1934 *Present :* **Macdonell C.J. and Dalton S.P.J.**

THEVAGNANASEKARAM *v.* KUPPAMMAL *et al.*

3-5—D. C. (Inty.) Colombo, 5,653.

Domicil—Indian Tamil settled in Ceylon—Acquisition of domicil of choice—Children born in Ceylon—Domicil of origin of child—Validing of Marriage—Ordinance No. 19 of 1907, s. 17.

Where a person claiming to be the wife of an intestate applied for administration to the District Court and agreed to go to trial on issues involving questions of her status,—

Held, that the party was not entitled afterwards to challenge the jurisdiction of the Court to give the decision invited by her, on the ground that there was no property of the deceased to be administered.

An Indian Tamil, M, came to Ceylon in 1850 and joined two of his brothers in a partnership business in Colombo, where he resided. He married in Ceylon, owned property, carried on business and continued to live at Colombo, save for occasional visits to India till his death in 1896.

His children, among whom was S, born in 1886, were all born in Ceylon. S married his niece (sister's daughter) in India in 1906, and after his marriage lived continuously in Ceylon till his death in 1931.

Held, that M had acquired a domicil of choice in Ceylon and that the domicil of origin of his son S was also in Ceylon.

Held, further, that S's marriage was invalid as being within the prohibited degrees of relationship under section 17 of Ordinance No. 19 of 1907.

THIS was an application for administration of the intestate estate of one Supramaniam Chetty, who died on January 24, 1931. The application was made by a person named Sellatchi, claiming to be the widow of the deceased on behalf of herself and her minor children. Supramaniam was the son of Muttucaruppen, who died in 1896 leaving three children—the deceased, a daughter Kaliamma who married one Kalimuttu Chetty and became by him the mother of the applicant Sellatchi, and another daughter Veeratha, mother of Vadivel who opposed the grant of letters on the ground that the marriage between Supramaniam and the applicant was invalid as being within the prohibited degrees of relationship. The learned District Judge held that the marriage was invalid under section 17 the Marriage Registration Ordinance, No. 19 of 1907.

N. E. Weerasooria, for substituted petitioner, appellant.—The District Judge was wrong in saying that the domicile of the deceased and of Sellatchi was a Ceylon domicile. The marriage took place in 1906; the Judge has not considered whether domicile was in India in 1906. The original member of the family not only came from India but the family in fact retain[1] their connection with India.

The Court has no jurisdiction to administer an estate which does not exist. See sections 516 and 524 of the Civil Procedure Code. Section 530 presupposes the existence of property of the intestate deceased—*vide* Forms 82 and 83 of the Code. In *Glasgow Navigation Co. v. Iron Ore Co.*[1] Lord Loreburn stated that " it is not the function of a Court of

[1] *(1910) A. C. 293.*

law to advise parties in the hypothetical case". The intestate was only a fiduciary, and on his death his interest devolved on the *fidei commissarii*, and there is no property left for administration. See section 70 of the Courts Ordinance and its proviso which was introduced as a result of the decision in *1 Bal. Rep. 51.*

On the question of domicile, see *Winans v. Attorney-General* [1]; domicile of choice is not acquired even after 25 years' residence. Also *Attorney-General v. Yule and Mercantile Bank of India* [2], on discharge of burden of proof *re* intention to change a domicil of origin.

[DALTON J.—Is there anything to prevent a person applying for letters of administration in the case of an estate below Rs. 2,500 in value?]

Nothing. But before order absolute is entered, the Court should be satisfied that there is an estate to be administered. See *(1898) 78 L.T 49;* application for letters of administration was not granted as the general statements of the applicant were groundless.

N. Nadarajah (with him *L. A. Rajapakse* and *Tiruchelvam*), for seventh, eighth, and ninth respondents.—On the question of domicile, see *Ramsay v. Liverpool Royal Infirmary* [3]; there is no change of domicile of origin in spite of express intention.

A marriage of uncle with niece is sanctioned by custom and valid in India. See *Gour's Hindu Code (1919 ed.), pp. 249 and 250.* Such marriages are valid in the United States of America except the New England States and Louisiana—*1 Burge's Foreign and Colonial Laws (1838 ed.), p. 189.*

The disability *re* incest imposed by Ordinance No. 19 of 1907 is to operate only as a local disability. See section 144 of *Story's Conflict of Laws.* A marriage unnatural according to the law of nature is unlawful everywhere; but a marriage, not unnatural according to the law of nature but only prohibited by statute, is not invalid everywhere. (*1 Burge's Foreign and Colonial Laws.*) The legislature of Ceylon has no jurisdiction to pass extra territorial laws.

V. Manicavasagar, for twelfth, thirteenth, and fourteenth respondents.—There is sufficient evidence that a valid marriage ceremony was performed between deceased and Shariffa Umma. The frequent maintenance applications were merely a device to get money.

H. V. Perera (with him *D. W. Fernando* and *D. S. Senanayake*), for fifth respondent.—(Counsel was not called upon to reply on the question of domicile.)

The question of an estate which must exist before it can be administered was not raised in the lower Court, even at a late stage. Even in the petition of appeal what the appellant asks for is a grant of letters of administration. At the same time she cannot be heard to say there is no estate to administer.

Assuming it is a question of jurisdiction of the Court, jurisdiction depends on the existence of certain facts. They cannot now be heard to say that the facts do not exist.

This is not a question of absolute jurisdiction of the Court, but of contingent jurisdiction. Section 70 of the Courts Ordinance has no

[1] *(1904) A. C. 287.* [2] *(1931) 145 L. T. 9.* [3] *(1930) A. C. 588.*

application to the present facts. That section deals with persons dying outside Ceylon. The District Court has multiple jurisdiction. Sometimes in an application for a judicial settlement various complications arise. In such an instance, where the parties acquiesce in putting such matters before a Court they cannot afterwards be heard to say that the Court was usurping jurisdiction, where such Court has both civil and testamentary jurisdiction. *Spenser-Bower on Estoppel, pp. 236 and 187.*

It is not required that the Judge should decide whether there is an estate. The Code recognizes that a mere declaration of a status may be made. The question as to what the property is can be gone into at any stage of the administration proceedings. Section 73 of the Courts Ordinance is the statutory recognition of waiver of an inquiry on the facts.

Counsel cited *Alagappa Chetty v. Arumugam Chetty*[1], *Pisani v. Attorney-General for Gibraltar*[2], *Baretto v. Rodrigues, Hukm Chand on Res Judicata p. 468.*

Re Shariffa Umma's appeal, the burden of proving a marriage was on the applicant. The petition in question is a public document, being part of the record in the maintenance case. All that might be said is that there is a little informality in the manner the document was produced. But since no objection was then made, no objection can now be taken on the ground of irregularity of procedure.

Weerasooria, in reply.—There was a protest by my client's counsel in the District Court that there was no estate to administer. Counsel also cited *Beaudry v. Mayor of Montreal*[4] and *Macintosh v. Simpkins*[5].

F. A. Tisseverasinghe (with him *E. C. Paul*), for eleventh, sixteenth, and seventeenth respondents.

Cur. adv. vult.

October 5, 1934. MACDONELL C.J.—

This was an action as to the intestate estate of one Supramaniam Chetty born on October 27, 1886, died January 24, 1931. Letters of Administration of his intestate estate were asked for by Sellatchi, claiming to be the widow of the deceased, on behalf of herself and her minor children (she herself died between conclusion of argument below and delivery, on November 9, 1933, of the judgment now appealed from, but her representative has been duly substituted on the record). A member of the family, Vadivel, petitioned against the grant of letters to Sellatchi on the ground that she was not lawfully married to the deceased Supramaniam. The family starts with one Muttucaruppen who died in 1896 and left by his second wife three children—the deceased Supramaniam, a daughter Kaliamma who married one Kalimuttu Chetty and became by him with other offspring the mother of the claimant Sellatchi, and another daughter Veeratha mother of the Vadivel who opposes the grant of letters to Sellatchi. Supramaniam, who according to his birth certificate was born in Colombo on October 27, 1886, is said to have married in India, on August 8, 1906, the woman Sellatchi, petitioner for letters of administration. It will be seen then

[1] *2 C. L. Rec. 202.*
[2] *L. R. 5 P. C. 516.*
[3] *35 Bom. 24.*
[4] *11 Moo. P. C. 393 at 426.*
[5] *84 L. T. 21.*

that the parties are related as follows: Vadivel who objects to the grant of letters is the nephew of the deceased Supramaniam and first cousin of Sellatchi, and Sellatchi herself was the niece of the deceased Supramaniam who therefore was her uncle, and they are all descendants of Muttucaruppen aforesaid. If a marriage at all, this marriage between the deceased Supramaniam and the petitioner Sellatchi was a marriage of uncle and niece. When the parties appeared before the learned District Judge they framed on September 11, 1931, the following two issues: (1) Was Sellatchi married to Supramaniam Chetty on or about August 8, 1906? (2) If so, is such marriage valid in law? The parties accepted these two issues and went to trial upon them, and the learned Judge found that there was no valid marriage between deceased and Sellatchi. From that decision Sellatchi and three brothers and sisters of hers bring the present appeal.

When the case had been part heard a certain Shariffa Umma filed petition on December 9, 1931, alleging that she was the widow of the deceased as having been married to him on July 23, 1919. She claims to have by the deceased two children, and she and her children were added as parties to the action on her cross-petition, she claiming under a will of the deceased dated November 5, 1930. The necessary issues as to the validity of her marriage were framed and agreed to. The learned District Judge found that there had been no marriage between this Shariffa Umma and the deceased, and from this decision she also appeals. These then were the issues before the Court of trial: Was Sellatchi married to the deceased, Was Shariffa Umma married to him; but before considering them it becomes necessary to dispose of a preliminary point raised before us on appeal though not to the Court of trial. It was this.

In the affidavit annexed to the petition Sellatchi gave a schedule of certain eight properties of the deceased, stating in that schedule that properties 1 to 4 were under bond of *fidei commissum* and properties 5 to 8 were under bond of another *fidei commissum*. The opponent of the grant of letters to her, her cousin Vadivel, also filed affidavit with a schedule annexed specifying the same eight properties and stating them to be under the same bonds of *fidei commissum*. It is to be noticed, however, that the eighth of the properties was a sum of Rs. 1,092.81 then in dispute in Court, dividends on which were payable to the person entitled under order of Court. The fact that these properties were under *fidei commissum* was opened to the Court of trial on the same day, September 11, 1931, that the issues were framed as to the validity of Sellatchi's marriage. On December 9, 1931, when the trial had commenced, certain other members of the family intervened denying the validity of Sellatchi's marriage but asking that a receiver should be appointed of the properties scheduled on the ground that the person then managing them—Kalimuttu, the father of Sellatchi herself—was not a fit person to manage them and that they should be placed in the hands of the Public Trustree as receiver. On December 15, 1931, this application for a receiver was further argued and all parties seem to have admitted in Court that the properties were subject to *fidei commissum*. On December 21, 1931, the Court made order on this application, the

relevant portions of which order are as follows: "In view of the title to the property which is sought to be administered, Counsel for the petitioner Sellatchi drew the attention of the Court to the position arising therefrom, namely, that there is no estate which requires administration", that is, as being all under *fidei commissum.* "This objection was sought to be met by Mr. Advocate Tisseverasinghe who appeared for some of the respondents (*i.e.*, those applying for a receiver) on the basis that the deceased died possessed of certain property consisting of the rents which had accrued during the month of his death amounting to over Rs. 1,400 and certain other property sufficient to make the administration of the estate necessary. It is too early at this stage without all the evidence before the Court to determine the quantum of the estate left by the deceased. The matter can be decided on at the final stage of distribution. If it should then turn out that the deceased had no administrable estate and that the proceedings for the administration were unnecessarily applied for, the Court will then make appropriate orders in respect of the costs of these proceedings. It seems to me that these proceedings have been initiated specially with a view to determine the question of heirship. Parties have agreed on certain issues to determine the questions and the inquiry has proceeded for some time. Any decision of the Court would be *res judicata* between the parties. As all parties claiming to be the heirs are before the Court it would probably be more convenient and less expensive to the parties that all matters in dispute including the question of heirship should be determined in these proceedings. The application for the appointment of a receiver is dismissed". The parties then went to trial on the two issues—validity of the marriage of Sellatchi, validity of the marriage of Shariffa Umma—and the learned Judge in due course gave his decisions on those issues, from which decisions the present appeals are now brought.

The record and the order just quoted from make the position clear. Parties agreed to the trial of these two issues, led evidence thereon at considerable length and argued their several cases to the learned Judge in the usual manner. The suggestion that in hearing and determining these issues the Court was doing something which it had no jurisdiction to do was never suggested to the Court of trial. After the appeal here had been argued at considerable length on behalf of Sellatchi and her children and in support of the validity of her marriage to the deceased, her counsel then for the first time raised the point that all the proceedings below were a nullity and empty words, on the ground that there was no estate to administer and that therefore the Court of trial had no jurisdiction.

I must be permitted to express my regret that this point, if it was going to be raised, was not raised at the proper time, namely, before the trial of the issues framed below, or at latest when Mr. Tisseverasinghe's clients intervened with their application for a receiver. By that moment at latest all the facts alleged with regard to these properties were in full possession of all the counsel engaged and it is difficult to believe that counsel for Sellatchi and her children had not by that time grasped the point now raised on their behalf. It should have been raised then and not later. Having been raised, however, it must be dealt with.

The argument is that there was no estate to administer. This does not seem a correct statement of the facts. Number 8 of the properties scheduled by the petitioner Sellatchi and by her opponent Vadivel specifies certain moneys in Court which can only be paid out by an order of Court. Before making that order the Court must determine who is entitled to those moneys, and proceedings have been brought in the estate of the deceased to enable that question to be answered. But furthermore there is the uncontradicted assertion that rents amounting to Rs. 1,400 have accrued due since the death of the deceased, and as to the right to these too, inquiry will also be necessary and an order of Court consequent on such inquiry. Even if it does eventually turn out that the two *fidei commissa* alleged to bind the properties sheduled are valid *fidei commissa,* as to which question so far there has not been a scrap of argument, still there will be the money in Court and the rents said to be in the hands of Kalimuttu, Sellatchi's father, order as to which will have to be made,—in effect, there will be an estate, even if a small one, to administer.

For myself I am doubtful whether an admission by all the parties concerned that the properties scheduled are under bonds of *fidei commissum* would oust the Court of its jurisdiction or absolve it from the duty of determining the validity of those *fidei commissa* and whether or not the lawful heirs of the deceased Suppramaniam are entitled, and if so, who are those lawful heirs, but on the facts disclosed it is perhaps unnecessary to decide this point.

It seems to me that the present objection can be determined on broad grounds. First of all the District Court is a Court of unlimited primary jurisdiction. It has power to determine questions as to the validity of a marriage or the legitimacy of children, just as much as it has power to wind up a deceased estate or to try an action for goods sold and delivered; Courts Ordinance, section 64. There is nothing in that section or in any other section in the Courts Ordinance dividing the jurisdiction of a District Court into separate and exclusive divisions, nothing that prevents a Court in an action ostensibly under a particular label from trying an issue outside that label provided that it has the parties interested in that issue before it and provided that they consent to its trying that issue. This seems to be clear from the constitution of the District Court. In England there is a division of the High Court called the Chancery Division which by law is given exclusive competence in certain matters, among them the execution of trusts and the dissolution of partnerships, that is to say, you may not commence a case involving either of these matters in some other division of that High Court, say the King's Bench. The constitution of our District Courts is different. A Judge when sitting in it has at any moment plenary jurisdiction. If the parties come before him with an action labelled, title to land, and it appears from the pleadings that that title to land cannot properly be determined without first determining an issue as to a trust under which that land is alleged to be held, then it would not be possible for the District Court to say, the Court is now sitting on a particular side or under a particular jurisdiction, that is, to try titles to land, you must bring this issue about trusts in a separate action before another division of the Court. It would be

the duty of the Court, supposing it was satisfied that it had the parties before it and that the parties were anxious to have the point as to the trust decided, to frame the appropriate issue as to the trust and to hear and determine the same; Civil Procedure Code, section 33, "Every regular action shall, as far as practicable, be so framed as to afford ground for a final decision upon the subjects in dispute and so to prevent further litigation concerning them". The present case is the ordinary testamentary action, that being its proper title, chapter XXVIII., Civil Procedure Code; is there any reason for saying it is not a 'regular action'? But by section 217 the Court has power by a decree or order to declare a right or status even without at the same time "affording any substantive relief or remedy". It was argued to us that to try this issue as to marriage and legitimacy was at the outside an irregularity in procedure and not usurpation of jurisdiction. I doubt it was even an irregularity. In a testamentary action where there is no will the Court has to determine who are the beneficiaries on that intestacy. In many cases the claims of those persons to be beneficiaries will depend on their being legitimate. It is natural therefore that questions as to legitimacy and therefore as to validity of marriages will come before a Court when trying a testamentary action.

Let us assume, what I am not certain of, that there was here an irregularity. In *Pisani v. Attorney-General for Gilbraltar* [1], the respondent had claimed certain land for the Crown making defendants all the parties interested. In the course of the case the respondent, the Attorney-General, came to the conclusion that he could not succeed in claiming the land for the Crown and accordingly dropped out of the case, consenting that the pleadings should be amended so as to enable the parties joined as defendants to litigate between themselves their respective rights to the lands which the respondent, the Attorney-General, had unsuccessfully claimed for the Crown. On this the Judicial Committee said as follows: "It is true that there was a deviation from the *cursus curiae*, but the Court had jurisdiction over the subject, and the assumption of the duty of another tribunal is not involved in the question. Departures from ordinary practice by consent are of every day occurrence; but unless there is an attempt to give the Court a jurisdiction which it does not possess, or something occurs which is such a violent strain upon its procedure that it is puts it entirely out of its course, so that a Court of Appeal cannot properly review the decision, such departures have never been held to deprive either of the parties of the right of appeal". In effect the Court there had jurisdiction in spite of the irregularity. We have a case of our own on the same matter, *Alagappa Chetty v. Arumugam Chetty* [2], the gist of which is to be found in a quotation from an Indian case at *2 C. L. R. p. 203*, "Where jurisdiction over the subject-matters exists requiring only to be invoked in the right way, the party who has invited or allowed the Court to exercise it in a wrong way, cannot afterwards turn round to challenge the legality of proceedings due to his own invitation or negligence". The case *Jose Antonio Baretto v. Francisco Antonio Rodrigues* in *35 Bombay, p. 24*, cited to us, is also to the point. There the parties had agreed to the value of the

[1] *L. R. 5 P. C. 516.* [2] *2 C. L. R. 202.*

property in dispute, and their valuation would have brought it within the competence of a certain Court. In actual fact at the time the property was worth more, whereby the case would not have been in the competence of that lower Court but of a higher Court, and it was argued that the lower Court had no jurisdiction to try the case. It was held the other way in the following words, "But it is urged that parties cannot by consent give jurisdiction where none exists. That is so where the law confers no jurisdiction. Here the consent is not given to jurisdiction where none exists. Here the consent related to the question of the market value. No doubt the question of jurisdiction depended on that question. But all that the law has said is that a suit relating to property, the market value of which is of or exceeds a certain amount (Rs. 5,000), shall not be tried by a Second Class Subordinate Judge. To bring that law into operation, the market value must be determined by evidence, where it is in issue. If it is not in issue and is taken to be Rs. 5,000 or more, there is no jurisdiction and parties by consent cannot give it. But where it is not in issue and parties agree, expressly or by conduct to treat the suit as one for property of lesser value than Rs. 5,000, the maxim of law does not apply. The law does not prevent parties from waiving inquiry by the Court as to facts necessary for the determination of the question as to jurisdiction, where that question depends on facts to be ascertained".

It has been said above that it is doubtful whether there was even any irregularity. In any event I would say that the parties taking this objection were estopped by their conduct in the Court below, namely, their agreeing to go to trial on the issues there framed. It has been urged however that this was not an estoppel since it was (*Spenser-Bower on Estoppel, p. 245*) "a proceeding or step in litigation which the litigant is compelled to take as the only possiblle means of raising the objection from setting up which he is sought to be estopped". In other words, we must regard the consent of the parties to go to trial on the issues below as having been given under species of *force majeure*. The cases in *Spencer-Bower* in support of the proposition just quoted do not seem to bear out the construction sought to be put upon it by Counsel supporting this objection. There the cases were those of a party coming forward to object to some process served upon him which he claimed was irregular, and it was held quite rightly that he could not be supposed to have waived that irregularity by coming forward to show that the irregularity existed. The present case is quite different. The parties were under no compulsion whatever to agree to this issue, and agreeing to it could not possibly be described as "the only possible means of raising the objection from setting up which they are sought to be estopped". I do not think that the passage cited from *Spencer-Bower* or the cases therein referred to help the present objection.

I would answer then the objection raised that the Court had no jurisdiction to decide the issues the parties went to trial upon by saying, firstly, that on the facts there was an estate, though a small one, to administer, secondly, that admission by the parties that property scheduled was under *fidei commissum* does not seem to me conclusive in the entire absence of evidence and argument thereon, and thirdly, that the District

Court being confessedly a Court of plenary jurisdiction and all parties having expressly consented to go to trial on these issues involving questions of status, it is not possible for any of them now to resile and to say that though they consented to the Judge trying these issues they can now avoid the effect of that consent and claim that his decision thereon is a nullity.

This preliminary point, namely, that the Court had no jurisdiction, must therefore be rejected.

I now come to the appeals themselves, that of Sellatchi, or rather her representative, claiming that her marriage to the deceased of August 8, 1906, was a valid one, and that of Shariffa Umma claiming that her marriage of May 23, 1919, was valid. If Sellatchi's marriage was valid, then, as she was alive till 1933, the marriage of deceased of Shariffa Umma in 1919, would clearly be invalid, but Shariffa Umma states that the Sellatchi's marriage was itself invalid and that the deceased was legally a bachelor when in May, 1919, he married her.

First as to the marriage alleged to have been celebrated between the deceased and Sellatchi on August 8, 1906. The law on the subject is found in Ordinance No. 19 of 1907, section 17, which says: "No marriage shall be valid (*b*) where the female shall be sister of the male either by the full or the half blood, or the daughter of his brother or of his sister by the full or the half blood". Here the female party to the marriage was daughter of the male's sister by the full blood, his niece, as has been said. Section 18 of the same Ordinance says "Any marriage or cohabitation between parties standing towards each other in any of the above enumerated degrees of relationship shall be deemed to be an offence and shall be punishable with imprisonment, simple or rigorous, for any period not exceeding one year". It will be seen then that a marriage between parties related as were the petitioner Sellatchi and the deceased is by the statute law of the Island invalid and a punishable offence.

The facts of the case seem to have been that the deceased Supramaniam was at the time of the marriage very much under the influence of his brother-in-law Kalimuttu, the father of the petitioner Sellatchi. Kalimuttu thought that some other members of the family were trying to provide a wife for Supramaniam, under age though he was, and he therefore induced this marriage of his daughter Sellatchi to his brother-in-law, the deceased Supramaniam. Kalimuttu himself made an affidavit on July 6, 1906, that is just a month before the marriage, paragraph 3 of which says as follows: "The minor Supramaniam having expressed a desire to get married to Sellatchi I commenced to make preparations for the marriage. When such preparations were being made I was noticed to appear before this Court and did so appear on May 25, 1906. On the said date the Court informed me that a marriage between the said Sellatchi and Supramaniam would be illegal in Ceylon and advised me to consult counsel before consenting to any such marriage. Beyond taking counsel's advice as to the legality of the marriage between the said two parties I took no steps whatever in the matter. It is not true that I have made preparations to remove the said Supramaniam outside the jurisdiction of this Court to have him married

to the said Sellatchi". In the following month he took his daughter Sellatchi over to India accompanied by Supramaniam, and the two parties were married by Hindu rites in India on August 8, 1906, as stated.

The argument on the validity of this marriage was put in this way. The parties to the marriage were Indian Tamils. Their domicile of origin was therefore India and there is some evidence that a marriage in India between uncle and niece, being Tamils, would be lawful. There was no evidence, it was urged, that the parties had either abandoned their Indian domicile of origin or become domiciled in Ceylon, then the marriage, if good in the domicile of the parties, would have to be good in Ceylon since the domicile of the parties and of the marriage, Indian, would attach to them and follow them, living in Ceylon or elsewhere. Supramaniam was under age at the time when he married (a horoscope was produced according to which he would have been born in 1885 and would have been of age when the marriage was celebrated, but the horoscope, according to the Judge, bore marks of having been tampered with and he preferred to accept the birth certificate of Supramaniam which showed him to have been born on October 27, 1886, and so to have been not quite 20 when he married). If the deceased Supramaniam was under age when he married he could not then have acquired a domicile of choice. His domicile of origin, it was argued, was Indian and there was not sufficient evidence that he ever at any time did anything from which it could be inferred that he had abandoned his Indian domicile of origin and acquired a domicile in Ceylon. There was evidence that there is a house in South India, at Pandakudi, which is called the family house of the particular family of Tamils from which the deceased Supramaniam descends, and there was also evidence that he, like other members of his family, used from time to time to pay visits to the family house at Pandakudi. It may be conceded that the ceremonies at the marriage between the deceased Supramaniam and Sellatchi were sufficient to form a valid marriage according to Hindu rites.

Now the facts with regard to the family of Supramaniam seem to be as follows. His own father was one Muttucaruppen Chetty who joined two brothers of his in a partnership business in Ceylon as far back as 1850. Muttucaruppen Chetty was therefore living in and doing business in Ceylon as far back as that date. This was at Colombo and apparently at Silversmith Street in Hulftsdorp where the family has resided and owned property continually from 1850 till the present day. Muttucaruppen himself is known to have bought property in Silversmith Street as far back as 1861. He married two wives in Ceylon, the second wife being the mother of the deceased Supramaniam. All his children seem to have been born in Ceylon, all his business interests seem to have been in Ceylon, and save for occasional visits to India he seems to have lived the whole of the rest of his life in Ceylon, and to have had the same home in Ceylon, at Silversmith Street in Colombo, from 1850, or at latest from 1861, to his death on October 2, 1896. At the time he died Supramaniam would be about 10 years old, having been born in 1886 and his domicile of origin would be that of his father Muttucaruppen. He seems to have been passed into the guardianship of his brother-in-law Kalimuttu, the father of the petitioner Sellatchi, and all the evidence

about Kalimuttu is that he likewise lived in Silversmith Street and that he had a wife, children, and business interests in Ceylon. Supramaniam himself seems after his marriage in 1906 to have lived continually in Ceylon, save for occasional visits to India, until his death in January, 1931. He is said to have been idle and to have had intemperate habits and not to have done any business, but he continued to live on the property which his family had bought in Silversmith Street and where he had been born and there his children were born likewise. The family had been settled in Ceylon since 1850 and there is no evidence to show that the deceased Supramaniam showed any intention of breaking away from the home he had made for himself in Silversmith Street, Colombo. Even assuming, what is by no means proved, that Supramaniam's domicile of origin was India and that if he acquired a Ceylon domicile it would be a domicile of choice acquired by him after he became of age in 1907, which was after his marriage, still I should be inclined to say that his whole course of conduct throughout his life showed an intention to live and to die in Ceylon. His conduct is strong evidence of an *animus manendi* and also of an *animus non revertendi*, and if so, that he had acquired a domicile of choice in Ceylon. This, however, would make his domicile at the time of his marriage Indian, and we therefore have to ask the question, was his domicile of origin Indian? The evidence seems to me very strong that his domicile of origin was not Indian but of Ceylon. Muttucaruppen, his father, had acquired property in Ceylon, done business there, lived there, married and begotten children there, always living in the same place and even the same house, long before Supramaniam was born. There is no evidence that he had any business elsewhere than in Ceylon or any several property elsewhere. Let it be conceded that he was born in India and that he had certain undefined proprietary rights to the family house at Pandakudi. No doubt also he went there from time to time. But the evidence seems to me decisive that Muttucaruppen, and Indian Tamil, had acquired a Ceylon domicile; there was the undeniable *factum*, continuous residence in one and the same house for at least 35 years, perhaps more, and it, and the accompanying conduct as to family and business matters, raise the presumption of an *animus manendi et non revertendi* which is too strong to be rejected and against which there is practically no evidence. If then Muttucaruppen had acquired a domicile of choice in Ceylon, the domicile of origin of his son Supramaniam was that of Ceylon also. To hold otherwise would be to substitute conjecture for fact.

There is no difficulty then in agreeing with the learned Judge on this point and in holding with him that this so-called marriage in August, 1906, between Supramaniam and Sellatchi being a marriage prohibited by the country in which the purported husband had his domicile was an invalid marriage according to the law of the Island, and that the children born of that marriage are not legitimate. If then the conclusion of the learned Judge is correct that the domicile of this so-called marriage was of Ceylon, it is unnecessary to inquire whether this marriage, being one not only prohibited but penalized by the law of the Island, could have been held valid if it had been shown that Supramaniam's domicile at the

time of the purported marriage was Indian. On the findings as to the facts of domicile it becomes unnecessary to pronounce on this point.

It will be observed how very close the facts of the present issue are to those in *In re de Wilton*[1]. There the male party to the marriage was a Jew and the maternal uncle of the woman whom he wished to marry, herself a Jewess by blood but brought up as a Christian. The parties "went to Wiesbaden, in Germany, where on August 20, 1876, they went through the form of civil marriage and afterwards married according to the practice and custom of the Jews. At that time Miss de Wilton (the wife) had not been formally admitted into the Jewish faith but she was so admitted at Paris on September 17, 1876, and afterwards, on the same date, she therefore went through the form of marriage with Mr. Montefiore according to the Jewish custom and practice. The evidence showed that such a marriage was valid according to the law in force at Wiesbaden, and also that it was valid according to the Jewish law, provided at the time of the ceremony both the contracting parties were adherents of the Jewish faith". The parties, it must be noticed, were domiciled in England, and the Marriage Act of 1835 (5 & 6 Wm. IV, c. 54) declares absolutely void any marriage between persons of their degree of consanguinity. It was argued that that statute did not apply to them being Jews, and it will be remembered that incest though it had long been an offence in England against the ecclesiastical law did not become punishable by the criminal law until the Statute of 1908—Punishment of Incest Act, 1908 (Edw. VII, c. 45). In the *de Wilton Case* it was argued that the Act of 1835 did not apply to these persons because the Marriage Act of 1836 (6 & 7 Wm. IV, c. 85, section 2), enacted that persons professing the Jewish religion may continue to contract and solemnize marriage according to the usages of the said persons, and it was argued that the legislature had "treated as valid marriages contracted in accordance with the rules of the Jewish law, not merely as regards the form of marriage but also as to the capacity of the contracting parties". Stirling J. who tried the case rejected this argument, holding that the Statute of 1836 dealt merely with matter of form but not with the capacity of the parties. He held therefore that the marriage in question was not valid according to English law. Our own Ordinance makes the present case a stronger one, for it not merely declares the marriage to be invalid but also punishes with imprisonment the person who is contracting it, or even cohabiting, if within the prohibited degree.

There remains to be considered the claims of the petitioner Shariffa Umma. She was by birth a Muslim who seems to have become the mistress of the deceased Supramaniam about the year 1909, and to have had children by him. As his marriage of 1906 with Sellatchi was an invalid one, he was in the eye of the law a bachelor at the time when he formed this connection with the petitioner Shariffa Umma and could therefore legally marry her. She gave evidence that she from being a Muslim became a Hindu and that she was married to Supramaniam "12 or 13 years ago in the month of April, this may have been in 1919. After our marriage I bore him one child". She describes the ceremonies performed at the marriage and calls as a witness a certain Parameswara

[1] *(1900) 2 Ch. 481.*

Aiyar who deposes to having performed the marriage ceremonies between her and the deceased Supramaniam. He describes himself as a Brahmin but admits that he is not a Kurukkal. His evidence, to read, is not satisfactory. He said at one part of his evidence, both in English and later in Tamil, that the ceremonies he performed were not sufficient to constitute a valid Hindu marriage, but immediately afterwards he said they were sufficient. He said that the *omam* ceremony was one of the essential ceremonies in connection with the marriage but that he did not perform the *omam* ceremony. He also says: "I did not make inquiries as to whether Supramaniam was previously married. I did not know that the woman he was marrying was a Muslim nor did I know what nationality she was . . . . If I knew she was a Muslim I would have performed the ceremony which would make her a convert and then I would have performed the religious ceremony". Later he says that in a temple he could not perform *poojahs* because he is not qualified as a Kurukkal, but that at this marriage he did perform certain *poojahs*. He also said that he did not ask the woman what her father's name was and that "it is necessary to ascertain three generations in such cases, but I did not do it in this case". He was also quite vague as to when he performed this marriage ceremony, merely saying that it was 12 or 13 years ago. You cannot wonder that the learned Judge rejected the testimony of this witness and of Shariffa herself and held it not proved that any ceremonies of marriage were gone through between the deceased Supramaniam and the petitioner Shariffa Umma. He therefore rejected her petition to be held the widow of the deceased Supramaniam.

There is however one unsatisfactory portion of his findings on this point. The petitioner Shariffa Umma had on June 29, 1918, presumably before the date when she claims to have been married to the deceased Supramaniam, instituted in the Colombo Police Court action No. 11,054 against the deceased Supramaniam for the maintenance of the children she had borne him. She obtained an admission by him of paternity and an order for the maintenance of her children on July 10, 1918, and at various times afterwards, notably between 1925 to 1930, she obtained various orders and distress warrants against the deceased Supramaniam for the payment of arrears under the original order. She gave evidence in that case No. 11,054 on more than one occasion and nowhere at any time stated that she was married to the deceased Supramaniam. In the record of this maintenance case No. 11,054 there is a petition of June 30, 1923, said to have been presented by this petitioner Shariffa Umma and marked by her, the mark being witnessed, in which she describes herself as the 'kept mistress' of Supramaniam. This petition was put to her in cross-examination and she flatly denied any knowledge of it; she had not sent it at all. The learned Judge overlooking the fact that it was not property proved that this petition was sent by her, refers to it in his judgment evidently as one of his reasons for disbelieving her story. As the petition was not proved, this is a misdirection on the evidence, and the question then arises whether his rejection of her petition to be pronounced widow of the deceased ought not formally to be set aside and that issue sent back for retrial. I have felt some doubt on the point,

but I think on the whole that there is sufficient evidence to justify the conclusion of the learned Judge that her marriage to the deceased Supramaniam is not proved. The notes of her evidence suggest that she was not a satisfactory witness. She denies having asked on February 4, 1927, for a distress warrant. It is perfectly clear from the record of the case No. 11,054 that she did make such an application on that date, and she admits further that she did not in any one of her applications say that she was lawfully married to Supramaniam or that she claimed maintenance for herself on the ground that she was lawfully married to him. Having regard to the very vague and unsatisfactory evidence by her and on her behalf as to her alleged marriage by Hindu rites to the deceased Supramaniam, I think the learned Judge was justified in finding that no such marriage had been proved, and if so it would be a waste of time to send the case back for re-trial on this issue.

In the event then each of the appeals fails: that of Sellatchi claiming that her marriage to the deceased Supramaniam on August 8, 1906, was valid, and that of Shariffa Umma that her alleged marriage to the deceased Supramaniam in some uncertain year, perhaps 1919, did take place and was valid.

For the above reasons I am of opinion that these appeals must be dismissed with costs as against the appellants, that is to say against the representative of the petitioner Sellatchi and against her brothers and sisters, the seventh, eighth, and ninth respondents in No. 5,653, themselves appellants in the appeal No. 4 now before us, and against Shariffa Umma, appellant in the appeal No. 5 now before us.

DALTON S.P.J.—

These three appeals, arising out of two testamentary proceedings in respect of the estate of the late Muttucaruppen Chetty Supramaniam Chetty, have been amalgamated and heard together. Appellant in No. 3 appeal is Kalimuttu Chetty Thevagnanasekaram, substituted petitioner for Kalimuttu Chetty Sellatchi (whom I will hereinafter refer to as Sellatchi), now deceased, who was the petitioner in case No. 5,653, stating she was the widow of the deceased Supramaniam Chetty, and asking for letters of administration of his estate. Her petition was rejected, hence her appeal.

A second petition for letters of administration, No. 5,667, was presented by Pitche Chetty Vadivel Chetty, a nephew of the deceased Supramaniam Chetty, asking for the issue of letters of administration of the estate to him, on the footing that Supramaniam Chetty had died unmarried and intestate. To that petition he made Sellatchi and three of her brothers and sister respondents (Nos. 1, 2, 3, and 4) on the footing that they were some of the heirs of the deceased Supramaniam Chetty, being the children of Kaliamma, a sister of Supramaniam Chetty, by her marriage with Kalimuttu Chetty. Further respondents to this petition were three other grandchildren (respondents Nos. 5, 6, and 7) of Muttucaruppan Chetty, the father of the deceased Supramaniam Chetty, by his first wife. Vadivel Chetty was successful in his petition, and appeal No. 4 is by the second, third, and fourth respondents thereto, two brothers and a sister of Sellatchi, against the order of the Court below.

The appellants in this appeal (No. 4), it is to be noted, prefer to support their sister's claim in appeal No. 3. If she is successful, they stand to gain no material benefit for themselves. On the other hand, if appeal No. 3 is dismissed on the ground that there was no valid marriage between their sister and the deceased, they stand to benefit as some of the heirs to Supramaniam Chetty, although probably not to any great extent. It is perhaps natural that they would prefer to see the validity of the marriage and the legitimacy of their sister's children upheld.

The third appeal (No. 5) is by a woman named Shariffa Umma *alias* Selatchi. She filed a. petition, which was not separately numbered, on December 9, 1931, after the commencement of the inquiry on petitions Nos. 5,653 and 5,667, purporting to produce at the same time a document alleged to be the last will of the deceased Supramaniam Chetty, and asking that letters of administration with the will annexed be issued to her as the widow of the deceased. She stated in her evidence her marriage to the deceased took place about the year 1919. Order was made on December 9, 1931, by the trial Judge on her petition that she be admitted as a party to the proceedings that had opened on the two earlier petitions, for the purpose of establishing the status she claimed, since the Court was then primarily concerned with the question who was entitled to administer the estate. For the proof of the document, however, as the last will of the deceased she was directed to commence separate proceedings. That document has not been produced in these proceedings and one is therefore not aware of the contents of it. Shariffa Umma accordingly took part in the inquiry and led evidence to establish her alleged marriage to the deceased. The trial Judge, however, has found against her and as a result she has appealed, making all the other parties respondents to her appeal.

The first question to be answered in these appeals is whether Supramaniam Chetty was domiciled in Ceylon at the time of his marriage, on or about August 8, 1906, to Sellatchi. It is admitted that Sellatchi was the daughter of his full sister Kaliamma and therefore the niece of Supràmaniam Chetty. By section 17 of the Marriage Registration Ordinance, 1907, it is enacted amongst other things that no marriage shall be valid where the female shall be daughter of the sister of the male by the full or half blood. By section 18 it is enacted that any marriage or cohabitation between parties standing towards each other in the prohibited degrees of relationship shall be deemed to be an offence punishable by one year's imprisonment. The marginal note to section 18 states the offence is incest. For Sellatchi it was pleaded that Supramaniam Chetty's domicile at the time of the marriage was India, where it is alleged a marriage between uncle and niece is lawful, and therefore the marriage was a legal one which will be recognized by the Courts in Ceylon. If it was a legal marriage, then the alleged marriage of Supramaniam Chetty with Shariffa Umma, if there ever was any marriage ceremony performed between them, was a bigamous one.

At the commencement of the proceedings in the lower Court on September 11, 1931, on the first two petitions, all the parties then before the Court accepted two issues, upon which the case should go to trial. Decree *nisi* appears to have been granted to both Sellatchi and Vadivel

Chetty under date May 13 and May 19, 1931, respectively. These issues were suggested by counsel for Sellatchi after he had opened his case, and were as follows:—

(1) Was Sellatchi married to Supramaniam Chetty on or about August 8, 1906?

(2) If so, is such marriage valid in law?

The trial Judge has found that a marriage was performed between these two parties in India in 1906, but that they had crossed from Ceylon to India for the purpose, that they both had a Ceylon domicile at the time, and that both being subject to the laws of Ceylon, the marriage was not valid. Whether or not the alleged marriage was valid according to the laws in India the trial Judge stated he had no sufficient material before him to decide.

It has been urged before us that the trial Judge's finding that the domicile of Supramaniam Chetty in August, 1906, was Ceylon was not justified on the evidence.

It is common ground, I think, that Supramaniam Chetty was what is called in Ceylon an Indian Tamil. This term seems to be very commonly used to distinguish Tamils, who or whose progenitors have come to Ceylon from India in recent or fairly recent times, from Jaffna Tamils, who have been resident in the Northern Province of Ceylon for many centuries. No assistance is to be obtained in this case from the description of Indian Tamil being applied either to Supramaniam Chetty or to his father.

Muttucaruppen Chetty, the father of Supramaniam Chetty, appears to have been born in India. He had a brother named Saravanar Chetty who came to Ceylon about 1830, and started a business in oil and other goods in Colombo. The family belonged to the oil-monger caste. He was joined there by his two brothers Chidambaram Chetty and Muttucaruppan Chetty in 1850 and they continued in the business in co-partnership, acquiring land and other property. Saravanar Chetty is stated to have purchased property in Hulftsdorp in 1844. In 1861 Muttucaruppen Chetty himself purchased a property, a house and garden, at Hulftsdorp (exhibit P 11), being described therein as of Colombo. In 1868 he let on lease (exhibit R 7) to one Velayutam Chetty for four years three contiguous portions of land and a house in Silversmith Lane, Colombo. In this deed he is also described as of Colombo. There is evidence that he married his first wife in Ceylon where she died in 1869. He married a second time on September 7, 1869, in Colombo, being described at the time as a trader and resident at Vansanden Lane, Colombo. Children were born to them in 1874, 1881, and 1886. In 1874, in the certificate, Muttucaruppen Chetty himself being the informant, he is described as a trader residing at Silversmith Street, which is in Hulftsdorp, Colombo. In 1881 he gives himself the same description and residence. His son Supramaniam Chetty was born on October 27, 1886, also at Silversmith Street, Colombo, the informant of the birth for purpose of registration being his father, who gives the same description he had given in 1874 and 1881. There is evidence that he continuously resided at the house in Silversmith Street and

carried on business there during these years and thereafter. He died in October, 1896, in a house in Silversmith Lane, and was buried or cremated in Colombo. Prior to his death, he and his wife had executed a joint will, as the learned trial Judge points out following Ceylon practice, in which both are described as of Silversmith Street, Colombo. They appear to have assumed that they were married in community of property in accordance with the law in force in Ceylon at the time of the marriage.

The evidence that Muttucaruppen Chetty owned property in India during the time he resided in Colombo has been examined by the trial Judge, and he comes to the conclusion that it is not satisfactory. He also holds that the attempt to prove he retained what is called an ancestral home there has failed. That he would pay visits to India on occasion is not surprising, although the evidence that he did so is not very strong. In his day probably such visits would not be so frequent as they might be at the present time with the present facilities for travelling, but the fact that Muttucaruppen Chetty did on occasion pay visits to India would not detract from the very strong evidence led to show that he had acquired a Ceylon domicile at the time of his death in 1896, and a long time before that year. The evidence, I think, conclusively establishes an intention to effect a change of domicile and to make Ceylon, where his business was, his permanent home. From all the circumstances one must, I think, infer a fixed and settled purpose of abandoning his Indian domicile and settling in Ceylon. There is ample evidence, in my opinion, to support the learned Judge's conclusion on this point, and I see no reason whatsoever to disagree with it.

With regard to Supramaniam Chetty himself, as opposed to his father, the evidence shows that his domicile of origin was Ceylon and that he never acquired any other domicile. During his minority after his father's death Kalimuttu Chetty, father of Sellatchi, became his guardian and curator, at any rate from 1899 onwards, the latter eventually obtaining his discharge in 1907. There can, I think, be no doubt that Supramaniam Chetty was a minor at the time he went through the marriage ceremony in 1906 with Sellatchi. The marriage, as the evidence shows, was arranged by Kalimuttu himself, although he had due warning as to the illegality of the proposed marriage. The evidence further shows that Supramaniam Chetty continually resided in Colombo up to the time of the marriage and that he returned to Colombo from India very soon after the marriage. He thereafter appears to have been a ne'er-do-well and had no occupation but he continued to reside in Colombo. All his children by Sellatchi were born in Ceylon and he died here in January, 1931. That he may have paid visits to India on occasion again is not surprising, for it is quite natural as Sellatchi states that she kept in touch with their relatives in India. The trial Judge is satisfied, however, on the evidence that at the date of her marriage she also had a Ceylon domicile and that she is not entirely reliable on all points in her evidence. Although the question of her domicile, as he points out, is immaterial, one is, in my opinion, compelled by the evidence to agree with his conclusion on this question.

It was urged on the appeals that the trial Judge had not had regard to the evidence that from August, 1906, to January, 1931, all the relatives took up the position that Supramaniam Chetty and Sellatchi were legally married. There is no doubt that the parties were regarded as husband and wife. There are the partition actions in 1910, 1917, and 1923, between members of the family including Vadivel Chetty, who at any rate in 1923 was a major, in which the fact of the marriage is relied upon and not contested. I am unable to agree, however, that these circumstances have been overlooked, nor do I think they are in all the circumstances of very much assistance, especially having regard to the very strong evidence to which I have referred, and upon which the trial Judge has relied on the question of domicile. Whether or not Vadivel Chetty was aware in 1923 of the circumstances upon which he now relies there is nothing to show. The statement of Supramaniam Chetty himself in 1907 in exhibit P 21 that he was married to Sellatchi was solely for the purpose of taking over his property and of granting Kalimuttu Chetty, his guardian and curator, a discharge. Supramaniam Chetty may well have thought he was legally married. No question was then raised by the parties to those proceedings as to the validity of his marriage, nor was it necessary for the Court, in the circumstances, to consider any such question.

The personal law then of both Supramaniam Chetty and Sellatchi at the time of this marriage between them in India was the law of Ceylon. By that law they were under an incapacity to contract it in respect of the prohibited degrees of relationship, as laid down by section 17 of the Marriage Ordinance referred to. The marriage was therefore invalid (see *Westlake's Private International Law, 7th ed., p. 57*, and cases there cited), for it cannot be brought within any of the exceptions there mentioned. In the result therefore, in my opinion, the trial Judge has answered the two issues correctly, and the petition of Sellatchi was rightly refused, the decree *nisi* in her favour being set aside.

Another matter argued on these appeals, on behalf of the substituted appellant in No. 3 appeal and the appellants in No. 4 appeal, was to the effect that there was no proof before the trial Judge that there was any estate of the deceased Supramaniam Chetty to be administered, and therefore the Court had no jurisdiction in testamentary proceedings to go into any further question such as those raised in the two issues framed. His power to hear the petitions was based, it is urged, upon the proof of the existence of an estate to be administered. If that proof was not forthcoming, he had no power or authority in these proceedings to determine any further questions, such as the right to administration. This ground is, I think there is good reason for saying, raised now for the first time in order to give the parties a second opportunity of having the validity of the marriage tested in an ordinary action, since the finding of the trial Judge in these proceedings is against the validity of the marriage.

Sellatchi came in to Court asking for letters of administration, stating there was an estate to be administered, and she obtained an order *nisi* on her petition. She stated in her affidavit of May 13, 1931, that, so far as she had been able to ascertain, the schedule to her affidavit contained

particulars of the property of the deceased. Eight items of property are set out, No. 1 to No. 7 being immovable property and No. 8 a sum of money in Court. She states that all these properties are subject to *fidei commissa.* It is strange that there is no reference in the schedule to any movable property such as jewellery, household furniture, or cash, which it is very difficult to think Supramaniam Chetty would not have possessed at the time of his death.

When the hearing of the two petitions was opened on September 11, 1931, counsel for Sellatchi put his case before the Court, and all the parties present on that date, including the appellants in appeal No. 4 who were represented by counsel, agreed that the case should go to trial on the two issues framed. They were satisfied then that there was an estate to be administered, and that for the purpose of deciding who was entitled to receive letters of administration, it was necessary to decide whether the marriage between Sellatchi and the deceased was valid. That issue it is not disputed the Court had jurisdiction to try in testamentary proceedings, under the Civil Procedure Code.

Evidence was then led upon these two issues, when on December 10, 1931, an application was made on behalf of one of the respondents to Sellatchi's petition, namely, No. 10, Ramasamy Chetty Saravanamuttu Chetty (who has since died), asking that the Public Trustee be appointed receiver of the rents and profits derived from the properties mentioned in the schedule to Sellatchi's affidavit, which were stated to be yielding a monthly income of about Rs. 1,458. The allegation made was to the effect that Kalimuttu Chetty, the father of Sellatchi, was in possession of all the properties and had been collecting the rents without keeping proper accounts, and that it was desirable that an independent and competent person be appointed receiver. One of the affidavits in support of this application was made by Doresamy Sivaperumal, the fourth added respondent to Sellatchi's original petition and the fifteenth respondent to her petition of appeal. Amongst other things he deposed to the fact that the deceased Supramaniam Chetty died possessed of properties in his absolute right and also of properties burdened with a *fidei commissum.*

When Saravanamuttu Chetty's application for a receiver came before the Court, it was also supported by Vadivel Chetty, the petitioner in case No. 5,667, for whom Mr. A. E. Keuneman appeared in the lower Court. The application was opposed on behalf of Sellatchi and her brothers and sister. In the course of the argument that followed it was again stated that the properties were subject to a *fidei commissum,* the result in that event being that the moment Supramaniam Chetty died the properties devolved on the heirs by virtue of the will or deed creating the *fidei commissum.* The argument was then advanced, in opposition to the request for a receiver, that in these circumstances the deceased left no property to be administered. This argument appears to have been adopted even by counsel who appeared in the lower Court for Sellatchi, and he asked the Court to consider whether it would be useful to continue the proceedings for the appointment of an administrator. It is to be noted, however, that he was then in possession of exactly

the same information as he had at the opening of the inquiry. He never at any stage suggested the Court could not proceed with the inquiry, nor did he ask for leave to withdraw his petition for administration.

In reply to the argument that there had been no disclosure of any estate to be administered, attention was called to the fact that the deceased died possessed of certain property consisting of rents which had accrued during the month of his death, amounting to over Rs. 1,400. He had died on January 24, 1931, and rents for that month, to the larger portion of which he was entitled, would not in the ordinary course be paid at any rate before the end of the month. It was also urged that he had also left other property and in this connection one may call attention to item 8 in the schedule, a sum of money deposited in the District Court, subject, it is stated, to the *fidei commissum* referred to at the end of the schedule. The deceased would be entitled to the dividends payable on this sum, which are paid out by the Kachcheri twice a year. We are informed that the usual practice, which would be well known to the learned trial Judge, in such cases is for the dividends to be paid out some two months or so after June and December each year. In those circumstances there would at the date of the death of the deceased also be more than half a year's interest on this sum due to him, which would be payable to his estate. It is most unlikely that the Kachcheri would pay any sum due to a person not clothed with proper authority to receive it and able to give an effective discharge.

At the termination of these arguments the application for the appointment of a receiver was dismissed. The learned Judge called attention to the fact that at that stage it was too early to determine the question of the quantum of the estate left by the deceased. He pointed out that the parties had all agreed to certain issues being first decided to determine the question of the right to administration, and the inquiry had proceeded on those issues. Should it eventually turn out that there was no administrable estate shown to exist then the matter could be dealt with by an appropriate order. The petitioners, however, had come into Court and had both obtained an order *nisi* on *primâ facie* proof of an administrable estate existing, and there was certainly at that stage no evidence to the contrary.

The inquiry thereafter proceeded on, and eventually the trail Judge came to a finding upon the issues agreed upon. In the course of his judgment thereon he came to the conclusion that on the evidence so far led before him there was an estate to be administered, although he describes it as very little. There was undoubtedly evidence before him to support that conclusion, and if there is any substance in the objection now raised to the proceedings in the lower Court, the fact that it has been shown that there was an estate to administer sufficiently disposes of the objection. It is not necessary therefore to deal with the other ground urged against the soundness of the argument raised before us in support of this objection. It is conceded by counsel that there is nothing contained in section 519 of the Civil Procedure Code, as amended by section 2 of Ordinance No. 15 of 1930, or in any other provision of the

law to prevent a Court of competent testamentary jurisdiction granting probate or administration in respect of an estate that does not exceed the sum of Rs. 2,500 in value. Even in small estates in which administration is not compulsory one can visualize cases, for example, where money is payable to an estate by an insurance company, or out of a provident fund, or by a public authority as here, in which the person or body responsible for making the payment would decline to do so except to an executor or administrator clothed with proper authority, and able to give a valid and effective discharge. One knows from experience what very unsatisfactory results may follow on attempts to deal direct with persons who come forward as heirs.

I come now to the appeal (No. 5) of Shariffa Umma against the dismissal of her claim to be the lawful wife of the deceased Supramaniam Chetty, and I find it necessary to say very little on this matter. There is reliable evidence to show that for a considerable time Shariffa Umma cohabited with Supramaniam Chetty, but it is urged against her that she was no more than his mistress. This the trial Judge finds to be the case, and on the evidence I have come to the same conclusion. The evidence led to prove her marriage about the year 1919 is most unsatisfactory. The witnesses are uncertain even about the year. The principal witness called was the person who is said to have performed the ceremony. As the trial Judge points out, he is not a fully qualified priest, and he gives contradictory evidence as to whether the ceremony he says he performed was sufficient to constitute a valid marriage. No note or record of any alleged ceremony of marriage between the parties was ever made by him or by any one else; and the trial Judge rejected the evidence of both this witness and the woman Marimuttu Letchimi. No other witness was called. He comes to the conclusion that Shariffa Umma has failed to show that any ceremony of marriage was performed between herself and Supramaniam Chetty, and in that conclusion I can only say I agree.

On this last appeal there is only one other matter to which I need refer. When the evidence on behalf of Shariffa Umma was led on August 1, 1932, her counsel, after leading the evidence on the record, asked for a further opportunity and adjournment to call further witnesses. This application was refused. One of the witnesses mentioned was not even on her list of witnesses, and no attempt had been made to summon others named for August 1, although the parties were aware the case would come up for hearing on that date, for which it had been specially fixed as early as May 25. The appellant had ample opportunity of putting her case before the lower Court. I mention the matter because it is referred to in her petition of appeal, but it was hardly pressed in the appeal before us, the chief ground taken on her behalf being that the evidence was sufficient to establish the marriage and should have been accepted by the trial Judge.

The appeal of Shariffa Umma therefore fails.

In the result all three appeals must be dismissed with costs.

Appeal dismissed.