

Brito and another - - - - - *Appellants*

v.

Muttunayagam and others - - - - - *Respondents*

FROM

THE SUPREME COURT OF CEYLON.

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JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE  
OF THE PRIVY COUNCIL, DELIVERED THE 30TH OCTOBER, 1922.

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*Present at the Hearing :*

LORD ATKINSON.

LORD SUMNER.

LORD PARMOOR.

LORD CARSON.

[*Delivered by LORD ATKINSON.*]

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Their Lordships will humbly advise His Majesty (1) that this appeal ought to be allowed and the decree of the Supreme Court of Ceylon dated the 21st June, 1920, varied by omitting therefrom the words—"on or before the 21st day of September, 1920, the sum of Rs. 202,065 together with interest on Rs. 115,000 at the rate of 9 per cent. per annum from the 7th day of April, 1919, to the 20th October, 1919, and further interest at 9 per cent. per annum on the aggregate amount from the 21st October, 1919, to date of payment and the costs of this suit in the proportion of  $\frac{3}{4}$  share by the 1st Defendant,  $\frac{1}{8}$  share by the 3rd Defendant, and  $\frac{1}{8}$  by the 4th Defendant, being the shares in which the property was mortgaged and hypothecated as security for the due payment of the said aggregate amount and costs as seized and possessed by the 1st, 3rd, and 4th Defendants respectively," and substituting therefor the words "such sum as may be found due by them on the said mortgages

if any"; (2) that the suit ought to be remitted to the District Court of Colombo to dispose of the issue raised by such substituted words and any other issues arising on the pleadings, with liberty to the appellants to raise by amendment of the pleadings or other proper procedure, as they may be advised, their contention that by the receipt, if any, of such of the rents and profits of the mortgaged estates as came into the hands of the respondent Arianayagam Michael Muttunayagam, either in his representative capacity or otherwise, any sums due and payable by the appellants on the mortgages were in whole or in part compensated and extinguished by operation of law, and with liberty to the respondents to raise the defence that such contention is not open to the appellants by reason of their having omitted or intentionally relinquished the same within the meaning of Section 34 of the Civil Procedure Code, and any other defences arising on the pleadings (3) that if the appellants fail to raise such defence within eight months from the date of His Majesty's Order herein or having raised it fail to establish it, the respondents ought to have the costs of this appeal, and that in any other event the parties ought to bear their own costs thereof and (4) that liberty ought to be reserved to the respondents to apply to His Majesty in Council for payment (if entitled thereto) of such costs after the determination of the suit in the District Court.



In the Privy Council.

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BRITO AND ANOTHER

vs.

MUTTUNAYAGAM AND OTHERS.

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DELIVERED BY LORD ATKINSON.

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