1913. *Present:* Pereira J. and De Sampayo A.J.

VALLIPILLAI *v.* PONNUSAMY.

86—D. C. Jaffna, 1,323.

Testamentary proceeding—Passing of final account—Subsequent application for judicial settlement.

There is no provision in the Civil Procedure Code for the filing of a "final account" in administration or testamentary proceedings; and where a Court had adopted a practice, the main features of which were that the executor or administrator was allowed to file a "final account" which, after notice to parties interested, was "passed" by the Court, and the estate declared closed,—

Held, that this practice could not be allowed to supersede the procedure of judicial settlement provided for by the Code.

THE facts appear from the judgment.

H. J. C. Pereira and *Wadsworth*, for the appellant.—There was no judicial settlement of the accounts in this case. The "passing of the final accounts," whatever that may mean, does not have the effect of making all the disputes between the parties *res judicata*. There is no proper order in this case. The procedure indicated in chapter LV. of the Code was not followed.

H. A. Jayewardene (with him *Elliott* and *Balasingham*), for the respondent.—The appellant was noticed to show cause against the passing of the final account. He did not show any cause. He should not be allowed to re-open the proceedings at any time he chooses. The administratrix became *functus officio* when the final account was passed.

Cur. adv. vult.

September 23, 1913. PEREIRA J.—

This is an appeal from an order of the District Judge refusing an application made by the appellant for the judicial settlement of the accounts of the respondent as administratrix of the estate of the deceased Arumugam Velupillai.

The appellant was admittedly a person interested in the due administration of the estate, but the District Judge refused his application on the ground that the administratrix had filed what he termed a "final account," and that the account had been accepted and "passed" as correct by the Court after notice to the appellant and all the other parties interested. The District Judge says that, when a final account is filed, the "practice of the Court is to issue

notice to all the respondents to show cause against the final account being passed, and after hearing the objections, if any, to pass the final account, and close the estate." This procedure he calls a judicial settlement; at any rate, he thinks it is a procedure that is tantamount to a judicial settlement. It is certainly not a procedure that is warranted by the Code. In section 553 the Code speaks of the administrator filing a "true account of his administration," but it does not invest this account with the attribute of finality, nor is it referred to as a "final account"; and I think it is manifest from the details of the procedure laid down in chapter LV. of the Code that it was never intended that a procedure such as that described by the District Judge should take the place of the procedure prescribed in chapter LV., nor do I think that it can effectually take its place. The present case itself affords an apt illustration. In the account filed by the administratrix there are several items—no less than five have been pointed out to us as examples—of amounts due to the estate on bonds and from other sources, but not recovered by the administratrix, and therefore not yet distributed by her among the heirs. In the event of a judicial settlement the Court would, of course, either adjourn the proceedings to enable the administrator to make these recoveries by process of law, or direct that the debts be sold and the proceeds accounted for, or that the debts be duly assigned to the heirs, and thus achieve finality. As matters stand, the estate has not in fact been closed. Moreover, as observed already, the procedure adopted by the District Judge is not the same as that laid down in chapter LV. of the Code, and it cannot well be substituted for it. The latter procedure is one that the Code gives the right to every person interested to claim from the Court.

For the reasons given above I would set aside the order appealed from and allow the application for judicial settlement with costs.

DE SAMPAYO A.J.—

I am of the same opinion. The practice adopted in the District Court is one which was in vogue before the enactment of the Civil Procedure Code, and even then I do not think that a mere order purporting to pass the account of an executor or administrator had the effect of disentitling a party to bring an administration suit for the purpose of having the account properly taken. But after the Code the practice became obsolete and inapplicable, and an administration suit no longer necessary. I may in this connection refer to *In re the Estate of Babam*,[1] where, under the old practice, the Court had by a formal order passed an executor's account and closed the estate, and where what purported to be the final account showed the estate had not been fully distributed. This Court held that a petition under the Code (which in the meantime had come into force) praying

[1] *C. L. R. 41.*

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for an order requiring the executor to render an account, and to deliver to the petitioner his distributive share was in order. In this case there is much less reason for saying that the appellant is precluded from making his present application by anything previously done. There was no formal order entered of record. The so-called order relied on is an entry in the journal of date November 22, 1912. This entry is a mere scrawl, the greater part of which is wholly illegible, and in the midst of many erasures and interlineations a few words are discernible, which are supposed to read as "final account passed and estate closed." It is hardly possible to regard this as a formal order of Court. Moreover, the appellant was not present or represented on the day for which the matter of "inquiry" was fixed. The District Judge says that the appellant must "purge his default" before he can be allowed to make the present application. I cannot find in the record the notice issued to the heirs, but the motion of the administratrix was "to issue notice of the final account to the heirs." I cannot regard this as anything more than an intimation to the heirs that the administratrix had filed her account. I do not see how the appellant could have gathered from it that there was to be an "inquiry" into accounts or that anything in the nature of a judicial settlement of accounts was intended to be done. In my opinion the appellant was not in default in the sense understood by the District Judge and even if he had due notice, the provisions of the Code are still available to him for the purpose of having the account of the administratrix judicially settled.

Set aside.