Present: **Howard C.J. and Wijeyewardene J.**

THE ATTORNEY-GENERAL, Appellant, *and* VALLIYAMMA ATCHIE, Respondent.

51—D. C. (Inty) Colombo, 10.

Estate Duty—Joint property of a Hindu family—Right of appeal from decision of Commissioner—Decision of Board of Review under Income Tax Ordinance—No estoppel by res judicata—Estate Duty Ordinance, No. 1 of 1938, ss. 34 and 73.

An appeal lies under section 34 of the Estate Duty Ordinance from a decision of the Commissioner under section 73 of the Ordinance as to whether the property left by a deceased person is the joint property of a Hindu undivided family.

The decision of the Board of Review on an appeal under section 70 of the Income Tax Ordinance is not *res judicata* in respect of a matter that arises for decision under section 73 of the Estate Duty Ordinance.

APPEAL from a judgment of the District Judge of Colombo. The facts appear from the argument.

H. H. Basnayake, C.C. (with him *Walter Jayawardene, C.C.*), for the Attorney-General, appellant.—The decision of the Commissioner of Estate Duty under section 73 of the Estate Duty Ordinance (Cap. 187), as amended by section 5 of Ordinance No. 76 of 1938, is not a matter which is subject to appeal to the District Court. The finding of the Commissioner that the Ceylon estate of the deceased in this case was not joint property of a Hindu undivided family is final and conclusive and cannot be questioned by the District Court. Section 34 which enables appeals to the District Court relates to appeals from assessments made by an *assessor*. The Commissioner does not make any assessments. This becomes clear when that section is read in conjunction with sections 29, 32, 37, 38 and 39. Section 34 does not give a right of appeal from a decision of the Commissioner under section 73. The Commissioner performs an administrative, and not a judicial function under section 73. *Dankotuwa Estates Co., Ltd. v. The Tea Controller*[1]; *Shell Co. of Australia v. Federal Commissioner of Taxation*[2]. The words " proved to the satisfaction of the Commissioner " have a conclusive effect—*Murugappa Chetty v. The Commissioner of Stamps*[3]; *Liversidge v. Anderson et al*[4]; *Point of Ayr Collieries, Ltd. v. Lloyd-George*[5]; *Carltons, Ltd. v. Commissioner of Works et al.*[6] *Wijeyesekere v. Festing*[7]; *Ramasamy Chettiar v. The Attorney-General*[8].

If the decision of the Commissioner of Estate Duty under section 73 of Cap. 187 is conclusive, estate duty becomes payable notwithstanding the foreign domicil of the deceased—*Winans v. Attorney-General*[9]; *Blackwood v. The Queen*[10]; *Freke v. Lord Carbery*[11]; *Dulaney v. Merry & Son*[12].

[1] *(1941) 42 N. L. R. 197.*
[2] *L. R. (1931) A. C. 275 at 295.*
[3] *(1922) 24 N. L. R. 231 at 234–5.*
[4] *L. R. (1942) 1 A. C. 206.*
[5] *(1943) 2 E. A. R. 546.*
[6] *(1943) 2 A. E. R. 560.*
[7] *L. R. (1919) A. C. 646 at 649.*
[8] *(1937) 38 N. L. R. 313.*
[9] *L. R. (1910) A. C. 27.*
[10] *L. R. (1882–3) 8 A. C. 82.*
[11] *L. R. (1873) 16 Eq. C. 461 at 466–7.*
[12] *L. R. (1901) 1 K. B. D. 536 at 540–1.*

The decision of the Board of Review of Income Tax that the estate of the deceased was not joint property of a Hindu undivided family for the purpose of section 20 (7) of the Income Tax Ordinance (Cap. 188) operates as *res judicata*, as regards that point, for the purpose of the present case also. The Board of Review constituted under section 10 of the Income Tax Ordinance corresponds to the District Court in section 34 of the Estate Duty Ordinance. On both occasions the parties were the same, namely, the Crown on one side and the legal representative of the deceased on the other. See *Hoystead v. Commissioner of Taxation*[1]; Spencer Bower on *Res Judicata* (1924 ed.) pp. 13, 128-9, 124, 11; *Sankaralinya Nadar v. Commissioner of Income Tax, Madras*[2]; *Gunatilleke v. Fernando*[3]. The case of *Commissioners of Inland Revenue v. Seneath*[4], which was cited on behalf of the respondent in the District Court, is not applicable because the decision in question in that case was not one of a judicial tribunal and, further, was operative only for one year.

H. V. Perera, K.C. (with him *N. Nadarajah, K.C.*, and *S. J. V. Chelvanayagam*), for the plaintiff, respondent.—As regards the words "proved to the satisfaction of the Commissioner" in section 73 of Cap. 187 they mean nothing more than "proved before the Commissioner". Similar words occur in many sections, *e.g.*, sections 17, 18 and 20, and merely indicate the various functions of either the Commissioner or the assessors. Section 73 must be read together with section 34. The Commissioner's decision can be reviewed in an appeal taken under section 34—*The Duke of Beauford v. Crawshay*[5]; *Saravanamuttu v. Chairman, Municipal Council, Colombo*[6].

On the question of *res judicata*, the Board of Review under the Income Tax Ordinance is only a link in the administrative machinery and its decision does not involve any exercise of judicial power—*Shell Co. of Australia v. Federal Commissioner of Taxation*[7]. Even if the Board of Review can be regarded as a Court its decision cannot operate as *res judicata* in the present case—*Commissioners of Inland Revenue v. Sneath (supra); Broken Hill Proprietary Co., Ltd. v. Municipal Council of Broken Hill*[8].

H. H. Basnayake in reply.—The words in section 73 of Cap. 187 do not permit of any other body reviewing the finding of the Commissioner. Their effect is similar to that of the words in sections 6, 53 (1), 58 &c. *The Duke of Beaufort v. Crawshay* (*supra*) is of assistance to the appellant. See also *The Queen v. Commissioners for Special Purposes of the Income Tax*[9].

Cur. adv. vult.

May 1, 1944. HOWARD C.J.—

This is an appeal by the Attorney-General from an order of the District Judge of Colombo holding:—

(*a*) That an appeal lies under section 34 of the Estate Duty Ordinance from a decision of the Commissioner of Estate Duty under section 73.

[1] *L. R. (1926) A. C. 155.*
[2] *A. I. R. (1930) Mad. 209.*
[3] *(1921) 22 N. L. R. 385 at 388.*
[4] *L. R. (1932) 2 K. B. 362.*
[5] *L. R. (1866) 1 C. P. 699 at 706.*
[6] *(1936) 38 N. L. R. 21 at 24.*
[7] *L. R. (1931) A. C. 275 at 296.*
[8] *L. R. (1926) A. C. 94.*
[9] *L. R. (1888) 21 Q. B. D. 313 at 319.*

(*b*) That the plaintiff is not estopped from giving or leading evidence to the effect that the Ceylon estate of the deceased K.M.N.S.P. Natchiappa Chettiar referred to in the assessment for estate duty dated May 12, 1941, is joint property of a Hindu undivided family and of which the deceased was a member.

(*c*) That the decision of the Board of Review of Income Tax that the property left by the deceased is not joint property does not operate as *res judicata*.

(*d*) That the plaintiff who is also an heir of the deceased is entitled to question the right of the testator to make the will she has proved and under which she has benefited.

In this Court Mr. Basnayake, on behalf of the Attorney-General, has asked us to say that the learned Judge came to a wrong decision with regard to findings (*a*), (*b*) and (*c*). With regard to (*a*), section 73 of the Estate Duty Ordinance is worded as follows:—

"Where a member of a Hindu undivided family dies, no estate duty shall be payable—

(*a*) on any movable property which is proved to the satisfaction of the Commissioner to have been the joint property of that family; or

(*b*) on any immovable property, where it is proved to the satisfaction of the Commissioner that such property, if it had been moveable property, would have been the joint property of that family."

It is conceded by the respondent that the Commissioner was not satisfied that the property of the deceased was joint property of a Hindu undivided family. In those circumstances Mr. Basnayake contends that there is no appeal from the decision of the Commissioner. To hold that the decision of the Commissioner under this provision can be made the subject of an appeal to the District Court would, in effect, substitute for the words "proved to the satisfaction of the Commissioner" the words "proved to the satisfaction of the District Court". In support of this proposition Mr. Basnayake has cited the recent House of Lords decision in *Liversidge v. Sir John Anderson & another* [1] in which it was held that, where the Secretary of State, acting in good faith under Reg. 18B of the Defence (General) Regulations, 1939, makes an order in which he recites that he has reasonable cause to believe a person to be of hostile associations and that by reason thereof it is necessary to exercise control over him and directs that that person be detained, a court of law cannot inquire whether in fact the Secretary of State had reasonable grounds for his belief. The matter is one for the executive discretion of the Secretary of State. At pages 219-220 in his judgment, Viscount Maugham stated as follows:—

"My Lords, I think we should approach the construction of Regulation 18B of the Defence (General) Regulations, without any general presumption as to its meaning except the universal presumption, applicable to Orders in Council and other like instruments, that, if there is a

[1] *(1942) 1 A. C. 206.*

reasonable doubt as to the meannig of the words used, we should prefer a construction which will carry into effect the plain intention of those responsible for the Order in Council rather than one which will defeat that intention. My Lords, I am not disposed to deny that, in the absence of a context, the *prima facie* meaning of such a phrase as ' if A. B. has reasonable cause to believe ' a certain circumstances or thing, it should be construed as meaning, ' if, there is in fact reasonable cause for believing ' that thing and if A. B. believes it. But I am unable to take the view that the words can only have that meaning. It seems to me reasonably clear that, if the thing to be believed is something which is essentially one within the knowledge, of A. B. or one for the exercise of his exclusive discretion, the words might well mean if A. B. acting on what he thinks is reasonable cause (and, of course, acting in good faith) believes the thing in question.

His Lordship then proceeds to detail a number of circumstances which tend to support the latter conclusion, and states as follows:—

" Any one of these various circumstances is sufficient to satisfy the first fact which the Secretary of State must believe, and I do not doubt that a court could investigate the question whether there were grounds for a reasonable man to believe some at least of those facts if they could be put before the Court. But then he must at the same time also believe something very different in it nature, namely, that by reason of the first fact, ' it is necessary to exercise control over ' the person in question. To my mind this is so clearly a matter for executive discretion and nothing else that I cannot myself believe that those responsible for the Order in Council, could have contemplated for a moment the possibility of the action of the Secretary of State being subject to the discussion, criticism and control of a judge in a court of law. If, then, in the present case the second requisite, as to the grounds on which the Secretary of State can make his order for detention, is left to his sole discretion without appeal to a court, it necessarily follows that the same is true as to all the facts which he must have reasonable cause to believe."

On page 221 His Lordship also says:—

" Thirdly, and this is of even greater importance, it is obvious that in many cases he will be acting on information of the most confidential character, which could not be communicated to the person detained or disclosed in court without the greatest risk of prejudicing the future efforts of the Secretary of State in this and like matters for the defence of the realm. A very little consideration will show that the power of the court (under s. 6 of the Act) to give directions for the hearing of proceedings *in camera* would not prevent confidential matters from leaking out, since such matters would become known to the person detained and to a number of other persons. It seems to me impossible for the court to come to a conclusion adverse to the opinion of the Secretary of State in such a matter. It is beyond dispute that he can decline to disclose the information on which he has acted on the ground that to do so would be contrary to the public interest, and that this privilege of the Crown cannot be disputed. It is not *ad rem* on the

question of construction to say in reply to this argument that there are cases in which the Secretary of State could answer the attack on the validity of the order for detention without raising the point of privilege. It is sufficient to say that there must be a large number of cases in which the information on which the Secretary of State is likely to act will be of a very confidential nature. That must have been plain to those responsible in advising His Majesty in regard to the Order in Council, and it constitutes, in my opinion, a very cogent reason for thinking that the words under discussion cannot be read as meaning that the existence of " reasonable cause ' is one which may be discussed in a court which has not the power of eliciting the facts which in the opinion of the Secretary of State amount to " reasonable cause'. "

Finally, His Lordship states that the objections to an appeal in a case of mere suspicion and in time of war are not far to seek, but, however that may be, an application to the High Court, with power to the Judge to review the action of the Secretary of State, seems to be completely inadmissible and he was unable to see that the words of the regulation in any way justify the conclusion that such a procedure was contemplated. A careful perusal of the judgment of Viscount Maugham and of their other Lordships, who share his view, indicates that the extraordinary and abnormal conditions arising from the war demanded that, in the interests of the safety of the realm, the Secretary of State should have the sole discretion to decide as to whether there is reasonable cause for believing that a person has hostile associations and that by reason thereof it is necessary to exercise control over him. The matter was one for executive discretion and their Lordships could not believe that those responsible for the Order in Council could have contemplated for a moment the possibility of the action of the Secretary of State being subject to the discussion, criticism and control of a judge in a court of law. The majority of their Lordships held that this was the plain intention of the Order in Council.

Mr. Basnayake also referred to two other recent cases, namely *Point of Ayr Collieries, Ltd. v. Lloyd-George*[1] and *Carltons, Ltd. v. Commissioners of Works & others*[2]. Both cases were decided by the Court of Appeal which formulated the same principle as that expressed in *Liversidge v. Anderson* (*supra*) that the legislature intended the executive to be answerable only to Parliament and that the Courts cannot question the *bona fide* action of the Minister. To hold otherwise would mean that the Courts would be made responsible for carrying on the executive government in these matters. Having regard to the grounds on which these decisions were based, they do not, in my opinion, in any way assist the argument put forward by Mr. Basnayake.

In *Murugappa Chetty v. The Commissioner of Stamps*[3] it was held that the term " debts and incumbrance " in section 17 (1) (*b*) of the old Estate Duty Ordinance, No. 8 of 1919, refers to such debts and incumbrances as have been incurred or created within the Island, and for the purpose of payment of estate duty, debts incurred or payable

[1] *(1943) 2 A. E. R. 546.* [2] *(1943) 2 A. E. R. 560.*

[3] *24 N. L. R. 231.*

out of the Island are not to be deducted from the estate. At the end of his judgment in this case Schneider J., stated as follows:—

> "Incidentally, I would also mention that the language of section 17 (1) is such that the opinion of the Commissioner appears to conclude the question as to what are the 'debts' or 'incumbrances' which might be deducted."

This statement was purely *obiter*. The question of an appeal from the decision of the Commissioner was not argued. The statement of the learned Judge does not in any way bind the Court in regard to the question with which we are now confronted.

In *Wijesekera v. Festing*[1] it was held by the Privy Council that when after the receipt of a report directed to be made under section 4 of the Acquisition of Land Ordinance, 1876, the Governor under section 6 directs the Government Agent to take orders for the acquisition of specified lands in Ceylon, it is not open to the owner to contend in any court that the land is not needed for a public purpose.

Mr. Basnayake also cited in support of his argument a case under the old Estate Duty Ordinance, No. 8 of 1919—*N. Ramaswamy Chettiar v. The Attorney-General*[2]. In this case it was held that estate duty that has been overpaid may be recovered by action against the Crown. It was argued by the Solicitor-General that the Commissioner was the sole judge of the question whether there has been an overpayment and whether there should be a refund. With regard to that argument, Soertsz J., at pages 319-320 stated as follows:—

> "The next point taken by the Solicitor-General is that the Commissioner of Stamps in the sole judge of the question whether there has been over payment and whether there should be a refund. The Courts, he says, have no jurisdiction in the matter. In this connection we were referred to the case in *re Nathan (L. R. 12 Q.B. 461)*. That case arose on an application made under section 23 of 5 and 6 Victoria, Chapter 79, which is the counterpart of section 28 of our Estate Duty Ordinance. These sections provide that 'when it is proved by affidavit or declaration on oath or affirmation and proper vouchers *to the satisfaction* of the Commissioners . . . .'
>
> Brett M.R., commenting on a similar argument addressed to the Court, said that it was not necessary to decide the point, but that he would 'be very loth to hold that that is so, and to think that there is no remedy open to persons in the position of the prosecutor . . . . and that the officials in a department of the Government have been constituted the sole and exclusive judge whether they ought to be satisfied or not'. In this case too, it is not necessary to decide that point for the plaintiff's claim is not made under section 28, but under section 27, of the Ordinance. In section 27 the words 'to the satisfaction of the Commissioner' do not occur. The simple words are 'if at any time within three years . . . . the value of the *property on which estate duty has been paid is found* to exceed *the true value*

[1] *(1919) A. C. 646.*

[2] *38 N. L. R. 313.*

> *of the property subject to estate duty* . . . . it shall be lawful for the Commissioner of Stamps, and he is hereby required to return the amount of duty which had been overpaid '."

It would appear that Soertsz J., was not called upon to decide and did not decide whether the use of the words " to the satisfaction of the Commissioner " precluded the Courts from reviewing his decision. In, however, *re Nathan*[1], Brett M.R. was apparently unwilling to hold that officials in a department of the Government have been constituted the sole and exclusive judge whether they ought to be satisfied or not. In my opinion the case of *N. Ramaswamy Chettiar v. The Attorney-General* (*supra*) does not support the contention of the Attorney-General.

In all the cases so far cited by me there was nothing in the phraseology of the legislative enactment under review giving a right of appeal either express or implied.

In my opinion section 73 of the Ordinance cannot be considered apart from the other provisions of the Ordinance. It must accordingly be construed with particular reference to section 34 which is worded as follows:—

> " Any person aggrieved by the amount of any assessment of estate duty made under this Ordinance, whether on the ground of the value of any property included in such assessment or the rate charged or his liability to pay such duty or otherwise, may appeal to the appropriate District Court in the manner hereinafter provided."

The section therefore grants an appeal to the appropriate District Court to " any person aggrieved by the amount of any assessment of estate duty made under the Ordinance, whether on the ground of . . . . or his liability to pay such duty or otherwise." The respondent maintains that the property is that of a joint Hindu family and on this ground he is not liable to pay. I do not think, therefore, that it can be argued that he is not a person aggrieved. He may therefore appeal. Similarly I am of opinion that the terms of section 34 are wide enough to allow for appeals by persons who are aggrieved by decisions of the Commissioner or the Assessor, as the case may be, under sections 6, 17, 18, 20, and 23. Both Counsel have called in support of their rival contentions the case of *The Duke of Beaufort v. Crawshay*[2]. In this case it was held that where a statute gives powers to a Judge at *nisi prius* to exercise a discretion as to the admission of a document in evidence, his decision is subject to the general supervision and control of the Court out of which the record comes, unless the express language of the statute makes his decision final. 1 Wm. 4, c.22, s.10, makes the deposition of a witness taken under it inadmissible in evidence, unless it shall apear *to the satisfaction of the judge* that the deponent is unable from *permanent* sickness or other *permanent* infirmity to attend the trial. Though it is competent to the Court to review his decision, it is for the judge to satisfy himself of the deponent's inability to attend, by such evidence as he shall think fit; and that the Court will not interfere, unless it be shown that the judge has been misled by false evidence, or that injustice

[1] *L. R. 12 Q. B. 461.*

[2] *L. R. (1866) ; 1 C. P. 699.*

has resulted from the course pursued at the trial. At page 706, Erle C.J. states as follows:—

> " The Judge who presides at *nisi prius* sits as a member of, and his decisions are subject to review by, the Court from which the record comes, unless he is acting under a statute the language of which expressly negatives or excludes the application of that general principle. Looking at the words of this statute, I have come to the conclusion that they are not sufficient to deprive the Court of that ordinary jurisdiction. If the statute had contained negative words, the question would have presented itself in a very different shape. The result is, that, in my ipinion, the decision come to by my brother Blackburn in this case is subject to review. Then, having this general jurisdiction, ought we to exercise it in this case by holding that the learned Judge fell into a mistake, and grant a new trial ? Upon that part of the case I think the rule fails."

The case no doubt is an authority for the proposition that the Court in the exercise of its ordinary jurisdiction will not interfere with the exercise by the judge at *nisi prius* of his discretion unless it is shown that he has been misled by false evidence or that injustice has resulted. But that is a very different proposition from the contention now put forward that there is no review at all. It has also to be borne in mind that the language of section 73 of the Ordinance, no more than the phraseology employed in 1 Wm. 4, c.22, s.10 does not expressly negative or exclude the jurisdiction of the Courts by way of review. Moreover the language of section 34, in my opinion, expressly provides for such review. For the reasons I have given I have come to the conclusion that the District Judge was right in holding that an appeal lies under section 34 from a decision of the Commissioner under section 73.

With regard to the question of *res judicata*, Mr. Basnayake has invited our attention to *Hoystead v. Commissioner of Taxation*[1]. The headnote of this case is as follows:—

> " Under a will the annual income from an estate in Australia was divisible by the trustees between the testator's daughters. The trustees objected to an assessment for the financial year 1918-1919 under the Land Tax Assessment Act, 1910-1916, of Australia; they claimed under s. 38, sub-s. 7, of the Act a deduction of £5,000 in respect of the share of each daughter. A case was stated for the opinion of the Full Court of the High Court upon the questions: (1) Whether the share of the joint owners, or of any and which of them, in the land were original shares within s. 38; (2) How many deductions of £5,000 the respondent should make. The full Court answered these questions as follows: (1) The shares of the six children surviving at the date of the assessment; (2) Six. Judgment upon the objection was entered accordingly. Upon the assessment for 1919-1920 the Commissioner allowed only one deduction of £5,000, contending that the beneficiaries were not joint owners within the meaning of the Act.

[1] *(1926) A. C. 155.*

Upon a case stated the Full Court upheld that view and held that the Commissioner was not estopped by the previous decision:—

> *Held*, that the Commissioner was estopped, since although in the previous litigation no express decision had been given whether the beneficiaries were joint owners, it being assumed and admitted that they were, the matter so admitted was fundamental to the decision then given.''

The question as to how many deductions of £5,000 the trustees were entitled to had already been settled for the years 1918-1919 and settled expressly by the High Court of Australia. The Commissioner of Taxation wished to withdraw the admission made in those proceedings—an admission of a fact fundamental to the decision—and embark on a fresh litigation upon a different assumption of fact. It was held that he could not be permitted to do so and that he was bound by the previous judgment, although it might be true that subsequent light or ingenuity might suggest some traverse which had not been taken. With regard to this case I would observe that it was a decision of the Full Court of Australia that caused estoppel by reason of *res judicata*. In the present case we are asked to say that a decision of the Board of Review on an appeal under section 70 of the Income Tax Ordinance (Cap. 188) is *res judicata* in respect to a matter to be decided under section 34 of the Estate Duty Ordinance (Cap. 187). I cannot regard *Hoystead v. Commissioner of Taxation* as supporting this contention.

On the other hand I consider that the case of *Commissioners of Inland Revenue v. Sneath*[1] is an authority that supports the contention that the matter is not *res judicata*. In this case it was held that a decision of the Commissioners for the Special Purpose of the Income Tax Acts in assessing super tax for a previous year that certain deductions can be made does not operate as a *res judicata* to prevent a contrary decision in assessing super tax for a later year. At pages 380-381 Lord Hanworth M.R. stated the conditions that must be fulfilled if an estoppel arising upon *res judicata* is to be effective as follows:—

> '' There must be a *lis inter partes* in which the point relied upon for establishing the estoppel was not merely incidentally, or collaterally, discussed and litigated, but was fundamental to the conclusion reached by the Court. The Court must be one of competent jurisdiction that has seisin of the case for the purpose of reaching a final decision *inter partes*, though it may be a private tribunal such as an arbitrators whose forum is a domestic one constituted by the parties themselves. ''

He then held that the assessment was final and conclusive between the parties only in relation to the assessment for the particular year for which it is made. So the decision of the Board of Review constituted under the Income Tax Ordinance can be regarded as final and conclusive between the Crown and the respondent as to the latter's income in regard to the particular year but not as to future years. This being so, the Board's decision upon any incidental question of fact or law, however necessary it may be for the purpose of ascertaining the income for the

[1] *(1932) 2 K. B. 362.*

year of assessment, cannot be conclusive in reference to the ascertainment of the respondent's income for any subsequent year of assessment with which the Board has nothing to do. Still less can it be regarded as creating an estoppel by means of *res judicata* in a matter that arises under a different enactment—the Estate Duty Ordinance. The decision of the Board was not a decision of a *lis inter partes* so as to create an estoppel by way of *res judicata*. The cases of *Broken Hill Proprietary Co., Ltd. v. Municipal Council of Broken Hill*[1] and *Sankaralinga Nadar v. Commissioner of Income Tax, Madras*[2] also lend support to this view. The District Judge was, therefore, correct in holding that the decision of the Board of Review of Income Tax is not *res judicata*.

The further point referred to us, (*b*), argued by Mr. Basnayake has not been strongly pressed. It is suggested that as Natchiappa Chettiar, the deceased, represented to the Commissioner of Estate Duty that his father Suppramaniam left no property, therefore the property possessed by Natchiappa Chettiar during his lifetime and left at his death was not ancestral but his own property. The plaintiff as executrix of Natchiappa Chettiar cannot, therefore, so it is argued, be heard to say that this property is property of a Hindu undivided family. There is no substance in this argument, particularly when it is borne in mind that the representation was made as the representative of Suppramaniam whereas the present representation is made by the executrix of Natchiappa Chettiar. This point also fails.

For the reasons I have given the appeal is dismissed with costs.

WIJEYEWARDENE J.—I agree.

Appeal dismissed.