

1930

Present : Garvin A.C.J. and Lyall Grant J.KANAGASUNDERAM *v.* SINNIAH.60—*D. C. (Inty.) Jaffna*, 7,240.*Administration—Widow's preferential right—Widow a lunatic—Next of kin—Right of manager of estate—Civil Procedure Code, s. 523.*

Where the widow of a deceased person was a lunatic, her preferential right to administration should be recognized by granting the letters to the manager of her estate.

A PPEAL from an order of the District Judge of Jaffna. This was a contest for letters of administration to the estate of one Arulambalam Muttukumaraswamy between the brother of the intestate and the sixth respondent who was the manager of the estate of the first respondent, the widow of Arulambalam, who was a lunatic. The learned District Judge held that that letters should be granted to the sixth respondent.

Subramaniam, for appellant.*Hayley, K.C.* (with *Somasunderam*), for respondent.

July 8, 1930. GARVIN A.C.J.—

This is an appeal against an order of the learned District Judge in a contest which arose for letters of administration to the estate of one Arulambalam Muttukumaraswamy. The contest is between the brother of the intestate, who is the petitioner, and the sixth respondent, who is the manager of the estate of the first respondent, the widow of Arulambalam. At the dates material to these proceedings the widow was a lunatic. The learned District Judge took the view that, inasmuch as the widow had a preferential right to have letters granted to her, letters should during her lunacy be issued to her manager, the sixth respondent. The grant is in terms limited to the

period of her lunacy. There can, of course, be no question that the widow has a preferential right, and in the absence of the widow an application by her attorney has been granted preference over all other applicants for letters—see *Musajee v. Carimjee*¹. There is no judgment of this Court which expressly deals with the point immediately before us. But it would seem that in England it is the practice where the widow happens to be a lunatic to grant letters to the committee of management in preference to the next of kin. This practice was recognized and approved in the case of *Alford v. Alford*². Delivering the judgment in that case Sir John Dodson said “I am inclined to hold the committee of the widow entitled preferably, as the widow herself would be, unless good cause is shown by the next of kin”. No special cause has been shown in this case why in recognition of the preferential rights of the widow letters should not be granted to the manager. It has been urged that under the Thesawalamai the widow is not an heir of her husband's property. But the preference created by section 533 is not expressly granted to the widow in recognition of any claim she may have as an heir. It is not difficult to visualize other reasons why the Legislature might have thought it desirable to give her the preference which they have undoubtedly done without any qualification or limitation. In the case under consideration a substantial part of the estate is acquired property, and that is a reason why this may well be regarded as a case in which the widow has a special interest apart from her preferential right to letters of administration.

I see no reason, therefore, to interfere with the judgment under appeal. The judgment will stand affirmed. The appellant will pay the costs of the appeal.

LYALL GRANT J.—I agree.

*Appeal dismissed.*¹ (1928) 29 N. L. R. 387. ² (1857) *Dean*.