

QUEEN-  
EMPRESS  
v.  
RAMALINGAM.

acquittal. We are unable to approve of the procedure adopted by the Sessions Judge. It is not warranted by any provision of law, and it might, under certain circumstances, lead to a failure of justice.

It appears that there were, in this case, two other witnesses examined before the Magistrate, and bound over to give evidence at the trial, whose evidence, if believed, would have corroborated the case for the prosecution, and might possibly have led the jury to form a different opinion of its credibility. No final opinion as to the falsehood or insufficiency of the prosecution evidence ought to be arrived at by the Judge or jury until the whole of that evidence is before them, and has been considered, and the jury ought, if need be, to be cautioned by the Judge to this effect. If, however, at the end of the prosecution evidence, the Public Prosecutor waives his right to sum up the evidence, where he has such right, and the jury then express an opinion that the evidence is incredible and the Judge agrees with them in such a case, we do not, as at present advised, say that it is necessary for the Judge to go through the formality of summing up the case to the jury. Their opinion might, in that case, we think, be at once accepted as a verdict. But we are clearly of opinion that this should not be done until the whole of the prosecution-evidence has been duly recorded. In the present case, looking to the evidence recorded and all the circumstances, we do not think it necessary to do more than point out the proper procedure for the future guidance of the Sessions Judge.

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## APPELLATE CIVIL.

*Before Mr. Justice Davies and Mr. Justice Boddam.*

NATHURAM SIVIJI SETT (PLAINTIFF), APPELLANT,

v.

KUTTI HAJI (DEFENDANT), RESPONDENT.\*

*Civil Procedure Code, 1882, s. 252—Legal representative—Suit against the heir and possessor of the assets of a deceased person.*

Where a party is sued for money as the heir and possessor of the assets of a deceased debtor, and it is proved that he has received sufficient assets to meet the debt, a personal decree therefor can be passed against him.

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\* Second Appeal No. 1213 of 1895.

SECOND APPEAL against the decree of A. Thompson, District Judge of North Malabar, in Appeal Suit No. 565 of 1894, modifying the decree of K. Ramanatha Ayyar, District Munsif of Cannanore, in Original Suit No. 491 of 1893. NATHURAM  
SIVJI SETT  
v.  
KUTTI MAJI.

This was a suit for the price of articles purchased from the plaintiff, bought against the defendant as the heir and legal representative of the purchaser. The District Munsif passed a personal decree against him, which, on appeal, was modified by the District Court and altered to a decree passed against him as the legal representative of the deceased. The plaintiff appealed to the High Court.

Mr. C. Krishnan for appellant.

Sankara Menon for respondent.

JUDGMENT.—The Judge is in error in stating that the defendant was sued only as legal representative of the deceased. He was in fact sued as the heir and possessor of the assets of the deceased. It having been proved in the suit that the defendant had received sufficient assets to meet the plaintiff's debt, the Court of first instance was justified in passing a personal decree against him in the suit for that debt, and it was not necessary to wait for execution proceedings to determine the extent of the defendant's personal liability as contemplated in section 252 of the Code of Civil Procedure. The case of *Magaluri Gurudiah v. Narayana Rungiah*(1) is, in point rather than the case of *Janaki v. Dhanu Lall*(2), quoted by the Judge. We must, therefore, reverse the decree of the Lower Appellate Court and restore that of the District Munsif. The defendant (respondent) must pay the plaintiff's costs in this and the Lower Appellate Court. This disposes of the memorandum of objections which is simply dismissed.

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(1) I.L.R., 3 Mad., 359.

(2) I.L.R., 14 Mad., 454.