1937 *Present :* **Poyser S.P.J. and de Kretser A.J.**

VALLIAPPA CHETTIAR *v.* SUPPIAH PILLAI.

210—D. C. Jaffna, 48,531.

Registration of Business Names' Ordinance, No. 6 of 1918—Failure to comply with provisions—Objection taken after judgment—Warrant of attorney to confess judgment—Entered of consent—Power of Court to set aside decree.

A party should not be permitted after judgment in a case to lead evidence to prove non-compliance with the terms of the Registration of Business Names' Ordinance, No. 6 of 1918.

A Court has no jurisdiction to set aside its own decree entered of consent in pursuance of a warrant of attorney to confess judgment.

***Van Twest v. Goonewardene* (32 *N. L. R. 220*) followed.**

APPEAL from a judgment of the District Judge of Jaffna.

N. E. Weerasooria (with him *E. F. N. Gratiaen*), for plaintiff, appellant.

H. V. Perera, K.C. (with him *N. Nadarajah*), for defendants, respondents.

Cur. adv. vult.

May 18, 1937. POYSER S.P.J.—

The plaintiff, the administrator of the estate of one V. P. L. V. Valiappa Chettiar, sued the defendants for the sum of Rs. 19,000 being the amount due on a mortgage bond.

The defendants did not file answer and consented, through their attorney, to judgment being entered against them.

About three months after decree was entered, the defendants filed a petition praying that the decree be set aside as the warrant of attorney to confess judgment was, for various reasons, bad in law and void. The petition also set out that the action could not be maintained as the plaintiff had not complied with the provisions of the Registration of Business Names' Ordinance.

The petition came up for inquiry on October 11, 1937, the District Judge did not adjudicate on the question of whether the warrant of attorney was void or not but held that the petitioners could lead evidence on the question of the registration of the plaintiff's "Vilasam" and against this order the plaintiff appeals.

It was argued on behalf of the appellant that it is not now open to the defendants to raise any question in regard to the registration of the plaintiff's business name as such question was never raised before judgment was entered.

Mr. Nadarajah, on the other hand, on the authority of *Karuppen Chetty v. Harrison & Crosfield, Ltd.*,[1], argued that the Court should, at any stage of an action or even in execution proceedings *ex mero motu* give effect to the terms of the Ordinance if it appeared that its provisions had been infringed.

[1] *24 N. L. R. 317.*

That case however is not an authority for the proposition that the Court can give effect to the provisions of the Ordinance after judgment. Further, it does not appear from the record that there has been any infringement of the terms of the Ordinance, and I do not think that a party should be permitted to lead evidence after judgment to prove non-compliance with any of its terms.

The case of *Karuppen Chetty v. Harrison & Crosfield, Ltd.* (*supra*) has recently come under consideration in *S. C. 103, D. C. Colombo, No. 49,541* [1]. In that case the following passage occurs in the judgment of Maartensz J. at page 26 :—

> " The first is the suggestion that we should receive evidence to show that the defendants were precluded from making their claim in reconvention because they had failed to comply with the provisions of the Business Names' Registration Ordinance, No. 6 of 1918. The plaintiffs when the last witness but one was being re-examined proposed to place this evidence before the District Judge who refused to admit it. I think the evidence was rightly rejected. No doubt when the evidence has transpired in the course of the trial the Court must act upon it. *Karuppen Chetty v. Harrison & Crosfield, Ltd.* (*supra*). But I do not think a party should be allowed to lead evidence at the last moment to prove non-compliance with the provisions of the Ordinance. Certainly I do not think the evidence should be received in appeal ".

I entirely agree with this passage and therefore consider that the District Judge's order was wrong.

There is one other matter, the District Judge in the course of his order stated : " If Mr. Nadarajah can show the warrant of attorney is bad, Mr. Beven admits the decree becomes bad. That seems to be the first question for decision ".

Mr. Weerasooria pointed out that this passage must not be taken to be an admission by Mr. Beven that the District Judge could himself set aside the decree entered in the case but only an admission that if the warrant of attorney was declared void in appropriate proceedings, the decree would be bad.

These observations of Mr. Weerasooria can be appreciated if reference is made to the case of *Van Twest v. Goonewardene* [2] in which it was held that " a Court has no jurisdiction to set aside its own decree, entered of consent, in pursuance of a warrant of attorney to confess judgment ". That case also indicated that the correct procedure would be to set aside a decree on the grounds that the warrant of attorney was bad.

The appeal is allowed with costs and the order of the District Judge permitting the defendants to lead evidence on the question of registration set aside.

DE KRETSER J.—I agree.

Appeal Allowed.

[1] *S. C. Minutes of May 18, 1937.*

[2] *32 N. L. R. 220.*