APPELLATE CIVIL.

Before Sir Owen Beasley, Kt., *Chief Justice, and Mr. Justice Horwill.*

C. M. RAJU CHETTY (RESPONDENT), APPELLANT,

v.

O. C. RAJU CHETTY AND ANOTHER (APPLICANTS), RESPONDENTS.*

1936, October 28.

Lunacy (Supreme Courts) Act (XXXIV of 1858)—Lunatic—Committee of—Liability to file accounts in Court—Committee spending moneys of lunatic without sanction of Court—Power of Court to sanction such payments retrospectively—Principles governing the exercise of.

The Committee of a lunatic failed to file in Court the accounts of the estate for a period of twenty-one years and had also spent large sums out of the estate without the sanction of the Court. On an application for directions the Court ordered the Committee to file the accounts and get them passed. The accounts were filed by the Committee and the Passing Officer disallowed considerable sums on the ground that it was beyond his province as Passing Officer to ascertain how far they were properly allowable since they were expended for the benefit of persons other than the lunatic. The first Court sanctioned the expenditure under the circumstances holding that the Court had power to sanction payments retrospectively in proper cases.

Held on appeal (i) that, though it is reprehensible on the part of a Committee not to file the accounts and to expend moneys out of the estate without the sanction of the Court, yet, the Court has a discretion to sanction expenditure which has been made by the Committee without the previous sanction of the Court having been obtained, although such discretion ought only to be exercised when the reasons are very strong, and (ii) that, in the administration of the property of a lunatic, the first care is the comfort of the lunatic who should have everything that his or her circumstances will allow and the next care is the

* Original Side Appeal No. 26 of 1936.

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household of the lunatic and, finally, the Court should not refuse to do on behalf of the lunatic what the lunatic himself would have done if of sound mind.

APPEAL from the order of LAKSHMANA RAO J., dated 11th November 1935 and passed in the exercise of the Ordinary Original Civil Jurisdiction of the High Court in Application No. 1451 of 1935 in Original Petition No. 95 of 1910.

The facts of the case and the arguments of Counsel appear sufficiently in the judgment.

V. Ramaswami Ayyar for *A. B. Nambiar* for appellant.

S. Doraiswami Ayyar for *V. Radhakrishnayya* for respondents.

Cur. adv. vult.

BEASLEY C.J.

The JUDGMENT of the Court was delivered by BEASLEY C.J.—This is an appeal from an order of LAKSHMANA RAO J. upon an application by the Committees of the estate of one Maragadammal, a lunatic, to sanction certain items of expenditure incurred by them since their appointment, for which the previous sanction of the Court had not been obtained. The expenditure was sanctioned by our learned brother. Hence this appeal.

The facts of the case are that one Alagappa who died in 1903 had a wife named Angammal who died in 1909. He had three daughters, Ammakannu who married Manicka Chetty, Maragadammal the lunatic, and Panchaksharammal. Ammakannu died before Algappa and after her death Maragadammal was given in marriage to Manicka Chetty. This was in the lifetime of Alagappa. Ammakannu and Manicka Chetty had two children, namely, Balasundaram

and Rajammal. Alagappa made a will leaving some of his property to the lunatic, and in that will directed her to continue to live with Balasundaram, who was then living, and his widow, Angammal, Panchaksharammal and Rajammal (Ammakannu's daughter) as one family. This the lunatic did. Angammal died, as already stated, in 1909 and thereafter the lunatic continued to live with the survivors of the family. Manicka died in 1913 and she then lived with his children, Balasundaram and Rajammal, and Panchaksharammal, until Balasundaram's marriage, when she was taken to live in his house. In 1910 Maragadammal was found to be a lunatic and Manicka Chetty, her husband, was appointed Committee of her person and estate. The order of appointment has an important bearing on this matter. That order stated that the estate consisted of the property known as "Abbotsbury" and that the Committee was empowered to apply its rent for its upkeep and the maintenance of the lunatic and her family. As before mentioned, Manicka Chetty died in 1913 and his brother, Govindarajulu Chetty, applied to be appointed as Committee. That application was opposed and the Official Trustee was appointed. He declined to act and by an order dated 20th January 1914 the present Committees, the elder sister, Panchaksharammal, and O. C. Raju Chetty, the husband of Rajammal (the daughter of Manicka Chetty and Ammakannu), were appointed Committees of the estate, and the powers given by the Lunacy (Supreme Courts) Act of 1858 were conferred upon them, and they were directed to submit half-yearly accounts. Nothing was said regarding the

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maintenance of the lunatic or her family and the Committees thought that the rents of "Abbotsbury" were to be applied therefor as before; and it cannot be said that they were unreasonable in so thinking. Most unfortunately the two Committees did not file any accounts at all from the date of their appointment until the date of the present proceedings—a period of nearly twenty-one years. This failure on their part is sought to be excused on the ground of inexperience, O. C. Raju Chetty, the second Committee, being only twenty-two years of age on the date of his appointment. The failure to file accounts is undoubtedly most reprehensible, particularly so, because during the interval a large expenditure was incurred by the Committees without the sanction of the Court having been obtained previously. The appellant here, C. M. Raju, is the husband of Chinnathayammal, one of the sisters of Alagappa, and in 1934 he presented an application to the High Court asking for directions to the Committees to file and pass their accounts and an enquiry as regards the management of the estate of the lunatic and charging the second Committee with various acts of misfeasance and malfeasance and serious neglect of duty and stating that a sum of Rs. 31,715-13-7 ought to be surcharged against him and praying for his removal from office; and on 3rd May 1934 an order was made directing the Committees to file their accounts by 14th August 1934 and get them passed. An account was filed accordingly on 14th August 1934 relating to the period from 25th June 1913 to 5th August 1934. The accounts were gone into by the Passing Officer, an order

having been made previously on 3rd May 1934 by STONE J. directing that the appellant was to have inspection of all accounts. According to the Passing Officer's report, although an affidavit had been filed by the appellant objecting to the correctness of the entries in the accounts and to the propriety of the expenditure, after the items of receipts and disbursements were gone into with the vouchers in the presence of the appellant and his Advocate, the correctness of the accounts was not disputed but only the propriety of the expenditure was objected to. The Passing Officer allowed some of the expenditure incurred but disallowed the remainder which amounted to a considerable sum on the ground that it was beyond his province as Passing Officer to ascertain how far the expenditure was properly allowable and that the Court alone could sanction the expenditure, having regard to the fact that it was for the benefit of persons other than the lunatic. He accordingly disallowed the following items of expenditure, viz., Balasundaram's account Rs. 7,411-8-9, maintenance Rs. 28,140-0-0, charities performed Rs. 956-0-0, presents to relations Rs. 1,027-4-9, and miscellaneous items Rs. 3,953-4-0, making a total of Rs. 41,488-5-6. He also found that there was a balance in the Committees' hands, in addition to the expenditure disallowed, of Rs. 4,683-8-6. Before us the objection to the expenditure under the heads of "charities performed", "presents to relations" and "miscellaneous items", was not pressed, the expenditure under the other two heads only being objected to. LAKSHMANA RAO J. sanctioned the expenditure under all the before-mentioned heads, although the sanction of the Court had not

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been obtained in the first instance, but he made no order as to costs, though we are informed that he allowed the appellant some costs out of the estate of the lunatic. In his order our learned brother says :

> "The *bona fides* of the applicants who are managers without remuneration was not disputed nor was it seriously contended that the amount spent was excessive or unreasonable";

and, as before stated, the accuracy of the account was admitted before the Passing Officer. Taking the amount spent on Balasundaram till 1923 and the maintenance of the lunatic and her household, LAKSHMANA RAO J. applies the principles that the first care is the comfort of the lunatic who should have everything that his or her circumstances will allow and the next care is the household of the lunatic and states that the final principle is that the Court should not refuse to do on behalf of the lunatic what the lunatic himself would probably have done. We are satisfied that the learned Judge has correctly stated the principles. In *In re Darling (a Person of Unsound Mind)*(1), the head-note of which reads as follows :

> "It is not the duty of the Court to deal benevolently or charitably with the property of a lunatic, and applications for allowances out of the surplus income of a lunatic to poor collateral relations who have no legal claims upon him for provision are to be discouraged",

it was held that, there being nothing to show that the lunatic would have done what the Court was asked to sanction, the mere fact that the collaterals were in humble circumstances and had difficulties in providing themselves with necessaries was not sufficient to justify the Court in

(1) (1888) 39 Ch.D. 208.

granting the application, and that it must be refused. The principles upon which Courts should act are set out by COTTON L.J. on page 211, and it is stated by him that Courts sometimes make considerable allowances for persons who have legal claims upon a lunatic such as a son or a daughter and also for persons who have moral claims upon him and that the cases do show however that the Court has sometimes made an allowance to collaterals. He then states as follows :

"I pass over those cases in which an allowance has been made by the Court in favour of a person who is the next successor to the lunatic's estate, for it is the interest of every possessor of an estate that his successor should be educated and brought up in such a manner as to enable him to fulfil the duties attaching to the ownership of the estate and, where the successor is in such a position as not to be able to obtain an education suitable to his prospects, the Court will, no doubt, make an allowance, and sometimes has made a very considerable one.

Here the lunatic had several cousins, who happen to be his next of kin, and while sane he made small allowances to some of them; and the Court, acting on the principle that the Court will do for the lunatic what the lunatic would have done himself if of sound mind, has continued these allowances.

But we are now asked to sanction an increase of the allowance to some of these persons, and also to sanction further allowances to others of them. Now to make such an order would, in my opinion, be contrary to the principles on which the Court acts in administering the property of a lunatic."

BOWEN L.J. said :

"The Court has always considered that its jurisdiction to make allowances to collaterals ought to be exercised with the utmost jealousy. The case of successors to property depends on a different principle. But in cases of collaterals who are not successors, the Court ought only to do that which the lunatic would have done himself if he had been of sound mind. If it could be shown that the lunatic would have done

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that which we are asked to do, that would be a different matter. In my opinion the evidence falls short of doing that."

Therefore, in England, Courts may sanction an allowance to be paid to a person who is not the lunatic where such person is the next heir or successor to the lunatic's estate, and to collaterals if they are the next of kin, or if not, if the lunatic if of sound mind would have made such an allowance, for which of course there must be some evidence. Balasundaram, it must be noted, is the next heir to the lunatic's estate. In *In re Frost*(1) weekly allowances were ordered out of the surplus income of a wealthy lunatic to needy collateral relatives who were supposed to be her next of kin, though their title as such had not been established, and for whom the lunatic, while sane, had expressed an intention to make some provision. JAMES L.J. on page 702 said :

> "In this case it appears highly probable that if the alleged cousins do not establish their claim to be next of kin no one else will. Considering this, and considering their poverty, the evidence of the intention of the lunatic to do something for them, and the amount of her income, which far exceeds anything that can ever possibly be required for her own wants, I think that I may venture to make the order asked, which will do no more than what the lunatic herself probably would have done had she continued sane."

In *In re Sparrow (a Person of Unsound Mind)*(2) a lunatic, aged sixty-four, was tenant for life of certain real estates, of which his nephew, aged twenty-eight, was tenant in tail in remainder, producing a considerable yearly income. The nephew had been found heir-at-law and one of the next of kin of the lunatic. The Court, upon the nephew's petition, directed an allowance

(1) (1870) 5 Ch. App. 699.

(2) (1882) 20 Ch.D. 320.

of £500 per annum to be made to him out of the surplus income of the lunatic after providing for a yearly sum for the lunatic's maintenance, in spite of the opposition of some of the next of kin, upon the terms of the petitioner charging the estate with the repayment of the sums received in respect of such allowance; and in subsequent proceedings the allowance of £500 was increased by £200. On the other side a number of English cases were cited by the appellant in support of his contention that the trial Judge ought not to have sanctioned this expenditure, because it had been incurred without the previous sanction of the Court. The argument indeed went to the length of stating that under the English decisions there was a definite prohibition against the granting of such sanction. The cases referred to, upon examination, certainly do not establish the latter proposition, and, as regards the former, are merely instances where the Courts have, on the facts of those cases, refused to give sanction. One of these is *In the matter of Sir James Langham, a lunatic*(1), where a Committee, who, having been authorized by the Court to expend a certain sum in rebuilding a farm house, expended half as much again in building one of a larger size on a different site, was not allowed the excess even though what he had done appeared to be beneficial to the estate. This case was stated by Lord COTTENHAM L.C. to be an extreme case, because the Court had given the Committee leave to enter into a particular contract and he took upon himself to enter into quite a different one involving

(1) (1847) 2 Ph. 299; 41 E.R. 958.

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much greater expense. The Lord Chancellor stated that such conduct was setting the Court at defiance. In *Ex parte Marton*(1) the petition was presented by the Committee of the estate of a lunatic, tenant in tail, with remainders over to the Committee and others, praying to be allowed for expenditure upon the estate made without any previous application, alleging that great improvements had been made. Lord ELDON expressed his regret that the Court had in a hard case been induced to relax the rule not to allow any expenditure made without previous application, the consequence of which was that the Committees never made application, and added that as there was that instance he would see what could be done in that case which appeared fair, desiring it to be understood that in future expenditure made without a previous application would never be allowed. This threat he subsequently carried out in the next case reported in the same volume, namely, *Ex parte Hilbert*(2), where the Committee of the estate of a lunatic, tenant for life, had expended the amount of £6,000 upon the estate and as to £4,000 without an application. Lord Chancellor ELDON said that such a thing could not be permitted. I do not understand these cases as stating that there is a definite prohibition against retrospectively sanctioning expenditure, regardless of every consideration which would show that such sanction ought to be granted. Indeed, *Ex parte Hilbert*(2) shows that there had been exceptional cases. In our view, Courts do have a discretion to sanction an expenditure

(1) (1805) 11 Ves. Jun. 397; 32 E.R. 1140.
(2) (1805) 11 Ves. Jun. 398; 32 E.R. 1141.

which has been made without the previous sanction of the Court having been obtained, although such discretion ought only to be exercised where the reasons are very strong, because Courts in such matters as this ought to have a discretion to do thereafter that which they are empowered to allow on applications made in the first instance. That the Court had the power to sanction the expenditure in question here on an application made to it for permission to do so is we think clear, having regard to the cases already referred to by Mr. Doraiswami Ayyar on behalf of the respondents. The learned trial Judge allowed the expenditure retrospectively, because Balasundaram is the next heir to the lunatic and because in his opinion there was evidence that the lunatic herself, if of sound mind, would have made the expenditure, namely, the education and maintenance of Balasundaram and the family she was living with. There is certainly evidence that the lunatic preferred to live with Balasundaram and, as before stated, the testator himself so directed. We think that the learned Judge was justified in holding that the lunatic herself would have made that expenditure. The expenditure on the maintenance and education of Balasundaram can clearly be supported on the ground that he was the next heir of the lunatic ; *see* the observations of COTTON L.J. in *In re Darling (a Person of Unsound Mind)*(1), already referred to. There is another important fact as well, and it is that in the first order of 1910 appointing Manikka Committee of the lunatic, there is a direction

(1) (1888) 39 Ch.D. 208, 211.

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that the income from the property "Abbotsbury" is to be spent on its upkeep and the maintenance of the lunatic and his family, and Balasundaram obviously was one of the family. It is true that the subsequent order does not contain any such direction. In fact it contains no specific direction as to the application of the income, but it can be read as reasonably supplementing the previous order of 1910, and it is made on the same original petition. Against this, the only thing that is urged, although its importance cannot be minimized, is that for twenty-one years the Committees never rendered any accounts at all. This, as we have stated earlier in this judgment, is a most reprehensible thing. If no case has been referred to in which such laches as this were in evidence, it is because it is almost impossible to imagine that there can have been any similar case before; and if the objection which is founded upon this deplorable neglect is to be overruled, it is because of strong exceptional circumstances. These are: that no damage whatever seems to have been done to the lunatic's estate, that the accuracy of the accounts was, after due inspection by the appellant, not questioned, that the *bona fides* of the Committees was not questioned thereafter, that the original order appointing the Committees authorises an expenditure on the maintenance of the family, that Balasundaram is the next heir, that the testator himself from whom the lunatic got her property desired her to live with Balasundaram and the other members of the family as one family, and that there is evidence upon which the learned trial Judge could reasonably hold that the lunatic herself, if

of sound mind, would have made the expenditure in question. Having regard to all these matters and in view of our opinion that the trial Court has a discretion in such matters, can it be said that, having regard to the considerations put forward on behalf of the Committees, the learned trial Judge has wrongly exercised his discretion, and that nevertheless and despite all these matters he ought to have refused sanction? In other words, ought he to have punished the Committees for not having filed and passed the accounts for twenty-one years by surcharging them with this expenditure and undoubtedly driving the second Committee to insolvency? In our opinion, in view of the exceptional circumstances of this case, the trial Judge was justified in exercising his discretion in the manner he did, and it follows that this appeal must be dismissed.

On the question of costs, we think that, as the appellant has failed, he must bear the costs of this appeal. It was one thing to carry this matter up to the stage of enquiry and into the trial Court. Not having succeeded there, we see no real justification for his pursuing the matter further. As he has chosen to do so and has failed, it is only right and proper in our opinion that he should bear the costs of the appeal.

The Committee must apply on the Original Side for the direction of the Court for the investment of surplus income in his hands.

G.R.