there will be so many firms.

In the house where O.R.M.M.SP.SV. carried on business we rented a box.

Q. Any clerks?—A. No.

Q. All the accounts were written by the clerks of O.R.M.M.SP.SV?—A. I don't know.

Q. Do you have experience of Thavanai letters?—A. What sort of experience. If I lend out money I make a draft myself and ask the debtor 40 to copy it and sign it.

Adjourned to 2.30 p.m.

Resumed—2.30 p.m.

P.W. 1 K.M.A.R.K.M. KUMARAPPA CHETTIAR (on former oath).
(CROSS-EXAMINATION continued) :

- I know Arunasalam's handwriting. This is his handwriting. (Document marked Ex. D.1.)
- The Straits Settlements Loan is here.
- It is not mentioned that bonds are in the name of O.R.M.M.SP.SV.
- From the envelope it appears that the bonds belong to my firm.
- It does not indicate in whose name they are.
- I do not admit that these were in the name of O.R.M.M.SP.SV.
- I do not know in whose name these bonds were before the occupation.
- After the occupation some transfers were effected in the form of
- 10 a receipt.
- Never got back the bonds.
- I look at ledger account of T.AR.CT.AR.
- That is Kuppan Chettiar's firm.
- That is the managing partner of Plaintiff firm.
- He owed Penang firm over \$26,000.
- It is written as having been settled in the time of Annamalai Chettiar during the occupation—1943. That firm had an agent in Alor Star.
- Q. Is it strange to you that your managing partner's agent paid that off to Annamalai?—A. I cannot offer any opinion on that. (Entry
- 20 marked Ex. D.2.)
- Q. When Arunasalam died what should have happened to all these assets?—A. Assets could be dealt with one day after a person is sent from India.
- Q. In the meantime?—A. Keep quiet.
- Q. What is to happen to the house rents?—A. They should remain uncollected.
- Q. If the houses require repairs?—A. The houses should remain in disrepair.
- Q. What would you have done in Annamalai's position?—A. If
- 30 I were in his position I should manage the affairs of the firm—that is all—I mean O.R.M.M.SP.SV.
- As to T.AR.CT. Annamalai Chettiar he could not do anything.
- He should tie everything up and leave it as it was.
- In December, 1941 I was in India. Kuppan was also in India.
- I was in my village and he was in his. I did not hear in December, 1941 that Arunasalam had died. I had no connection with the firm at the time. Kuppan Chettiar's handwriting I know. This looks like his handwriting, but it does not bear his signature. (Document put in and marked Ex. D. 3.)
- 40 There are different ways of writing amongst Chettiars. This is one of the ways.
- I see the second paragraph. Kuppan was managing partner of the Plaintiff firm. He tells there of "our business affairs."
- Q. He did expect everything to have been tied up?—A. This was written in October, 1945. That was as early as a letter could go after the Occupation.
- Q. It does not look as though Kuppan expected everything to be tied up?—A. The word "our" there refers to the general Chettiar business

In the High Court at Penang.

Plaintiffs' Evidence.

No. 4. Notes on Evidence of the Hon. Mr. Justice Spenser Wilkinson, 20th August, 1951.

Kuna Mana Ana Runa Kuna Mana Kumarappa Chettiar. Cross-examination—*continued.*

In the High Court at Penang. conditions. It does not refer to his own affairs. If he wished to refer to his own affairs the word "firm" would be there.

Plaintiffs' Evidence. I look at another (Ex. D. 4).

No. 4. Notes on Evidence of the Hon. Mr. Justice Spenser Wilkinson, 20th August, 1951. I know Ramanathan. He is the other partner of Plaintiff firm. I agree this is a letter from him to O.R.M.M.SP.SV. Letter is dated 24th October, 1945. AR. refers to Arunasalam Chettiar. I think they are there asking for details of his death. Last paragraph is seeking particulars of documents connected with the firm. He is asking about the Plaintiff and he is writing to O.R.M.M.SP.SV. 10

Kuna Mana Ana Runa Kuna Mana Kumarappa Chettiar. Cross-examination—continued. Q. So he did not expect Arunasalam to leave everything tied up?—A. This letter was written after news had been conveyed to him in India and is asking for particulars. I do say that they did not know the death of Arunasalam until after Occupation. I was appointed in 1948. Q. Between 1945 and 1948 who was in charge?—A. Annamalai Chettiar from whom I took over. Annamalai Chettiar was in charge of the firm at first. He handed it over to one Meyappa Chettiar from whom I took over. 20 Meyappa Chettiar was the agent of O.R.M.M.SP.SV. after Annamalai Chettiar. We had our own agent. We had our own box. Arunasalam Chettiar was our own agent. After he died the documents went into possession of O.R.M.M.SP.SV. When I said Annamalai Chettiar was in charge from 1945 to 1948 I mean he held the documents. My view is this—that according to the books of O.R.M.M.SP.SV. firm made collections and so on for our firm between 1945 and 1948 but in my opinion they should not have done so. 30 I don't know if that is the view of my principal also. That is my personal opinion. Law requires the business to be registered. The business was registered before I joined. I don't know who did it. I don't know whether Annamilai sent a telegram to Kuppan Chettiar telling him that Arunasalam was missing. No such particulars were received as I should have known. I frequently visited Kuppan Chettiar. Also my son was there. Ramanathan is my son. He is one of the partners in the Plaintiff firm. Put to me that Annamalai's telegram was received in India. 40 I say I do not know. I do not know if Kuppan sent a telegram in reply.

Re-examination. RE-EXAMINED BY POOLEY : Between 1945 and 1948 no new business was done in name of Plaintiff firm as far as I can see from the books. Q. Did T.AR.CT. own any house property?—A. Yes, in Penang. Nobody else has a share.

Also some rubber estates on the mainland—owned by Plaintiff firm and another firm.

I said Plaintiff firm had its own office. Other firms had their offices in the same building—14 to 15 firms.

Each firm has its own box in which it keeps its documents—that is the practice.

BY COURT :

I agree that if a friend collected rents for me and handed them all over to me after the occupation there would be nothing wrong in that.

10 I still say that without an agent it would be wrong for another to step in.

In case of rents of house property belonging partly to Plaintiffs and partly to O.R.M.SP.SV. I think it would be possible to split the rent and collect only the part due to them.

In case of dividends I agree the whole must be collected and our part accounted for.

I now agree that that applies to all incomings in respect of jointly held property.

CASE FOR PLAINTIFFS.

Adjourned to 10.30 a.m., 4th September, 1951.

20

(Sgd.) T. C. SPENSER WILKINSON,

Judge.

20th August, 1951.

4th September, 1951.

HUCK LIM : Asks for leave to recall the Plaintiff to put certain letters to him.

POOLEY : These letters are very old.

HUCK LIM : They are from Annamalai. They were not in our possession. Letter produced by Annamalai yesterday showing who it was done by.

30 P.W.1. K.M.AR.KM. KUMARAPPA CHETTIAR (recalled) on former affirmation :

CROSS-EXAMINED BY HUCK LIM :

I look at this letter (Ex. D.5). I do not know if it is a letter written by Kuppan Chettiar. His name is there but I don't know if it is written by him. I don't know if it is his handwriting. It is not very clear to me. I look at Ex. D.3. I told Court it bore no signature but handwriting appeared to be that of Kuppan Chettiar. I also said that was usual form of letter by Chettiars—they do not sign letters. How can I say that Ex. D.5 definitely comes from him. The envelope (Ex. D.6) comes from Madras but I cannot say it is definitely from Kuppan Chettiar.

In the High Court at Penang.

Plaintiffs' Evidence.

No. 4. Notes on Evidence of the Hon. Mr. Justice Spenser Wilkinson, 20th August, 1951.

Kuna Mana Ana Runa Kuna Mana Kumarappa Chettiar. Re-examination—*continued.*

Further Cross-examination.

In the High
Court at
Penang.

Plaintiffs'
Evidence.

No. 4.
Notes on
Evidence
of the Hon.
Mr. Justice
Spenser
Wilkinson,
4th
September,
1951.

Kuna Mana
Ana Runa
Kuna Mana
Kumarappa
Chettiar.

Further
cross-exam-
ination—
continued.

Defendants'
Evidence.

R. Vinaith-
erthan.
Examina-
tion.

M. K. R. A.
Annamalai
Chettiar.
Examina-
tion.

Q. Do you deny that the letter is written by your principal's firm?—
A. I cannot say.

I now look at another letter (Ex. D.7). I cannot say if this was written by Kuppan Chettiar.

BY COURT :

I said Ex. D.3 looked like handwriting of Kuppan Chettiar.

I say Ex. D.5 is not similar to the handwriting in Ex. D.3 ; I say the same about Ex. D.7.

NO RE-EXAMINATION BY POOLEY.

DEFENDANTS' EVIDENCE

10

HUME CALLS :

D.W.I. R. VINAITHERTHAN, affirmed, states in English :

Clerk in Indian Overseas Bank, Ltd. Have been subpoenaed to produce two cheques. These are the cheques, dated 16th and 19th September, 1951. Put in and marked Exs. D.8 and D.9.

NO CROSS-EXAMINATION BY POOLEY.

D.W. 2. M.K.R.A. ANNAMALAI CHETTIAR, affirmed, states in Tamil :
126 Penang Street, Penang. Present agent of firm of O.R.M.M.SP.SV.
In 1930 agent of my firm was my maternal uncle Somasundaram Chettiar.
I know firm T.AR.CT. They opened in Penang in May, 1930.

20

First agent of that firm was Muthukaruppan Chettiar. Firm was opened by Somasundaram Chettiar and then a month later Muthukaruppan alias Kasi Chettiar became the agent. He is my elder brother.

I first came to Penang in 1921 as a young boy. I came again in September, 1932. At that time I was an assistant in firm of O.R.M.M.SP.SV. The Plaintiff firm and that firm did business in partnership. In some transactions the Plaintiffs had 1/4th share ; in some 1/2 ; and in some 1/5th. But all the documents connected with such transactions were always written up in name of O.R.M.M.SP.SV.

In 1933 Principal of Plaintiff firm wrote to agent of O.R.M.M.SP.SV. asking him to invest on Thavannai letters, the Charity Fund of his firm ; and Muthukaruppan Chettiar who was agent of Plaintiff firm used to act on the directions of Somasundaram Chettiar.

That letter was lost during the war. The documents were kept at 140 Penang Street, which was destroyed by a direct hit by a bomb.

In 1934 Somasundaram Chettiar left for India. He was succeeded by Ramasamy Chettiar. My brother Muthukaruppan Chettiar (Kasi Chettiar) also left at the same time for India.

Arunasalam Chettiar succeeded him as agent of Plaintiff firm. This man had previously been an assistant in the firm of O.R.M.M.SP.SV.

After the change of agency the investments continued as before and Arunasalam Chettiar acted as directed by Ramasamy Chettiar.

10 There were no changes at all in the investments.

Towards the close of 1934 and early in 1935 Arunasalam Chettiar, agent of Plaintiffs' firm lent our money in small sums in name of Plaintiffs' firm and when copies of accounts were sent to India about these transactions the Principal, Arunasalam Chettiar (who died in 1937) wrote back saying that these transactions should be no longer in name of Plaintiff firm but should continue to be in partnership with firm of O.R.M.M.SP.SV. as before.

I went to India in 1936. Shortly after that my brother Muthukaruppan Chettiar became agent of the Plaintiff firm.

20 I returned to Penang in May, 1937.

Somasundaram Chettier, agent of firm O.R.M.M.SP.SV. died in June, 1937. To succeed him I acted in his place for about a year. My brother (Kasi Chettiar) was then managing the Plaintiff firm as agent.

My instructions came from Meyappa Chettiar in Kampar who had a full power of attorney from my Principal—my firm had a branch in Kampar.

With regard to some transactions I followed previous procedure and some instructions I got direct from India.

My brother, who was then agent of Plaintiffs acted as directed by me.

30 In 1937 Kuppan Chettiar came and took out a Grant of Letters of Administration to Estate of Arunasalam Chettiar, the Principal of Plaintiff firm.

The business continued as before. I continued to manage firm as agent of O.R.M.M.SP.SV. for about a year in 1937.

I continued to work in the firm as assistant under one Meyappa Chettiar—not the one in Kampar—until 1940.

In July, 1940, I went to India.

My brother left Plaintiff firm in April, 1941. Arunasalam Chettiar took over from him—he had previously been agent of Plaintiff firm.

I returned to Penang in May, 1941. I became the agent of firm of O.R.M.M.SP.SV. I took over from Meyappa Chettiar.

40 After that business continued to be carried on as before and all documents connected with transactions were in name of O.R.M.M.SP.SV.

I remember September, 1941. In that month the Defendant firm applied to me for a loan on a Thavanai Letter. They wanted \$5,000. I agreed to lend that amount.

The money was advanced to Defendant firm on Thavanai letters as follows :—

In the High Court at Penang.

Defendants' Evidence.

No. 4. Notes on Evidence of the Hon. Mr. Justice Spenser Wilkinson, 4th September 1951.

M. K. R. A. Annamalai Chettiar. Examination—*continued.*

In the High
Court at
Penang.

Defendants'
Evidence.

No. 4.
Notes on
Evidence
of the Hon.
Mr. Justice
Spenser
Wilkinson,
4th
September,
1951.

M. K. R. A.
Annamalai
Chettiar.
Examina-
tion—
continued.

\$2,000 in name of Muthukaruppi Achi, the mother of my Principal Meyappa Chettiar and wife of the previous Principal Sevagan Chettiar O.R.M.M.SP.SV.

\$3,000 was given in name of T.AR.CT. Charity Fund.

I instructed the agent of T.AR.CT. firm to issue one of their cheques for this amount—\$5,000.

This is the cheque (Ex. D.8). It was filled up by an assistant in my firm and was signed by the agent of the Plaintiff firm.

Cheque was given to Defendant firm's agent, Sithambaram Chettiar. I took the cheque from Arunasalam Chettiar and gave it to agent of Defendant firm. 10

These are the two Thavanai letters for \$2000 and \$3000 (Exs. D.10 and D.11).

Letters of this kind were drafted. A draft is given with the cheque or with the cash to the party borrowing and he makes a copy, puts the seal of the firm and sends it the following day.

I look at Exs. D.10 and D.11—these are the draft letters which were given along with the cheque. They are written by my assistant, Nadaraja, that man who prepared the cheque.

It was done on my instructions. He was my assistant in firm of O.R.M.M.SP.SV. The Plaintiff firm did not have an assistant. 20

On 19th September a sum of \$4000 was lent on two Thavanai letters to the firm known as M.K. in Ipoh. \$2000 was given in name of Muthukaruppi Achi and \$2000/- T.AR.CT. Charity Fund. The money was given from the firm of O.R.M.M.SP.SV. by a cheque. Ex. D. 9 is the cheque. The body of the cheque was written by me and I signed it.

In December 1941 the War started. I Arunasalam Chettiar and my four assistants went and stayed in the Waterfall Temple. We carried with us some account books, some grants and documents. We went there on 8th December. We visited the Town every day. On 11th December myself, my assistant Kasi and Arunasalam Chettiar, agent of Plaintiff firm, came to Town from the Temple by car—O.R.M.M.SP.SV.'s car. The documents on which we were to collect money were then in the possession of Arunasalam Chettiar—his physical possession. We went to Indian Overseas Bank to find out if money could be sent to India. We then heard the sirens. We ran to the house in 140 Penang Street—i.e. I and Arunasalam Chettiar, Kasi having remained in the house. About 27 planes flew over and started bombing. We separated and that was the last I saw of Arunasalam Chettiar. I sent a telegram to Kuppan Chettiar in India as follows — 40

“Your agent Arunasalam Chettiar missing. Searching. Annamalai.”

This is a copy I made at the time. Attached is the receipt from the Cable Company (put in as Ex. D.14).

I received no reply to that.

When I went to India after the War I came to know that a reply had been sent by Kuppan Chettiar but I never got it. At first Japanese Courts did not function and later when they started to function I carried on the business of O.R.M.M.SP.SV. and T.AR.CT.

Subsequently as a result of Gazette Notification I informed the Japanese Government that Arunasalam Chettiar had died in the bombing. I was asked to pay estate duty. I got a certificate from the Collector of Estate Duty saying that no duty was payable.

I paid Corporation Duty in respect of the T.A.R.C.T. Charity Fund. During Occupation I looked after the joint interest of the two firms and of the Charity Fund.

Prior to Occupation when I was agent of O.R.M.M.SP.SV. firm I used to give instructions to Arunasalam Chettiar.

10 The \$5000 I lent to SV.KR. firm was repaid with interest during the Occupation. All repaid by June 1943. It was paid voluntarily without demand by Sathasivam Chettiar, son of the Principal of that firm.

We had \$50,000 to \$60,000 at the time when this was offered to be paid. But at the time the money was actually paid we had about \$130,000 to \$140,000. Monthly income received by rent was two to three thousand dollars.

After Occupation I got a letter from Kuppan Chettiar, proprietor of Plaintiff firm. That is Ex. D. 3. This is the original. (Translation of Ex. D. 3 put in as Ex. D. 3T.)

20 I replied to that letter. Later I received a telegram from Kuppan Chettiar asking for further particulars of the loan and Back Account at the time of Arunasalam Chettiar's death.

Ramanathan Chettiar is another partner in T.A.R.C.T. He wrote letter, Ex. D. 4 to me. (Translation put in as Ex. D. 4T.)

Telegram from Kuppan Chettiar is in India.

I did not reply to Ex. D.4 as I had already replied to Kuppan Chettiar.

I returned to India in October 1946. I did not take with me the books of O.R.M.M.SP.SV. and T.A.R.C.T. I took only copies of those accounts. I handed copies of the T.A.R.C.T. accounts to Ramanathan Chettiar, one 30 of the partners in the firm; and copies of O.R.M.M.SP.SV. accounts to Meyappa Chettiar, the Principal.

I came back to Penang in February, 1949. During my absence M.K.R. Meyappa Chettiar was in charge.

I know the handwriting of Kuppan Chettiar. Ex. D. 5 and D. 7. are in his handwriting. They are not signed—it is not the practice of Chettiars to sign letters at the bottom. From whom to whom is stated. He it is given.

Kondanoor is Head Office of T.A.R.C.T. firm. Ex. D. 5 is in the usual form. It is in Kuppan Chettiar's own handwriting.

40 I have made out a summary of transactions made in joint account by the two firms and collections made in some of the transactions. I have my books here.

Summary put in and marked as Ex. D. 15.

I have also made a list of all the assets held by the joint firm—assets held jointly by T.A.R.C.T. and O.R.M.M.SP.SV. List put in and marked Ex. D. 16.

In the High Court at Penang.

Defendants' Evidence.

No. 4.

Notes on Evidence of the Hon. Mr. Justice Spenser Wilkinson, 4th September, 1951.

M. K. R. A. Annamalai Chettiar. Examination—

continued.

In the High Court at Penang. Defendants' Evidence. No. 4. Notes on Evidence of the Hon. Mr. Justice Spenser Wilkinson, 4th September, 1951. M. K. R. A. Annamalai Chettiar. Cross-examination.

CROSS-EXAMINED BY POOLEY :
Arunasalam, agent of Plaintiff firm had a Power of Attorney from the Plaintiff firm ; but although he had a power he had to act according to our instructions.

Kuppan Chettiar, a partner of Plaintiff firm had a firm of his own in Kedah. Originally Arunasalam Chettiar acted as an agent in Kedah for Kuppan Chettiar and therefore he had a Power of Attorney given to him by Kuppan Chettiar.

When Ramanathan Chettiar came to Kedah as agent of Kuppan Chettiar Arunasalam Chettiar was given a substitute Power to Ramanathan Chettiar. He was the only other person who had a Power of Attorney from Plaintiff firm but that was only from the Kedah firm. 10

Muthukaruppan Chettiar had a Power of Attorney given to him originally. That is my brother.

When he had the Power he was the only person in Malaya who held a power.

Arunasalam Chettiar took over from him and had a power and he was then the only person with a power.

Arunasalam Chettiar was paid a salary as agent of Plaintiff firm;

Q. He was responsible to his Principal for what happened to the money?—A. No. I would say he was not responsible because he had to take orders from us and if any responsibility was to be taken it must be shouldered by both. 20

I mean because he was acting on our instructions. If any question was put by Principal we both would have answered.

Q. You as agent of O.R.M.M.SP.SV. could not deal with assets of T.AR.CT. without their agent's consent?—A. That is not correct. The transactions were always done in common and that portion of the transaction which belongs to them the Plaintiffs' agent will write the accounts for them, or the assistant of O.R.M.M.SP.SV. 30

Q. Could you draw cheques on account of T.AR.CT. firm?—A. The agent signed the cheques he held the Power of Attorney.

Q. If you had signed a cheque on a T.AR.CT. account the cheque would be dishonoured?—A. Yes. They would not give the money. I look at list of assets, Ex. D. 16. All first items except D.1 are of assets in which T.AR.CT. had a share. Loan D.1 was in our name, but they had the name transferred by legal proceedings.

Q. You had this loan in name of O.R.M.M.SP.SV. and you refused to transfer except under threat of legal proceedings?—A. It was settled before going to Court. 40

The agent of T.AR.CT. came in June 1948 and the loan was transferred to Plaintiff firm in May or June 1949.

Items List F and List G on front page of Ex. D. 16—all other items were in name of O.R.M.M.SP.SV. Not in joint names.

Because List G was Charity Fund and the loan was given through us and was managed by us.

List F—assets of T.AR.CT. firm. All in name of T.AR.CT. Items 6 and 7 are Back Accounts. Those two figures show the Current Account

balance at the time of Occupation—the beginning of Japanese Occupation. These sums had been received by P.W.I after he took charge of the firm.

List G—Those Thavanai letters were all taken in name of T.A.R.C.T. in form similar to Exs. D. 10 and D. 11.

Q. Is this form of Thavanai letter a standard form used amongst Chettiars?—A. This is the usual form which all Chettiar use.

Q. It acknowledges receipt and promise repayment to your order?—A. Yes.

10 On left-hand side is borrower (refers to Ex. D. 7). Loan advanced by name on right T.A.R.C.T.

Reference to T.A.R.C.T. Charity Fund is to an entry in the books.

“Through you” means “through T.A.R.C.T.”

“To your order” means to the “order of T.A.R.C.T.”

Letter to be endorsed by T.A.R.C.T.

Q. Invariably practice for the Thavanai letter to be returned duly endorsed?—A. Yes.

Q. No Chettiar would consider he had a valid receipt till he got the letter back?—A. Yes.

20 Q. Referring to your evidence in chief, in 1933 the Thavanai letters were given in name of O.R.M.M.SP.SV. ?—A. I meant that Somasundaram Chettiar was instructed to give Charity Fund moneys in the name of T.A.R.C.T. Charity Fund.

All other transactions were done in the name of O.R.M.M.SP.SV. alone—that is the joint partnership business.

I said that in 1935 Arunasalam lent out money in small sums in name of Plaintiff firm. That was not Charity Fund money—it was T.A.R.C.T. firm’s money. Firm’s money and Charity Fund money were not separate but the accounts were kept separate. In 1937 I said I was still an assistant in firm.

30 And when agent died I acted.

At that time my elder brother took instructions from me.

Everybody knows about it.

I had a collection Power of Attorney. Myself and my brother as agents of the two firms took instructions from M.P.L.M. Meyappa Chettiar of Kampar.

40 Q. So your brother took instructions from two people?—A. That is correct. I gave instructions to my brother because I had only a limited power to collect. I sometimes conveyed to my brother instructions from Meyappa Chettiar and sometimes Meyappa gave instructions to my brother direct.

Q. During occupation period you collected nearly all the money as shown in the list?

12.45 p.m. (Pooley now suggests he should have an opportunity to go through Exs. D.15 and D.16. This is not objected to).

Adjourned to 2.30 p.m.

(Sgd.) T. C. SPENSER WILKINSON,

Judge.

In the High Court at Penang.

Defendants’ Evidence.

No. 4. Notes on Evidence of the Hon. Mr. Justice Spenser Wilkinson, 4th September, 1951.

M. K. R. A. Annamalai Chettiar. Cross-examination—continued.

In the High
Court at
Penang.

Resumed 2.30 p.m.

Defendants'
Evidence.

No. 4.
Notes on
Evidence
of the Hon.
Mr. Justice
Spenser
Wilkinson,
4th
September,
1951.

M. K. R. A.
Annamalai
Chettiar.
Cross-exam-
ination—
continued.

D.W.2. M.K.R.A. ANNAMALAI CHETTIAR (on former oath).

CROSS-EXAMINATION BY POOLEY continued :

I look at the two summaries I have prepared (Exs. D.15 and D.16).

Ex. D.16 shows total of assets held jointly by the two firms.

Ex. D.15 shows what was collected after the War consists of two items.

The sum of \$11,081.49 is income from immoveable properties.

Includes interest from one of the customers on a Promissory Note and a Mortgage, paid whilst Moratorium in force. 10

List 1 shows amount collected from rents and income from rubber estates.

List 2 shows collections of interest.

Total is \$3,638. Items 15 and 16 include some interest.

I now say I have no separate list for interest. The sum of \$3,638 represents principal collected.

I have submitted to lawyers a list of interest collected.

Q. List 2 shows collections of pre-occupation debts collected during occupation period ?—A. It shows only amounts collected in 1944 and 1945.

Column 1 shows amount due to us both. Total is \$155,826. 20

In Ex. D.16 total is \$671,741.10.

Omitting last three items over \$600,000 is due.

Q. Of that total greater part was repaid during occupation period ?—
A. With exception of \$5,000 rest were paid during occupation.

Except for \$155,826 shown in Ex. D.15 I have no hope of recovering anything under Debtor & Creditor Ordinance. During occupation period received approximately \$600,000. List D.15 shows collections in 1944 and 1945. The rest of the collections were made before 1st January, 1944. Amount shown in first column of List 2 in Ex. D.15 was paid in 1944 and 1945. 30

Under provisions of Debtor & Creditor Ordinance we became entitled to further payments in respect of those debts.

Revalued amounts are shown in next column. Column 3 shows amounts settled in respect of these payments due under Ordinance.

Amount is represented partly by cash payments and partly by reinstatement of securities.

That deals with \$155,000 odd worth of assets. Rest of the \$600,000 was collected prior to 1st January, 1944.

As to the money collected before 1st January, 1944, the contribution to Indian Independence League for both firms amounting to about \$160,000 40
to \$170,000 was paid out of this amount.

The balance was deposited in the Bank and in Chettiar firms and part of it was used for our expenses.

Two houses were bought—Lorong Selamat Nos. 58 and 60.

Also three houses at Kulim, Kedah were bought.

With moneys collected subsequently we bought a half share in eight houses in Parit Buntar for the firm of O.R.M.M.SP.SV.

Q. Firm of T.A.R.C.T. was given no share in any of this property ?—*A.* No. In the High Court at Penang.

Q. Why not ?—*A.* Originally the arrangement was that the firm of T.A.R.C.T. was to have shares only in transactions on promissory notes, mortgages, charges, etc., and not on properties. Defendants' Evidence.

The Kedah firm known as T.A.R.C.T.A.R. wanted to purchase some properties before the War. The then agent of that firm Ramanathan Chettiar write to Kuppam Chettiar in India asking if he could purchase properties in Kedah. No. 4. Notes on Evidence of the Hon.

10 In reply Kuppam wrote and said no properties were to be acquired and dealings should only be in transactions on promissory notes and mortgages, and during the occupation Ramanathan Chettiar bought certain properties for the Kedah firm but he sold them before the reoccupation. Mr. Justice Spenser Wilkinson, 4th

Ramanathan Chettiar advised me not to buy properties for this reason. September, 1951.

Q. So even this money on joint account you could not deal with without consulting Ramanathan Chettiar at Alor Star ?—*Q.* Yes, I had to consult him regarding buying properties. I kept the books of T.A.R.C.T. firm during occupation and caused entries to be made in their books. M. K. R. A. Annamalai Chettiar. Cross-examination—

Q. These accounts purported to show a series of transactions between T.A.R.C.T. and O.R.M.M.SP.SV. ?—*A.* Yes. *continued.*

20 *Q.* The effect of those transactions was a series of lendings and borrowings between the firms ?—*A.* That is the Chetty method of keeping current accounts.

Q. While Arunasalam was alive you could not give orders as to entries in his accounts ?—*A.* Whatever is the share of Plaintiffs' firm in transactions which were done in common I will enter them on sheets of paper and give them to him for posting in his accounts.

Q. If you wanted to borrow \$5,000 you would have to go to him and ask him for it ?—*A.* The cheque book of T.A.R.C.T. were kept by the firm of O.R.M.M.SP.SV. and when we wanted money we would fill in the amount and draw the money from the Bank. The cheque books were already signed 30 —every leaf—by Arunasalam Chettiar, as is the practice in all Chettiar Houses—to have the cheques signed before and crossed.

Q. You would have to consult Arunasalam before you drew money from his account ?—*A.* There is no necessity to ask his permission. If he was there in the shop he would just be informed that a certain sum of money would have to be paid for a certain purpose and the cheque would be filled up. If he was not there we would fill in the cheque and issue it.

Q. You would be responsible to makers of Thavanai letters if it was held that you had no authority to give a valid discharge ?—*A.* No, I don't think 40 I would be liable to pay if it is proved I had no authority to pay.

I cannot understand what is meant by no authority. The amounts given in these Thavanai letters were given jointly. All transactions were in the name of our firm. Only cheques were given by T.A.R.C.T.

Q. What joint interest was there ?—*A.* The amounts were given in our advice because those amounts when paid would be paid to us. Even during the time of Arunasalam Chettiar such amounts were paid to us and we told him to enter in his accounts.

In the High
Court at
Penang.

Defendants'
Evidence.

No. 4.
Notes on
Evidence
of the Hon.
Mr. Justice
Spenser
Wilkinson,
4th
September,
1951.

M. K. R. A.
Annamalai
Chettiar.
Cross-exam-
ination—
continued.

Q. Who endorsed the Thavanai letters ?—*A.* We would tell Arunasalam to endorse the Thavanai letters. We only advised, because the money belonged to T.AR.CT. Charity Fund.

Q. When Arunasalam had signed all the cheques why didn't he go back to India ? What else was there for him to do ?—*A.* At the time this firm was opened (T.AR.CT.) it was arranged there should be a man as agent of the firm and that agent was to look after the work connected with O.R.M.M.SP.SV.

The salary receipt for the agent of T.AR.CT. firm is always prepared in the house of my Principal—O.R.M.M.SP.SV. in India. He will start on his 10
journey here after taking his leave from Principal O.R.M.M.SP.SV. and after returning to India he will first visit Principal of O.R.M.M.SP.SV. and then go to Principal of T.AR.CT.

Q. You said that the work of T.AR.CT. agent was to supervise the work of O.R.M.M.SP.SV. ?—*A.* It is like this : I and my assistant will look after the work of T.AR.CT. also ; and in same way T.AR.CT.'s agent will supervise work of our firm. Because we were doing business jointly.

Q. Of amounts shown in Ex. D.15 not one refers to an amount due on a Thavanai letter in name of T.AR.CT. ?—*A.* Yes. This list refers only to joint accounts—not to individual accounts. 20

Q. After the War O.R.M.M.SP.SV. collected nothing on Thavanai letters in name of T.AR.CT. ?—*A.* Because it was handed over in 1948.

Q. There was one Thavanai letter of T.AR.CT. which was not collected during the war ?—*A.* Yes.

Q. Firm of O.R.M.M.SP.SV. made no attempt to collect that before handing over to a proper agent of T.AR.CT. ?—*A.* Because interest was being paid and it was a good transaction and so we handed it over to the agent.

I said I received a telegram in October 1945 in which Kuppan Chettiar asked for particulars of back accounts and Government loans at the time 30
of Arunasalam's death. I have not the telegram—I have a letter (Letter not put in). When I got to India after Occupation I took copies of the day-book from the beginning i.e. from the time Arunasalam was in charge. It was written by my assistant.

Q. When Kuppan Chettiar saw those accounts he was very far from pleased ?—*A.* I did not give a copy of this day-book to Kuppan as he was then in Bangalore—I gave it to Ramanathan Chettiar with instructions to give it to Kuppan when he got back.

Q. When Kuppan Chettiar saw the accounts he was not pleased ?—*A.* I cannot say—he did not tell me anything.

Q. I suggest the two firms have not been on good terms ever since ?— 40
A. During the Japanese Occupation Kuppan Chettiar had borrowed from the Principal firm O.R.M.M.SP.SV. up to Rupees 50,000 and as a result of this transaction there is misunderstanding between them. That was the beginning of the misunderstanding and it developed.

Q. It developed very fast when Kuppan discovered what you had been doing during the Occupation ?—*A.* I do not know.

Q. In addition to about \$80,000 collected on Thavanai letter and the \$150,000 collected on joint accounts—you paid all that into Banks?—
 A. Some goods were purchased and those were sold after Occupation and the amount Credited to T.A.R.C.T.

Q. At a loss?—A. Naturally.

Q. If you had bought goods for 20,000 Japanese dollars and resold them for Malayan 2,000 dollars you would charge the difference as a loss of \$18,000?—A. There was a debit of \$2,500 in the current account.

(N.B.—Witness has not really been given an opportunity to answer
 10 the first question.)

There was money in the Bank.

Q. Why did you not use that money instead of borrowing?—A. The contributions to Indian Independence League were paid from the Bank deposits. Goods were also purchased with this money in the bank.

Q. This debt of \$2,500 you took repayment of that after the War in Malayan dollars?—A. I did not do that. That was done by another agent. It was done by the firm of O.R.M.M.SP.SV.

Q. Similarly with regard to losses on vegetables or other goods. Did you not seek to recover those also in good currency?—A. Not myself.
 20 I don't think the firm has done that.

Q. At the time when our books showed borrowing from our firm by T.A.R.C.T. the books also showed credit in the Bank of \$103,000?—
 A. Yes, that is quite possible.

Q. Money paid into Bank was not paid in when you received it?—
 A. It was always credited in the current account of my firm O.R.M.M.SP.SV. and that paid into the Bank and so it was not possible to pay in straight away when collected. It would be deposited along with our moneys in our account at the Bank. Sometimes it was deposited with other Chettiars.

Q. Did T.A.R.C.T. have any share in any deposits with other Chettiars?
 30 —A. No.

During the Occupation I made deposits with other Chettiars in the name of T.A.R.C.T. firm to extent of \$45,000. With K. O. Nadersan Chettiar—would be between 1944 and 1945. I think 1945. That was the only one.

Q. You kept Plaintiff firm's money as long as you wanted to use it and then paid it in to the Bank?—A. It is not so. It was deposited in Bank at end of 1943. About \$130,000. There were subsequent deposits to the Bank.

Q. And sums drawn out?—A. Yes, for paying to the League and for buying goods and for depositing with current account with a Chettiar.

Q. The sums deposited with the Chettiar were not deposited in the
 40 name of T.A.R.C.T.?—A. Yes. But there was only the one.

Q. No object at all in your receiving the money due on these Thavanai letters?—A. They had to be collected because they could not be refused at that time. Besides the Thavanai letters were with us.

Q. Because the letters were with you that was sufficient reason for collecting the money?—A. Yes. Because these amounts were advanced by us. Naturally when they wish to pay back there is no alternative but to accept.

In the High Court at Penang.

Defendants' Evidence.

No. 4. Notes on Evidence of the Hon. Mr. Justice Spenser Wilkinson, 4th September, 1951.

M. K. R. A. Annamalai Chettiar. Cross-examination—
continued.

In the High Court at Penang.

Defendants' Evidence.

No. 4.

Notes on Evidence of the Hon. Mr. Justice Spenser Wilkinson, 4th September, 1951.

M. K. R. A. Annamalai Chettiar. Re-examination.

RE-EXAMINED BY HUME :

The \$15,000 S.S. Loan. These bonds were held here on instructions from the Principal of O.R.M.SP.SV. because the Principal thought this could partly satisfy the loan made in India. Judgment was obtained against Kuppam in India. The Judgment was in the name of Kuppam Chettiar personally. So Principal was unable to set it off and that is why it was returned.

Q. Is it the custom for the bigger Chettiar firms to pay annual retainers to legal firms ?—A. Yes.

Both O.R.M.SP.SV. and T.AR.CT. used to pay retainers before the War—joint retainers. They retained Messrs. Hogan, Adams & Allan. 10

O.R.M.SP.SV. paid the retainers and got a receipt in the name of both firms and payment entered up in the books of both firms.

In 1942 we were collecting moneys. Japanese currency equalled to British.

Collected moneys in the name of T.AR.CT. and in the name of T.AR.CT. Charitable Fund.

Nobody objected to paying me.

Q. Why not ?—A. Because all documents were in our name and we had advanced the moneys. 20

Moneys which were due to T.AR.CT. Charity Fund were paid voluntarily without my asking for them.

Adjourned to 10.30 a.m. 5th September, 1951.

(Sgd.) T. C. SPENSER WILKINSON,
Judge.

5th September 1951.

POOLEY : I ask leave to recall last witness for further cross-examination on one point.

HUME : No objection.

D.W. 2. M.K.R.A. ANNAMALAI CHETTIAR (on former oath) (re-called). 30

Further Cross-examination—

CROSS-EXAMINED BY POOLEY :

I said yesterday I did not demand repayment of any of the Thavanai letters. That is right.

Q. Would you look at this letter from M. K. Kuppam in reply to a notice of action ?—A. What is contained in this letter is not true. It was a voluntary payment.

(Two documents put in together and marked Ex. P. 17.)

Further Re-examination.

RE-EXAMINED BY HUME :

I don't remember the month when the money was repaid. It was in 1943. 40

At the same time M.K. Kuppam Chettiar repaid another \$2,000/- which was due to Muthukaruppi Achi.

BY COURT :

Among Chettiars it is the practice to run joint firms consisting of one big firm and one small. The agent of the small firm is meant for writing the accounts of that firm but always takes instructions from the agent of the bigger firm.

Arunasalam was agent of the smaller firm taking instructions from the bigger firm.

Arunasalam was 35. I was then 33 or 34.

10 D.W. 3. M.C.T. SITHAMBARAM CHETTIAR affirmed, states in Tamil :
(POOLEY states this witness has been in Court throughout the previous evidence.)

(HUCK LIM states he is the Defendant. (I ask how ?) He is the defendant's agent.)

(HUME : I called that other witness first because he could tell us the earlier history. Agree it might have been better had he been out of Court).

(I note the fact that witness has heard all the other evidence.)

I live at 17 Jalan Ibrahim, Sungei Patani. Agent and attorney of Defendant firm. I was managing Defendant firm before the outbreak of the War here.

20 In September 1941 firm had occasion to borrow money.

We borrowed from Annamalai Chettiar.

I required money and approached Annamalai Chettiar, who was then residing at 126 Penang Street. I asked for \$5,000 on a Thavanai letter. I now say he lived at 140 Penang Street. He gave me a cheque for \$5000. This is the cheque (Ex. D. 8).

I wrote out two Thavanai letters. Annamalai Chettiar gave me the drafts of the two letters. These are the two drafts (Exs. D. 12 and D. 13). I copied them out as Exs. D. 10 and D. 11 and signed them.

As far as I was concerned Annamalai Chettiar was the lender.

30 I went to India before the outbreak of War.

Sathasivan Chettiar took over from me—he is the son of the Principal.

I gave him instructions regarding the loan. I told him at the time of handing over that a sum of \$5,000 had been borrowed on two Thavanai letters from Annamalai Chettiar and that the moneys should be repaid as early as possible with interest to Annamalai Chettiar.

During Occupation I was in India. I came back after liberation. I found from the accounts that this amount had been repaid in 1943 and the two Thavanai letters had been obtained with the endorsement.

CROSS-EXAMINED BY POOLEY :

40 Sathasivam Chettiar is now in India.

Q. Do you attach any importance to whether a person purporting to act for a firm has a power of attorney ?—A. In regard to Thavanai letters no importance is attached to powers of attorney.

If I had any transaction with a firm it would be important.

In the High Court at Penang.

Defendants' Evidence.

No. 4.
Notes on Evidence of the Hon. Mr. Justice Spenser Wilkinson, 5th September, 1951.

M. C. T. Sithambaram Chettiar. Examination.

Cross-examination.

In the High
Court at
Penang.

If any transfers were to be effected on mortgages executed then one must enquire if the person has a power of attorney. Not for any other thing.

Defendants'
Evidence.

For signing documents in Government offices a power of attorney is essential.

No. 4.
Notes on
Evidence
of the Hon.
Mr. Justice
Spenser
Wilkinson,
5th
September,
1951.

Not required for any other transactions.

Q. How would you find out if the person you were dealing with was authorised to carry out the transaction?—A. When occasions arise for transfer or mortgage we naturally ask if he has a power of attorney—not otherwise. Whenever a power of attorney is essential we will ask. 10

Q. What about other transactions? If uncertain would you ask for a power of attorney?—A. Where it is essential we ask if he has a power.

Q. All Chettiar firms send an agent to Malaya and every agent has a power of attorney?—A. Yes.

Q. It is accepted that the holder of the power of attorney is the only person who represents his Principal?—A. Yes.

Q. Considerable importance is attached by Chettiar community to the holding of a power of attorney?—A. Yes.

M. C. T.
Sitham-
baram
Chettiar.
Cross-exam-
ination—
continued.

I look at Exs. D. 10 and D. 11.

This is usual form of Thavanai letter. It provides that on repayment 20
letter is to be returned, duly endorsed.

Q. Is it to be endorsed by the Principal or his duly authorised agent?—
A. If Principal is here he can make the endorsement, but if he is not here his agent can endorse.

Q. Those are the only two people who can endorse?—A. The person who gives out this money is bound to endorse.

In this case I gave two letters. One is in favour of O.R.M.SP.SV. the other is in favour of T.AR.CT.

Q. So you knew it was to two different firms you owed this money?—
A. I did not know that. 30

Q. Then why did you write T.AR.CT. on the letter?—A. It is the practice amongst Chettiar firms to lend out on Thavanai letters moneys belonging to the Charity Fund of other firms. Some such firms may be in India.

Q. Do they lend out other money belonging to other firms?—A. Yes, and the money is repayable to the person who gives it. That is why it is always added: "repayable in Penang to the order of the person."

Q. That is to the order of the person to whom the money is to be paid?—A. Yes.

Q. The person to whom it is to be paid appears in top right-hand 40
corner of the letter?—A. Not so, but to the person actually paying the money to us.

The name of the person who gives the money need not be in the Thavanai letter.

Ex. D. 10 is addressed to O.R.M.SP.SV.

It recites the \$2,000. It states it is the money of SV. Pari Muthukaruppi Achi.

Q. So it is Muthukaruppi Achi's money advanced to you through O.R.M.M.SP.SV ?—A. Yes.

Q. You will get back the letter on paying to *your* order—that means the order of O.R.M.M.SP.SV. ?—A. Yes. At Penang.

Q. So “ your order ” refers in this letter to person in top right-hand corner of the letter ?—A. Yes.

Q. That is the usual way of doing it ?—A. Both ways.

Q. Document Ex. 11 is the same ?—A. The firm is the same.

Q. It was intended to mean exactly the same ?—A. Yes.

10 Q. You are to pay to the order of T.AR.CT. ?—A. This has to be written according to the draft written by Annamalai Chettiar. It is common for Chettiar firms to do like this. Anybody's money kept on deposit in a firm can be lent out in that way on Thavanai letters.

Q. In that case the name of the firm who lends the money goes in top right-hand corner ?—A. It may not be. It is usual for them to insert such name as they like and the money is repayable to the person who gives.

Q. The person who gives has his name in the top right-hand corner ?—A. Not necessarily.

20 Q. The letter requires endorsement by the person whose name is in the top right-hand corner ?—A. No.

By COURT :

How is anybody who reads the letter to know who gave the money ?

I will tell my substitute who lent the money.

I do not say that the document is useless because the name of the lender is not there.

I say it depends where the money came from.

I got this money from Annamalai Chettiar.

Q. Did you not see that cheque (Ex. D. 8) ?—A. Yes.

30 Q. You knew the money came from T.AR.CT. ?—A. I did not at the time notice carefully. I did not on that day notice whose cheque it was.

Q. So it all depends where the money came from but you were not careful to see where the money came from ?—A. No.

Q. Is it not a Chettiar practice to recommend loans ? To recommend a borrower ?—A. It may be but I have not done so.

Q. You were in Court when Annamalai Chettiar gave evidence ? You heard him say that he on behalf of O.R.M.M.SP.SV. would recommend loans to T.AR.CT ?

(Question withdrawn.)

40 Q. When you borrow on a Thavanai letter and subsequently repay you expect to get the letter back endorsed ?—A. Yes, I would expect to.

Q. That endorsement would be by the person whose name appears at top-right-hand corner ?—A. Yes. Anyone who is looking after the interest of the firm whose name is written at top right-hand corner.

Q. If I said I was looking after interests of O.R.M.M.SP.SV. you would not accept my endorsement ?—A. No, it is not possible.

In the High Court at Penang.

Defendants' Evidence.

No. 4. Notes on Evidence of the Hon. Mr. Justice Spenser Wilkinson, 5th September, 1951.

M. C. T. Sithambaram Chettiar. Cross-examination—continued.

By Court.

||
||

In the High Court at Penang.

Defendants' Evidence.

No. 4. Notes on Evidence of the Hon. Mr. Justice Spenser Wilkinson, 5th September, 1951.

M. C. T. Sithambaram Chettiar. Re-examination.

MP. Muthupalaniappi Chettiar. Examination.

Q. It has to be by that firm or their agent?—A. The person who gave the money—if he should endorse that is enough.

Q. He would just endorse his own name?—A. Yes, he naturally would sign his name. He will write thereon “on instructions of so and so” or “on behalf of” or “for.”

Q. What will be the position if he has not got instructions or authority?—A. Since the money is paid by a certain person it is repaid on the belief that he has instructions without any further enquiry.

Q. Did Annamalai demand payment of this sum (referring to Ex. D.11)?

—A. That I do not know. I told the agent who came to relieve me that the money was to be repaid as early as possible with interest. 10

After the War I took over again in 1947.

When I took over I was told this transaction was settled and the account closed. That is all that was said.

RE-EXAMINED BY HUCK LIM :

There are thousands of transactions on Thavanai letters. I know of cases where the person named in right hand top corner has never been in Penang and has no agent here, because it is repayable to the person who gives it. Thavanai letters have to be renewed from time to time. That is done by a local firm without any power of attorney. Money is sometimes paid in Penang without getting back the letter—in cases where the Thavanai letter is in India at the time of payment. Then the local firm which receives the money gives a receipt. The letter will be returned when it is received from India and the receipt is taken back. In this case I followed the normal procedure. In this case our agent received back the letter endorsed, when he paid the money. 20

D.W.4 MP. MUTHUPALANIAPPI CHETTIAR, affirmed, states in Tamil :

67A Jalan Raya, Kulim. Proprietor of firm MM.P. I had dealings with O.R.M.M.SP.SV. of Penang.

I had a current account with them. The agent in 1939 was M. K. R. Meyappa Chettiar. He had connections with the firm of T.AR.CT. 30

T.AR.CT. was a small firm and O.R.M.M.SP.SV. was a big firm and these two firms were one and he used to look after T.AR.CT. also.

T.AR.CT. had a separate agent—Muthukaruppan Chettiar was the agent at that time.

He acted according to what Meyappa Chettiar said.

I know Annamalai Chettiar. He is the present agent.

He succeeded Meyappa Chettiar in May, 1941. After Annamalai came I continued to have transactions. I asked for a Thavanai loan about the beginning of September, 1941. 40

He gave me \$2,000 from the Charity Fund of T.AR.CT. I executed a Thavanai letter. I paid interest once before the War in December, 1941, and during occupation also I paid interest on due dates.

I paid to Annamalai Chettiar and continued to do so once in three months.

In September, 1943, on the due date I paid back the money to Annamalai Chettiar and he gave me the Thavanai letter back.

I know the custom regarding Thavanai letters.

They lend money belonging to relatives in India.

I know of cases where the persons in whose favour the letter is are in India and never come to Penang. There is no power of attorney and it is just entrusted to a local firm. When one wants to repay one pays back to the person from whom it is borrowed.

- 10 If the letter is not in Penang at the time of payment the money is paid to the person who gave it and if he can be trusted no receipt is taken. If not, a receipt is always taken and then we wait for the Thavanai letter from India. When it arrives the receipt is given and the letter is taken back. That has gone on for a long time. There has never been any trouble.

CROSS-EXAMINED BY POOLEY :

Q. When the letter arrives from India it is duly endorsed by the person in whose favour it is?—*A.* No. Sometimes it is endorsed in India by the person whose name is written at top right, but sometimes they are received without endorsement.

- 20 *Q.* Usual form states that the letter will be returned endorsed?—*A.* Yes. Sometimes that wording is omitted.

Q. If it is so worded it has to be endorsed.—*A.* Not necessary.

Q. Then why is it so written?—*A.* That is the practice of Chettiar to write that and it is always copied from a draft.

Q. So some of what is written means nothing?—*A.* It is only as a matter of trust. The letters are just given by way of trust.

Q. Just now you said if it was somebody I could trust I would not get a receipt?—*A.* Yes.

- 30 *Q.* A Thavanai letter is a special form of receipt?—*A.* We could easily give an on demand note. It is only as a matter of respect we issue these Thavanai letters.

Q. A Thavanai letter is an agreement?—*A.* Yes.

Q. It is intended to mean what it says?—*A.* In Chettiar houses that is not the practice.

Q. You have received a letter of action from T.A.R.C.T. claiming repayment of the amount due on the Thavanai letter you have referred to?—*A.* Yes.

Q. You are hoping this action will not succeed and so you will not have to pay?—*A.* Yes, if this case succeeds I will not have to pay. I have come here to tell the truth.

- 40 *Q.* When you repaid during occupation was payment demanded?—*A.* I paid voluntarily.

RE-EXAMINED BY HUCK LIM :

I paid on due date. That was in September, 1943.

In the High Court at Penang.

Defendants' Evidence.

No. 4. Notes on Evidence of the Hon. Mr. Justice Spenser Wilkinson, 5th September, 1951.

MP. Muthupalaniappi Chettiar. Cross-examination.

Re-examination

In the High Court at Penang. D.W.5 R.M.M.R.M. RAMASAMY CHETTIAR affirmed, states in Tamil :

Defendants' Evidence. No. 4. Notes on Evidence of the Hon. Mr. Justice Spenser Wilkinson, 5th September, 1951. Live at 126 Penang Street. Carry on business under Vilasam R.M.M.R.M. First came to Penang in 1923. First worked with K.A.L.R.M. Their office was at 140 Penang Street. There were other firms there. Firm of O.R.M.M.SP.SV. carried on business in same premises—theirs was the next box to mine. Have always worked in same building as O.R.M.M.SP.SV. In 1930 agent of O.R.M.M.SP.SV. was Somasundaram Chettiar. In that year another firm joined O.R.M.M.SP.SV.—that was the firm of T.AR.CT. Somasundaram Chettiar the agent of O.R.M.M.SP.SV. was looking after this firm T.AR.CT. T.AR.CT. had a separate agent, Muthukaruppan Chettiar; but they had no clerks or assistants because O.R.M.M.SP.SV.'s people used to look after the firm. 10

R. M. M.
R. M.
Ramasamy
Chettiar.
Examina-
tion.

Muthakaruppan Chettiar got his salary cheque—I do not know from whom.

I know Annamalai Chettiar. He first joined O.R.M.M.SP.SV. Firm in 1932.

The relationship between those two firms continued till occupation—they were carrying on business jointly.

Prior to occupation I don't know if Arunasalam Chettiar held a power of attorney from T.AR.CT. I did not see him after the bombing on the 11th December, 1941. 20

On that day 140 Penang Street was totally destroyed.

It is usual for Chettiar firms to have money belonging to their relatives in India.

Such moneys used to be invested on Thavanai letters to Chettiar firms and they bore interest at rates fixed by Chettiar community from time to time.

Not usual for Chettiars to have powers of attorney from the owners of the money. 30

When the money becomes repayable the money is repayable to the person from whom it is borrowed—I mean the person through whom it is borrowed in Penang.

Cross-examination. CROSS-EXAMINED BY POOLEY :

Q. Supposing your firm had some money of that kind and lent it on a letter mentioning the name of the person in India? A. It used to be like that. In some instances the vilasam is put in the top—in some cases the name is inserted in the body of the letter. In some cases the name of my firm would appear at right-hand top corner and in other cases the name of the person in India. They use different practices. 40

Q. What is intended will be written in the letter?—A. Yes.

Q. Sometimes it is written that on repayment the letter is to be endorsed?—A. Yes. Sometimes it is to order also. Sometimes it will be omitted.

Q. When to order does it mean it can be transferred like a Bill of Exchange or a promissory note?—A. If “Order” is mentioned it could be repaid to the person to whom it is ordered to be paid.

Q. That order might appear be endorsement on the back of the letter? —A. No. Endorsement will hereof be “Principal and Interest Paid.”

NO RE-EXAMINATION BY ONG HUCK LIM :

BY COURT :

I look at Ex. D.11. The “through you” refers to T.AR.CT. “Your order” means to the order of T.AR.CT.

10 Q. To whom would that money be repayable?—A. This is to be repaid to the person who is looking after or in the management of the Charity Fund.

I look at Ex. D. 10. That is repayable to O.R.M.M.SP.SV. who was looking after the interests of Muthukaruppi Achi.

In case of the money of a relative in India the name of the local firm who pays out the money will not appear.

The borrower knows to whom he has to repay.

If letter says the money is lent through someone then the name of the local firm will be there.

Case for Defendants.

20 Adjourned to 2.30 p.m.

Resumed : 2.30 p.m.

HUME addresses :

Only one point in case. Was Annamalai Chettiar of O.R.M.M.SP.SV. THE AGENT OF Plaintiffs for this particular loan? He arranged the loan. Was he agent of T.AR.CT. for this particular loan?

O.R.M.M.SP.SV. firm established many years ago—goes back to 1923—firm of good standing. T.AR.CT. only started in 1930.

30 Always closely associated with the bigger firm. Never employed assistants or clerks—relied on staff of O.R.M.M.SP.SV.

Most investments were joint. At one time nearly all in the name of O.R.M.M.SP.SV. Evidence that agent of T.AR.CT. always under general directions of agent of O.R.M.M.SP.SV. Clear from letters Exs. D. 6 (*sic* D. 5) and D. 7 even in 1947 O.R.M.M.SP.SV. still looked upon as people to look after affairs of T.AR.CT. This particular letter—only witness of Plaintiffs’ present agent.

40 First joined in 1948. Knows nothing about what happened before occupation. Idea that only a man with a power of attorney can be an agent is nonsense. No writing necessary to create relationship of Principal and agent. Plaintiffs’ witness evaded question of handwriting of Kuppan. Witness must have known they were Kuppan’s letters. Letters clearly a ratification. Other evidence establishes that Annamalai arranged this loan. Interest paid to Annamalai in December. Annamalai held out as person entitled to receive the interest. Transaction three days later—someone else asked for a loan. This time it was O.R.M.M.SP.SV.’s cheque. And again Annamalai dealt with the two firms.

Conduct of Kuppan Chettiar who had a private firm in Alor Star. In June 1943 agent of that firm paid off the \$26,000 to Annamalai Chettiar.

In the High Court at Penang.

Defendants’ Evidence.

No. 4. Notes on Evidence of the Hon. Mr. Justice Spenser Wilkinson, 5th September, 1951.

R. M. M.
R. M.
Ramasamy Chettiar.
By Court.

Closing Speech of Mr. Hume.

In the High Court at Penang. Why should he do that to Annamalai unless he knew he was the right man (Notes of evidence, page 11). Well known these were joint firms and that agent of O.R.M.M.SP.SV. had authority.

No. 4. Bowstead on Agency, 10th edition, page 53.

Notes on Evidence of the Hon. Mr. Justice Spenser Wilkinson, 5th September, 1951. Agent of O.R.M.M.SP.SV. a general agent.

If Annamalai had general authority to make loans he must have had implied authority to get money back. Plaintiffs cannot be heard to say that he did not have authority.

Bowstead page 15—holding out.

Wilson v. West Hartlepool Harbour & Railway Co. ii L.T.R. at page 327. 10

Taking into consideration the course of business, on death of Arunasalam, Annamalai was an agent of necessity.

Sent a telegram at once to Kuppan. Got no reply.

Bowstead, page 11. Page 14, illustration 13.

Here we have the close connection between the two firms.

Submit it was his duty to act and might have been liable in damages, if he had not.

Civil Suit No. 313 of 1950.

Section 3 (1) of Agents & Trustees (Occupation Period) Ordinance 1949.

Quite immaterial whether Annamalai acted either wisely or honestly. 20

Submit judgment of Taylor, J. should be followed.

Closing Speech of Mr. Pooley. POOLEY addresses :

Whole question is whether agent of O.R.M.M.SP.SV. firm had authority in 1941. If he had he is covered by Section 3 (1) of Agents & Trustees (Occupation Period) Ordinance 1949.

War did not destroy any authority he had.

Did not create any authority he had not already got.

No necessity to accept payments. No urging. As to salary of agent of T.AR.CT. being received from O.R.M.M.SP.SV.

Might show that he was agent of O.R.M.M.SP.SV. but does not show 30 the reverse.

Neither Exs. D. 3, D. 5 or D. 7 disclosed in affidavit. Complaint that witness who saw these letters did not at once agree they were Kuppan's but they might have been forgeries. If Defendants wish to rely on these letters they should have given us good time to admit or deny them. Submit the letters have no evidential value, even if genuine. Merely ask for information. No ratification in them. I agree agent need not be appointed by power of attorney. Is there any evidence that Annamalai was appointed agent either by word of mouth or implication or conduct? Two classes of joint business :—

(1) Investment in joint account. In those cases investments were made in name of O.R.M.M.SP.SV. firm. Clear in those cases that O.R.M.M.SP.SV. firm has implied authority to receive full amount so invested. But there were other transactions.

(2) Thavanai letters. Care was taken not to make investment in name of O.R.M.M.SP.SV. Intended that those were to be dealt with by T.AR.CT. Two distinct letters. Why go to all that trouble. Why insist that it requires the endorsement of T.AR.CT. Only evidence is that 40

O.R.M.SP.SV. not intended to give valid receipt for \$2,000. T.AR.CT. firm did have its separate agent. Annamalalai admitted that Arunasalam had power to supervise O.R.M.SP.SV. firm. Reciprocal supervision. Truth is they discussed matters between them. No evidence of holding out to Sithambaram or Annamalalai as agent, except for the mere fact that he approached Annamalalai for the loan.

Document specifically made out in somebody else's name.

10 This is stronger than a case of a mere I.O.U. in name of third party because endorsement is required. Possession of document no evidence of anything. Endorsement—Annamalalai signs as agent of O.R.M.SP.SV. for T.AR.CT. That is admission that document has to be endorsed. Annamalalai had no authority to draw cheques on Bank account. Was not for all purposes an agent for T.AR.CT. Not a general agent, except for joint investments. As to payment of interest—Date is not mentioned.

As to other transactions with M. K.—Again two separate Thavanai letters were given.

D.W. 3 an unsatisfactory witness.

In any case both sides bound by the terms of the written document.

Mean is clear. "You" and "your" refer to T.AR.CT.

20 Thavanai letter is not a negotiable instrument.

As to agent in Sungei Patani paying \$23,000 to Annamalalai we don't know what the transaction was.

Not evidence of any value in this case at all.

Said that it was well known that both firms were joint firms—Sithambaram never said he knew that.

Bowstead, Article 9.

Submit if Annamalalai was not agent before War the agency never arose either by implication or necessity or any other way.

30 Annamalalai telegraphed to Kuppan and received no reply. So nothing expressed.

Before death of Arunasalam, Annamalalai had no express authority from Kuppan. No evidence in this case to imply authority in relation to this transaction.

Any implication by reason of the fact that he made the loan is destroyed by the written document.

As to necessity—No evidence of any necessity.

Annamalalai did not demand payment. It was offered to him and he took it.

40 Defendants have not shown that they paid this money to anyone who had authority to receive it and they are therefore liable.

(Sgd.) T. C. SPENSER WILKINSON,

C.A.V.

Judge.

5th September, 1951.

Parties as before.

I read judgment. Judgment for Defendants with costs.

(Sgd.) T. C. SPENSER WILKINSON,

Judge,

9th October, 1951.

In the High Court at Penang.

No. 4.
Notes on Evidence of the Hon. Mr. Justice Spenser Wilkinson, 5th September, 1951.

Closing Speech of Mr. Pooley
—continued.

In the High
Court at
Penang.

No. 5.
Judgment.

No. 5.
Judgment,
9th
October,
1951.

In September, 1941, the Defendant firm borrowed a sum of \$5,000/- on two Thavanai letters, each dated 16th September, 1941 in the following circumstances :

Sithambaram Chettiar, who was then the agent of the Defendant firm approached one Annamalai Chettiar, at that time the agent of the firm of O.R.M.SP.SV. (which firm I shall refer to herein as O.R.M.) for a loan of \$5,000/- on a Thavanai letter. Annamalai Chettiar gave Sithambaram Chettiar a cheque in favour of the Defendant firm for \$5,000/-, drawn by the Plaintiff firm (T.AR.CT.) by their then local agent Arunasalam Chettiar. Annamalai Chettiar gave to Sithambaram Chettiar two draft Thavanai letters, one for \$2,000/- and one for \$3,000/- for him to copy and sign, which he did. It is in respect of the latter for \$3,000/- that this action is now brought. 10

On the 8th December, 1941 when War broke out in Malaya Annamalai Chettiar of O.R.M. and Arunasalam Chettiar, the agent of T.AR.CT., together went and lived at the Waterfall Temple and took with them there most of the account books and documents of their respective firms. They came to town daily for the next few days. On the 11th December, 1941, when Penang was bombed, Arunasalam Chettiar was killed and No. 140, Penang Street, the place of business of O.R.M. and T.AR.CT. and other Chettiar firms was destroyed by a direct hit. Thereafter Annamalai Chettiar carried on the joint businesses of the firms of O.R.M. and T.AR.CT. and continued to do so until October, 1946, when he returned to India. 20

On the 25th June, 1943, the Defendants paid to Annamalai Chettiar the principal and interest then due in respect of the loan of \$3,000/- and received back the appropriate Thavanai letter cancelled by Annamalai Chettiar, purporting to act on behalf of the firm of T.AR.CT. The Plaintiffs' contention in this action is that the Defendants have not repaid the money to any person authorised to receive it, and they are, therefore, still liable to T.AR.CT. for the money. 30

The Thavanai letter upon which the action is brought acknowledges the receipt of the sum of \$3,000/- and states : " We have credited this " three thousand dollars in the name of T.AR.CT. Charity Trust Fund " through you from current date. . . ." The letter concludes with these words :

" We hereby agree to pay the principal and interest to your
" order at Penang on due date and get back this letter endorsed."

At the top left-hand corner of the letter appears the vilasam of the Defendant firm as makers of the letter and at the top right-hand corner it has as addressee T.AR.CT., Penang. I accept the evidence which was given to the effect that the expression " you " and " your " in the body of the letter refers to the addressee T.AR.CT. This is a usual form of a Thavanai 40

letter, and I do not think that the letter in question really admits of any other reasonable construction.

In my opinion, therefore, it is clear on the face of the letter that it was the duty of the Defendants to repay this money to the firm of T.A.R.C.T. or to an agent of that firm with authority to receive the money on their behalf.

10 Some of the witnesses for the Defendants gave evidence to the effect that where there is a loan upon such a letter the money is always repayable to the actual person who lent it, the suggestion being in this case that because the transaction was carried out through the agent of the firm of O.R.M. the money was repayable to O.R.M. I am unable to accept this as a general proposition. In so far as such evidence tends to vary the terms of the letter it is, I think, inadmissible; and I would in any event reject such evidence, because it seems to me this would reduce the meaning of Thavanai letters to an absurdity. To my mind the money borrowed on this letter was clearly repayable to the firm of T.A.R.C.T. or their agent and to no one else.

20 The idea, however, that the money due on such a letter may legitimately be paid back through the person who actually made the loan is one that might be supported, not on the ground of any custom or course of business, but on the ground that the person who actually lends the money is in so doing acting as the agent of the firm to whom the letter is addressed. I do not think that this circumstance by itself would be sufficient to constitute the relationship of principal and agent between the person who actually handed the money over and the borrower, but I think it is one of the circumstances to be taken into account in considering the whole question of agency in any particular case.

30 The only witness called for the Plaintiff was the Plaintiffs' present agent and his only knowledge of the transaction is derived from the account books and documents. His oral evidence, therefore, was of little value, but it is of interest to observe that his attitude in cross-examination was much more that of a principal complaining that his agent had not done as well for him as he should have done than of a man repudiating all authority on the part of a purported agent. The cross-examination of the Defendants' witnesses by Counsel for the Plaintiffs confirmed the impression that the Plaintiffs' real complaint in this case is not directed so much to the fact that O.R.M. collected the money as to the use to which that money was put after collection.

40 A good deal of evidence was given to the effect that Chettiar firms often work in pairs—a smaller firm working with a larger firm—and that in such cases the agent of the smaller firm works under the general supervision of the agent of the larger firm; and there was specific evidence that the firm of O.R.M. and T.A.R.C.T. were two of such firms working together and that O.R.M. was the larger firm and T.A.R.C.T. was the smaller firm. On this point I accept the evidence of the Defendants' 5th witness, Ramasamy Chettiar, who had worked in the same building as these two firms for many years before the War. He stated that although the firm of

In the High
Court at
Penang.

No. 5.
Judgment,
9th
October,
1951—
continued.

In the High Court at Penang.
 No. 5.
 Judgment, 9th October, 1951—
continued.

T.A.R.C.T. had a separate agent they had no clerks or assistants because the staff of O.R.M. used to look after the firm. Similar evidence was given by Annamalai Chettiar himself, the agent of O.R.M. and when asked what object there was in T.A.R.C.T. having a separate agent if the firm was to be run by the O.R.M. agent, he stated that the agent of the smaller firm, is meant for writing the accounts of the firm, but always takes instructions from the agent of the bigger firm.

I think this evidence of the close relationship between the two firms is borne out by the very large volume of business shown to have been done by the two firms jointly, most of the investments being in the name of O.R.M. Although they each had some separate transactions they were virtually joint firms. 10

I have come to the conclusion that the true position with regard to the two firms O.R.M. and T.A.R.C.T. was that at the time when both agents were alive both were general agents of both firms, although the agent of O.R.M. had a dominant voice in the management of both. It was clearly necessary for the T.A.R.C.T. firm to have someone in Penang with a power of attorney who could sign cheques, deeds and other necessary documents for T.A.R.C.T. under that power, but the fact that a firm has an agent with a power of attorney does not preclude that firm from having other agents with general powers to act on their behalf in matters which do not necessitate a written power of attorney. It seems to me that in effect, in this case, Annamalai Chettiar was the agent who decided questions of policy and Arunasalam Chettiar carried out that policy by signing the necessary documents such as cheques or deeds. In my opinion, therefore, Annamalai Chettiar was a general agent of both firms, so that when Arunasalam Chettiar was killed it was right that he should take charge of the books and business of the T.A.R.C.T. firm and carry on their business until he was in a position to receive further instructions from India. 20

I am unable to find in the letters written by Kuppan Chettiar or Ramasamy Chettiar (partners of the T.A.R.C.T. firm in India) after the War anything that amounts to an express ratification of Annamalai Chettiar's acts during the Occupation. I think, however, that those letters tend to show that Annamalai Chettiar was looked upon by the firm of T.A.R.C.T. as having been the agent of both firms during the Occupation period. I think it is of some significance that although Annamalai Chettiar returned to India in June, 1946 taking copies of the accounts with him there is no evidence that any protest was made by the T.A.R.C.T. firm in regard to his activities during the Occupation until June, 1948, by which time other causes of friction between T.A.R.C.T. and O.R.M. had arisen. 40

On the evidence as a whole I am satisfied that the Defendants made repayment of this loan to an ostensible agent of the Plaintiff firm, who held the document, and the Plaintiffs' claim therefore fails.

Dated this 9th day of October, 1951.

(Sgd.) T. C. SPENSER WILKINSON,
Judge.

No. 6.
Order.

In the High
Court at
Penang.

IN THE SUPREME COURT OF THE FEDERATION OF MALAYA.
IN THE HIGH COURT AT PENANG.

Civil Suit 1949 No. 192.

No. 6.
Order, 9th
October,
1951.

Between

The Firm of T.AR.CT. *Plaintiffs*

and

The Firm of SV.KR., alias SEENA VANA KANA RUNA ... *Defendants.*

10 Before the Honourable Mr. Justice SPENSER WILKINSON.

IN OPEN COURT.

The 9th day of October, 1951.

This Action coming on for trial before this Court on the 20th day of August, 1951, and the 4th and 5th days of September, 1951, in the presence of Counsel for the Plaintiffs and for the Defendants abovenamed, upon reading the pleadings and upon hearing the evidence adduced and upon hearing Counsel for the Plaintiffs and for the Defendants, THIS COURT DID ORDER that this Action should stand for judgment, and the same coming on for judgment this day in the presence of Counsel aforesaid, 20 THIS COURT DOTH ADJUDGE that this Action be dismissed with costs to be taxed.

By the Court,

(Sgd.) G. M. YUSOFF,
Ag. Sr. Assistant Registrar.

No. 7.
Notice of Appeal.

In the Court
of Appeal
at Penang.

IN THE SUPREME COURT OF THE FEDERATION OF MALAYA.
IN THE COURT OF APPEAL AT PENANG.

Federation of Malaya Civil Appeal No. 60 of 1951.

No. 7.
Notice of
Appeal, 6th
November,
1951.

30

Between

The Firm of T.AR.CT. *Appellants*

and

The Firm of SV.KR., alias SEENA VANA KANA RUNA ... *Respondents.*

In the Court
of Appeal
at Penang.

In the Matter of Civil Suit No. 192 of 1949.

Between

The Firm of T.AR.CT. *Plaintiffs*

and

The Firm of SV.KR., alias SEENA VANA KANA RUNA ... *Defendants.*

No. 7.
Notice of
Appeal, 6th
November,
1951—
continued.

Take notice that the Firm of T.AR.CT. the Plaintiffs herein being dissatisfied with the decision of the Honourable Mr. Justice Spenser Wilkinson given at Penang on the 9th day of October, 1951, appeals to the Court of Appeal against the whole of the said decision.

Dated at Penang this 6th day of November, 1951.

10

(Sgd.) PRESGRAVE & MATTHEWS,
Solicitors for the Appellants.

To The Ag. Senior Assistant Registrar,
Supreme Court, Penang.

To the Firm of SV.KR., alias
Seena Vana Kana Runa or their Solicitor,
Mr. Ong Huck Lim,
16-A Ah Quee Building,
Beach Street, Penang.

The address for service of the Appellants is care of Messrs. Presgrave 20
& Matthews, of No. 9 Beach Street, Penang.

No. 8.
Memo-
randum
of Appeal,
22nd
November,
1951.

No. 8.

Memorandum of Appeal.

The Firm of T.AR.CT., the Appellants above-named, appeal to the Court of Appeal against the whole of the decision of the Honourable Mr. Justice Spenser Wilkinson given at Penang on the 9th day of October, 1951, on the following grounds :—

1.—The learned trial Judge ought not to have held that the businesses of the firms of “ O.R.M.M.SP.SV.” and “ T.AR.CT.” were joint and that the business of “ T.AR.CT.” the Plaintiff-firm, was carried on by Annamalai Chettiar of “ O.R.M.M.SP.SV.” 30

2.—The learned trial Judge ought to have held that Annamalai Chettiar had no authority to carry on, if he did, the business of the Plaintiff-firm at any time.

3.—The learned trial Judge ought to have held that the alleged receipt by Annamalai Chettiar of the sum of \$3,000.00 from the Defendant on 25th June, 1943, and the cancellation by him of the Thavanai letter, was without authority from the Plaintiff and did not discharge the debt of the Defendant-firm on the Thavanai letter.

4.—The learned trial Judge was wrong in his conclusion that the 40 agents of “ O.R.M.M.SP.SV.” and of the Plaintiff-firm at the time when

both agents were alive were general agents of both firms, or that the agent of "O.R.M.M.SP.SV." had a dominant voice in the management of both firms.

5.—The learned trial Judge was wrong in holding that Annamalai Chettiar of the firm of "O.R.M.M.SP.SV." was the agent who decided questions of policy connected with the Plaintiff-firm and that Arunasalam Chettiar carried out that policy by signing the necessary documents such as cheques or deeds.

10 6.—The learned trial Judge was wrong in holding that Annamalai Chettiar was a general agent of the Plaintiff-firm and that it was right that he should take charge of the books and business of the Plaintiff-firm and carry on their business.

7.—The learned trial Judge was wrong in holding that the letters written from India by Kuppan Chettiar, one of the partners of the Plaintiff-firm, to Annamalai Chettiar tend to show that Annamalai Chettiar was looked upon by the Plaintiff-firm as having been the agent of the Plaintiff-firm and of the firm of "O.R.M.M.SP.SV." during the occupation period.

8.—The learned trial Judge was wrong in holding that the Defendant-firm made the payment to an ostensible agent of the Plaintiff-firm.

20 Dated this 22nd day of November, 1951.

(Sgd.) M. N. CUMARASAMI,
Solicitor for the Appellant.

To The Registrar,
Supreme Court, Penang.

And to the Respondents above-named or their
Solicitors, Ong Huck Lim, Esq., Penang.

The address for service of the Appellant is No. 49 Macalister Road,
Penang.

No. 9.

Further Grounds of Appeal.

30

6A. Even if the learned trial Judge was right in his finding that Annamalai Chettiar was a general agent at large of the Plaintiff firm, such finding was not sufficient to support the finding that the payment made by the Defendant to the said Annamalai Chettiar and the endorsement made by him on the Thavanai letter sued on were a good discharge of the debt of the Defendant firm to the Plaintiff-firm.

In the Court
of Appeal
at Penang.

No. 8.
Memo-
randum
of Appeal,
22nd
November,
1951—
continued.

No. 9.
Further
Grounds
of Appeal
(undated).

- In the Court of Appeal at Penang.
- No. 9.
Further Grounds of Appeal (undated)
—continued.
- 6B. In order to justify a finding that the said payment and endorsement were a good discharge of the said debt it was necessary for the learned trial Judge to find that the said Annamalai Chettiar was a general agent of the Plaintiff firm authorised to receive payment of monies owed to the Plaintiff firm, to issue valid receipts for such payments on behalf of the Plaintiff firm and to endorse the said Thavanai letter in the name of the Plaintiff firm.
- 6C. The learned trial Judge did not so find and there was no evidence upon which the learned trial Judge could have so found. Moreover it was not pleaded that the said Annamalai Chettiar was so authorised.

10

No. 10.

Notes of Argument taken by Mathew, C.J.

No. 10.
Notes of
Argument
taken by
Mathew,
C.J., 22nd
February,
1952.

CHARLESWORTH and CUMARASAMI for Appellants.
HUME and ONG HUCK LIM for Respondents.

CHARLESWORTH applies for leave to amend memorandum of appeal.

Claim under Thavanai letter dismissed.

Small sum claimed but it is a test case.

Refers to nature of Thavanai letter transaction.

It is a security for money and this one a negotiable instrument.

Case : *Lakshmanan Chettiar v. Commissioner of Income Tax, Madras*,
122 Indian Cases (1922), at 510.

Para. 3 judgment.

A sum of money lent. Ack receipt of sum of money, provision "to pay you or to your order." Top right corner.

Appeal against finding of fact that Annamalai was general agent of 20

T.AR.CT. I do not dispute material facts. Only dispute conclusive.

Three Chettiar firms concerned.

(i) Appellant T.AR.CT.

(ii) Big firm O.R.M.M.SP.SV. (O.R.M.).

(iii) Respondent SV.KR.

Appellant firm and O.R.M. carried on business pre-war in Penang as did several other firms. Frequently large numbers of firms carry on business in same room—Agent & box.

Respondent at Sungei Patani.

O.R.M.M. was a substitute firm. Appellant firm started 5.30, p. 18, 30
line B. (Record p. 14.)

From start of Appellant firm a separate agent of (i) and (ii).

Each agent had full power of attorney—p. 18 history of agent.
(Record p. 14.)

Page 46 (Record p. 61) power of attorney under which agent of
Appellant firm operates.

Arunasalam was appointed sub-attorney p. 57. (Record p. 67.)

No doubt O.R.M. big—Appellant firm small. They worked closely together. Appellant had two funds :

(a) monies of partners, (b) the charity fund.

All T.A.R.C.T.'s own monies were lent out through O.R.M. and in their name. T.A.R.C.T. had a share.

Details on page 89. Indicates close association.

O.R.M. various borrowers principal O.R.M. O.R.M. trustee of T.A.R.C.T. share of investments. O.R.M. not agent.

Appellant firm had some investments in own name p. 115.

10 In respect of that property agent of O.R.M. no power to deal with property.

Charity Fund. All money in trust was lent out on Thavanai letter by T.A.R.C.T.

Details of Thavanai letter 116. Agent of O.R.M. no right to deal with these monies.

20 On 16.9.41 agent of Respondent firm approached agent of O.R.M. and asked for a loan of \$5,000. That loan was made by cheque p. 75. (Record p. 82.) Agent of Appellants was Arunasalam Chettiar. Money lent through O.R.M. p. 19. (Record p. 15.) Money came from Appellant firm—two Thavanai letters given. The drafts of letters were written by O.R.M. clerk p. 19. (Record p. 16.)

Page 59 (Record p. 68) letter subject of suit. Page 65 2nd letter. (Record p. 73.)

Only person who could endorse 59 T.A.R.C.T. 65 O.R.M.

Accounts put in at trial. Appellant's accounts—60. (Record p. 69.)

61 (Record p. 70) Trust account. 62 and 63 (Record p. 70 and p. 71) ledger account relating to transactions.

Respondents' account 78. (Record p. 86.)

30 Page 80—agent knew cheque for T.A.R.C.T. and for charity page 78. (Record p. 88.)

At outbreak of war agent of O.R.M. and Appellant firm went to the Waterfall Temple.

On 11.12.41 Penang bombed and Arunasalam agent of Appellant firm killed. During occupation money due \$3,000 was paid to O.R.M.

Agent of O.R.M. took over T.A.R.C.T. books and acted as agent of Appellant.

Pages 66 and 67. (Record p. 74 and p. 75.)

In 1943 money was repaid on Thavanai letter.

If he had no authority bad payment.

40 Good payment if Annamalai were agent of T.A.R.C.T.

Trial Judge found Annamalai was general agent of T.A.R.C.T.

Pleadings pp. 4 and 5. (Record p. 2 and p. 4.)

To you 3,000 T.A.R. CT.

2,000 O.R.M.

Pleading allegation being addressed O.R.M.

Finding Annamalai agent of T.A.R.C.T. unsupported by evidence.

If case Arunasalam had full power. Onus on Respondent to prove that Annamalai was Appellants' agent. They should have pleaded it. Decided on an issue not in the pleadings.

In the Court
of Appeal
at Penang.

—
No. 10.
Notes of
Argument
taken by
Mathew,
C.J., 22nd
February,
1952—
continued.

In the Court
of Appeal
at Penang.

No. 10.
Notes of
Argument
taken by
Mathew,
C.J., 22nd
February,
1952—
continued.

Agent by necessity, etc.

1 issue against Respondent not varied—no varying that.

Plaintiffs evidence can be disregarded.

Evidence for Respondent Annamalai pp. 18-21 xx 28. (Record p. 14.)

Summarises evidence :—

(a) He gave history p. 18. (Record p. 14.)

(b) All T.AR.CT.'s own monies were invested in O.R.M. name.
p. 19 C. ? p. 21 K. (Record p. 15.)

All our money in name of O.R.M.

(c) Asked Annamalai for money.

(d) All T.AR.CT. charity money all lent out in name of T.AR.CT.

Page 22. (Record p. 18.)

Agent of Respondent firm. Tried to establish payee.

? no importance—p. 30. (Record p. 25.)

R.M.N.L. Chettiar v. A. L. Chettiar, 1934 S.S.L.R. 114.

T.AR.CT. or duly authorised agent.

Judge held on 43 no evidence to support finding of general agency.

Arunasalam was agent with wide powers.

1 Hailsham 200, classes of agents Sections 354, 269—Section 447.

Must be relationship and clear evidence.

Boustead 11th edition, page 2. *Smith v. T. M'Guire* (1858) 3 H & N
page 554. *Brady v. Todd* 142 E.R. 233.

Smith v. Thomas M'Guire. Kinahan v. Parry (1910) 2 K.B. 389.

Only in an ordinary capacity in regard to charity money.

Thavanai letter negotiable instrument.

Alexander v. Mackenzie, 136 E.R. 1449.

When Respondents paid back to Annamalai at own risk. They were
put on their guard. Could Annamalai have sued on the Thavanai.

Agent of necessity. Doctrine inappropriate in this.

Monroe v. Wilmott (1949) 1 K.B. 295.

(1948) 2 K.B. 23. *Sachs v. Miklos & ors.*

Five conditions.

What would have happened? Japanese custodian. No need to do
anything. Ratification. No question on facts of the case.

Boustead—Art. 29.

Comment on Plaintiffs' witness unfair—p. 42. (Record p. 35.)

HUME: Agency. Distinguishes the 2 accounts. O.R.M. agent of
Appellant firm. Pages 28 and 29. (Record p. 25.)

Page 33 (Record p. 28)—Defe: witness 4. Page 34 (Record p. 30) Def.
wit. 5. pp. 11, 13. (Record p. 8, p. 9, p. 10.)

Section 3 Agents and Trustee Ord: 1949. If he had authority from the
occupation then it continued.

Letters indicating agency pp. 71, 72 and 73. (Record p. 78, p. 78, p. 80.)
Principal of T.AR.CT.

The firm of T.AR.CT. paid a sum of dollars to Annamalai p. 14.
(Record p. 11.)

Agency had not been pleaded. Pleading is not as clear as it might have
been. Annamalai was away in India when drawn.

10

20

30

40

Section 2 pleadings. Clearly an allegation of agency. Reply makes this clear—Section 4 reply.

Whole case proceeded on basis of agency and ratification.

Clear in fact that Annamalalai was agent in Sept. 1941 and throughout the occupation.

Loans split up between the two firms. Interest from the war was paid to Annamalalai. Law cited by my friend was not applicable. Agent authorised to sell goods and give receipt.

10 Evidence of a loan made in 1941. He was authorised to give loan and give receipt.

Chitty on Contracts 20th ed : at page 266. Last para.—*Barrett v. Veere*, 173 E.R. 1131.

Ostensible authority. *Wilmott v. Smith & another*, 1144.

1 Hailsham 209§ 365. 269§ 447.

Boustead 10th ed : 53.

Authorised investment—authorised receipts follow.

ONG HUCK LIM : Not upset decision on facts unless it can be shown that his pleadings were unreasonable. Trial judge found facts on evidence.

20 CHARLESWORTH : Pleading. No indication they were going to say something else. Annamalalai extraordinary agent.

Barrett v. Veere—special circumstances.

My friend said that once Arunasalam was dead there was no one who could do anything. If Annamalalai had authority before the occupation then it continued. All the evidence is that he had not got the authority to give endorsement on receipt.

Annamalalai agent of superior firm. T.A.R.C.T.'s own money given to O.R.M. who invested on mortgage.

Was agent O.R.M. empowered to sign receipts. Arunasalam has a p of a for that purpose, therefore no.

30 Page 67 the conclusive letter. (Record p. 75.)

C. A. V.

No. 11.

Notes of Argument taken by Murray-Aynsley, C.J.

CHARLESWORTH and CUMARASAMI.

HUME.

CHARLESWORTH : wants to add to Memorandum of Appeal.

Handed in.

Class of Thavanai letter.

Lakshmanan Chettiar v. Commissioner of Income Tax.

In the Court of Appeal at Penang.

No. 10. Notes of Argument taken by Mathew, C.J., 22nd February 1952—

continued.

No. 11. Notes of Argument taken by Murray-Aynsley, C.J., 22nd February, 1952.

In the Court
of Appeal
at Penang.

No. 11.
Notes of
Argument
taken by
Murray-
Aynsley,
C.J., 22nd
February,
1952—
continued.

- (1929) A.I.R. Madras, 675.
(1922) Indian Cases 510.
p. 59 Letter in question—(Record p. 68.)
Negotiable instrument—
Question of agency; finding that Annamalai was general agent.
Inference from facts not disputed—
Three Chetty firms concerned :
T.AR.CT.
O.R.M.M.SP.SV.
SV.KR. 10
First two carried on business house No. 40 Penang Road with other
firm, common practice.
O.R.M. big old-established firm.
T.AR.CT. started 1930; always had separate agents, each with
P/A. History see p. 18. (Record p. 14.)
Power of Attorney of agent of Appellants p. 46. (Record p. 61.)
Substitute P/A p. 57. (Record p. 67.)
Annamalai Chettiar attorney till his death.
Two firms closely associated.
Two funds of Appellant firm. 20
Money of partners and charity fused—
Partners money of T.AR.CT. lent to O.R.M.
Never lent in name of T.AR.CT. direct.
p. 89 note form of transactions.
O.R.M. transfer of share of T.AR.CT.
No question of holding out.
p. 115, 116.
agent of O.R.M. would have no power of property of T.AR.CT.
T.AR.CT. charity funds lend in name of T.AR.CT.
Thavanai letters, agent of O.R.M. would have nothing to do with 30
these.
16.9.41. agent of Respondents asked agent of O.R.M. for loan of
\$5,000—
cheque drawn by agent of Appellants p. 75. (Record p. 82.) Arunasalam.
p. 19 evidence of loan—(Record p. 15.)
p. 25 practice with cheque books. (Record p. 21.)
Thavanai letter purchased by clerk of O.R.M.
p. 59 Thavanai letter—(Record p. 68.)
p. 65 other letter. (Record p. 73.)
Could only be by firm named as its agent. 40
Accounts p. 60 Appellants' day book. (Record p. 69.)
p. 61 account T.AR.CT. charities day book. (Record p. 70.)
p. 62 63 ledger. (Record p. 70 and p. 71.)
Accounts of Respondents p. 78, 88 ledger. (Record p. 86.)
Evidence of agent of Respondents.
Outbreak of war Arunasalam and Annamalai—
went to waterfall temple.

- 11.12.41 Arunasalam killed by bomb.
 Telegram to Appellant firm—
 Repayment to agent of O.R.M.
 Annamalai Chettiar.
 Took over books and securities of T.AR.CT.
 Acted as agent of T.AR.CT.
 Letters p. 66 3.6.48. (Record p. 74.)
 67 reply by Hogan Adams & Allan. (Record p. 75.)
 June 25th 1943. repayment—
 10 Thavanai letter returned.
 p. 68, 69. (Record p. 76 and p. 68.)
 Agent of O.R.M. no authority to receive for T.AR.CT.
 Could only be good if attorney of O.R.M.
 Finding that attorney of O.R.M. was general agent of T.AR.CT.
 Judgment and evidence.
 p. 4 endorsement of writ. (Record p. 2.)
 Defence para. 3.
 Allegation cheque by O.R.M. not correct.
 Name of Thavanai letters not correct p. 59, 65.(Record p. 68 and p. 73.)
 20 Pleading that both letters addressed to O.R.M.
 No allegation that Annamalai was agent of T.AR.CT.
 Finding general agency unsupported—see p. 9—court of trial.
 Record p. 8.)
 Reply—p. 6. (Record p. 5.)
 If Respondents' case that Annamalai was agent after death of
 Arunasalam then Annamalai held full P/A.
 Onus on Respondents to prove agency ; also to plead it which they
 never did.
 Issue not on record—
 30 ? actual agent.
 ? agent of necessity holding out.
 None on record—
 No opportunity to all rebutting evidence on this issue.
 Evidence of Appellants immaterial—
 Evidence of respondents
 p. 18-29. (Record p. 14.)
 Evidence that owners of T.AR.CT. are owners on instructions of O.R.M.
 p. 19. (Record p. 15.)
 21 K. (Record p. 18.)
 22 J. (Record p. 18.)
 40 Request for loan to Annamalai.
 T.AR.CT. charity lent in name of T.AR.CT.
 p. 22. (Record p. 18.)
Sithambaram Chettiar, p. 29. (Record p. 25.)
 Agent of Respondents p. 30 F.
Muthupalaniappa Chettiar p. 33. (Record p. 28.)

In the Court
 of Appeal
 at Penang.

 No. 11.
 Notes of
 Argument
 taken by
 Murray-
 Aynsley,
 C.J., 22nd
 February,
 1952--

continued.

In the Court
of Appeal
at Penang.

No. 11.
Notes of
Argument
taken by
Murray-
Aynsley,
C.J., 22nd
February.
1952—
continued.

- Judgment p. 41 E finding. (Record p. 35.)
R.M.N.L. v. A.L.V.
(1934) S.S.L.R. 114.
distinguish form of letter in the present case.
p. 43 C Judgment. (Record p. 36.)
finding of general agency.
no evidence of general agency.
Association of two firms—
does not indicate agency—
Arunasalam was general agent— 10
1 *Hailsham* 200 Art. 224.
Special or general agent, question arises when agency established.
11 ed. Boustead 2
Note (f).
Brady v. Todd, 142 E.R. 223.
Smith v. McGuire, 157 E.R. 589.
Kinahan v. Parry (1910) 2 K.B. 389.
Present form of Thavanai letter—
result of Singapore case referred to.
Alexander v. Mackenzie, 136 E.R. 1449 effect of per pro. 20
endorsement on present letter—
Endorsement taken at risk of Respondents—
Annamalai could not endorse—
Agent of necessity ?
does not apply to these.
Monroe v. Willmott (1949) 1 K.B. 295 at 196.
Sachs v. Miklos (1948) 2 K.B. 23 at p. 24.
8th Ed. Leake 538.
Debtor & Creditor Ordinance Section 4 (2) (c).
Ratification not mentioned in Court below. 30
Letter by owner to Annamalai—
Boustead Art. 29.
Judgment p. 44. (Record p. 36.)
HUME—contra—facts
Firms on money charitable trust.
p. 18 p. 28 p. 29 p. 33. (Record p. 14, p. 25, p. 28.)
p. 34 *Ramasamy Chettiar*. (Record p. 30.)
Appellants' agent p. 10, pp. 11—13. (Record p. 8, p. 9, p. 10.)
Annamalai had authority to collect before occupation ; by statute this
continues. 40
(1949) Ordinance 38.
Letters after occupation—
p. 71—T.AR.CT.AR. (Record p. 78.)
Pleading. Defence not as clear as might be.
Annamalai as agent of Appellants.
Endorsement.
20th Ed. Chitty 267

- 173 E.R. 1131.
 same volume 1144.
 1 Hailsham 365.
 Agency by estoppel.
 Agent special and general.
 Ong Huck Lim followed same side.
 CHARLESWORTH in reply.
 Referred to pleadings.
 173 E.R. 1131 distinguished.
- 10 No one to sign cheques, etc., after death of Arunasalam—if this is so
 conclusive.
 Agree authority if exists before would extend into occupation.
 But say never had authority—
 Course of transactions.
 Never any question of agency—
 T.A.R.C.T. agent had control of money—
 No holding out—
 No contention that agent of O.R.M. could sign cheques.
 Real position set out on p. 67. (Record p. 75.)
- 20
- In the Court
 of Appeal
 at Penang.
 —
 No. 11.
 Notes of
 Argument
 taken by
 Murray-
 Aynsley,
 C.J., 22nd
 February
 1952 —
continued.
- C.A.V.

No. 12.

Notes of Argument taken by Pretheroe, J.

- CHARLESWORTH and CUMARASAMI for Appellants.
 HUME and ONG HUCK LIM for Respondents.
- CHARLESWORTH—
 Asks leave to amend Memorandum of Appeal by adding three
 paragraphs—6A, 6B, and 6C.
 Leave granted.
 Test case.
 Thavanai letter is a negotiable letter.
- 30 *Lakshmanan Chettiar v. Commissioner of Income Tax* (1929) A.I.R.
 Madras 675.
 (Also Vol. 122 Indian Cases 1922 at page 510.)
 Top right corner—is person to whom money is to be paid. (See 59.)
 (Record p. 68.)
 Appellants do not dispute any material finding of fact.
 Therefore we are in same position as trial Judge.
 3 Chettiar firms concerned—Appellants, O.R.N.M.SM.SB., and
 Respondents.
- No. 12.
 Notes of
 Argument
 taken by
 Pretheroe,
 J., 22nd
 February,
 1952.

- Cf. this endorsement with 65. (Record p. 73.)
 (Both endorsements made the same day.)
 Payment was bad unless Annamalai was the agent of T.A.R.C.T.
 Trial Judge found he was the *general agent* of T.A.R.C.T.
 That is the point against which we appealed.
 In pleading nothing about "agent" or "general agent"—see page 5.
 (Record p. 4.). So Judge's finding not supported on the pleadings. (See
 bottom p. 9 and top 10.) (Record p. 8.)
- 10 Onus on Respondents to prove Annamalai was Appellants' agent—
 they didn't plead it.
My 1st point—Therefore case decided on issue not on record.
 Annamalai's evidence from page 18 onwards. (Record p. 20.)
 Then see page 30. (Record p. 25.)
 Obviously untrue evidence that money must be paid back to person
 who physically handed over the money in the first place.
 Judge rightly rejected this theory.
R.M.N.L. Letchumanan Chettia v. A. L. V. Alagappa Chettiar (1934)
 S.S. Law Reports 114.
 (59) is a negotiable instrument. (Record p. 68.)
- 20 Therefore in this case only T.A.R.C.T. could endorse it on.
 No evidence that Annamalai was general agent for T.A.R.C.T.
 General agency must be proved.
 It can never arise in the circumstances of this case.
 1 Hailsham 200—Section 354.
 „ 269—Section 448.
 Powers of } *Boustead*—page 2.
 General Agent } *Brodie v. Todd*—142 E.R. 233.
 } *Smith v. Maguire*—157 E.R. 589.
 } *Kinahan & Co., Limited v. Parry* (1910).
 } 2 K.B. 389.
- 30 We say Annamalai was never any kind of agent at all.
 It was *not* a question of the extent of his powers as agent. He was
 merely advisory to our own Attorney—(page 25 G.). (Record p. 21.)
 HUME says—
 This was a transfer. Anna- }
 malai could not transfer } *Alexander v. McKenzie*—136 E.R. 1449.
 When they accepted Annamalai's endorsement, they did so at their own
 risk. Could he have sued on it? No—not until endorsed by T.A.R.C.T.
Re agent of necessity—
- 40 *Monroe v. Wilmott*—(1949) 1 K.B. 295.
 Leake on Contract 8th Edition—page 538.
 Query—Japanese Custodian should have taken over—Section 4 (2) C
 Debtor & Creditor Ordinance.
Re ratification—
 Could be no such question on facts of this case.
 See Article 29 *Boustead* on Agency.
 Record, page 42—attitude of Plaintiffs' witness. (Record p. 35.)

In the Court
of Appeal
at Penang.

—
No. 12.
Notes of
Argument
taken by
Pretheroe,
J., 22nd
February,
1952—
continued.

In the Court of Appeal at Penang.

No. 12.
Notes of
Argument
taken by
Pretheroe,
J., 22nd
February,
1952—
continued.

HUME—

I am going to deal with Agency only.

Huck Lim will do the rest.

I say he was the ostensible agent in Penang.

Study page 18 to see close relationship. (Record p. 14.)

Annamalai did everything. See also top p. 29. (Record p. 25.)

For independent evidence—See bottom page 34. (Record p. 30.)

(Note his evidence—carefully).

Here they were joint and several agents—that of O.R.N. the dominating one. 10

Section 3 Agent & Trustee (Occupation Period).

Ordinance 38 of 1949.

By this section his powers lasted through the war.

Therefore he had power to collect debts.

See pages 71, 72, 73. (Record p. 78, p. 79, p. 80.)

See page 14—2nd line. (Record p. 11.)

Re pleading—see paragraph 4 of reply, page 6. (Record p. 5.)

Clear from evidence Annamalai was an agent.

If not actual, was ostensible agent certainly.

Interest on Thavanai letter was paid to *him* before the occupation. 20

He was authorised to lend money; receive money and give receipts.

Ostensible } Chitty on Contract 20th Edition at p. 266.

authority } *Barrett v. Deere*, 173 E.R. 1131.

Similar case same volume, page 1144.

1 Hailsham para. 365 page 209.

1 „ „ 447 page 269.

Boustead on Agency 10th Edition, p. 53.

ONG HUCK LIM—

Judge could reasonably arrive at the conclusion he did.

See the witnesses he accepted. 30

CHARLESWORTH—

Pleadings did not indicate that Annamalai was a very special sort of agent.

Barrett v. Deere a very special case—very different from this case.

Once Arunasalam was dead nobody could endorse the letter—Annamalai couldn't endorse anything.

I agree that *if* he had authority before occupation then it continued. But I submit he had not the required authority to endorse the letter.

C.A.V.

(Sgd.) E. O. PRETHEROE.

40

No. 13.
Judgment of Mathew, C.J.

In the Court
of Appeal
at Penang.

No. 13.
Judgment
of Mathew,
C.J., 13th
June, 1952.

The main facts in this case present no difficulty. In 1941 the Respondents approached a Chettiar firm known as O.R.M.SP.SV. (hereinafter referred to as O.R.M.) for a loan of \$5,000. A cheque for \$5,000 from the Appellants was given to the Respondents, and the Respondents gave two Thavanai letters, one of them for \$3,000 in the name of the Appellants, and it is in respect of this transaction that the present suit was brought.

10 The agent of the Appellant firm was one Arunasalam Chettiar, and that of O.R.M. one Annamalai Chettiar. These two firms worked in close collaboration, and they shared an office, the staff being provided by O.R.M. All loans which were made from the funds of the principals were dealt with by the agent of O.R.M., and T.A.R.C.T. would advance a part of the money required for the loans to the agent of O.R.M. O.R.M. was the larger firm, and sixty-six per cent of the loans were generally advanced by them. Certain loans which were made from the T.A.R.C.T. charitable funds were always put out on Thavanai letters in the name of T.A.R.C.T.

20 On the 11th of December, 1941, Arunasalam Chettiar was killed in an air raid. Three days before, Annamalai Chettiar and Arunasalam Chettiar had gone to live at the Waterfall Temple in Penang, and had taken with them a number of the account books of their two firms. After the death of Arunasalam Chettiar Annamalai Chettiar carried on the joint business of the two firms until 1946 when he returned to India.

In June 1943, the Respondents paid to Annamalai Chettiar the principal and interest due in respect of the loan of \$3,000 and received back the Thavanai letter which was endorsed as follows :—

“ Date the 11th day of Auni Subanu year.

30 “ Excluding the interest received up till 30th day of Vaigasi, current
“ year (14.6.43) per this letter, received through cheque No. 53102 drawn
“ on the Indian Overseas Bank for three thousand dollars and cash two
“ dollars and seventy five cents, total \$3,002.75 in settlement of principal
“ of \$3,000 and 11 days interest of \$2.75 from the 31st day of the aforesaid
“ month till 10th of current month and this letter has been settled.

“ Sgd. : Annamalai Chettiar, Agent of O.R.M.SP.SV. for T.A.R.C.T.
“ Kuppan Chettiar. 25.6.2603.”

The short point in this case is whether Annamalai Chettiar who was the agent of O.R.M. had authority to receive the money, and give a receipt which was a valid discharge of the debt owing by the Respondent firm.

40 The learned trial Judge in discussing the Appellants' claim found as follows :—

“ On the evidence as a whole I am satisfied that the Defendants
“ made repayment of this loan to an ostensible agent of the
“ Plaintiffs' firm, who held the document, and the Plaintiffs'
“ claim therefore fails.”

In the Court
of Appeal
at Penang.

No. 13.
Judgment
of Mathew,
C.J., 13th
June, 1952
—continued.

Although the pleadings are not as precise as they might be, it is perfectly clear that the issue before the learned trial Judge and before us was, whether in fact Annamalai Chettiar was the agent of T.A.R.C.T. and able to give a valid discharge of the debt on behalf of T.A.R.C.T. The Appellants' main submission is that after the death of Arunasalam Chettiar there was nobody in Penang who was the agent of the Plaintiffs, and that this disposes of the case.

Mr. Hume for the Respondents argued that in all the circumstances of the case Annamalai Chettiar was an ostensible agent of T.A.R.C.T. In support of his argument he quoted Chitty on Contracts (20th edition) 10 page 266 :—

“ Payment to an agent binds the principal, if the agent has
“ either a real or an ostensible authority to receive payment
“ as for example, a person apparently entrusted with the conduct
“ of Plaintiff's business although he had not in fact any authority
“ to receive payment. There is no general rule that an agent
“ who is authorised to sell on behalf of his principal is also
“ authorised to receive the purchase money.”

The cases that support this statement of the law are contained in *Barrett v. Deere*, M. & M. 200, and *Wilmot v. Smith*, M. & M. 238. The 20 heading in the former case reads as follows :—

“ Payment to a person found in a merchant's counting-
“ house and appearing to be interested with the conduct of
“ the business there, is good payment to the merchant,
“ though it turns out that the person was never employed by him.”

And in *Wilmot v. Smith* :—

“ A tender to a person in the office of the Plaintiff's attorney,
“ who is referred to on the subject by a clerk in the office, and
“ refuses the tender as being of an insufficient sum, is a good
“ tender, without shewing who that person was.” 30

The basis of this last decision was that the person who had refused the tender did not do so on the ground that he was not authorised.

There is no dispute in this case that the firms of O.R.M. and T.A.R.C.T. carried on business in the same room, that T.A.R.C.T. had an interest in many of the loans made by O.R.M. and that the loan of \$3,000 the subject of this case, was in fact arranged by Annamalai Chettiar. In my view, it would be impossible on the facts and having in mind that the loan emanated from the T.A.R.C.T. Charitable funds, to hold that Annamalai Chettiar was not the ostensible agent of the Plaintiffs-Appellants.

I would accordingly dismiss this appeal with costs here and in the 40 Court below, and order that the deposit of \$500 be paid to the Respondents towards their costs.

(Sgd.) CHARLES MATHEW,
Chief Justice,
Federation of Malaya.

Kuala Lumpur.
13th June, 1952.

No. 14.
Judgment of Murray-Aynsley, C.J.

In the Court
of Appeal
at Penang.

No. 14.
Judgment
of Murray-
Aynsley,
C.J.
(undated).

The facts in this case are simple. In 1941 there were functioning in Penang two Chettiar firms which may be conveniently referred to as T.A.R.C.T. and O.R.M. It appears that they were closely associated. The agent of the former was one Arunasalam Chettiar and of the latter one Annamalai Chettiar. The T.A.R.C.T. agent had in his hands, besides funds of his principals funds of what was known as the T.A.R.C.T. Charitable Trust. The course of business of the two firms seems to have been as follows : Where funds of the principals were to be dealt with the agent of O.R.M. would make a loan and the agent of T.A.R.C.T. would advance part of the money required to the agent of O.R.M. That is, the ultimate borrower would deal with the O.R.M. firm, though the other firm would provide part of the money, usually a third. The banking account of T.A.R.C.T. was in the hands of the agent of the firm. The agent of O.R.M. could not draw it. There is evidence that the agent of T.A.R.C.T. was instructed to follow the directions of the agent of O.R.M. in disposing of the funds of his firm. In the case of funds of the Charitable Trust the procedure was different. These funds were put out on "Thavannai" letters among Chettiar firms in the name of T.A.R.C.T.

In the course of September, 1941, the Defendants, a Chettiar firm known as SV.KR. of Sungei Patani approached the O.R.M. agent for a loan of \$5,000/-. As a result the Defendants received a cheque of \$5,000/- from T.A.R.C.T. and gave two "Thavannai" letters, one of them in the name of T.A.R.C.T. Charitable Trust in the following form :—

" 31st day of the month of Avani, Visu Year (16.9.41).

" Sithambaram hereby writes. Received from you \$3,000/-

" on current date. We have credited this three thousand dollars

" in the name of T.A.R.C.T. Charity Fund Trust through you from

" current date at 5/16% interest, i.e. interest rate at 3/32% over

" and above the rate of interest ruling for the Penang three months

" "Thavannai" (account). We hereby agree to pay the principal

" and interest to your order at Penang on due date and get back

" this letter endorsed.

(" Sgd.) SITHAMBARAM CHETTIAR,
" *Attorney of SVKR.*"

Rather less than three months later, that is, before any interest was payable, the T.A.R.C.T. agent was killed in an air-raid and no one was appointed to succeed him.

Later in June, 1943, the Defendants repaid the loan to the O.R.M. agent who endorsed the letter as follows :—

" Dated the 11th day of Auni, Subanu year.

In the Court
of Appeal
at Penang.

No. 14.
Judgment
of Murray-
Aynsley,
C.J.
(undated)
—continued.

“ Excluding the interest received up till 30th day of Vaigasi,
“ current year (14.6.43) per this letter, received through cheque
“ No. 53102 drawn on the Indian Overseas Bank for three thousand
“ dollars and cash two dollars and seventy-five cents, total
“ \$3,002.75 in settlement of principal of \$3,000/- and 11 days
“ interest of \$2.75 from the 31st day of the aforesaid month till
“ 10th of current month and this letter has been settled.

“(Sgd.) ANNAMALAI CHETTIAR,
“ Agent of O.R.M.M.SP.SV. for T.A.R.CT.
“ Kuppan Chettiar. 25.6.2603.”

10

The Plaintiffs, T.A.R.CT., sought to recover the sum lent. In answer to a letter from the Plaintiffs' solicitors the solicitors of O.R.M. wrote as follows :—

“ As there was nobody to take charge of the affairs of
“ T.A.R.CT., the said Annamalai Chettiar, in his own capacity and
“ not as agent for the firm of O.R.M.M.SP.SV., acting no doubt
“ in the best interests of the proprietor of the firm, took over the
“ assets and helped in the management of the firm.”

Later when the Defendants had been approached, the Defendants' solicitors replied :—

“ Our clients say that the sum of \$3,000/- and all interest due
“ on the ' Thavannai ' letter has been paid and settled.”

20

In October, 1949, the Plaintiffs issued a specially indorsed writ. The Defendants filed a defence which is instructive. The material parts are as follows :—

“ 3. The said Annamalai Chettiar gave the Defendants a
“ cheque from O.R.M.M.SP.SV. Firm and the Defendants later
“ gave the said Annamalai Chettiar two Thavannai letters, one in
“ the name of Muthukaruppi Achi for \$2,000/- and the other for
“ \$3,000/- in the name of T.A.R.CT. Charitable Trust in accordance
“ with instructions from the said Annamalai Chettiar. 30

“ 4. All interest on the said loan were paid to the said
“ Annamalai Chettiar from time to time, and on the 25th of June
“ 1943, the Defendants paid to the said Annamalai Chettiar the
“ principal and interest thereon due on the said loan and received
“ back the Thavannai letters duly cancelled.”

It is clear that the pleader was uncertain of what his defence might be. He does not plead agency in terms. He appears to be pleading that the loan was made on behalf of the O.R.M. firm.

In their reply, the Plaintiffs denied, *inter alia*, agency of Annamalai Chettiar for the purpose of receiving money and giving receipts. 40

At the trial the Defendants seem to have run several defences. Of these the learned Judge found against the contention of the Defendants that by custom of Chettiars the repayment to the O.R.M. agent was good, as he was

the person who negotiated the loan, as this would have been contrary to the terms of the written agreement. He also found that the act of the O.R.M. agent in receiving the money had not been subsequently ratified by the T.A.R.C.T. principal. He did, however, find in favour of the Defendants on the ground that the agent of the O.R.M. firm was a general agent for the T.A.R.C.T. firm. The learned Judge found in the following terms :—

In the Court
of Appeal
at Penang.

No. 14.
Judgment
of Murray-
Aynsley,
C.J.

(undated)
—continued.

10 “ I think this evidence of the close relationship between the
“ two firms is borne out by the very large volume of business shown
“ to have been done by the two firms jointly, most of the invest-
“ ments being in the name of O.R.M. Although they each had
“ some separate transactions they were virtually joint firms.

20 “ I have come to the conclusion that the true position with
“ regard to the two firms O.R.M. and T.A.R.C.T. was that at the
“ time when both agents were alive both were general agents of
“ both firms, although the agent of O.R.M. had a dominant voice in
“ the management of both. It was clearly necessary for the
“ T.A.R.C.T. firm to have someone in Penang with a power of
“ attorney who could sign cheques, deeds and other necessary
“ documents for T.A.R.C.T. under that power, but the fact that a
“ firm has an agent with a power of attorney does not preclude that
“ firm from having other agents with general powers to act on their
“ behalf in matters which do not necessitate a written power of
“ attorney. It seems to me that in effect, in this case, Annamalai
“ Chettiar was the agent who decided questions of policy by signing
“ the necessary documents such as cheques or deeds. In my
“ opinion, therefore, Annamalai Chettiar was a general agent of
“ both firms, so that when Arunasalam Chettiar was killed it was
“ right that he should take charge of the books and business of the
“ T.A.R.C.T. firm and carry on their business until he was in a
30 “ position to receive further instructions from India.”

40 I am unable to follow this. I should not have thought that an order to
follow the directions of the agent in making the loans would in any sense
have made the other agent an agent of the T.A.R.C.T. capable of binding
that firm by his acts. I do not think that it is any relation of principal
and agent that is involved. If there were it would only be a question of
particular and not general agency. The matter is also unsatisfactory in
view of the defence filed by the Defendants. Counsel for the Plaintiffs at
the trial objected to the question of agency being raised. We have no
evidence of actual authority of the O.R.M. agent to receive money or give
receipts There is also no question of holding out. The loans of funds
other than charitable funds did not bring third parties in contact with
T.A.R.C.T. at all. The loans of charitable funds were expressly made by
T.A.R.C.T. and there is no evidence of any payments to the O.R.M. agent
during the lifetime of the T.A.R.C.T. agent. I cannot see anything in the
relations of the two firms which would lead third parties to conclude that
the O.R.M. agent had any authority to receive money and give receipts on

In the Court
of Appeal
at Penang.

No. 14.
Judgment
of Murray-
Aynsley,
C.J.
(undated)
—continued.

behalf of T.A.R.C.T. The whole evidence shows that this was the business of the T.A.R.C.T. agent. This is particularly the case where all concerned were Chettiars engaged in transactions of this kind. The authority of the accredited agent of a Chettiar firm is well known.

In my opinion judgment should have been entered for the Plaintiffs. The appeal should be allowed with costs.

(Sgd.) C. M. MURRAY-AYNSLEY,
Chief Justice,
Singapore.

No. 15.
Judgment
of
Pretheroe,
J., 21st
March,
1952.

No. 15

10

Judgment of Pretheroe, J.

The essential facts in this case are not in dispute. In the year 1941 the Plaintiffs made a loan of \$3,000/- to Defendants. The Plaintiffs were represented in Penang by an attorney who was killed by enemy action in the early days of the war in Malaya. The Defendants paid the interest as, and when, it fell due to one Annamalai and finally repaid the capital in June, 1943, to the same Annamalai. This Annamalai was the attorney in Penang of another Chettiar firm known as O.R.M.M.SP.SV. (hereinafter in this judgment referred to as "the third firm"). It is alleged that the amount never reached the Plaintiffs so they instituted this action against the Defendants claiming the sum of \$3,809.45 as being the capital and interest then due to them. 20

In a carefully prepared judgment the learned trial Judge found that "the Defendants made repayment of this loan to an ostensible agent of the Plaintiff firm, who held the document, and the Plaintiffs' claim therefore fails."

Against this decision the Plaintiffs appealed and were represented at the hearing of the appeal by Mr. Charlesworth. Mr. Hume appeared for the Respondents.

At the hearing of the appeal Mr. Charlesworth based his case on two main grounds. The first was that the case had been decided on an issue not on the record viz. that Annamalai was the ostensible agent of the Plaintiffs. It is quite true that the defence stated that all interest on the loan was paid to, and the capital itself was repaid to, Annamalai and made no mention that it was paid to him in his capacity as agent for the Plaintiffs. But the same reply had stated in an earlier paragraph that Annamalai made the original advance by giving a cheque drawn upon the third firm (of which he was the attorney). On the evidence this averment was in fact in error and in their reply the Plaintiffs pleaded that "at no time was the said Annamalai the agent of the Plaintiffs authorised to receive money and give receipts on their behalf." That the error on the part of the Defendants caused no embarrassment is perfectly clear from 30 40

the final addresses of counsel. Each agreed that the only point in the case was whether Annamalai was the agent of the Plaintiffs for the purpose of receiving the repayment of this loan. The issue was thus squarely before the Court, and without any protest from Plaintiffs' counsel, and was in fact the only issue considered by the trial Judge. In these circumstances I would dismiss Mr. Charlesworth's first ground.

In the Court
of Appeal
at Penang.
No. 15.
Judgment
of
Pretheroe,
J., 21st
March,
1952—
continued.

Mr. Charlesworth's second submission was that the learned trial Judge was in error in finding that Annamalai was the ostensible agent of the Plaintiffs. His case was that Annamalai was not an agent of the Plaintiffs' at all and that therefore no question of the extent of his powers as an agent for the Plaintiffs need be considered.

At this stage I may remark that I have had the advantage of reading the draft judgment in this appeal prepared by the learned Chief Justice of Singapore, for whose legal knowledge and acumen I have had the greatest respect for many years, and find that I have reached a different conclusion on this ground of appeal. For this reason I propose to set out the reasons for my decision at greater length than I would otherwise have done.

It was common ground that, if Annamalai had the required authority as agent for the Plaintiffs immediately prior to the occupation, Section 3 of the Agents and Trustees (Occupation Period) Ordinance, 1949, preserved that authority in him during the occupation period. There is no documentary evidence in support of such authority and, although the learned trial Judge arrived at the conclusion that, at the time when Plaintiffs' attorney was alive, he and Annamalai were both "general agents of both firms" (i.e. the Plaintiff firm and the third firm) his final conclusion was based on another ground. And this latter ground did not require the finding of general agency to sustain it. As I view this case, the precise extent of Annamalai's authority (if any) before the occupation has not been proved. For this reason, therefore, I do not think that the Ordinance to which I have just referred carries the matter any further. The leading feature in Mr. Charlesworth's argument was that there was direct documentary proof that, before the occupation, Plaintiffs had an agent in Penang, duly appointed under a power of attorney, who had authority to receive money for his principal. He also had power to appoint a substitute attorney but there is no evidence whatever to show that, at the time he unfortunately met his death by enemy action, he had ever exercised this power. In these circumstances Mr. Charlesworth submitted that, after the death of Plaintiffs' attorney, there remained no person in Penang authorised to accept money on behalf of the Plaintiffs.

This submission may very well be true but it overlooks the fact that there still might have been a person, without any authority from Plaintiffs, who did in fact receive the money in such circumstances as to constitute a discharge of Defendant's liability. (*Barrett v. Deere* 173 Eng. Rep. 1131.) This in fact is the case advanced by Mr. Hume on behalf of the Defendants viz. that Annamalai received the payment as the ostensible agent of the Plaintiffs. The matter is put thus by the editors of Chitty on Contract (20th Edition) at page 266 :—

In the Court
of Appeal
at Penang.

No. 15.
Judgment
of
Pretheroe,
J., 21st
March,
1952—
continued.

“ Payment to an agent binds the principal, if the agent
“ has either a real or an ostensible authority to receive payment,
“ as for example, a person apparently entrusted with the conduct
“ of Plaintiff’s business although he had not in fact any authority
“ to receive payment.”

The authorities cited in support of that view are *Barrett v. Deere* (supra) and *Wilmot v. Smith* 173 Eng. Rep. 1144. The facts in the former case were that Defendant owed Plaintiff some money but the precise amount so owing was in dispute. In these circumstances Defendant sent a messenger to pay the amount admitted and to hand over a letter 10 stating his objections to the items in dispute. The messenger proceeded to the Plaintiff’s counting-house, where he found a person sitting within a railed off area with account books near him, so he handed over the cash and letter to that person. The latter read the letter : referred to the account books and said he would say nothing in reply. He also gave a receipt for the amount actually paid. In fact the person sitting in the counting-house was not in Plaintiff’s employment but nevertheless the payment was held to be a valid discharge of that part of the debt which was actually paid to that person. The basis of the decision was that in 20 a great business area no transactions could be carried on if it were not sufficient for a purchaser to send his money to the seller’s counting-house and pay it to any person he finds there, whether actually authorised to receive it or not, who appears to be interested with the conduct of the business. In my view the facts of the present case are even more compelling. Defendants’ representative went to the room where both Plaintiffs and the third firm carried on their businesses. There he arranged terms of the loan with Annamalai, and Annamalai signed the Thavanai letter. He signed thus “ Annamalai Chettiar, Agent of ” the third firm “ for ” the Plaintiffs. That letter clearly shows that the loan was repayable 30 to the Plaintiffs. Before the Occupation Defendant paid the interest as, and when, due to Annamalai. After the Occupation, and after the destruction of the business premises, he sought out Annamalai and continued to pay him the interest. And finally, in June, 1943, the Defendants repaid the capital to Annamalai. Thus the Defendants knew the loan was from the Plaintiffs but every single transaction was conducted between themselves and Annamalai. In the circumstances can it reasonably be suggested that they, the Defendants, did not regard Annamalai as the agent of the Plaintiffs ?

For these reasons, with respect, I agree with the finding of the learned trial Judge that Annamalai was, for the purpose of this transaction, the 40 ostensible agent of the Plaintiffs. Consequently I would dismiss this appeal and would grant Defendants their costs in this Court and in the Court below. I would also order that the \$500/- deposited in Court by the Appellants should be paid out to Defendants against their costs.

(Sgd.) E. O. PRETHEROE,
Judge,
Federation of Malaya.

Ipoh, 21st March, 1952

No. 16.
Order.

In the Court
of Appeal
at Penang.

IN THE SUPREME COURT OF THE FEDERATION OF MALAYA.
IN THE COURT OF APPEAL AT PENANG.

No. 16.
Order,
16th
August,
1952.

F.M. Civil Appeal No. 60 of 1951.

Between

The Firm of T.AR.CT. *Appellants*
and
The Firm of SV.KR. alias SEENA VANA KANA RUNA ... *Respondents.*

10 (In the Matter of Civil Suit No. 192 of 1949

Between

The Firm of T.AR.CT. *Plaintiffs*
and
The Firm of SV.KR. alias SEENA VANA KANA RUNA ... *Defendants.*)

Before :

The Honourable Mr. Justice CHARLES MATHEW, Chief Justice,
Federation of Malaya.

The Honourable Sir CHARLES MURRAY-AYNSLEY, Chief Justice,
Singapore.

20 The Honourable Mr. Justice PRETHEROE.

This 16th day of August, 1952.

ORDER.

IN OPEN COURT.

This appeal coming on for hearing on the 22nd day of February, 1952, before the Court of Appeal at Penang and upon reading the Record of Appeal and upon hearing what was alleged by Counsel for the Appellants and the Respondents, IT WAS ORDERED that the said appeal should stand for judgment and the same coming on for judgment this day, IT IS ORDERED that the Judgment of the Honourable Mr. Justice Spenser Wilkinson given at Penang on the 9th day of October, 1951, be affirmed
30 and the appeal herein be dismissed with costs, AND IT IS ORDERED that the Respondents' Solicitor's costs of this appeal be taxed and paid by the Appellants, AND IT IS FURTHER ORDERED that the sum of \$500/- paid into Court by the Appellants as security for the costs of this appeal be paid out to the Respondents' Solicitor, Mr. Ong Huck Lim, towards his taxed costs of the Appeal.

Given under my hand and the Seal of this Court this 16th day of August, 1952.

(L.S.)

(Sgd.) P. SAMUEL,
Assistant Registrar, Court of Appeal,
Federation of Malaya.

In the Court
of Appeal
at Penang.

No. 17.

**Order granting Conditional Leave to Appeal to Her Majesty in Council,
6th October, 1952.**

No. 17.
Order
granting
Conditional
Leave to
Appeal to
Her
Majesty in
Council.

[Not Printed.]

No. 18.
Order
granting
Final Leave
to Appeal
to Her
Majesty in
Council,
17th
April, 1953.

No. 18.

Order granting Final Leave to Appeal to Her Majesty in Council.

IN THE SUPREME COURT OF THE FEDERATION OF MALAYA.
IN THE COURT OF APPEAL AT PENANG.

Federation of Malaya Civil Appeal No. 60 of 1951.

Between

The Firm of T.AR.CT. *Appellants*

and

The Firm of SV.KR. alias SEENA VANA KANA RUNA ... *Respondents.*

In the Matter of Civil Suit 192 of 1949

Between

The Firm of T.AR.CT. *Plaintiffs*

and

The Firm of SV.KR. alias SEENA VANA KANA RUNA ... *Defendants.*

Before the Honourable Mr. Justice BRIGGS sitting as a single Judge of
the Court of Appeal.

IN OPEN COURT.

Upon Motion made unto the Court this day by Counsel for the Appellants abovenamed and upon reading the affidavit of KM.AR.KM. Kumarappa Chettiar son of Arunasalam Chettiar affirmed to and filed herein on the 31st day of March, 1953, and upon hearing Counsel for the Appellants and for the Respondents IT IS ORDERED that final leave be granted to the Appellants to appeal to Her Majesty in Council from the Judgment of the Court of Appeal dated the 16th day of August, 1952.

Dated at Penang this 17th day of April, 1953.

By the Court,
(Sgd.) K. SOMASUNDRAM,
Senior Assistant Registrar.

(L.S.)

10

20

30

PLAINTIFFS' BUNDLE OF DOCUMENTS " A."

" A " pages 1-11.—Power of Attorney T.AR.CT. Kuppan Chettiar to
Muthukaruppan Chettiar.

Exhibits.

" A "

TO ALL TO WHOM THESE PRESENTS Shall Come I, T.AR.CT.AR. KUPPAN CHETTIAR alias T.AR.CT. Kuppan Chettiar son of Arunachalam Chettiar Nattukottai Chettiar caste, Banker, Money Lender, Saivite of Kondanoor, Ramnad District, Madras Presidency South India and now residing and carrying on business as money lender under the style or firm of " T.AR.CT." alias " Theyna Ana Roona Ceena Thana " (hereinafter
10 called the said firm) at No. 140 Penang Street, Penang, SEND GREETING :

WHEREAS T.AR.CT. Arunachalam Chettiar son of Chidambaram Chettiar deceased by his last Will dated the 28th day of April, 1937, appointed me, the said Kuppan Chettiar to be the executor and trustee of the Will of the said deceased.

AND WHEREAS Probate of the said Will was duly granted to me the said Kuppan Chettiar on the 4th day of January, 1938, by the High Court of the Straits Settlements Settlement of Penang in Probate No. 459 of 1937.

AND WHEREAS the said Arunachalam Chettiar was till his death a partner in the said firm.

20 AND WHEREAS the said Arunachalam Chettiar was till his death a partner in the said firm.

AND WHEREAS I am the sole son of the said Arunachalam Chettiar and the managing partner of the said Firm.

AND WHEREAS I am about to proceed to India for certain urgent purposes and am desirous of appointing an attorney to act for me during my absence in India.

NOW THIS DEED WITNESSETH that I the said T.AR.CT.AR. Kuppan Chettiar alias T.AR.CT. Kuppan Chettiar son of Arunachalam Chettiar aforesaid the managing partner of the said Firm of T.AR.CT. alias " Theyna
30 Ana Roona Ceena Thana " do hereby appoint Muthukkaruppan Chettiar alias Muthukkaruppan Chetty also of No. 140 Penang Street, Penang (hereinafter called the attorney) to be my true and lawful attorney for me and in my name as the executor and trustee of the said Will and as the managing partner of the said Firm to act in conduct and manage all matters and things whatsoever in the Straits Settlements Federated and Unfederated Malay States including the State of Kedah relating to or otherwise concerning the said Firm and for the purposes aforesaid I hereby confer upon the attorney the following powers and authorities :—

1.—In my name and on my behalf or in the name of the said Firm or
40 on its behalf to ask, demand sue for recover and receive from every person

Power of Attorney, T.AR.CT. Kuppan Chettiar to Muthukaruppan Chettiar.
4th April, 1938.

Penang Stamp 50 cts.

The Indian Overseas Bank Ltd. Penang

Registered B. 8/4/38

Chartered Bank of India

Australia and China Penang

C. Penang.

Exhibits.
 " A "
 Power of
 Attorney,
 T.A.R.C.T.
 Kuppan
 Chettiar to
 Muthuka-
 ruppan
 Chettiar,
 4th April,
 1938—
continued.

and every body politic or corporate, whom it shall or may concern all sums of money, debts, dues, goods, wares, merchandise, chattels, effects and things of whatever nature or description soever which now are or which at any time or times during the subsistence of these presents shall or may be or become due, owing, payable or belonging to me or to the said Firm in or by any right, title ways or means howsoever and upon receipt thereof or of any part thereof in my name as the case may require to make sign execute and deliver such receipts releases or other discharges for the same respectively as he shall think fit or be advised.

2.—To settle any account or reckoning whatsoever wherein the said Firm is or I as such managing partner as aforesaid now am or at any time hereafter shall be in anywise interested or concerned with any person whomsoever and to pay or receive the balance thereof as the case may require. 10

3.—For me in my name or in the name of the said Firm to receive every sum of money whatsoever which now is due or may become due to me or to the said Firm upon or by virtue of any mortgage, bill of sale by way of mortgage, charge or other security whatsoever and on receipt thereof to make sign execute and give good and sufficient releases acquittances or other discharges for the same and also to sign seal execute make and deliver all proper and sufficient conveyances, reconveyances, releases discharges and other assurances of the lands, tenements hereditaments and property which shall have been mortgaged as security therefor and also to consent to any such alteration or modification of the nature or conditions of the said securities or any of them as the attorney shall think fit. 20

4.—To accept mortgages or charges in my favour or in the name of the said Firm and to sell (either by public auction or private contract) any real or personal property at any time vested in me personally or as such trustee or as such managing partner by way of mortgage or charge in exercise of any power conferred upon me by the mortgage or charge deeds and documents or by any law to give any notices and do any other acts necessary for such purpose and to effect insurances appoint receivers and generally to exercise all powers vested in or conferred upon me by any such mortgage or charge deeds and documents or by any law in respect of any such property to apply for orders to sell or otherwise dispose of any lands houses or tenements of any tenure wherever situate or any estate and interest therein and to do all things necessary to enforce any equitable charge or lien in my favour as such trustee or in the name of the said Firm on any moveable or immoveable property. 30

5.—For me and in my name or in the name of the said Firm to compound with or make allowances to any person for or in respect of the aforesaid debts or any other debt or demand whatsoever which now in or shall or may at any time hereafter become due or payable to me or to the estate of the 40

said deceased or to the said Firm and to make or receive any composition or dividend thereof or thereupon and give receipts releases or other discharges for the whole of the same debts, sums or demands or to settle compromise or submit to arbitration every such debt or demand and every other claim right matter and thing due to or concerning me or the said estate or the said Firm as the attorney shall think most advisable for my benefit or for the benefit of the said estate or the said Firm and for that purpose in my name or in the name of the said Firm to enter into make sign execute and deliver such bonds or arbitration or other deeds or instruments as are usual in like cases.

10

6.—For me and in my name or in the name of the said Firm or in my name as such trustee as aforesaid to accept service of any Writ Summons or other legal process and to appear and my person to represent in any Court and before all Magistrates or Judicial or other officers whatsoever as by the attorney shall be thought advisable and for me and in my name to commence any action or other proceedings in any Court of Justice for the recovery of any debt sum of money right title interest property matter or thing whatsoever now due or payable or to become due or payable or in anywise belonging to me or to the estate of the said deceased or to the said Firm by any means or on any account whatsoever and the same action or proceeding to prosecute or discontinue withdraw or become nonsuit therein if he the attorney shall see cause. And also take such other lawful ways and means including proceedings in Bankruptcy or insolvency for the recovering or getting in any such sum of money or other thing whatsoever which shall by the attorney be conceived to be due owing belonging or payable to the estate of the said deceased by any person whomsoever and also to appoint any advocate or solicitor to prosecute or defend in the premises aforesaid in any of them as occasion may require either in my name or in the name of him the attorney and to discharge the said solicitor or advocate whenever the attorney deems necessary.

30

7.—To enter into and upon all messuages farms lands hereditaments and real estates whatsoever belonging to the said Firm or to the estate of the said deceased and to view the state and defects or the reparation thereof and forthwith to give proper notices and directions for repairing the same and to oversee, let, manage and improve the same to the best advantage and to make or repair drains or roads thereon.

8.—From time to time to fell or cut down any wood or underwood timber or other trees standing or being on any of the said lands and hereditaments belonging to me or to the said Firm or to the estate of the said deceased as the attorney shall see fit and the same to sell and dispose of or allow to be used for repairs or otherwise in or about the said premises and to work old mines and quarries or open and work new ones and dig minerals on the said lands and to repair and uphold or to take down and rebuild or otherwise improve or alter and to insure any houses, edifices, or buildings in and about the said lands and hereditaments as occasion shall require.

40

Exhibits.

" A "

Power of
Attorney.
T.A.R.C.T.
Kuppan
Chettiar to
Muthuka-
ruppan
Chettiar,
4th April,
1938—
continued.

Exhibits.

" A "

Power of
Attorney,
T.A.R.C.T.
Kuppan
Chettiar to
Muthuka-
ruppan
Chettiar,
4th April,
1938—
continued.

9.—To pay or allow all taxes rents, assessments, rates, charges, deductions, expenses and all other payments and outgoings whatsoever due and payable or to become due and payable for or on account of any lands, hereditaments, estates and premises.

10.—To contract with any person for leasing for such period at such rent and subject to such conditions as the attorney shall see fit all or any of the premises belonging to me or to the estate of the said deceased or to the said Firm and any such person to let into possession thereof and to accept surrenders of leases and for those purposes and as my act and deed to make seal deliver and execute any lease or grant or other necessary deed or instrument whatsoever which shall be necessary or proper for those purposes and also in my name to sign and give lawful notice to quit to any tenant of the said lands and hereditaments. 10

11.—For me and in my name or in the name of the said Firm to ask, receive and recover from all receivers, farmers, tenants and all other occupiers whatsoever of the lands, messuages and hereditaments belonging to me or to the estate of the said deceased or to the said Firm all rents, arrears of rent, issues, profits, emoluments, and sums of money now due owing and payable or at any time hereafter to become due owing and payable in respect of the same premises in any manner whatsoever and also on non payment thereof either to enter and distrain and the distress and distresses there found to detain and keep or to sell and dispose of according to law or to apply for a writ of distress or other legal process and to increase or reduce the rents in respect of the said premises. 20

12.—To appoint any fit persons to be receivers or servants and the same or any of the present receivers or servants at pleasure to remove and displace as the attorney shall think fit.

13.—To sell either by public auctioneer privately or exchange any part of the freehold or leasehold messuages lands tenements or hereditaments personal property or chattels or other effects belonging to me or to the estate of the said deceased or to the said Firm for such consideration and subject to such covenants as he may think fit and to give receipt for all or any part of the purchase or other consideration money and to deal with any real or personal property or any part thereof as he may think fit for the purpose of paying off, reducing consolidating or making substitution for any existing or future mortgages charges or pledge. And to make or concur in any transfer of or alteration in the terms of any existing or future mortgage charge or pledge of the same or any part thereof as he shall think fit and in general to sanction any scheme for dealing with mortgages charges or pledges of any real or personal property or any part thereof as fully and effectually as I myself could have done. 30 40

14.—And also for me and in my name and as aforesaid to do or authorise the doing of or consent to the doing of any act connected with the registra-

tion or refusal of or withdrawal from registration of land or of any interest in land or of any claim thereto or of any condition relating thereto including the caveating of any land under any law that is or may be in force and generally to make, give, execute, or consent to all such application, notification, cautions, inhibitions transfers, references or authorisations under any of the said law as I myself might do or have done.

Exhibits.

" A "

Power of
Attorney,
T.A.R.C.T.
Kuppan
Chettiar to
Muthuka-
ruppan
Chettiar,
4th April,
1938—
continued.

15.—For me and in my name to purchase or take on lease or otherwise such lands, houses, tenements, or chattels as the attorney may think desirable for carrying out the purposes of these presents.

10 16.—To exercise for me and in my name as aforesaid all rights and privileges and perform all duties which now or hereafter may appertain to me as holder of debentures or shares or stock of or as otherwise interested in any company or corporation.

20 17.—To deposit any money belonging to the estate of the said deceased which may come to his hands as such attorney with any banker or other person either in my name or in his own name and any of such money or any other money to which I am or the said Firm is entitled which now or hereafter is or shall be deposited with any banker or other person to withdraw and if necessary to employ as he shall think fit for my use and benefit or for the use and benefit of the said Firm or to invest in my or his own name in any stocks shares or funds or securities as he may think proper and to receive and give receipts for any income or dividend arising from such investments and the same investments to vary or dispose of as he may think fit.

30 18.—For all or any of the purposes of these presents to enter into and sign seal execute and perfect and as my act and deed to deliver any conveyance contract instrument deed surrender or assurance whatsoever and for me and in my name to or in the name of the said Firm to draw accept or endorse discount or otherwise deal with any bills of exchange or other mercantile instruments.

19.—To engage, employ and dismiss any agent, clerk, servants, or other person in and about the performance of the purposes of these presents as he shall think fit.

20.—To manage all the rubber estates belonging to me or to the said estate in accordance with the laws of Rubber Restriction or otherwise now prevalent in the Straits Settlements Federated or Unfederated Malay States including Kedah.

40 21.—To apply for and obtain from the proper Court or other authority having jurisdiction in the premises a grant of Probate or Letters of Administration with or without the Will annexed of the estate and effects of any deceased debtor or debtors and to enter into such obligations undertake such liabilities and execute such deeds as may be legally required for that purpose.

Exhibits.

" A "

Power of
Attorney,
T.A.R.C.T.
Kuppan
Chettiar to
Muthuka-
ruppan
Chettiar,
4th April,
1938—
continued.

22.—In general to do all other acts, deeds, matters and things whatsoever in or about the estate, property and affairs of the estate of the said deceased or of the said Firm or concur with person jointly interested with myself therein in doing all acts, deed, matters and things herein either particularly or generally described as amply and effectually to all intents and purposes as I could do in my own proper person if these presents had not been made.

23.—For the better doing, performing and executing of the matters and things aforesaid I hereby further grant unto the said attorney full power and authority to substitute and appoint in his place and stead on such terms and at such salary as he shall think fit one or more attorney or attorneys to exercise for me as my attorney or attorneys any or all the powers and authorities hereby conferred and to revoke any such appointment from time to time and to substitute or appoint any other or others in the place of such attorney or attorneys as he the said attorney shall from time to time think fit. 10

24.—And I, the said T.A.R.C.T.A.R. Kuppan Chettiar alias T.A.R.C.T. Kuppan Chettiar in his own behalf and for and on behalf of the said Firm undertake to ratify whatsoever the said attorney or his substitute or substitutes shall lawfully do or cause to be done in the premises. 20

IN WITNESS WHEREOF I have hereunto set my hand and seal at Penang this 4th day of April 1938.

SIGNED SEALED AND DELIVERED } by the said T.A.R.C.T.A.R. Kuppan } Chettiar in the presence of }	(Sgd.) T.A.R.C.T. KUPPAN CHETTIAR (L.S.)
---	--

(Sgd.) N. RAGHAVAN,
Solicitor,
Penang, S.S.

" A " page 12.—Form of Original Thavannai Letter.

(*In Original.*)

“ A ” pages 13-15.—Power of Substitution Muthukaruppan Chettiar to Arunasalam Chettiar. Exhibits.

“ A ”

Penang Impressed Stamp \$2/- 16.4.41.	Kedah Stamp \$2/- State Treasury Alor Star 21.4.1941	Negri Sembilan Stamp \$1/- Stamp Office Seremban Negri Sembilan	Power of Substitu- tion, Muthuka- ruppan Chettiar to Arunasalam Chettiar, 16th April, 1941.
--	--	--	--

0

KNOW ALL MEN BY THESE PRESENTS THAT I, Muthukkaruppan Chettiar alias Muthukkaruppan Chetty son of Chinniah Chettiar of No. 140 Penang Street, Penang in exercise of two powers vested in me by T.AR.CT.AR. Kuppan Chettiar alias T.AR.CT. Kuppan Chettiar son of Arunachalam Chettiar by certain deeds poll dated the 4th day of April 1938 and 26th day of November 1940 and registered in the High Court of the Straits Settlements Settlement of Penang as No. 96/38 and In the Supreme Court of the Federated Malay States at Seremban as No. 338/1940 respectively and of all other powers me hereunto enabling hereby substitute and appoint Arunasalam Chettiar son of Annamalai Chettiar also of No. 140 Penang Street, Penang my true and lawful attorney for me and in my name as attorney of the said T.AR.CT.AR. Kuppan Chettiar alias T.AR.CT. Kuppan Chettiar to perform all and singular the acts and things which I as attorney of the said T.AR.CT.AR. Kuppan Chettiar alias T.AR.CT. Kuppan Chettiar am in the said deeds poll authorised to perform I the said Muthukkaruppan Chettiar hereby giving and granting unto the said Arunasalam Chettiar my whole and entire derived power and authority in the premises in as ample a manner to all intents and purposes as I received the same from the said T.AR.CT.AR. Kuppan Chettiar alias T.AR.CT. Kuppan Chettiar by the said deeds poll.

The Indian
Overseas
Bank
Limited
Penang 3/42
27.5.41.

0

Chartered
Bank of
India
Australia
and China,
Penang
Registered
22.5.41.

0

And Generally to do and perform all such acts and thing as the said Arunasalam Chettiar shall deem necessary or expedient to be done for the purposes aforesaid.

And I the said Muthukkaruppan Chettiar as well for myself as for the said T.AR.CT.AR. Kuppan Chettiar alias T.AR.CT. Kuppan Chettiar hereby agree to ratify and confirm whatsoever the said Arunasalam Chettiar shall lawfully do or cause to be done in or about the premises by virtue of these presents.

In Witness Whereof I have hereunto set my hand and seal at Penang this 16th day of April 1941.

0

Signed Sealed and Delivered } (Sgd.) MUTHUKKARUPPAN CHETTIAR
in the presence of } (L.S.)
(Sgd.) K. S. PILLAI, (in Tamil characters)
Solicitor,
Penang.

Exhibits. " A " page 16.—Translation of Tamil Thavannai Letter executed by
 " A " Sithambaram Chettiar Attorney of SV.KR. in favour of the Appellants.

Translation of Tamil Thavannai Letter executed by Sithambaram Chettiar Attorney of SV.KR. in favour of the Appellants, 16th September, 1941. C.S. 192 of 1949 SV.KR. Sungei Patani Translation No. 28 of 51 Folio Fees \$ Penang Impressed Stamp 31 cts. T.AR.CT. Penang.

31st day of the month of Avani, visu year (16.9.41).

Sithambaram hereby writes : Received from you \$3,000/- on current date. We have credited this three thousand dollars in the name of T.AR.CT. Charity Fund Trust through you from current date at 5/16% 10 interest, i.e. interest rate at 3/32% over and above the rate of interest ruling for the Penang three months " Thavannai " (account). We hereby agree to pay the principal and interest to your order at Penang on due date and get back this letter endorsed.

(Sgd.) Sithambaram Chettiar attorney of S.V.K.R.

Note.—Signature struck off.

On the reverse side.

Dated the 11th day of Auni Subanu year.

Excluding the interest received up till 30th day of Vaigasi, current year (14.6.43) per this letter, received through cheque No. 53102 drawn 20 on the Indian Overseas Bank for three thousand dollars and cash two dollars and seventy five cents, total \$3002.75 in settlement of principal of \$3,000/- and 11 days' interest of \$2.75 from the 31st day of the aforesaid month till 10th of current month and this letter has been settled.

(Sgd.) Annamalai Chettiar, Agent of O.R.M.M.SP.SV. for T.AR.CT. Kuppan Chettiar. 25.6.2603.

Translated by me,

(Sgd.) S. G. SAMY,
Sworn Interpreter,
 Supreme Court, Penang. 30

Issued this 31st day of January, 1951.

(Sgd.) J. W. D. AMBROSE,
Senior Assistant Registrar,
 Supreme Court, Penang.

“ A ” page 17.—Translation of marked portions in pages 94 and 174 of Appellants' Tamil Day Book. Exhibits. “ A ”

C. Suit 192/49. Translation of marked portions in pages 94 and 174 of Appellants' Tamil Day Book, 16th September, 1941, and 14th June, 1943

The sign of the 1st God =			
Omnipresence of Lord Siva *			
Jayan Konda soleeshar's Grace *			
The Day Book from 31st Avani Month Visu Year (i.e.) 16th September, 1941 of credit and Balance			
<i>Year</i>	<i>Date</i>	<i>Credit.</i>	<i>Debit.</i>
10	<i>Month</i>	\$ c.	\$ c.
	(Line 8)		
	To debit for T.AR.CT. charities Trust		3000.00
	To debit by O.MR.M.SP.SV.		600.00
	By credit for 1 cheque (drawn on)		
	Indian Overseas' Bank	5000.00	
	To Immediate debit for 1 deposit receipt		1500.00

Page 174.

	11th day (of Ani Month Subanu Year) i.e. 25.6.2603.		
20	By credit for T.AR.CT. charities Trust through SV.KR. (firm) of Sungei Patani. \$2.75 being interest at $\frac{1}{4}$ (i.e. 25%) for 10 days from 31st date of Vai Kasi Month current (year) to the 10th day of current month and \$3000/- to Principal, in settlement, received by the Agent of O.R.M.M. SP.SV. (firm) after endorsing on our behalf the "Thavani" letter, by cash and by Indian Overseas Bank cheque No. 53102	\$3002.75	
30	To debit by O.R.M.M.SP.SV.		3002.75

Translation No. 100/50 Folio 3 Fee \$4/-

Translated by me,
(Sgd.) (Illegible)
A Sworn Interpreter 27.5.50
Supreme Court, Penang.

Issued this 30th day of May, 1950.

(Sgd.) V. KRISHNASAMY (L.S.)
Ag. Senior Asst. Registrar,
Supreme Court, Penang.

Exhibits. " A " page 18.—Translation of Entry No. 2 dated 16.9.41 on page 20 of the Appellants' Charities Trust Day Book.

Translation of page 20 of the Appellants' Charities Trust Day Book, 16th September, 1941.

Translation No. 87/50 Folio 2 Fee \$3.

Translated by me,

(Sgd.) (Illegible)

A Sworn Interpreter,

Supreme Court, Penang 15/5/50.

C.S. 192/49.

31st day (of Avani Month. Vishu year) (Corresponding 16.9.41).

To SEENA VANA KANA RUNA, Sungei Patani debit. To debit for one signed letter bearing from this date 3/32 excess interest on a 3 months' "Thavanai" totalling 10/32 interest	10 3000.00
By credit from T.A.R.C.T. (firm)	3000.00

" THAVANNAI " = FIXED PERIOD.

() Explanation and Implication.

Issued this 16th day of May, 1950.

(Sgd.) V. KRISHNASAMY (L.S.)

Ag. Senior Asst. Registrar, 20
S. Court, Penang.

Translation of page 129 of Appellants' Charities Trust Ledger. " A " pages 19 and 20.—Translation of Entries on page 129 of Appellants' Charities Trust Ledger.

Translation of page 129 of Appellants' Charities Trust Ledger, 16th September, 1941, to June 1943.

Translation No. 88/50 Folio 8 Fee \$9/-

Translated by me

(Sgd.) (Illegible)

A Sworn Interpreter,

Supreme Court, Penang 15/5/50.

C.S. 192/49.

The sign of the 1st God	*	30
Omnipresence of Lord Siva	*	
Seyankonda Solisher's Grace		

The debit, credit account of SEENA VANA KANA RUNA, Sungei Patani.

	Vishu year Avani Month 31st 16.9.41	Debit from this date for 3 months "Thavanai" bearing excess interest 3/32 totalling 10/32 interest for on signed letter	3000.00	Exhibits. — A —
	Sitrabanu year Ani month 4th date 18.6.2602	Debit for interest from Vishu year, Avani month, 31st date to current year Vaigasi month 30th date for 3 months' "Thavanai" with accumulated interest for interest (compound interest)	85.17	Translation of page 129 of Appellants' Charities Trust
10		Immediate credit for interest \$85.17 and for Principal in account below \$3000/- totalling	3085.17	Ledger, 16th September, 1941, to June 1943
	Margali Month 6th Date 21.12.2602	Immediate Debit from previous account for 3 months, "Thavanai" from 31st Vaigasi current year with excess (interest) 3/32 for 1/4 interest	3000.00	--continued.
		Debit for interest from 31st Vaigasi current year to 30th Karthigai, for "Thavanai" two with accumulated interest for interest (compound interest)	45.16 $\frac{3}{4}$	
20		Immediate credit \$54.16 $\frac{3}{4}$ for interest and \$3000/- for Principal through account below totalling	3045.16 $\frac{3}{4}$	
		Immediate Debit for 3 months, "Thavanai" from 31st Karthigai Current year, with excess (interest) 3/32, for 1/4 interest, from previous account	3000.00	
		Page 2		
	Panguni Month 4th date 30 17th.3.03	Debit for interest for 3 months' "Thavanai" on 30th day of Masi of the current year	22.50	
		Immediate credit for interest \$22.50 and \$3000/- for Principal in the account below	3022.50	
		Immediate debit for 3 months' "Thavanai" from 30th Masi current year, with excess (interest) 3/32, for 1/8 interest from previous account	3000.00	
	Subanu year Vaikasi 31st day 14.6.03	To debit for interest for 3 months' "Thavanai" ending to date	22.50	
		Immediate credit interest \$22/50 and \$3000/- for Principal through account below—Total	3022.50	
40		Immediate debit for interest for 3 months' "Thavanai" from this day with excess (interest) 3/32, for 1/4 interest, from previous a/c	3000.00	
	Ani Month 11 date 25.6.03	Debit for interest at 1/4 for 11 days from Vaigasi 31st current year to 10th of the current month	2.75	
		Immediate credit interest \$2/75 and \$3000/- in settlement of Principal Total received by Indian Overseas Bank cheque No. 53102 and cash after Annamalai Chettiar Agent of O.R.M.SP.SV. had endorsed receipt on our behalf the "Thavanai" paper	3002.75	
50				
		Total credit Debit	15178.08 $\frac{3}{4}$	15178.08 $\frac{3}{4}$

Issued this 16th day of May, 1950.

(Sgd.) V. KRISHNASAMY (L.S.)
Ag. Senior Asst. Registrar,
S. Court, Penang.

Exhibits. " A " page 21.—Translation of page 47 of Appellants' Tamil Ledger Debit and Credit Account.

" A "

Translation of page 47 of Appellants' Tamil Ledger Debit and Credit Account. C.S. 192/49. Translation No. 30 of 1951 Folio 5 Fee \$6.00. Debit and Credit account of T.AR.CT. Charity Trust through T.AR.CT. Penang.

Year Month	Date	Particulars	Credit	Debit
Visu Avani	31st	Credit. By a letter at 5/16% interest at excess interest of 3/32% of P. (Penang) (3 months " Thavannai " account)	3000.00	10
Sitharabanu Vaigasi	31st	Credit. By interest at 5/16% interest for 3 " Thavannai " from 30th Avani previous year to 31st of current month Immediate debit aforesaid transactions. Paid cash for interest	85.17	85.17
Avani	31st	Credit. By 1/4% interest at excess interest of 3/32% from 31st Vaigasi, Sitharabanu year to 30th of current month per 1 " Thavannai " Immediate debit of principal \$3000/- and interest \$22.50 Immediate credit as per previous account as on current date	22.50 3022.50	20 3022.50
Karthigai	30th	Credit. By 1/4% compound interest per 1 " Thavannai " from 31st Avani, current year to current date Immediate debit for the aforesaid cash paid for interest per 2 " Thavannai "	22.66 3/4	45.16 3/4 30
Masi	30th	Credit. By 1/4% interest at excess interest of 3/32 from 31st Karthigai to current date per 1 " Thavannai " Immediate debit for the aforesaid Cash paid for interest	22.50	22.50
Subanu Vaigasi	30th	Credit. By 1/4% interest at excess interest at 3/16% from 30th Masi, Sitharabanu year to current date per 1 " Thavannai " Immediate debit for aforesaid. Cash paid for interest	22.50	22.50 40
Auni	20th	Credit. Interest for 11 days from 31st Vaigasi current year to 10th of current month as on 11th of current month Immediate debit. To a cheque No. 530102 drawn on the Indian Overseas Bank & Cash \$2.75 for interest and received the " Thavannai " letter endorsed, as on the 11th of current month	2.75	3022.75
Account balanced			6200.58 3/4	6200.58 3/4 50

Issued this 31st day of January, 1951.

(Sgd.) J. W. D. AMBROSE,
Senior Assistant Registrar,
Supreme Court, Federation of Malaya, Penang.

Translated by me,

(Sgd.) S. G. SAMY,
Sworn Interpreter,
Supreme Court, Penang.

Exhibits.

“ A ”

Translation
of page 47 of
Appellants’
Tamil
Ledger
Debit and
Credit
Account—
continued.

10 “ A ” page 22.—Translation of “ Thavannai ” Letter written in Tamil
executed by Sithambaram Chettiar Attorney of SV.KR. in
favour of O.R.M.SP.SV.

C.S. 192 of 49.

Translation No. 29 of 51 Folio 3 Fees \$4.00.

Penang Impressed.
Stamps 31 cts.

SV.KR.
Sungei Patani.

O.R.M.SP.SV.
Penang.

Translation
of
Thavannai
Letter
written in
Tamil
executed
by Sitham-
baram
Chettiar.
Attorney of
SV.KR.
in favour of
O.R.M.
M.SP.SV.,
16th
September,
1941.

31st day of the month of Avani Visu Year (16.9.41).

20 Sithambaram hereby writes. Received from you \$2,000/- on current
date. We have credited this two thousand dollars in the name of
Muthukaruppi Achi wife of SV. of Devakottai through you from current
date at 5/16% interest, i.e. interest rate at 3/32% over and above the rate of
interest ruling for the Penang three months “ Thavannai ” (account). We
hereby agree to pay the principal and interest to your order at Penang on
due date and get back this letter endorsed.

(Sgd.) SITHAMBARAM CHETTIAR,
Attorney of SV.KR.

Note. Signature struck off.

On the reverse side.

Dated the 11th day of Auni Sabanu Year.

30 Excluding the interest received up till 30th day of Vaigasi, current year
for this letter, received through cheque No. 53102 drawn on the Indian
Overseas Bank for two thousand dollars and cash \$1.83, total \$2,001.83,
in settlement of principal of \$2,000/- and 11 days’ interest of \$1.83 from

Exhibits. the 31st day of the aforesaid month till 10th of current month and this
letter has been settled.

“ A ”

(Sgd.) ANNAMALAI CHETTIAR,
Attorney of O.R.M.M.SP.SV.

Translation
of
Thavannai
Letter
written in
Tamil
executed
by Sitham-
baram
Chettiar
Attorney of
SV.KR.
in favour of
O.R.M.
M.SP.SV.,
16th
September,
1941—
continued.

25.6.2603.

Translated by me,

(Sgd.) S. G. SAMY.
Sworn Interpreter,
Supreme Court, Penang.

Issued this 31st day of January, 1951.

10

(Sgd.) J. W. D. AMBROSE,
Senior Assistant Registrar,
Supreme Court, Penang.

Notice of
Action,
Appellants'
Solicitors to
Agent of
O.R.M.
M.SP.SV.,
3rd June,
1948.

“ A ” page 23.—Notice of Action from Appellants' Solicitors to the Agent of
O.R.M.M.SP.SV.

COPY.

9, Beach Street,
Penang.

Presgrave & Matthews,
Advocates, Solicitors & Notaries.

20

To Meyappa Chettiar,
Agent of the Firm of O.R.M.M.SP.SV.,
126 Penang Street, Penang.

We are instructed by T.AR.CT. Kumarappa Chettiar of No. 49 McAlister Road, Penang, the present Agent of the Firms of T.AR.CT. and T. AR.CT. Charitable Trust both of Penang to call upon you to hand over to our client the management of these firms and to deliver to him all account books, securities and assets of the said firms and to render to our Client a full account of your management of the business of the said firms as from the date of the re-occupation of Malaya.

30

We are further instructed to state that during the Japanese occupation in consequence of your undertaking and carrying on the management of the said firms without any authority whatsoever the said firms have sustained heavy losses. Our client reserves the right to claim against you for all such losses when the proposed Debtor and Creditor legislation is enacted and comes into force.

In default of your compliance with the above request within three days from the date of the service of this notice upon you such proceedings will be taken against you as our Client may be advised.

Dated at Penang this 3rd day of June, 1948.

(Sgd.) PRESGRAVE & MATTHEWS,
Solicitors for T.A.R.C.T. Kumarappa Chettiar,
9, Beach Street, Penang.

Copy to

10 O.R.M.M.SP.SV. Meyappa Chettiar
Devakottai, Ramnad District, South India,
Proprietor of the firm of O.R.M.M.SP.SV.

Exhibits.

“ A ”

Notice of
Action,
Appellants'
Solicitors to
Agent of
O.R.M.
M.SP.SV.,
3rd June,
1948—
continued.

“ A ” page 24.—Letter from Hogan Adams and Allan to Appellants' Solicitors.

Hogan Adams & Allan.

5th June, 1948.

Letter,
Hogan
Adams and
Allan to
Appellants'
Solicitors,
5th June,
1948.

Dear Sirs,

We are instructed by M.K.R. Meyappa Chettiar to acknowledge the receipt of your notice of action dated the 3rd day of June, 1948.

We are informed that the position is as follows :—

20 Prior to the outbreak of the war with Japan the firms of T.A.R.C.T. and O.R.M.M.SP.SV. both had offices and accommodation for their staff at No. 140 Penang Street, Penang. The Agent of O.R.M.M.SP.SV. was Annamalai Chettiar. Arunasalam Chettiar, the Agent of T.A.R.C.T. was unfortunately killed during air-raid on December 11th, 1941.

As there was nobody to take charge of the affairs of T.A.R.C.T. the said Annamalai Chettiar, in his own capacity and not as Agent of the firm of O.R.M.M.SP.SV. acting no doubt in the best interests of the proprietor of the firm, took over the assets and helped in the management of the firm.

30 Annamalai Chettiar returned to India about the month of August, 1946. As there was still no representative of your client's firm in Malaya, he handed over certain monies to his successor, who was our client. The old account books title-deeds and securities were not handed to our client.

Our client had cabled to Annamalai Chettiar in India asking for authority, and on receipt of a reply we will write you further in the matter.

Our client is not concerned with what happened during the war and does not know the position.

Yours faithfully,

(Sgd.) HOGAN ADAMS & ALLAN.

40 Messrs. Presgrave and Matthews,
Advocates & Solicitors,
Beach Street, Penang.

Exhibits. " A " page 25.—Letter from Appellants' Solicitors to Respondents.

" A "

Letter,
Appellants'
Solicitors
to Re-
spondents,
26th June,
1948.

Presgrave & Matthews.

Penang, 26th June, 1948.

Dear Sir,

We are instructed by T.A.R.C.T. Kumarappa Chettiar of No. 49 Macalister Road, Penang, to state that on perusing the accounts of the firm of T.A.R.C.T. Charitable Trust it appears that during the Japanese occupation you paid the sum of \$3,000/- to Annamalai Chettiar the then agent of the firm of O.R.M.SP.SV. an individual who was not the attorney or agent of nor was he authorised to collect money or give receipts for money 10 due to the said firm.

The amount due by you for principal is \$3000/- and as this debt is an interest bearing one we are to advise you that our client will as soon as the moratorium is lifted, call upon you to pay both principal and interest to the date of payment.

Yours faithfully,

(Sgd.) PRESGRAVE & MATTHEWS.

The Firm of Seena Vana Kana Roona,
Sungei Patani,
Kedah.

20

A.R. Card
signed by
Sitham-
baram
Chettiar.

" A " page 26.—A.R. Card signed by Sithambaram Chettiar.

(In Original.)

Letter, Re-
spondents'
Solicitors to
Appellants'
Solicitors,
27th July,
1948.

" A " page 27.—Letter from Respondents' Solicitors to Appellants' Solicitors.

COPY.

Pillai & Eng Cheang.

27th July, 1948.

Dear Sirs,

Re : T.A.R.C.T. and the Firm of
Seena Vana Kana Roona, Sungei Patani.

We are instructed by the Firm of Seena Vana Kana Roona of Sungei 30 Patani, Kedah to acknowledge receipt of your letter of the 26th June 1948 and to reply thereto as follows :—

Our clients say that the sum of \$3000/- and all interest due on the Thavanai letter has been paid and settled. Exhibits.

Our clients deny liability for the said sum of \$3000/- or any interest. " A "

Yours faithfully,

(Sgd.) PILLAY & ENG CHEANG.

To Messrs. Presgrave & Matthews,
Advocates & Solicitors,
Penang.

Letter, Respondents' Solicitors to Appellants' Solicitors,
27th July, 1948—
continued.

" D.1."—Envelope Cover.

(*See Original.*)

10

" D.1." Envelope Cover.

" D.2."—Entry on page 29 of Account Book of T.AR.CT.

(*See Original.*)

" D.2." Entry on page 29 of Account Book of T.AR.CT.

" D.3."—Letter, written in Tamil, Kuppan Chettiar to O.R.M.SP.SV.

(*See Original.*)

" D.3." Letter, written in Tamil, Kuppan Chettiar to O.R.M.SP.SV.

Exhibits. “ D.3.T.”—Translation of a Tamil Letter from Kuppan Chettiar to
 O.R.M.SP.SV.

“ D.3.T.”
 Translation
 of Tamil
 Letter,
 Kuppan
 Chettiar to
 O.R.M.M.
 SP.SV., 8th
 October,
 1945.

* Sign of First God
 * Omnipresence of Siva.

T.AR.CT.AR.
 Kuppan Chettiar
 Kandanoor
 Ramnad Dt.

8.10.45.
 Penang.
 O.R.M.M.SP.SV.

Kuppan Chetty now writing. Now all is well. Received the letter of 12.9.45 from there. Received the letter from there after some years. 10
 Gives as much consolation as if seeing people in person. Very glad after knowing yourself and others there are living well. Very joyful to know that all in other firms of ours are well. Here, myself, RM., children and others and M.P.A. in Devakottai and in the family, mother, children and others are well. In your house also, your brother, mother and others are well.

Now I await at once your letter in detail, all news there our business affairs, and all particulars etc.

I am very eager to know about particulars of the well-being of Mr. AR.VR. S. there. 20

In addition to writing at once about the well-being of all others there, I await your detailed letter for all particulars.

Other particulars after seeing your letter.

Yours

* Help of Sree Meenakshi.

“ D.4.” “ D.4.”—Letter written in Tamil, Ramanathan of T.AR.CT.KR.RM. to
 O.R.M.M.SP.SV.

Letter
 written in
 Tamil, Ra-
 manathan
 of T.AR.CT.
 KR.RM. to
 O.R.M.M.
 SP.SV.

(See Original.)

“ D.4.T.”—Translation of Tamil Letter, T.AR.CT.KR.RM. to
O.RM.M.SP.SV.

- * Sign of First God.
- * Omnipresence of Siva.

T. AR. CT. KR. RM.

O. RM. M. SP. SV.
Penang.

Kandanoor.

24.10.1945.

Exhibits.

“ D.4.T.”
Translation
of Tamil
Letter,
T.AR.CT.
KR.RM. to
O.RM.M.
SP.SV.,
24th
October,
1945.

8th day of the month of Arpisi in the year Parthiba.

10 Ramanathan now writing. Here and in Devakottai and your mother
in Puthuvayal and all others (are) well. Please write reply about your
health and all others connected with us.

Write in detail complete particulars connected with our AR. Where
are all the documents, accounts regarding our Penang firm? Write and
send particulars regarding details connected with the above said firm's
business and how much money was there connected with the aforesaid
firm in Chartered Bank, and in Indian Overseas Bank during Enemy
Occupation time. Write also particulars regarding our charity fund
business.

Yours

20

* Help of Meenaksi.

“ D.5.”—Letter written in Tamil, Kuppan Chettiar to O.RM.M.SP.SV.

(See Original.)

“ D.5.”
Letter
written in
Tamil,
Kuppan
Chettiar to
O.RM.M.
SP.SV.

“ D.5.T.”—Translation of Tamil Letter, Kuppan Chettiar to
O.RM.M.SP.SV.

Civil Suit No. 192/49.

Translation of a Tamil Letter dated the 27th day of Vaikasi month
Sarvasithu Year (Corresponding 10-6-47).

“ D.5.T.”
Translation
of Tamil
Letter,
Kuppan
Chettiar to
O.RM.M.
SP.SV.,
10th June,
1947.

Kondanoor.
T.AR.CT.

The sign of the 1st God *
Omnipresence of Lord Siva *

Penang
O.RM.M.SP.SV.

30

Sarvasithu Year Vaikasi month 27th day.

Exhibits.
 " D.5.T." Translation
 of Tamil Letter,
 Kuppan Chettiar to
 O.R.M.M. SP.SV
 10th June, 1947—
continued.

Now, written by Kuppan Chettiar from Madras. Quite well. Myself and our Ramiah have signed (both) the two " Business " Registration Forms (herewith) and sent herewith. In addition to writing (lit. : causing to be written) particulars about (its) coming and reaching should do for it (Business Registration) that which should be done within time.

In addition to having matters connected with our firm well attended to, should cause copies of accounts sent every month. Should cause even the old accounts (lit. : previous account) to be written together up-to-date and sent. Even our (Mr.) " M " would have written there from Devakottai in connection with this. Should see. (Even) in the aforesaid forms in the place meant " to The Registrar of which place " the name of the place is not put and sent. Even in that put (enter) the name of the place and cause the application to be given. 10

For other particulars I shall write on seeing letter from there and on reaching home. (lit. : country or native village).

There for (about) the welfare of all and for all particulars connected with the business should cause letter to be written and sent frequently.

	* Invocation.	Wishing,	
()	Explanation or Implication.	Meenatchi's Help.	
(lit. :)	Literal.		20
" "	English words used.		

Issued this 4th day of September, 1951.

Senior Assistant Registrar.

" D.6." Envelope
 Cover of
 Exhibit
 " D.5."

" D.6."—Envelope Cover of Exhibit " D.5."

(See Original.)

" D.7." Letter
 written in
 Tamil by
 Kuppan
 Chettiar to
 O.R.M.M.
 SP.SV.
 enclosed
 in and
 sent with
 Exhibit
 " D.5."

" D.7."—Letter written in Tamil by Kuppan Chettiar to O.R.M.M.SP.SV. enclosed in and sent with Exhibit " D.5."

(See Original.)

“ D.7.T.”—Translation of Tamil Letter from Kuppan Chettiar to
O.R.M.SP.SV. enclosed in and sent with Exhibit “ D.5.”

Exhibits.

Civil Suit No. 192/49.

Translation of a Tamil slip annexed to the letter dated 27th Vaikasi,
Sarvasithy Year.

“ D.7.T.”
Translation
of Tamil
Letter
enclosed in
and sent
with
Ex. “ D.5.”
10th June.
1947.

T.AR.CT.
(Mr.) “ KP.”

The Sign of the 1st God *
10.6.47.

Penang.
O.R.M.SP.SV.
(Mr.) “ M.”

Written by Kuppan Chettiar.

- 10 On receipt of this letter enquiries if there is a “ demand ” there for
“ Aluminium ” and brass vessels (utensils), if so at what price per pound
can (we) sell there, should any “ Import ” permit be obtained (lit. : received
or got) for getting it there, and for these particulars cause a telegram to be
sent (lit. : tell by wire) to me here, in Madras,

Pavalakarath Thayru

- 20 to the address : 22, “ Coral Merchant St.” Even the aforesaid—goods
(things) appear to be obtainable cheaply here. Even for sending the
aforesaid goods (things) it appears as if that we may get the permit. That
is why (hence) particulars are written. Hence I hope you will enquire
these particulars and send a telegram (lit. : tell by wire). Other particulars
later.

Wishing,

Meenatchi’s Help *

* Invocation.

() Explanation or Implication.

(lit. :) Literal.

“ ” English words used.

Issued this 4th day of September, 1951.

Senior Assistant Registrar.

Exhibits. " D.8."—Cheque for \$5,000 signed by T.AR.CT. Kuppan Chettiar.

" D.8."
Cheque for
\$5,000,
16th
September,
1941.

No. P4/45738 Please Pay Cash 16.9.1941

THE INDIAN OVERSEAS BANK LIMITED 8 cts.
(Incorporated British India) Duty
PENANG. Paid

2/50/

T.AR.CT. Kuppan Chettiar
by his attorney PAY SV.KR.....or Bearer 10
(Sgd.) (In Tamil)
Arunasalam Dollars Five thousand only.....
Chettiar

PAID T.AR.CT. Kuppan Chettiar
16 Sep. 1941 by his attorney
(Sgd.) (In Tamil)
Arunasalam Chettiar.

\$5,000/-

" D.9." Cheque for
\$4,000,
19th
September,
1941.

" D.9."—Cheque for \$4,000 signed by O.RM.M.SP.SV. Meyappa Chettiar.

P 4/46186 19th September, 1941.

THE INDIAN OVERSEAS BANK LIMITED 8 Cts. 20
(Incorporated in British India) Duty
PENANG. Paid

& Co. Pay M. K. Ipoh.....or Bearer

Dollars Four thousand only.....

O.RM.M.SP.SV. Meyappa Chettiar
by his attorney

(Sgd.) (In Tamil)
Annamalay Chettiar.

\$4,000/-

“ D.10.”—Thavannai Letter written in Tamil, executed by Sithambaram Chettiar, Attorney of SV.KR., in favour of O.R.M.SP.SV.

(See Original.)

Exhibits.

“ D.10.”
Thavannai
Letter
written in
Tamil,
executed by
Sitham-
baram
Chettiar,
Attorney of
SV.KR. in
favour of
O.R.M.
SP.SV.

“ D.11.”—Thavannai Letter written in Tamil, executed by Sithambaram Chettiar, Attorney of SV.KR., in favour of the Appellants.

(See Original.)

“ D.11.”
Thavannai
Letter
written in
Tamil,
executed by
Sitham-
baram
Chettiar,
Attorney of
SV.KR.,
in favour
of the
Appellants.

“ D.12.”—Draft Thavannai Letter written in Tamil, for \$2,000, executed by the Attorney of SV.KR.M. in favour of O.R.M.SP.SV.

(See Original.)

“ D.12.”
Draft
Thavannai
Letter,
written in
Tamil,
for \$2,000,
executed
by the
Attorney of
SV.KR.M.
in favour of
O.R.M.
SP.SV.

Exhibits. " D.13."—Draft Thavannai Letter written in Tamil, for \$3,000, executed by the Attorney of SV.KR.M. in favour of the Appellants.

" D.13."
Draft
Thavannai
Letter
written in
Tamil,
for \$3,000,
executed
by the
Attorney of
SV.KR.M.
in favour
of the
Appellants.

(See Original.)

" D.14."
Copy
Cablegram
with
Receipt.

" D.14."—Copy Cablegram with Receipt.

(See Original.)

(Text at Record page I6.)

" D.15."
" D.16."

" D.15." Summary of Transactions and " D.16." List of Assets.

(Not transmitted from Malaya.)

" B "

DEFENDANTS' BUNDLE OF DOCUMENTS "B."

Translation
of Draft
Thavannai
Letter for
\$3,000,
executed
by the
Attorney of
SV.KR.M.
in favour
of the
Appellants.

" B " page 1.—Translation of Draft Thavannai Letter for \$3,000, executed by the Attorney of SV.KR.M. in favour of the Appellants. 10

TRANSLATION OF A TAMIL DOCUMENT.

TRANSLATION No. 212 OF 1951.

Penang H.C. Civil Suit 192/49

Folio :

Fee :

.COPY

SV.KR.
Sungei Patani.

Sign of First God.
Omnipresence of Siva.

T.AR.CT.
Penang.

Chop.

Written on the 31st of the month of Avani of the year Vishu.

Now on this date (amount) received from you \$3,000/-. We have credited this three thousand dollars through you in the name of T.AR.CT. Charity Fund Trust at 5/16 interest, 3/32 more than the Penang 3 months' Thavanai interest from this date. We will get back this paper with endorsement paying to your order at Penang the interest and principal in accordance to the Thavanai.

Exhibits.

“ B ”

Translation of Draft Thavannai Letter for \$3,000 executed by the Attorney of SV.KR.M. in favour of the Appellants
continued.

(Signature of the Attorney).

(Sgd.) as Ct.

Attorney of SV.KR.M.

Translation No. 212 Folio 2 Fee \$3/-.

10 Translated by me,

(Sgd.) T. R. DORAISWAMY,
A Sworn Interpreter,
Supreme Court, Penang.

Translated by me,

(Sgd.) T. R. DORAISWAMY,
A Sworn Interpreter,
Supreme Court, Penang.

13.8.51.

Issued this 17th day of August, 1951.

(Sgd.) J. W. D. AMBROSE,
Senior Assistant Registrar,

Supreme Court, Penang.

(L.S.)

20 “ B ” page 2.—Translation of Draft Thavannai Letter for \$2,000, executed by the Attorney of SV.KR.M. in favour of O.RM.M.SP.SV.

Translation of Draft Thavannai Letter for \$2,000, executed by the Attorney of SV.KR.M. in favour of O.RM.M.SP.SV.

TRANSLATION OF A TAMIL DOCUMENT.

TRANSLATION NO. 211 OF 1951.

Penang H. C. Civil Suit No. 192/49.

Folio :

Fee :

COPY

SV.KR.

Sign of First God.

O.RM.M.SP.SV.

Sungei Patani.

Omnipresence of Siva.

Penang.

Chop.

Written on the 31st of the month of Avani in the year of Vishu.

30 Now on this date (amount) received from you \$2,000/-. We have credited this Two thousand dollars through you in the name of SV. Pari Muthu Karuppi Achi at 5/16 interest, 3/32 more than Penang 3 months' Thavanai interest, from this date. We will get back this paper with endorse-

Exhibits. ment paying to your order at Penang the interest and principal in accordance
 " B " to the Thavanai.

Translation
 of Draft
 Thavannai
 Letter for
 \$2,000
 executed
 by the
 Attorney of
 SV.KR.M.
 in favour of
 O.R.M.M.
 SP.SV.
 --continued.

(Signature of the Attorney).
 (Sgd.) as CT. *Attorney of SV.KR.M.*

Translation No. 211 Folio 2 Fee \$3/-.

Translated by me,
 (Sgd.) T. R. DORAISWAMY,
A Sworn Interpreter,
 Supreme Court, Penang.

Translated by me,
 (Sgd.) T. R. DORAISWAMY,
A Sworn Interpreter,
 Supreme Court, Penang.

13.8.51.

Issued this 17th day of August, 1951.

(Sgd.) J. W. D. AMBROSE,
Senior Assistant Registrar,
 Supreme Court, Penang.

(L.S.)

10

Translation of entries written in Tamil on page 46, Tamil Ledger. " B " pages 3 and 4.—Translation of Tamil Entries on page 46 in Tamil Ledger.

C.S. 192/49.

Translation No. 216. Folio : 5. Fee : \$6/-.

Page 46. Sign of First God.

Omnipresence of Siva.

Help of Sree Muthumariambal.

Thavanai Debit Credit account of Devakottai SV. Pari Muthu
 Karuppi Achi through Penang O.R.M.M.SP.SV.

<i>Year and Month</i>	<i>Date</i>	<i>Particulars</i>	<i>Credit</i>	<i>Debit</i>
Vishu year	31	Credit for one letter, interest at 5/6, 3/32 more than P. 3 months Thavanai interest	\$2,000.00	
Avani Chithira-bhanu Vaikasi month	31	Credit cash given towards interest at 5/16 for 3 Thavanais from 31st of Avani in the previous year up to the 31st of the current month	56.78	
		Immediate debit—cash paid for aforesaid		\$56.78

30

C/forward

<i>Year and Month</i>	<i>Date</i>	<i>Particulars</i>	<i>Credit</i>	<i>Debit</i>	<i>Exhibits. " B "</i>
		B/forward			
Avani	31	Credit. Towards interest for one Thavanai at $\frac{1}{4}$ interest, $\frac{3}{32}$ more from the 31st of the month of Vaikasi of Chithirabhanu year up to the 30th of the current month	15.00		Translation of entries written in Tamil on page 46, Tamil Ledger— <i>continued.</i>
10		Immediately debit—principal \$2,000/- and interest \$15/-. Total principal and interest as on this date		2,015.00	
		Immediate credit per previous account as on this date current year	2,015.00		
Karthigai	30	Credit. For interest with compound interest on interest at $\frac{1}{4}$ for one Thavanai from 31st of Avani of current year up to this date	15.11 $\frac{1}{2}$		
		Immediate debit per aforesaid. Interest cash paid for two Thavanais		30.11 $\frac{1}{2}$	
20	Masi 30	Credit. To interest for one Thavanai at $\frac{1}{4}$ interest, $\frac{3}{32}$ more from the 31st Karthigai to this date	15.00		
	Subhanu year	Immediate debt. Cash paid for interest aforesaid		15.00	
	Vai Kasi 30	Credit to interest for one Thavanai at $\frac{1}{4}$ as interest $\frac{3}{32}$ more, from the 30th of the month of Masi of Chithirabhanu year to this date	15.00		
		Immediate debit. Cash given for interest aforesaid		15.00	
30	Ani month 20	Credit. Interest for 11 days from 30th of the month of Vai Kasi current year to the 10th of current month. Cash as on 11th of current month paid	1.83		
		Immediate debit. Received after endorsing on the Thavanai letter by Indian Overseas Bank Cheque No. 53102 for \$2,000/- and interest cash \$1.83 as on 11th of the current month		2,001.83	
Total credit debit correct			\$4,133.72 $\frac{1}{2}$	\$4,133.72 $\frac{1}{2}$	

40

Translated by me,
(Sgd.) T. R. DORAISWAMY,
A Sworn Interpreter,
High Court, Penang.

Issued this 17th day of August, 1951.

(Sgd.) J. W. D. AMBROSE,
Sr. Assistant Registrar,
High Court, Penang.

(L.S.)

Exhibits. " B " pages 5 and 6.—Translation of Entries marked " 1 " in the Tamil Ledger.

Translation of entries written in Tamil, marked " 1 " in Tamil Ledger.	C.S. 192/49.		
	Translation No. 217.	Folio : 5.	Fee : \$6/-.
	Page 14. (Avani 31)	Through Penang T.A.R.C.T. in the name of T.A.R.C.T. Charity Trust for one letter at 5/16 interest, 3/32 more than Penang 3 months' Thavanai interest—Credit	\$3,000.00
	Page 67. (Vai Kasi 31)	Through Penang T.A.R.C.T. Thavanai A/C. of T.A.R.C.T. Charity Trust. Credit interest for 3 Thavanais at 5/16 from 31st of the month Avani in the year of Vishu up to the 31st of current month—Credit for interest Immediate debit as per aforesaid interest. Cash given	\$85.17 \$85.17
	Page 72. (Avani 31)	Through Penang T.A.R.C.T. Credit of T.A.R.C.T. Charity Trust Thavanai account. Interest for one Thavanai at $\frac{1}{4}$, 3/32 more from 31st of Vai Kasi month, Chithirabhanu year, to the 30th of the current month. Credit for interest Immediate debit. Principal \$3,000/- and interest \$22.50 for one payment. Principal and interest as on this date. Debit Immediate credit as per previous account as on this date	\$22.50 \$3,022.50 \$3,022.50
Page 78. (Karthigai 30)	Through Penang T.A.R.C.T. Thavanai A/c of T.A.R.C.T. Charity Trust credit. Interest at $\frac{1}{4}$ including compound interest for one Thavanai from 31st of Avani month, current year, to this date—Credit Immediate debit. Interest for two Thavanais for aforesaid. Cash given	\$22.66 $\frac{3}{4}$ \$45.16 $\frac{3}{4}$	
Page 83. (Masi 30)	Through Penang T.A.R.C.T. Thavanai A/c of T.A.R.C.T. Charity Trust. Credit. Interest for one Thavanai at $\frac{1}{4}$, 3/32 in excess From 31st of the month of Karthigai current month to this date for interest credit Immediate debit. Interest for aforesaid cash given	\$22.50 \$22.50	

Page 90. (Vai Kasi 30)	Through Penang T.A.R.C.T. Thavanai A/c of T.A.R.C.T. Charity Trust. Credit. Interest for one Thavanai at $\frac{1}{4}$, $\frac{3}{32}$ in excess from 30th of Masi, Chithirabhanu, to this date— For interest credit Immediate debit. Interest for aforesaid cash given	\$22.50 \$22.50	Exhibits. — “ B ” — Translation of entries written in Tamil, marked “ 1 ” in Tamil Ledger— <i>continued.</i>
Page 93. 10 (Ani 20)	Through Penang T.A.R.C.T. Thavanai account of T.A.R.C.T. Charity Trust. Credit. Interest for 11 days from 31st of the month of Vai Kasi, current year, up to the 10th of current month as on the 11th of this month—credit Immediate debit as per Indian Overseas Bank cheque No. 53102 receiving the Thavanai letter with endorsement \$3,000/- and cash \$2.75 for interest as on 11th of this month	\$2.75 \$3,002.75	

Translated by,

20

(Sgd.) T. R. DORAISWAMY,
A Sworn Interpreter,
High Court, Penang.

Issued this 17th day of August, 1951.

(L.S.) (Sgd.) J. W. D. AMBROSE,
Sr. Assistant Registrar,
High Court, Penang.

“ B ” pages 7 and 8.—Translation of Entries marked “ 2 ” in the Tamil Journal.

C.S. 192/49.
30 Translation No. 218. Folio : 5. Fee \$6/-.
Page 14.

Credit. Thavanai a/c. of Devakottai SV. Pari Muthu Karuppi Achi through Penang O.R.M.SP.SV. I letter with interest at $\frac{5}{16}$, $\frac{3}{32}$ more than P. 3 months Thavanai interest. Credit

\$2,000.00

Translation of entries written in Tamil and marked “ 2 ” in Tamil Journal.

Exhibits. Pages 67 & 68. " B "	Credit by interest at interest for 3 Thavanais from 31st of the month of Avani in the year of Vishu to the 31st of the current month as per Thavanai account of Devakottai SV. Pari Muthu Karuppi Achi through Penang O.R.M.M.SP.SV. Credit	\$56.78		
	Immediate debit as per aforesaid interest. Cash paid		\$56.78	
Translation of entries written in Tamil and marked " 2 " in Tamil Journal— <i>continued.</i>	Page 72. (Avani 31)	16th on the 11th credit. Through Penang O.R.M.M.SP.SV. Thavanai A/c of SV. Pari Muthu Karuppi Achi of aforesaid place from 31st of the month of Vai Kasi of Chithirabhanu year to the 30th of the current month. Interest at $\frac{1}{4}$ including interest at $\frac{3}{32}$ for 1 Thavanai interest credit	\$15.00	10
		Immediate debit. Principal \$2,000/- and interest \$15/- including Principal interest for one payment. Total debit	\$2,015.00	20
		Immediate credit per previous account on this date	\$2,015.00	
	Page 77. (Karthigai 30)	On the 15th Through Penang O.R.M.M.SP.SV. To credit of Devakottai SV. Pari Muthu Karuppi Achi Thavanai A/c from 31st of Avani current year to this date. Interest at $\frac{1}{4}$ for one Thavanai including compound interest. Credit	\$15.11 $\frac{1}{2}$	
		Immediate debit. Interest for aforesaid cash paid for 2 Thavanais	\$30.11 $\frac{1}{2}$	30
	Page 83. (Masi 30)	On 13th Through Penang O.R.M.M.SP.SV. To credit of Devakottai S.V Pari Muthu Karuppi Achi Thavanai A/c. from 31st of Karthigai current year to this date. Interest for one Thavanai at $\frac{1}{4}$, including $\frac{3}{12}$ Credit towards interest	\$15.00	
		Immediate debit. Cash given for interest for above	\$15.00	40
	Page 90. (Vai Kasi 30)	On 13th Through Penang O.R.M.M.SP.SV. To credit of Devakottai SV. Pari Muthu Karuppi Achi's Thavanai A/c from 30th of Masi, in the year of Chithirabhanu, to this date. Interest for one Thavanai at $\frac{1}{4}$ including $\frac{3}{12}$. Credit towards interest	\$15.00	
		Immediate debit. Cash given for interest for above	\$15.00	

Page 93. (Ani 20)	Through Penang O.R.M.SP.SV. To credit of Devakottai SV. Pari Muthu Karuppi Achi's Thavanai A/c. Interest for 11 days from 31st Vai Kasi up to the 10th of current month. Cash paid as on 11th of current month	\$1.83	Exhibits. — " B " — Translation of entries written in Tamil and marked " 2 " in Tamil Journal—
10	Immediate debit as per Indian Overseas Bank Cheque No. 53102 receiving the Thavanai letter with endorsement \$2,000/- and cash \$1.83 for interest as on 11th of current month	\$2,001.83	Journal— <i>continued.</i>

Translated by me,

(Sgd.) T. R. DORAISWAMY,
A Sworn Interpreter.
High Court, Penang.

Issued this 17th day of August, 1951.

(Sgd.) J. W. D. AMBROSE,
Sr. Assistant Registrar,
High Court, Penang.

(L.S.)

In the Privy Council.

No. 31 of 1953.

ON APPEAL FROM THE COURT OF APPEAL
SUPREME COURT OF THE FEDERATION OF
MALAYA.

BETWEEN

THE FIRM OF T.A.R.C.T
(Plaintiffs) Appellants

AND

THE FIRM OF SV.KR. alias
SEENA VANA KANA RUNA
(Defendants) Respondents.

RECORD OF PROCEEDINGS

LAWRANCE, MESSER & CO.,
16 Coleman Street, E.C.2,
Solicitors for the Appellants.

SHELTON COBB & CO.,
3 New Court, W.C.2,
Solicitors for the Respondents.