

Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Domaty Nursiah, Appellant, v. (1) S. R. M. Ramen Chetty, (2) S. N. A. Soobramonien Chetty, (3) V. E. A. T. Vyraven Chetty, and (4) K. P. A. T. Adappah Chetty, Respondents, from the Court of the Recorder of Rangoon ; delivered 13th July 1899.

Present at the Hearing :

LORD WATSON.

LORD HOBHOUSE.

SIR RICHARD COUCH.

SIR EDWARD FRY.

[*Delivered by Lord Watson.*]

The Appellant Domaty Nursiah and the Respondents, S. R. M. Ramen Chetty and S. N. A. Soobramonien Chetty, who carried on the business of bankers and money lenders in Rangoon, under the firm name or mark S. R. M., their Agent in Rangoon being the Respondent V. E. A. T. Vyraven Chetty, on the 28th January 1892, jointly advanced the sum of Rs. 30,000 to Cuddily Murady (who has since deceased) and one Domaty Moothaloo. Of that sum Rs. 15,000, or one half, was contributed by the Appellant, and the other half by the firm of the said two Respondents, who were his co-adventurers. In order to cover the advance, the borrowers, of same date, granted to the said Respondents, with the consent of the Appellant, their promissory note for Rs. 30,000, payable on demand, with interest. In security for the due repayment of principal

and interest Cuddily Murady transferred six cargo boats, with their licenses, to the Respondents' firm, and four cargo boats with their licenses to T. R. M. Seethumbram Chetty, with the knowledge and consent of the Appellant. In further security Cuddily Murady deposited with the Appellant, on the joint account of himself and his co-creditors, the title deeds of his half share of a house and land in XXXVIIIth Street, Rangoon, known as the southern half of 3rd Class Lot 16 in Block F 1.

Cuddily Murady died intestate in the month of February 1892. Thereafter, in the month of November 1892, Cuddily Ramasawmi applied for and obtained from the Court of the Recorder of Rangoon, letters of administration to his estate and effects.

In the end of the year 1892, the Respondent V. E. A. T. Vyraven Chetty ceased to act for the firm in Rangoon, of which the Appellant's co-creditors, Ramen Chetty, and Soobramonien Chetty, were the partners. In 1893, Ramen Chetty, and Soobramonien Chetty, assigned their interest in the loan made by them and the Appellant, to Cuddily Murady and Domaty Moothaloo, to the said Vyraven Chetty, and the other Respondent in this Appeal, K. P. A. T. Adappah Chetty. Upon the 10th August 1893, the said Adappah Chetty, writing to the assignors on behalf of himself and the other assignee, after remarking that they had bought up "your share of yours and Domaty Nursiah's "partnership transaction with Cuddily Murady," undertook the following obligation,—“in case we “did not pay the said Nursiah's half, and he “should file a suit against you, we ourselves are “bound to pay the costs therein according to “original decision.”

It appears from a decision, or award, dated 22nd January 1895, by four persons who acted as arbiters, that they had been applied to by Vyraven Chetty on the 13th day of December 1894, who submitted to them certain accounts documents and statements connected with the advance made to Cuddily Murady in January 1892. Vyraven Chetty made the application "under power of attorney from S. R. M. and "Korangi Domaty Nursiah of Rangoon"; and it is obvious from the tenor of their decision that the arbiters understood that it was their duty to settle questions arising between Nursiah and the Rangoon firm of which the Respondents Ramen Chetty and Subramonien Chetty were the members.

The award lays down the principle, that Domaty Nursiah and the firm, having each advanced one-half of the loan, must (1) take a half each of the sum and interest which may be realised either through the Court or by means of compromise, and (2) each bear one-half of the expenses incurred on account of litigation, and any other manner of expenses that may occur in that behalf. It apportions the income and interest which was derived, "through Nursiah's means," from the Arracan Company, for the use of boats, and also the income and interest arising "through the means of Vyraven Chetty," from the use of other boats, worked by Mohr Brors. The award, which has not yet been implemented, directs that the principal and interest which may yet be realised, shall, in like manner be equally divided.

In 1895, Vyraven Chetty brought an action, in the Court of the Recorder of Rangoon, in the name of the firm, which was creditor in the promissory note, against Cuddily Ramaswami, as the representative of Cuddily Murady, in which accounts were taken, and decree passed

for the sum of Rs. 24,663. 4, after giving the Defendant credit for the sum of Rs. 13,424. 4, being the net proceeds of the sale of the cargo boats held in security.

The decree obtained against Cuddily Ramaswami has not been executed. The house and land in Rangoon, of which the title deeds were delivered in security by Cuddily Murady have not yet been realised.

The Appellant brought the present action in June 1896, in which he called, as Defendants, the Respondents Ramen Chetty, and Soobramonien Chetty, his original co-creditors. His plaint concluded, *inter alia*, for a declaration that the loan of Rs. 30,000 to Cuddily Murady, and Domaty Moothaloo was a joint venture, and that the Plaintiff and Defendants advanced the money in equal shares; that accounts should be taken, and the venture wound up under the direction of the Court; and that, in the event of the Defendants failing to execute the decree which they had obtained against Cuddily Ramaswami, and to realise the mortgaged premises in Rangoon, a receiver should be appointed.

The Defendants, Ramen Chetty, and Soobramonien Chetty, in their written statement, averred that they had assigned their interest in the venture to the Respondents, Vyraven Chetty and Adappah Chetty, and that the Appellant had agreed to accept the said assignees as responsible in their stead. They accordingly pleaded that the action, as against them, ought to be dismissed, and that Vyraven Chetty and Adappah Chetty ought to be made parties to the suit. On the 8th July 1896, they petitioned the Court:—"That, in order to enable the Court
 " effectually and completely to adjudicate upon
 " and settle all the questions involved in this
 " suit, it is necessary that (1) V. E. A. T. Vyraven
 " Chetty, and (2) K. P. A. T. Adappah Chetty

“should be joined as Defendants in the suit.” The learned Recorder issued an order to the effect craved.

The Respondents, Vyraven Chetty, and Adappah Chetty, who have not appeared in this Appeal, were accordingly joined as Defendants, and they lodged a separate written statement. They admitted that the interest of Ramen Chetty and Soobramonien Chetty had been duly assigned to them, and they averred that the Appellant, being aware of the circumstance, “entered into an agreement with “Vyraven Chetty, the third Defendant above “named, whereby he agreed to refer the “accounts in connection with the said loan, and “his deposit account to the arbitrament of “certain persons therein named, and such “persons duly made their award.” They also averred “that the account sought for in this “suit cannot be taken, until the sale of the mort- “gaged property and the final execution of the “said decree, and that there were no matters in “dispute in relation to any accounts between “the parties at the time of the institution of “this suit.” They pleaded that the suit, as against them should be dismissed with costs.

The joinder of Vyraven Chetty and Adappah Chetty, unfortunately, had not the effect, predicted by the original Defendants, of enabling the Court to adjudicate upon and settle all the questions involved in the suit. The main object of the Defendants appears to have been, not to aid in the settlement of these questions, but to delay a settlement, by procuring the dismissal of the Appellant’s action. The learned Recorder, after hearing evidence decreed that the suit be dismissed, and that the Plaintiff do pay the Defendants’ costs as taxed.

Their Lordships do not think it necessary to make any observation upon the decree of the learned Recorder, save this,—that the facts

relied on in his judgment, are, in their opinion, sufficient to show that the Plaintiff is entitled to have the adventure judicially wound up, and that the action ought therefore to have been allowed to proceed.

Their Lordships desire to express their opinion that the Respondents have failed to establish that the Appellant, although he may have become aware of the assignment of their interest by Ramen Chetty and Soobramonien Chetty to the other Respondents, ever consented to accept Vyraven Chetty and Adappah Chetty, as responsible to him in lieu of their assignors. Assuming the statements of either set of Defendants, bearing upon the plea of novation, to be relevant, they are not supported by the proof. The Appellant, Domaty Nursiah swears, that, at the date of the award, he was not aware that the original Defendants had assigned over their share in the loan of Rs. 30,000 to Vyraven and Adappah, and that he "never dealt with them in the matter." In his cross-examination for the Respondents, no reference is made to the time when, or the manner in which he consented to the novation. The Respondent Vyraven Chetty, the only witness examined for the Defendants, on being shown a letter to the Rangoon firm, setting forth the terms of their arrangement to assign their debt to him and Adappah Chetty, but making no reference to Appellant, states, "I told Plaintiff all about it. He said all right." The words said to have been used by the Appellant on that occasion, imply that he had no intention of disturbing an assignment to which he had no right to object; but they cannot be construed as signifying that he accepted the assignees, and passed from his claims against the assignors.

Their Lordships will humbly advise Her Majesty to reverse the judgment appealed from; and, the Appellant having, by his Counsel at the

Bar agreed to account for all money received by him under the joint adventure of the 28th January 1892, to direct as follows:—(1) that an account be taken of all the moneys received by the Defendants under the said transaction, and of all dealings and transactions of the Plaintiff and the Defendants in respect of the said adventure, and that, in taking the said accounts, the decision or award of the 2nd January 1895 is to be treated as binding on the parties; (2) to declare that the third and fourth Defendants are liable, jointly and severally with the first and second Defendants, to pay to the Plaintiff all sums found payable to the Plaintiff, to the extent of the moneys received under the said adventure by the third and fourth Defendants; (3) that there be liberty to the Plaintiff and Defendants respectively to apply for the payment into Court of any moneys received by the Defendants and the Plaintiff respectively, and also for directions as to the conduct of the suit brought against the representatives of Cuddily Murady and Domaty Moothaloo, and as to the execution of the decree made in the said suit, and also as to the realisation of the house and land in Rangoon, of which the title deeds were pledged in security by Cuddily Murady; (4) that the costs of process hitherto incurred by the Plaintiff in the Court below, as the same shall be taxed, shall be jointly and severally payable to the Plaintiff by the Defendants, and that future costs shall be reserved for disposal by the Court below.

The Respondents S. R. M. Ramen Chetty, and S. N. A. Soobramonien Chetty, must pay to the Appellant the costs of this Appeal.

