1957 *Present :* **Basnayake, C.J., Pulle, J., and K. D. de Silva, J.**

MANICKAM CHETTIAR and others, Appellants, *and* MURUGAPPA CHETTIAR, Respondent

S. C. 19—D. C. Colombo, 18,581/M

Interest—Obligation to pay interest—Express agreement necessary.

Minor—Debt due to him—Right of guardian to receive it—Requirement of authority of Court—Civil Procedure Code, s. 585.

An obligation to pay interest on money due does not arise unless there is an express agreement in that behalf. Mere payment of interest over a number of years without any prior agreement in that behalf does not give rise to a duty to pay interest thereafter.

Where a debt falls due to a minor, the debtor would be justified in not paying the minor's money to a guardian until the guardian obtains the authority of the Court to receive it.

APPEAL from a judgment of the District Court, Colombo.

H. V. Perera, Q.C., with *M. L. S. Jayasekera*, for Defendants-Appellants.

Sir Lalita Rajapakse, Q.C., with *S. Sharvananda*, for Plaintiff-Respondent.

Cur. adv. vult.

November 28, 1957. BASNAYAKE, C.J.—

The sole question for decision on this appeal is whether for the years March 1934 to March 1938 interest is payable on a sum of Rs. 38,800 deposited with Suppramaniam Chettiar, the father of the defendants-appellants, by the agent of the 1st plaintiff's father, at the rate customary among Chettiars known as " nadappu watti " (hereinafter referred to as " nadappu watti ") or at the Bank rate of 1½ %. The former was in the nature of compound interest. It would appear that " nadappu watti " is a rate of interest fixed by the association of Chettiars from time to time at a meeting held at their temple. Once fixed the rate endures until altered. The last time it was fixed was somewhere in March 1942, the rate being 3/8 % per month.

Briefly the material facts are as follows : Muttiah Chettiar, the father of the 1st plaintiff, who was carrying on a money lending business in Ceylon, died in July 1929. Shortly before his death his assets were divided among the members of his family with the assistance of arbitrators. The share of the 1st plaintiff in the cash assets came to about Rs. 200,000, which included the sum of Rs. 38,800 deposited with Suppramaniam Chettiar. This sum was credited to an account in the name of

2——J. N. B 2235—1,593 (5/59).

the vilasam M. R. M. M. M. R. the registered proprietor of which was Muttiah Chettiar and interest at the "nadappu watti" rate was added till March 1934. During the period for which interest was added at that rate the money was used in Suppramaniam's business. From March 1934 to March 1938 the money was not so utilised and interest was added only at the Bank rate of 1½%.

On 21st March 1934 Suppramaniam's proctor wrote the letter D8 to Muttiah's widow Sigappi Achchy, in reply to a request made by her by a letter which is not produced, informing her that a sum of Rs. 52,950 being principal and interest till 31st March 1934 less income tax was due to M. R. M. M. M. R., and that it would be paid on her producing letters of administration. She was also informed that, if she failed to produce her authority to receive the money before 15th April 1934, Suppramaniam would be compelled to apply for letters of administration and deposit the money in court, and that interest would be paid not at the rate at which it was paid up to the date of the letter, but at the Bank rate for fixed deposits. On 24th April 1934 Sigappi Achchy's lawyer informed Suppramaniam's proctor by letter D9 that the money "in deposit" belonged to her minor son Murugappa, the proprietor of the firm of M. R. M. M. M. R., and that she as his lawful guardian under Hindu Law was prepared to receive the money and that Suppramaniam remained liable to pay interest. On 26th May 1934 by D10 written apparently before D9 reached him, Suppramaniam's proctor wrote to Sigappi Achchy denying any liability to pay interest. This was followed up with letter D11 of 1st April 1935 informing her that Suppramaniam was prepared to deposit the minor's money in the Bank, and that, if by 10th April 1935 authority to do so was not given, steps would be taken to deposit the money in court. Suppramaniam died in 1936 and Manickam Chettiar, his son and the administrator of his estate, through his proctor wrote letter D12 of 4th December 1936 informing Sigappi Achchy that he was prepared to pay the money lying to the credit of her minor son to the duly appointed curator and that if no application was made by a curator he would not hold himself liable for interest. Sigappi Achchy does not appear to have taken any action to have herself or any other person appointed as curator and on 6th January 1942 the firm M. R. M. M. S. through their proctor wrote D13 informing her that as she had taken no action to have a curator appointed, despite repeated requests in that behalf, they would take steps to do so and deposit the money in court if no definite reply was given before 14th January 1942. It was only on 1st March 1942 that a reply was received (D14). It called for details of the minor's account to enable Sigappi Achchy to apply for a certificate of curatorship. On 4th March 1942 the 2nd defendant Sundaram Chetty deposited Rs. 64,172/71 in court, Rs. 38,800 being capital and Rs. 25,372/71 being interest to the credit of curatorship case No. 3,836/G instituted at his instance. The 1st plaintiff claims that a sum of Rs. 11,602/15 is still due to him being the "nadappu watti" for the period March 1934 to March 1938. The chief witness for the 1st plaintiff was Vellasamy Pillai, his next friend, who was also described as 2nd plaintiff till the 1st plaintiff

attained majority. He had been Muttiah's kanakapulle from about 1906 till his death and claimed to be familiar with Muttiah's business in Ceylon. He said, "When I gave these moneys to M. R. M. M. S. I spoke to Suppramaniam Chetty himself and told him whose money it was. I told him it was money belonging to the 1st plaintiff. It was agreed that he should keep that money according to the prevailing rate of interest customary among chettiars called Nadappu watti. Suppramaniam Chetty accepted that position. I also told him to whom the money had to be returned. He had to return it to the 1st plaintiff Murugappen Chetty."

Sunderam Chettiar one of the defendants contradicted Vellasamy on the point that Suppramaniam was in Ceylon at the relevant time. He said that between 1928 and 1932 his father was in India and did not come to Ceylon at all.

The learned District Judge has rejected Vellasamy's evidence that he arranged with Suppramaniam that "nadappu watti" should be paid on the sum of Rs. 38,800 deposited with him. But he says, "I am, however, satisfied irrespective of whether such an agreement was reached or not, the money was taken by Suppramaniam Chettiar on the understanding that rate of interest would be paid, namely, Nadappu Watti". He also says, "The fact that on the money deposited up to 1934 Nadappu Watti was entered in the books and in fact deposited along with the principal in the curatorship case is in my opinion sufficient evidence to justify the inference that even if there was no specific agreement in regard to the rate of interest there was in point of fact an implied undertaking to pay interest at the Nadappu rate".

Learned counsel for the appellant challenges the soundness of these conclusions. He submits that an obligation to pay interest does not arise unless there is an agreement in that behalf. He also submits that the learned Judge's conclusion that Suppramaniam accepted the money on the "understanding" that "nadappu watti" would be paid cannot be sustained in view of his finding that Vellasamy did not speak to Suppramaniam and fix the rate of interest.

The learned District Judge's conclusion that Suppramaniam took the money on the understanding that "nadappu watti" would be paid cannot be reconciled with his rejection of Vellasamy's evidence. An understanding is an agreement of an informal nature but explicit. Once Vellasamy's evidence is rejected there is no evidence of an explicit agreement of an informal nature. Then if there was no understanding to pay interest, what was the liability of Suppramaniam? The money was paid to Suppramaniam's firm as a deposit and not as a loan. The liability to pay interest on money can arise from an express agreement. But where as in this case there is no evidence of an express agreement can one presume, as the learned District Judge has done, from the circumstance of interest having been paid over a period of years that there was an agreement to pay interest? Both Voet and Huber take the view that mere payment of interest over a number of years without any prior agreement

in that behalf does not give rise to a duty to pay interest thereafter. This is what Voet says : " The mere payment of interest continued over several years, without any precedent obligation to pay it, does not bring about any duty to pay interest thereafter ". (Book 22.1.13). Huber states the same proposition thus : " Prolonged payment of interest is not held to be a cause for establishing a liability for interest, but he who has paid may stop if he discovers that he is not liable for the same ; . . . (Huber's Jurisprudence of My Time, Vol. I, p. 578, Gane's Translation). Even if it is assumed that there had been an agreement between Muttiah and Suppramaniam to pay interest, it was terminated in Suppramaniam's life time by letters D8 of 21st March 1934 and D10 of 26th May 1934. In those letters the 1st plaintiff's natural guardian, his mother, (he being a minor of about 5 years at the time), was informed that interest at the Bank rate only would be paid thereafter. In my opinion Suppramaniam's liability to pay " nadappu watti " or any other interest ceased in March 1934. The fact that after his death his sons paid " nadappu watti " from 1938 to 1942 does not make them liable to pay that rate for the years 1934 to 1938 because there was no agreement to do so during that period. The offer was to pay interest at the Bank rate for fixed deposits and the defendants have not resiled from that offer.

The correspondence between Suppramaniam's proctor and Sigappi Achchy's lawyer shows that Suppramaniam was not aware that he was receiving a minor's money at the time it was given to him. His offer to return the money to Muttiah's administratrix indicates that he was under the impression that it belonged to Muttiah. The moment he was informed that it was money belonging to a minor he offered to pay it back provided the natural guardian obtained the authority of court. Suppramaniam was justified in asking the minor's mother to obtain authority to receive the money by getting a certificate of curatorship. Voet states that when there are no guardians legally appointed payment may be made to the father of minors as being the natural guardian of his children, and adds it would be wiser for a claim to be made from a Magistrate that the father may be confirmed as the legal guardian of his children (Bk. XLIV, Tit. 3, Sec. 3, Gane Vol. 7, p. 97). In the instant case the father being dead the mother was the natural guardian (Voet, Bk. XXVI, Tit. 2, Gane Vol. 4, p. 419) ; and Suppramaniam advisedly offered to pay the 1st plaintiff's money on her obtaining the necessary authority of court to be the curator of the minor's property. Was he wrong in doing so ? I think not. Voet says, " Nay indeed not even a father or a mother are nowadays *ipso jure* guardians among us, if they have not clearly been assigned by the last will of the deceased spouse or of some stranger. So far is this so that, if they wish to hold the legal guardianship of children, it would be prudent for them to seek to have themselves confirmed by the magistracy ". (Voet, Bk. XXVI, Tit. 4, Gane Vol. 4, p. 422). Our equivalent of confirmation by a magistrate is a certificate of curatorship from the District Court prescribed in section 585 of the Civil Procedure Code. The 1st plaintiff's mother whose duty it was to get such a certificate neglected to do so and Suppramaniam or his heirs are not answerable for her failure because he was under no legal

duty to move the court for the appointment of a curator for the purpose of receiving the money. (*Arunasalam Chettiar v. Murugappa Chettiar*) [1]. Suppramaniam was justified in not paying the minor's money to a guardian who had not the authority of the District Court to receive it. The plaintiff has failed to establish his claim and his action must be dismissed.

I accordingly allow the appeal with costs and set aside the judgment of the District Judge in the plaintiff's favour and make order dismissing his action with costs.

PULLE, J.—I agree.

K. D. DE SILVA, J.—I agree.

Appeal allowed.